

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Concise Statement  
File Number: VID645/2020  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
ALLIANZ AUSTRALIA INSURANCE LIMITED & ANOR  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 30/09/2020 3:39:18 PM AEST

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

Registrar

### Important Information

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**Concise Statement**

No. VID of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

**Australian Securities and Investment Commission**

Plaintiff

**Allianz Australia Insurance Ltd (ACN 000 122 850) and another**

Defendants

**A. Introduction**

1. This claim relates to a number of travel insurance products that the first defendant (**Allianz**) issued and was responsible for, and which were marketed, sold and managed by the second defendant (**AWP**). Those products were sold to consumers in Australia through websites operated by Expedia Inc (ARBN 138 063 573) (**Expedia**).
2. In the course of dealing with the travel insurance products referred to above, Allianz engaged in four categories of (mis)conduct, and AWP engaged in three categories of (mis)conduct, in respect of which the plaintiff (**ASIC**) brings this claim.
3. In summary, ASIC alleges that Allianz and AWP misled or deceived, and/or failed to ensure financial services were provided efficiently, honestly and fairly, and/or otherwise failed to comply with financial services laws. ASIC alleges that – except for one category of breach – Allianz and AWP are liable both as primary wrongdoers, as accessories to the wrongdoing of the other, and, as an alternative, as accessories to the wrongdoing of Expedia. Those failings involved breaches of various provisions of the *Corporations Act* 2001 (Cth) (**Corporations Act**) and the *Australian Securities and Investments Commission Act* 2001 (Cth) (**ASIC Act**).

**B. The important facts giving rise to the claims****B.1. Allianz, AWP, Expedia and the relevant products**

4. Allianz issued a number of travel insurance products to consumers in Australia. It used AWP (which trades as “Allianz Global Assistance”) to market, sell and manage those products, pursuant to a number of agreements between Allianz and AWP. At all material

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times, each of Allianz and AWP was financial services licensees for the purposes of the *Corporations Act*. In marketing, selling and managing those products, including arranging, entering into, varying and disposing of the products, AWP acted as Allianz' agent.

5. One of the methods by which Allianz and AWP issued, marketed and sold travel insurance products was through Expedia. At all material times, Expedia operated a number of travel booking websites, including [www.expedia.com.au](http://www.expedia.com.au), [www.lastminute.com.au](http://www.lastminute.com.au) and [www.wotif.com.au](http://www.wotif.com.au) (together, **Expedia websites**). Through the Expedia websites, Expedia marketed and sold travel products to members of the public, including flights, accommodation and travel insurance. In marketing and selling Allianz' products, including arranging for and selling those products, Expedia acted as Allianz' and/or AWP's agent.
6. Allianz issued a range of travel insurance products. At all material times, one category of those products was known as "integrated" products (**the Integrated Product**). The Integrated Product was, relevantly, sold on the Expedia websites in conjunction with other travel products being sold by Expedia, such as flights or accommodation. The Integrated Product had two policy options: a "cancellation-only" policy (which covered costs associated with cancellation of travel arrangements), and an "essentials" policy (which incorporated the cancellation-only cover, and also added cover for medical or hospital cover). The Integrated Product comprised approximately 98% of the travel insurance products issued by Allianz, sold by AWP and distributed by Expedia in Australia.
7. Allianz and/or AWP had the power to monitor and approve all new or updated content or advertising material on the Expedia websites in respect of Allianz' travel insurance products (including the Integrated Product), and they had the power to require Expedia to make changes to the Expedia websites in relation to those products (including the Integrated Product). Allianz and AWP had their own internal processes which governed that monitoring and approval process.
8. Where Expedia made statements on the Expedia websites about Allianz/AWP products (including the Integrated Product), Allianz and/or AWP should be taken to have made those statements. Alternatively, to the extent that Expedia made statements on the Expedia websites about Allianz/AWP products (including the Integrated Product), Allianz and/or AWP were liable as accessories to those statements.

