

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
Federal Court of Australia Act 1976 - Form 19 - Rule 9.32

Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

Date of Lodgment: 15/12/2023 4:21:50 PM AEDT

Date Accepted for Filing: 15/12/2023 4:28:14 PM AEDT

File Number: VID489/2020

File Title: NIGEL PETER STACK & ORS v AMP FINANCIAL PLANNING PTY
LIMITED & ORS

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



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.



Further amended originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976

(Filed pursuant to leave granted in order ~~2(4)~~ of the orders made by Beach J on 8
December 23 December 2024 2023)

No. VID 489 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Nigel Peter Stack and others named in the Schedule
Applicants

AMP Financial Planning Limited (ACN 051 208 327) and others named in the Schedule
Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: Federal Court of Australia, 305 William Street, Melbourne VIC 3000

Date: 15 December 2023

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

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Definitions

Unless otherwise stated, capitalised terms used in the accompanying ~~Consolidated~~ Further Amended Statement of Claim have the same meaning when used in this application.

Details of claim

On the grounds stated in the ~~Consolidated~~ Further Amended Statement of Claim, the Applicants claim on their own behalf and on behalf of the Group Members:

As against the First, Second and Third Respondents (the AMP Licensees):

1. An order that, in the event the Applicants and Group Members so elect, the AMP Licensees account for and pay to the Applicants and each of the Group Members all benefits, profits and gains made or derived by the AMP Authorised Representatives and the AMP Licensees by reason of the breaches of fiduciary duty alleged in the Further Amended Statement of Claim;
2. An order that an enquiry be held to determine the amount payable to the Applicants and each of the Group Members pursuant to the order referred to in paragraph 1 above;
3. In the alternative to the orders referred to in paragraphs 1 and 2 above, an order that, in the event the Applicants and Group Members so elect, the AMP Licensees pay equitable compensation to the Applicants and Group Members for loss and damage suffered by them by reason of the breaches of fiduciary duty alleged in the Further Amended Statement of Claim;
4. In respect of the amounts payable under the orders referred to in paragraphs 1 to 3 above, an order that the ~~First and Second Respondents~~ AMP Licensees pay to the Applicants and each of the Group Members compound interest on monthly rests at the rate of 4% above the Cash Rate Target from time-to-time set by the Reserve Bank of Australia;
5. In the alternative to the orders referred to in paragraphs 1 to 4 above, an order pursuant to ss 961M(2) and (4) of the Corporations Act that the AMP Licensees pay compensation to the Applicants and Group Members for loss and damage suffered by them by reason of the contraventions of ss 961B(1) and 961J(1) by the AMP Authorised Representatives and the contraventions of s 961L by the AMP Licensees alleged in the Further Amended Statement of Claim, including any profits resulting



from those contraventions made by the AMP Licensees and the AMP Authorised Representatives;

6. ~~An order pursuant to s 236(1) of the ACL that the AMP Licensees pay compensation to the Applicants and Group Members for loss and damage suffered by them by reason of the AMP Licensees' contraventions of s 18(1) of the ACL alleged in the Amended Statement of Claim;~~
7. ~~In the alternative to the order referred to in paragraph 6 above, an order pursuant to s 1041H(1) of the Corporations Act that the AMP Licensees pay compensation to the Applicants and Group Members for loss and damage suffered by them by reason of the AMP Licensees' contraventions of s 1041H(1) of the Corporations Act alleged in the Amended Statement of Claim;~~
8. ~~In the alternative to the orders referred to in paragraphs 6 and 7 above, an order pursuant to s 12GF(1) of the ASIC Act that the AMP Licensees pay compensation to the Applicants and each of the Group Members for loss and damage suffered by them by reason of the AMP Licensees' contraventions of s 12DA(1) of the ASIC Act;~~
9. An order pursuant to s 12GF(1) of the ASIC Act that the AMP Licensees pay compensation to the ~~Second and Fourth~~ Applicants and the ~~OSF Sub-Group~~ Members for loss and damage suffered by them by reason of the AMP Licensees' contraventions of s 12CB(1) of the ASIC Act alleged in the Further Amended Statement of Claim;
10. Further or in the alternative to the order referred to in paragraph 9, an order that the AMP Licensees pay damages to the ~~Second and Fourth~~ Applicants and the ~~OSF Sub-Group~~ Members for loss or damage suffered by them by reason of the breaches of contract alleged in the Further Amended Statement of Claim;

