

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/11/2021 4:21:36 PM 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:	VID681/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v MLC LIMITED ABN 90 000 000 402
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: 18/11/2021 4:31:15 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.



Form 2
(rules 2.2 and 15A.3)

ORIGINATING PROCESS

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

NO **OF 2021**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

MLC Limited (ACN 000 000 402)
Defendant

A. DETAILS OF APPLICATION

This application is made under ss 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), ss 12GBA(1), 12GBB(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and ss 1101B and 1324 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the ASIC Act, Corporations Act and *Insurance Contracts Act 1984* (Cth) (**ICA**), pecuniary penalty orders, adverse publicity orders and ancillary orders, including costs.

In this originating process, terms which are defined in the Concise Statement dated 18 November 2021 have the same meaning as they do in that document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

Declarations

- 1 A declaration under s 21 of the FCA Act, s 12GBA(1) of the ASIC Act, and/or s 1101B of the Corporations Act that, by making the RBB Documentary and Silence Representations to 282 insureds, the Defendant (**MLC**) represented to each insured in trade or commerce that:
 - (a) MLC would assess insureds who made claims for the benefits to which the insured was entitled under their policy (including the RBB);
 - (b) MLC would pay the RBB to insureds if they were eligible;
 - (c) MLC had appropriate systems and procedures in place to ensure that eligible insureds would be assessed for and paid the RBB; and



- (d) on an assessment by MLC applying appropriate systems and procedures, the insured was not entitled to the RBB,

which representations were each:

- (e) 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 s 12DB(1)(a), (e) and (i) of the ASIC Act; and
- (f) 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 A declaration under s 21 of the FCA Act, s 12GBA(1) of the ASIC Act, and/or s 1101B of the Corporations Act that, by making the SRA Documentary and Silence Representations to 8 insureds, MLC represented to each insured in trade or commerce that:

- (a) definitions of serious ailments would be updated within a reasonable time to remain appropriate with regard to current medical terminology and classification, treatment and diagnosis;
- (b) whenever a definition was updated, that update would automatically be made to each insured's extant policy;
- (c) MLC had appropriate systems and procedures in place to ensure that medical definitions would be updated to take into account advances in medical treatment and diagnostics; and
- (d) on application by MLC of appropriate systems and procedures, the unamended definition of severe rheumatoid arthritis remained appropriate with regard to current medical practice,

which representations were each:

- (e) a false or misleading representation that services are of a particular standard, have benefits, or contain conditions or rights, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(a), (e) and (i) of the ASIC Act; and
- (f) 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.



- 3 A declaration under s 21 of the FCA Act, s 12GBA(1) of the ASIC Act, and/or s 1101B of the Corporations Act that, by making the LC Representations to 41,440 insureds, MLC represented to each insured in trade or commerce that:
- (a) where the insured's policy was cancelled early, their refund would be calculated by the Early Cancellation Refund Rule (**ECRR**); and
 - (b) MLC had appropriate systems in place to ensure refunds were calculated by the ECRR,
- which representations were each:
- (c) a false or misleading representation that services are of a particular standard, have benefits, are of a particular price, or contain conditions or rights, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(a), (e), (g) and (i) of the ASIC Act; and
 - (d) 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.
- 4 A declaration under s 21 of the FCA Act, s 12GBA(1) of the ASIC Act, and/or s 1101B of the Corporations Act that on each occasion during the Penalty Period that MLC in trade or commerce accepted payment of fees for a RBB Policy held by 282 insureds, there were reasonable grounds for believing that MLC would not be able to supply the financial services within a reasonable time, in contravention of s 12DI(3) of the ASIC Act.
- 5 A declaration under s 21 of the FCA Act, s 12GBA(1) of the ASIC Act, and/or s 1101B of the Corporations Act that on each occasion during the Penalty Period that MLC in trade or commerce accepted payment of fees for a LC Policy held by 22,996 insureds, there were reasonable grounds for believing that MLC would not be able to supply the financial services within a reasonable time, in contravention of s 12DI(3) of the ASIC Act.
- 6 A declaration under s 21 of the FCA Act and/or s 1101B of the Corporations Act that by engaging in the conduct described in Part C.2 and C.4 in the Concise Statement, MLC failed to act with utmost good faith in breach of the term of utmost good faith implied in each of the Relevant Policies by s 13(1) of the ICA, and in breach of s 13(2) of the ICA.



