

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
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File Number: NSD310/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
AUTO & GENERAL INSURANCE COMPANY LIMITED (ACN 111 586
353)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Originating process

(rules 2.2 and 15A.3)

No. of 2023

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

IN THE MATTER OF AUTO & GENERAL INSURANCE COMPANY LIMITED ACN 111 586 353

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

AUTO & GENERAL INSURANCE COMPANY LIMITED (ACN 111 586 353)

Defendant

A. DETAILS OF APPLICATION

This application is made under ss 12GND, 12GNB and 12GD of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and ss 21 and 23 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).

In this Originating Process:

- A reference to **Class Insurance Contracts** is a reference to a contract:
 - a) entered into or renewed from 5 April 2021;
 - b) between the defendant and any Non-Party Consumer;
 - c) which meets the definition of a consumer contract within the meaning of s 12BF(3) of the ASIC Act; and
 - d) which incorporates one of the following Product Disclosure Statements (**PDS**) dated 1 March 2021:
 - i. Auto & General Your Home and Contents Insurance Policy PDS;
 - ii. Budget Direct Your Home and Contents Insurance Policy PDS;
 - iii. Australia Post Your Home and Contents Insurance Policy PDS;
 - iv. ING Home and Contents Insurance Policy PDS;
 - v. Catch Insurance Your Home and Contents Insurance Policy PDS;
 - vi. Virgin Insurance Your Home and Contents Insurance Policy PDS; and

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Tina Beltrame, Litigation Counsel		
Law firm (if applicable)	N/A		
Tel	0402 955 439	Fax	N/A
Email	Tina.Beltrame@asic.gov.au		
Address for service	Level 5, 100 Market Street Sydney NSW 2000		
(include state and postcode)	Tina.Beltrame@asic.gov.au		



vii. Qantas Home and Contents Insurance PDS.

- A reference to the **Individual Insurance Contracts** is a reference to the contracts of insurance entered into by the defendant identified in Annexure “A”.
- A reference to a **Non-Party Consumer** has the meaning given in 12BA of the ASIC Act.
- A reference to the **Notification Term** is the term identified in Annexure “B”.

On the grounds stated in the Concise Statement filed in these proceedings and served with this Originating Process, the plaintiff claims:

Individual Insurance Contracts

1. A declaration under s 12GND of the ASIC Act that the Notification Term in the Individual Insurance Contracts is an unfair term within the meaning of s 12BG(1) of the ASIC Act.
2. A declaration under s 21 of the FCA Act, or alternatively ss 12GNB and 12GNC of the ASIC Act, that the Notification Term in the Individual Insurance Contracts is void ab initio by operation of s 12BF(1) of the ASIC Act.
3. An order under s 12GD of the ASIC Act restraining the defendant, whether by itself, its servants, agents or otherwise, from applying or relying on or enforcing the Notification Term in the Individual Insurance Contracts.
4. A declaration under s 21 of the FCA Act that the Individual Insurance Contracts otherwise continues to bind the parties to it.

Class Insurance Contracts

5. A declaration under s 12GNB of the ASIC Act that the Notification Term in each of the Class Insurance Contracts is void ab initio.
6. Alternatively, a declaration under s 12GND of the ASIC Act, or alternatively s 21 of the FCA Act, that the Notification Term in each of the Class Insurance Contracts is unfair within the meaning of s 12BG(1) of the ASIC Act and is void ab initio by operation of s 12BF(1) of the Act.
7. An order under s 12GNB of the ASIC Act, or alternatively s 23 of the FCA Act, directing the defendant, at its own expense, within 30 days, to reassess any claim made by a Non-Party Consumer under a Class Insurance Contract which the defendant reduced or refused to pay in reliance upon the Notification Term.
8. An order under s 12GD of the ASIC Act, or alternatively s 23 of the FCA Act, restraining the defendant, whether by itself, its servants, agents or otherwise, from applying or relying on or enforcing the Notification Term in the Class Insurance Contracts.
9. An order under s 12GNB of the ASIC Act, or alternatively s 23 of the FCA Act, that the defendant, at its own expense, is, within 14 days of the date of this order, to publish in a



prominent place on the home page of the defendant's website (being <https://www.autogeneral.com.au>) a corrective notice in such terms as are ordered by the Court.