As against the Fourth Respondent (AMP):

11. ~~An order pursuant to ss 1317E(1) and/or 1317HA(1) of the Corporations Act that AMP pay compensation to the Applicants and Group Members for loss and damage suffered by them by reason of AMP's contraventions of s 965(1) of the Corporations Act alleged in the Amended Statement of Claim;~~
- 11A. An order pursuant to s 12GF(1) of the ASIC Act that AMP pay compensation to the Applicants and Group Members for loss and damage suffered by them by reason of AMP's contraventions of s 12CB(1) of the ASIC Act alleged in the Further Amended Statement of Claim;



As against the Fifth Respondent (formerly AMP Life, now Resolution Life Australasia Limited, AMP Life):

12. An order that, in the event the Applicants and Group Members so elect, AMP Life account for and pay to the First and Third Applicants and the Stack Sub-Group Members all benefits, profits and gains made or derived by AMP Life from its receipt and use of the AMP Life Premiums, including the Excess Premiums;

12A. Further or in the alternative to paragraph 12, an order that, in the event the Applicants and Group Members so elect, AMP Life account for and pay to the First and Third Applicants and Group Members that held AMP Life Products within ASST and/or ART all benefits, profits and gains made or derived by the AMP Authorised Representatives (and/or their Practices), the AMP Licensees, ASL and AMP Life by reason of the breaches of fiduciary duty by AMP Life alleged in the Further Amended Statement of Claim;

13. An order that an enquiry be held to determine the amount payable to the First and Third Applicants and Stack Sub-Group Members pursuant to the order referred to in paragraphs 12 and/or 12A above;

14. In the alternative to the orders referred to in paragraphs 12 and 13 above, an order that, in the event the First and Third Applicants and Stack Sub-Group Members so elect, AMP Life pay equitable compensation to the First and Third Applicants and the Stack Sub-Group Members for loss and damage suffered by them by reason of AMP Life's knowing receipt of the Excess Premiums;

14A. In the alternative to paragraphs 12A and 13 above, an order that, in the event the Applicants and Group Members so elect, AMP Life pay equitable compensation to the First and Third Applicants and Group Members that held AMP Life Products within ASST and/or ART for loss and damage suffered by them by reason of the breaches of fiduciary duty by AMP Life alleged in the Further Amended Statement of Claim;

15. In respect of the amounts payable under the orders referred to in paragraphs 12 to 14A above, an order that AMP Life pay to the First and Third Applicants and the Stack Sub-Group Members compound interest on monthly rests at the rate of 4% above the Cash Rate Target from time-to-time set by the Reserve Bank of Australia;

As against all the Respondents:

16. An order that damages be awarded in an aggregate amount pursuant to s 33Z(1)(f)



of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**);

17. Interest pursuant to s 51A of the FCA Act;
18. Costs;
19. Such further or other relief as the Court may deem appropriate.