**B.2. The Premium Calculation Methodology breaches**

9. Between 24 February 2015 and 1 June 2018, Allianz issued various product disclosure statements (**PDS**) to customers in respect of the Integrated Product which were made available to customers on the Expedia websites. The PDS remained available on the Expedia websites beyond those dates (although the dates on which the PDS were removed from the Expedia websites are not presently known to ASIC). Each PDS contained words to the effect of "in calculating [a customer's premium], we take into account a number of factors, including your destination(s), length of journey and age of persons to be covered under the policy. The amount of any excess payable is also included in the calculation of your premium" (**the Premium Calculation Statements**).

10. In fact, and contrary to the Premium Calculation Statements, the calculation of a customer's premium was made by reference to only two factors: (a) the cost of the total travel package being purchased by the customer; and (b) the duration of the customer's trip. The premium was calculated as a percentage of the total cost of the trip, and the relevant percentage changed depending on the length of the trip (although there was also a minimum charge of \$29 per person) (**the Premium Calculation Methodology breaches**).

*B.3. The Journey Criterion Breaches*

11. One of the policies available under the Integrated Product was known as "Plan D Cancellation Only" (**Plan D policy**). In order for a customer to have insurance coverage under the Plan D policy, the customer's journey was required to commence, or in some instances commence or conclude, in Australia (**the Journey Criterion**).
12. During the purchase process on the Expedia websites from which the Plan D policy was available for purchase, customers were required to enter the places of origin and conclusion of their journey. However, despite some customers entering information about the places of origin and conclusion of their journey which would have enabled the Expedia website to have determined that the customer did not satisfy the Journey Criterion, the Expedia websites (**Flawed Websites**) did not contain any control mechanism to prevent customers who did not satisfy the Journey Criterion from purchasing the Plan D policy. Accordingly, the Flawed Websites allowed customers who did not satisfy the Journey Criterion to purchase the Plan D policy. Between 24 February 2015 and 12 September 2018, 63,762 policies were purchased by customers who did not satisfy the Journey Criterion. The Flawed Websites remained active until some time after 12 September 2018 (although the date/s on which those websites were relevantly deactivated are not presently known to ASIC).
13. As a result of the matters referred to in paragraph 12 above, Allianz and/or AWP allowed ineligible customers to obtain the Plan D policy through the Expedia websites, and thereby sold Plan D policies to customers who did not satisfy the Journey Criterion (**the Journey Criterion Breaches**).

*B.4. The Age Criterion Breaches*

14. At all material times, the Integrated Product did not provide insurance coverage to persons over 61 years old (**the Age Eligibility Criterion**). Between about 1 December 2016 and 15 February 2017, in respect of the Integrated Product, the Expedia websites did not contain any warning, other than a link to a Product Disclosure Statement, to notify customers of the Age Eligibility Criterion.
15. Between about 1 December 2016 and 15 February 2017, Allianz and/or AWP allowed ineligible customers in effect to mistakenly apply for and thereby obtain the Integrated Product through the Expedia websites (**the Age Criterion Breaches**).

**B.5. The Smart Traveller Breaches**

16. At all material times, during the process of purchasing travel products on the Expedia websites, customers were required to select one of three options concerning travel insurance. Two of the options enabled a customer to purchase travel insurance policies which were part of the Integrated Product. The third option enabled a customer not to purchase travel insurance, and also contained the words “Travel insurance is as essential as your passport regardless of your travel destination – Smart Traveller – Department of Foreign Affairs and Trade” (**the Smart Traveller Statement**).
17. The Smart Traveller Statement was intended by Expedia (and therefore by Allianz and/or AWP) to represent that the Department of Foreign Affairs and Trade advised in effect that all forms of travel insurance were as essential as a passport. In fact, however, when the Smart Traveller Statement was published on the website of the Department of Foreign Affairs and Trade, it was contained in terms/context which indicated that the Smart Traveller Statement applied to travel insurance containing medical and hospital coverage.
18. From some time between about October 2015 and April 2016, until some time after 12 September 2018 (although the date is not presently known to ASIC), the use of the Smart Traveller Statement on the Expedia websites included instances where the Smart Traveller Statement was made in respect of cancellation-only travel insurance policies of Allianz/AWP, which did not include medical or hospital cover (**the Smart Traveller Breaches**).