10. An order under s 12GNB of the ASIC Act, or alternatively s 23 of the FCA Act, that the defendant, at its own expense, within 14 days of the date of this order, provide a corrective notice in such terms as are ordered by the Court to each Non-Party Consumer.
11. Such further or other orders as the Court considers appropriate.
12. Costs.

Date: 4 April 2023

A handwritten signature in blue ink, appearing to read 'Tina Beltrame', written over a horizontal line.

Signature of Tina Beltrame
Plaintiff's legal practitioner

This application will be heard by the Federal Court of Australia at _____ at
on _____ .

B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: Auto & General Insurance Company Limited, 'Toowong Tower', Level 13, 9 Sherwood Road, Toowong, Queensland, 4066.

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 a 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. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

N/A

D. FILING

Date of filing:

Signed by an officer acting with the authority
of the District Registrar

This originating process is filed by Tina Beltrame for the plaintiff.

E. SERVICE

The plaintiff's address for service is Level 5, 100 Market Street, Sydney NSW 2000.

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



ANNEXURE A: INDIVIDUAL INSURANCE CONTRACTS

DOCUMENT IDS	CONTRACT DATE	POLICY TYPE	PDS
AGI.1900.0001.0005 AGI.0003.0001.1152 AGI.1451.0001.0318	22.03.2023	Home	Qantas Home and Contents Insurance PDS
AGI.1900.0001.0014 AGI.0010.0001.0010 AGI.0003.0001.0131	08.03.2023	Home & Contents	Auto & General Your Home and Contents Insurance Policy PDS
AGI.1900.0001.0040 AGI.0003.0001.0489 AGI.1451.0001.0079	22.03.2023	Home & Contents	Budget Direct Your Home and Contents Insurance Policy PDS
AGI.1900.0001.0046 AGI.0003.0001.0489 AGI.1451.0001.0079	22.03.2023	Contents	Budget Direct Your Home and Contents Insurance Policy PDS
AGI.1900.0001.0020 AGI.0003.0001.0940 AGI.1451.0001.0205	22.03.2023	Contents	ING Home and Contents Insurance Policy PDS
AGI.1900.0001.0044 AGI.0003.0001.1317 AGI.1451.0001.0391	21.03.2023	Home	Virgin Insurance Your Home and Contents Insurance Policy PDS
AGI.1900.0001.0013 AGI.0010.0001.0010 AGI.0003.0001.0131	21.03.2023	Home	Auto & General Your Home and Contents Insurance Policy PDS
AGI.1900.0001.0021 AGI.0003.0001.0940 AGI.1451.0001.0205	21.03.2023	Home & Contents	ING Home and Contents Insurance Policy PDS
AGI.1900.0001.0096 AGI.0003.0001.1317 AGI.1451.0001.0391	21.03.2023	Contents	Virgin Insurance Your Home and Contents Insurance Policy PDS
AGI.1900.0001.0003 AGI.0003.0001.1152 AGI.1451.0001.0318	21.03.2023	Home & Contents	Qantas Home and Contents Insurance PDS



ANNEXURE B: NOTIFICATION TERM

Tell us if anything changes while you're insured with us

While you're insured with us, you need to tell us if anything changes about your home or contents.

If you don't tell us about changes, we may:

- refuse to pay a claim
- reduce the amount we pay
- cancel your contract
- not offer to renew your contract.

Examples of changes we want you to tell us about, are:

Your insured property or address for contents changes	You find out your home is heritage listed or has a heritage overlay
Paying guests stay in your home, for example, Airbnb, Homestayz	Your home is no longer in good condition
You are moving out and rent your home to tenants	You will start earning an income at your insured address
Any construction, alteration, or renovation work will start or finish	Security devices are removed, or broken
Your home will be demolished, by you or a government agency	You find out the building materials contain asbestos.
Your property will be unoccupied for more than 60 days, or is occupied by trespassers	