Questions common to claims of group members

The questions of law or fact common to the claims of the group members are:

Introductory matters

1. ~~Could~~ In respect of the matters set out in paragraphs ~~45 and 41~~ to 46 of the Further Amended Statement of Claim:
 - (a) Could those matters reasonably be expected to influence the personal advice given to clients by the AMP Authorised Representatives with respect to Commissioned Products, including any recommendation to acquire, renew, or continue to hold one or more AMP Life Products?
 - (b) Did they give rise to a conflict between the interests of AMP Authorised Representatives and AMP Licensees, on the one hand, and their clients on the other hand?
 - (c) Did they financially incentivise AMP Authorised Representatives to recommend acquiring, renewing, or continuing to hold AMP Life Products, rather than substantially equivalent or better insurance products available for a cheaper premium from third parties, even if the AMP Life Products were not the product in the best interests of the clients?
 - (d) Did they financially incentivise AMP Authorised Representatives to recommend acquiring, renewing or continuing to hold Commissioned Products, even if those products were not the product in the best interests of the client?
- 1A. During the Relevant Period, did the AMP Licensees have in place systems or processes for remunerating their respective AMP Authorised Representatives with the features set out in paragraph 47A of the Further Amended Statement of Claim?
2. ~~Could~~ In respect of the matters set out at paragraphs 48 to 50C of the Further Amended Statement of Claim:



- (a) Could those matters reasonably be expected to influence the personal advice given to clients by the AMP Authorised Representatives with respect to Commissioned Products, including any recommendation to acquire, renew or continue to hold one or more AMP Life Products?
- (b) Did they give rise to a conflict between the interests of AMP Authorised Representatives and AMP Licensees on the one hand and their clients on the other hand?
- (c) Did they financially incentivise AMP Authorised Representatives to recommend acquiring, renewing or continuing to hold AMP products, including AMP Life Products, even if those products were not the product in the best interests of the clients?
- (d) Did they financially incentivise AMP Authorised Representatives to recommend acquiring, renewing or continuing to hold Commissioned Products, even if those products were not the product in the best interests of the clients?
- 2A. During the Relevant Period, did the AMP Licensees maintain and/or facilitate policies, systems or processes to provide incentives to their AMP Authorised Representatives (or their Practices) to grow sales in Commissioned Products, which had the features set out in paragraph 51A of the Further Amended Statement of Claim?
3. Could In respect of the matters set out at paragraphs 52 and 53 to 53D of the Further Amended Statement of Claim;
- (a) Could those matters reasonably be expected to influence AMP Authorised Representatives in relation to the provision of advice to clients in respect of life or risk insurance products, including when recommending whether the client acquire, renew or continue to hold one or more AMP Life products?
- (b) Did they give rise to a conflict between the interests of AMP Authorised Representatives (and their Practices), the AMP Licensees, AMP, and AMP Bank Limited, on the one hand, and the clients on the other hand?
- (c) Did they incentivise AMP Authorised Representatives to recommend that clients buy or continue to hold Commissioned Products to maintain or increase the value of their client register rights?
- (d) Did they incentivise AMP Authorised Representatives to recommend clients buy or continue to hold Commissioned Products to service and secure the debt owing to AMP Bank Limited?



3A. During the Relevant Period, did the AMP Licensees have in place policies, systems and processes pursuant to which an AMP Authorised Representative (or their Practice) could require the AMP Licensee to buy back the AMP Authorised Representative's (or the Practice's) client register based on a pre-agreed valuation calculation and/or sell the AMP Authorised Representative's (or Practice's) client register rights to another AMP Authorised Representative (or Practice)?

Approved products, benchmarks and legacy products

3B. At all material times, were the AMP Life Premiums on AMP Life Products higher than the premiums on substantially equivalent or better insurance products issued by third-party insurers?

3C. At all material times, did the Insurance APLs fail to include one or more insurance products from a third-party insurer that were substantially equivalent or better and on which lower premiums were payable than the AMP Life Premiums payable on the AMP Life Products on the Insurance APLs?

4. ~~Could~~ In respect of the matters set out at paragraphs 98 and ~~406~~ 98A of the Further Amended Statement of Claim;

(a) Could those matters reasonably be expected to have influenced the AMP Authorised Representatives in relation to providing clients with advice in respect of life or risk insurance products, including when recommending that the client acquire, renew or continue to hold one or more AMP Life Products?