- 7 A declaration under s 21 of the FCA Act, s 12GBA(1) of the ASIC Act, and/or s 1101B of the Corporations Act that on each occasion that MLC contravened ss 12DA(1), 12DB(1)(a), (e), (g) and (i), and/or 12DI(3) of the ASIC Act, s 1041H of the Corporations Act, and s 13(2) of the ICA, as referred to in paragraphs 1 to 6 above, and by the conduct described in Part C of the Concise Statement, MLC breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

Penalties

- 8 An order pursuant to s 12GBB(1) of the ASIC Act that, within 30 days of the order, MLC pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of MLC's conduct declared to be contraventions of ss 12DB(1)(a), (e), (g) and (i) and 12DI(3), as referred to in paragraphs 1 to 5 above.

Other Orders

- 9 An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, MLC take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations, and accepted payments when there were reasonable ground for believing that it would not be able to provide the financial services, in a manner and form approved by the Court.
- 10 An order pursuant to s 12GD(1) of the ASIC Act and ss 1101B and/or 1324 of the Corporations Act that MLC, at its own expense:
- (a) within 45 days of the date of this Order, appoint a suitably qualified compliance professional with expertise in assessing insurance business processes, systems and controls, and who is independent of MLC and has not previously been engaged by MLC (**Reviewer**) to review and confirm the design and operating efficacy of:
 - (i) MLC's ongoing systems and controls in respect of the assessment of insureds for their entitlement to the RBB, and the payment to those insureds of the RBB;



- (ii) MLC's systems and controls in respect of updating medical definitions to ensure they stay contemporary with medical diagnostic and treatment practice;
 - (iii) MLC's ongoing systems and controls in respect of the suppression and resumption of communications to insureds;
 - (iv) MLC's ongoing systems and controls in respect of calculating and paying refunds to insureds in accordance with the given insured's policy; and
 - (v) MLC's processes for identifying and remediating insureds impacted by MLC's conduct in respect of the RBB and SRA Breaches,
- (b) instruct the Reviewer to prepare a written report to MLC within a period of 6 months of the date of their appointment that confirms the design and operating efficacy of MLC's systems and controls and if necessary, makes recommendations which identify:
- (i) any revisions to MLC's systems and controls in respect of the matters at 10(a) above that are reasonably necessary to limit the risk of future contraventions of the Corporations Act, ASIC Act or ICA of the nature of those the subject of this proceeding; and
 - (ii) any material deficiencies in MLC's systems and controls in respect of the matters at 10(a) above that are reasonably necessary to be rectified, and should be rectified, to limit the risk of future contraventions of the Corporations Act, ASIC Act or ICA of the nature of those the subject of this proceeding;
- (c) the identity of the Reviewer and terms of their retainer is to be agreed between MLC and the Plaintiff;
- (d) use best endeavours to provide the Reviewer with access to all sources of information in MLC's possession, power or control that is relevant to the Reviewer's review;
- (e) within 20 business days of receiving the Reviewer's written report, provide a copy of that report to the Plaintiff; and
- (f) use best endeavours to implement with due diligence any recommendations made by the Reviewer.



- (a) an affidavit verifying that it has carried out its obligations under paragraph 10(a) above, within 10 days of MLC appointing the Reviewer; and
- (b) an affidavit verifying that it has carried out its obligations under paragraph 10(f) above, within 10 months of the date of this Order.

12 An order that the Defendant pay the Plaintiff's costs of and incidental to the proceeding.

13 Such further or other orders as the Court considers appropriate.

Date: 18 November 2021

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Andrew John Christopher

This application will be heard by the Federal Court of Australia at Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC 3000 at *am/*pm on

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B. NOTICE TO DEFENDANT

TO: MLC Limited
C/- Clyde & Co
Level 26, 140 William Street
Melbourne VIC 3000
Attention: Nicole Wearne

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. FILING

Date of filing:

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Registrar

This originating process is filed by Andrew John Christopher for the plaintiff.

E. SERVICE

The plaintiff's address for service is:

C/- Webb Henderson

Level 18, 420 George Street, SYDNEY NSW 2000

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