



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID681/2021

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MLC LIMITED (ABN 90 000 000 402)

Defendant

ORDER

JUDGE: JUSTICE MOSHINSKY

DATE OF ORDER: 18 May 2023

WHERE MADE: Melbourne

THE COURT NOTES THAT:

In these declarations and orders, terms have the following meaning:

- (a) **AFSL** means Australian Financial Services Licence.
- (b) **ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth) as in force during the relevant period.
- (c) **Corporations Act** means the *Corporations Act 2001* (Cth) as in force during the relevant period.
- (d) **Insurance Contracts Act** means the *Insurance Contracts Act 1984* (Cth) as in force during the relevant period.
- (e) **MLCL** means the defendant, MLC Limited (ACN 000 000 402).
- (f) **SRA** means severe rheumatoid arthritis.
- (g) **MS Breach** means the Mail Suppression breach.

THE COURT DECLARES THAT:

1. a. In the period up to 31 October 2018:
 - i. MLCL provided income protection cover to customers under policies of insurance (**RBB Policies**) which contained a term (**RBB Term**) by which MLCL promised to pay a sum of money to the customer described as a “Rehabilitation Bonus Benefit” (**RBB**) if the customer was eligible;
 - ii. 119 customers made a claim to MLCL for indemnity under their respective RBB Policy and were in receipt of income protection benefits (each a **RBB Impacted Customer**);



- iii. each RBB Impacted Customer participated in an approved rehabilitation program, by reason of which each RBB Impacted Customer was eligible for the RBB;
 - iv. between 18 November 2015 and 31 October 2018 each RBB Impacted Customer (or their agent or doctor) provided information to MLCL by which it knew or should have known that each RBB Impacted Customer was eligible for the RBB; and
 - v. MLCL did not pay the RBB to each RBB Impacted Customer within a reasonable period of time after proof of satisfactory participation by the RBB Impacted Customer in an approved rehabilitation program.
 - b. By the above conduct in paragraphs 1(a)(i) - (v), MLCL represented to each of the 119 RBB Impacted Customers that the RBB Impacted Customers were not eligible for RBB (the **Representation**).
 - c. The Representation was made in trade or commerce and constituted:
 - i. a false or misleading representation, that services were of a particular standard, had benefits, or contained conditions or rights, in connection with the supply or possible supply of financial services, in contravention of ss 12DB(1)(a), (e) and (i) of the ASIC Act; and
 - ii. misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
2. MLCL breached the requirements of s 13 of the Insurance Contracts Act in relation to the 119 RBB Impacted Customers in the period 18 November 2015 to 31 October 2018 in that it failed to act towards each RBB Impacted Customer, in respect of each matter arising under or in relation to that customer's RBB Policy, with the utmost good faith, by reason of engaging in the conduct the subject of declaration 1 above.
3. By reason of:
 - a. MLCL engaging in the conduct the subject of declaration 1 above; and
 - b. MLCL not having appropriate processes and procedures to ensure that it would pay the RBB to the 119 RBB Impacted Customers in the period 18 November 2015 to 31 October 2018,

MLCL thereby failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.



4. a. On 30 June 2017, MLCL updated its definition of SRA in MLCL Insurance and Personal Protection Portfolio policies for SRA (**SRA Policies**) diagnosed after 30 June 2017.
- b. In the period 27 February 2015 to 30 June 2017, MLCL did not have adequate processes to review and if appropriate promptly update, medical definitions for critical illnesses in SRA Policies, in circumstances where it had received expert medical evidence or opinion concerning the currency of medical definitions which ought to have prompted it to review the relevant medical definitions.
- c. By reason of the foregoing, between 27 February 2015 to 30 June 2017, MLCL failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
5. a. Between 18 November 2015 to March 2018:
 - i. MLCL had a policy administration system called Eclipse which provided for, amongst other things, communications to insureds under MS Policies;
 - ii. Eclipse was configured to enable MLCL to suppress the automated communications to insureds by manually applying the “mail suppression flag” (**Flag**) to the insured in Eclipse;
 - iii. however, MLCL did not:
 - A. adequately train relevant MLCL staff to remove the Flag after the reasons for the suppression ended; nor
 - B. appropriately monitor relevant MLCL staff’s use of the Flag.
- b. Accordingly, in the period 18 November 2015 to March 2018 and in relation to 282 life insureds (374 policies), MLCL failed to remove the Flag within a reasonable time after the reason for the mail suppression ended.
- c. By reason of the matters in paragraph 5 (a)(iii) above, MLCL failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

THE COURT ORDERS THAT:

6. Pursuant to s 12GBA(1) of the ASIC Act, within 30 days of the date of this order, MLCL pay to the Commonwealth of Australia a pecuniary penalty of \$10 million in respect of MLCL’s conduct in paragraph 1 of the declarations declared to be contraventions of ss 12DB(1)(a), (e) and (i) of the ASIC Act.



7. MLCL pay the plaintiff's costs of and incidental to the proceeding as agreed, and if not, taxed.
8. Pursuant to s 12GLB(1)(a) of the ASIC Act, within 30 days of the order, MLCL publish, at its own expense, a written adverse publicity notice in the terms set out in Annexure A to these orders (**Written Notice**), by, for a period of no less than 90 days, maintaining a copy of the Written Notice, in font no less than 10 point, in an immediately visible area of the following web address: <https://www.mlcinsurance.com.au> (the **webpage**).
9. The proceeding otherwise be dismissed.

Date that entry is stamped: 18 May 2023

Sia Lagos
Registrar



Annexure A

Misconduct Notice

The Federal Court of Australia has ordered MLC Limited to publish this misconduct notice.

On [date], Justice Moshinsky of the Federal Court ordered MLC Limited to pay a total pecuniary penalty of \$[10 million] in connection with making false or misleading representations that services were of a particular standard, had benefits, or contained conditions or rights to insurance customers throughout the period spanning 18 November 2015 to 31 October 2018, (the **Penalty Period**).

Justice Moshinsky also declared that, by the conduct MLC Limited:

- a. failed to do all things necessary to provide financial services fairly, honestly and efficiently; and
- b. failed to act with the utmost good faith towards some insurance customers.

A total of \$2,062,958.92 in rehabilitation bonus benefits were not paid to 119 eligible insurance customers within a reasonable period of time after proof of satisfactory participation in an approved rehabilitation program during the Penalty Period.

MLC Limited made admissions of contravention in the proceeding.

Prior to the proceeding, MLC Limited conducted a remediation program in which it paid \$6,195,633.68 including interest to 293 insurance customers.

The conduct subject of the proceeding affected 119 customers of the following insurance policies during the Penalty Period:

- (a) MLC Personal Protection Portfolio Income Protection Plus;
- (b) MLC Insurance Income Protection (including Platinum and Special Risk);
- (c) MLC Protection^{first} Income Protection Gold;
- (d) NAFM Protection Plan Income Protection Plus.

Further information

The above conduct contravened the following financial services laws:

- sections 12DA(1) and 12DB(1)(a), (e) and (i) of the *Australian Securities and Investments Commission Act 2001* (Cth); and
- sections 1041H and 912A(1)(a) of the *Corporations Act 2001* (Cth); and
- section 13 of the *Insurance Contracts Act 1984* (Cth).



For further information about the conduct, see the following links:

- Justice Moshinsky's judgment on penalty [\[hyperlink\]](#);
- ASIC media release [\[hyperlink\]](#); and
- Statement of facts agreed between the parties to the proceeding [\[hyperlink\]](#).