(b) Did they give rise to a conflict between the interests of AMP Authorised Representatives, on the one hand, and their clients on the other hand;

(c) Did they incentivise AMP Authorised Representatives to recommend acquiring, renewing or continuing to hold AMP Life Products, rather than substantially equivalent or better insurance products available for a cheaper premium from third party insurers, even if the AMP Life Products were not products in the best interests of the clients?

4A. At all material times, did the Insurance APLs and Benchmarking Guidelines not include sufficient information for the AMP Authorised Representatives to determine whether there were insurance products that were substantially equivalent or better than the AMP Life Products and available to be obtained from a third-party insurer for a lower premium?



4B. At all material times up until around late 2019, were the only life and risk insurance products that could be placed on AMP's platforms insurance products issued by AMP Life?

4C. Did the Platform APLs and/or Insurance APLs have the effect of ensuring that:

(a) AMP Authorised Representatives could not comply with their duties under ss 961B and 961J of the Act?

(b) The AMP Licensees could not comply with their duties under s961L of the Act?

4D. During the Relevant Period, did the AMP Licensees have the knowledge and engage in the conduct set out paragraph in 103E of the Further Amended Statement of Claim and was that conduct motivated by the matters set out in paragraph 103F of the Further Amended Statement of Claim?

4E Was it necessary for the AMP Life Products to be removed from the Insurance APLs in order for the AMP Licensees to comply with their obligations under s 961L of the Corporations Act?

4F Did the AMP Licensees:

(a) Know that Legacy Products were expensive and uncompetitively priced when benchmarked across the peer group?

(b) Determine that Legacy Products were unsuitable for sale to new clients?

(c) Know that, despite the matters in (a) and (b), over half of AMP's total cash inflows were into Legacy Products?

(d) Know that approximately 95% of the funds invested in Legacy Products were invested in products issued by subsidiaries of AMP?

(e) Fail to instruct the AMP Authorised Representatives that they were required to assess clients with Legacy Products and provide them with new product recommendations?

(f) Fail to direct the AMP Authorised Representatives to transition clients out of Legacy Products?

4G Was it necessary for the AMP Licensees to take the steps in questions 4F(e) and (f) in order for those Licensees to comply with their obligations under s961L of the Act?

4H Did the AMP Licensees fail to take the steps in questions 4F(e) and (f) because they were promoting their own interest in:

(a) retaining grandfathered Commissions on Legacy Products?



- (b) maintaining profit margins for the AMP Licensees?
- (c) preserving the security provided to AMP Bank Limited?
- (d) maintaining profit margins for AMP Capital?

Related superannuation fund trustees

4l. In respect of the matters set out at paragraph 106 of the Further Amended Statement of Claim:

- (a) Could those matters reasonably be expected to have influenced the AMP Authorised Representatives in relation to the provision of advice in respect of life or risk insurance products, including when recommending that their clients acquire, renew or continue to hold one or more AMP Life Product?
- (b) Did they give rise to a conflict between the interests of AMP Authorised Representatives, on the one hand, and the clients on the other hand?
- (c) Did they incentivise AMP Authorised Representatives to recommend acquiring, renewing or continuing to hold AMP Life Products, rather than substantially better or equivalent insurance products available for a cheaper premium from third party insurers, even if the AMP Life Products were not the products in the best interests of the clients?

Future of Financial Advice obligations and contraventions

5. During the Relevant Period, was there a conflict between the interests of the Applicants and Group Members on the one hand, and the interests of the relevant AMP Authorised Representatives and AMP Licensees on the other?
6. Further to paragraph 5 above, during the Relevant Period, was there a conflict between the interests of the First and Third Applicants and Stack Sub-Group Members on the one hand, and the AMP Authorised Representatives' own interests and the interests of the AMP Licensees and/or AMP Life on the other?
7. Did the conduct of the AMP Authorised Representatives pleaded in Sections F, G and H of the Further Amended Statement of Claim relate to the provision of a financial service within the meaning of s 917A(1)(a) of the Corporations Act, and was it conduct on which the Applicants and Group Members could reasonably be expected to rely, within the meaning of s 917A(1)(b) of the Corporations Act?