**C. Summary of relief sought**

19. ASIC seeks declarations to the effect that:
  - (a) Allianz and AWP have contravened ss 12DA, 12DB and 12DF of the ASIC Act;
  - (b) Allianz and AWP have contravened ss 912A(1)(a), 912A(1)(c) and 1041H of the *Corporations Act*;
  - (c) further or alternatively, Allianz and AWP respectively aided, abetted, were directly knowingly concerned in and/or were indirectly knowingly concerned in the breaches of AWP and Allianz respectively; and
  - (d) alternatively to (c) above, Allianz and/or AWP aided, abetted, were directly knowingly concerned in and/or were indirectly knowingly concerned in the breaches of Expedia.
20. ASIC also seeks:
  - (a) pecuniary penalties in respect of the contraventions of ss 12DB and 12DF of the *ASIC Act*; and
  - (b) costs.

**D. The primary legal grounds for the relief sought**

21. **Misleading conduct in relation to the nature, characteristics or suitability of financial services** (s 12DF of the *ASIC Act*): the Premium Calculation Breaches; the Journey Criterion Breaches; the Age Criterion Breaches; and the Smart Traveller Breaches.
22. **Conduct in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive** (s 1041H of the *Corporations Act*): the Journey Criterion Breaches; the Age Criterion Breaches; and the Smart Traveller Breaches.
23. **Failure to do all things necessary to ensure that financial services covered by a licence were provided efficiently, honestly and fairly** (s912A(1)(a) of the *Corporations Act*): the Premium Calculation Breaches; the Journey Criterion Breaches; the Age Criterion Breaches; and the Smart Traveller Breaches.
24. **Conduct in relation to financial services that was misleading or deceptive, or likely to mislead or deceive** (s 12DA of the *ASIC Act*): the Journey Criterion Breaches; the Age Criterion Breaches; and the Smart Traveller Breaches.
25. **False or misleading representation concerning the need for financial services** (s 12DB(1)(h) of the *ASIC Act*): the Smart Traveller Breaches.
26. **Failure to comply with financial services laws** (s 912A(1)(c) of the *Corporations Act*): the Premium Calculation Breaches; the Journey Criterion Breaches; the Age Criterion Breaches; and the Smart Traveller Breaches.
27. **Accessorial liability**: In respect of the Journey Criterion Breaches; the Age Criterion Breaches; and the Smart Traveller Breaches, to the extent that AWP and/or Allianz are not primarily liable, they are accessorially liable for each other's breaches, alternatively for Expedia's breaches, by reason of having aided, and/or abetted, and/or being directly knowingly concerned in, and/or being indirectly knowingly concerned in, the relevant breaches.

**E. The alleged harm suffered from the conduct**

28. Allianz and/or AWP's conduct potentially resulted in its customers being misled or deceived into purchasing inappropriate or worthless insurance and traveling without, or without adequate, insurance coverage.

**Certificate of lawyer**

I, Nick Kelton, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the Concise Statement.

Date: 30 September 2020



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Signed by Nick Kelton  
Solicitor for the Plaintiff

This concise statement was prepared by the Plaintiff's counsel: S R Senathirajah and Myles Tehan.

## **Schedule of parties**

### **Plaintiff**

Plaintiff Australian Securities and Investment Commission

### **Defendants**

First Defendant Allianz Australia Insurance Ltd (ACN 000 122 850)

Second Defendant AWP Australia Pty Ltd (ACN 097 227 177)