Future of Financial Advice Contraventions

8. Was the advice provided by the AMP Authorised Representatives to the Applicants and Group Members, alleged in paragraphs 55 of the Further Amended Statement of Claim, financial product advice within the meaning of s 766B(1) of the Corporations Act and personal advice within the meaning of s 766B(3) of the Corporations Act?
9. In providing that advice, were the AMP Authorised Representatives providing a financial service within the meaning of s 766A(1) of the Corporations Act?
10. In relation to the provision of those financial services, were the Applicants and Group Members retail clients within the meaning of s 761G(1) of the Corporations Act?
11. During the Relevant Period, were the AMP Authorised Representatives under an obligation to act in the best interests of the Applicants and each of the Group Members in relation to the personal advice pursuant to s 961B(1) of the Corporations Act?
12. By reason of the conduct alleged in paragraphs 129 to 131 of the Further Amended Statement of Claim (individually, together or in any combination), did the AMP Authorised Representatives contravene s 961B(1) of the Corporations Act during the Relevant Period?
13. During the Relevant Period, were the AMP Authorised Representatives under an obligation to give priority to the interests of the Applicants and Group Members pursuant to s 961J(1) of the Corporations Act?
14. By reason of the conduct alleged in paragraphs 133 to 137 of the Further Amended Statement of Claim (individually, together or in any combination), did the AMP Authorised Representatives contravene s 961J(1) of the Corporations Act during the Relevant Period?
15. During the Relevant Period, were the AMP Licensees under an obligation to take reasonable steps to ensure the AMP Authorised Representatives complied with ss 961B(1) and 961J(1) of the Corporations Act pursuant to s 961L of the Corporations Act?
- 15A. Did the AMP Licensees know, or ought they have reasonably known, any or all of the matters set out in paragraph 140 of the Further Amended Statement of Claim?
16. By reason of the conduct alleged in paragraphs 141 and 142 of the Further Amended Statement of Claim (individually, together or in any combination), did the AMP Licensees contravene s 961L of the Corporations Act during the Relevant Period?



17. Were the AMP Licensees responsible licensees within the meaning of s 961P of the Corporations Act in relation to the contraventions of ss 961B(1) and 961J(1) by their respective AMP Authorised Representatives?
18. Are the AMP Licensees liable to compensate the Applicants and Group Members for loss or damage, and profits, resulting from the alleged contraventions by the AMP Licensees and the AMP Authorised Representatives, pursuant to ss 961M(2) and (4) of the Corporations Act?
19. If the AMP Licensees are liable to compensate the Applicants and Group Members, what is the proper methodology for assessing statutory compensation?

Anti-Avoidance Contraventions

- ~~20. During the Relevant Period, were AMP and the AMP Licensees prohibited from entering into, beginning to carry out or carrying out a scheme or part of a scheme within the meaning of s 965(1) of the Corporations Act?~~
- ~~21. By reason of the matters alleged in paragraph 147 to 156 of the Amended Statement of Claim, did AMP and the AMP Licensees enter into, begin to carry out or carry out a scheme to avoid the ban on conflicted remuneration contained in Division 4 of Part 7.7A of the Corporations Act?~~
- ~~22. By reason of the matters alleged in paragraph 147 to 156 of the Amended Statement of Claim, did AMP and the AMP Licensees contravene s 965(1) of the Corporations Act?~~

Fiduciary duty and breach

23. During the Relevant Period, did the AMP Licensees owe the Applicants and Group Members the fiduciary duties alleged at paragraphs 161 and/or 162 of the Further Amended Statement of Claim?
24. By reason of the matters alleged at paragraphs 165 and 166 of the Further Amended Statement of Claim, did the AMP Licensees breach their fiduciary duties owed to the Applicants and Group Members during the Relevant Period?
25. During the Relevant Period, did the AMP Authorised Representatives owe the Applicants and Group Members the fiduciary duties alleged at paragraphs 167 and/or 168 of the Further Amended Statement of Claim?
26. By reason of the matters alleged at paragraphs 169 and 170 of the Further Amended Statement of Claim, did the AMP Licensees breach their fiduciary duties owed to the Applicants and Group Members during the Relevant Period?



27. Are the AMP Licensees responsible for the conduct of their respective AMP Authorised Representatives that was in breach of their fiduciary duties owed to the Applicants and Group Members, and for any loss or damage suffered by the Applicants and Group Members as a result?
28. Are the AMP Licensees liable to account for and pay to the Applicants and Group Members all benefits, profits and gains made or derived by the AMP Authorised Representatives, the AMP Licensees and AMP Life by reason of the breaches of fiduciary duty?
29. Are the AMP Licensees liable to pay equitable compensation to each of the Applicants and the Group Members for the loss or damage, pursuant to s 917F of the Corporations Act?
- 29A. At all material times was there a conflict between the interests the First and Third Applicants and Group Members that held AMP Life Products within ASST and/or ART, on the one hand, and ASL's interests and the interests of AMP Life, the AMP Licensees and the AMP Authorised Representatives (and, if applicable, their Practices) on the other?
- 29B. During the Relevant Period, did ASL owe to the First and Third Applicants and the Group Members that were members of ASST and ART the fiduciary duties alleged in paragraph 174A of the Further Amended Statement of Claim?
- 29C. By reasons of the matters alleged at paragraph 174C of the Further Amended Statement of Claim, did ASL breach its fiduciary duties to the First and Third Applicants and Group Members that held AMP Life Products within ASST and/or ART?
- 29D. During the Relevant Period, did AMP Life owe to the First and Third Applicants and the Group Members that were members of ASST and ART the fiduciary duties alleged in paragraph 174D of the Further Amended Statement of Claim?
- 29E. By reasons of the matters alleged at paragraph 174F of the Further Amended Statement of Claim, did AMP Life breach its fiduciary duties to the First and Third Applicants and Group Members that held AMP Life Products within ASST and/or ART?
- 29F. Is AMP Life able to account for and pay to the First and Third Applicants and those Group Members all benefits, profits and gains made or derived by the AMP Authorised Representatives (and/or their Practices), the AMP Licensees, ASL and AMP Life by reason of the breaches of fiduciary duty by AMP Life?



29G. Is AMP Life liable to pay equitable compensation to each to the First and Third Applicants and those Group Members for loss or damage suffered by reason of those breaches of fiduciary duty?

Knowing receipt

30. At the time that AMP Life received the Excess Premiums, did AMP Life know:
- (a) the material facts giving rise to the existence of the fiduciary duty owed by the AMP Authorised Representatives and/or the AMP Licensees to the Applicants and Group Members?
 - (b) the material facts giving rise to the breaches of those fiduciary duties?
 - (c) of the circumstances that would have indicated to an honest and reasonable person the material facts referred to in (a) and (b) above?
31. Is AMP Life liable to account for and pay to the Applicants and Group Members all benefits, profits and gains made or derived by AMP Life from its receipt and use of the AMP Life Premiums, including the Excess Premiums?
32. Is AMP Life liable to pay equitable compensation to the Applicants and each of the Group Members for loss or damage suffered by reason of AMP Life knowingly receiving the AMP Life Premiums, including the Excess Premiums, in breach of the fiduciary duty of the AMP Licensees?
- 32A. At the time that AMP Life received the Excess Premiums on AMP Life Products of the First and Third Applicants and the Group Members that held those products within ASST and/or ART, did AMP Life know:
- (a) the material facts giving rise to the existence of the fiduciary duty owed by ASL to the First and Third Applicants and the Group Members that were members of ASST and ART?
 - (a) the material facts giving rise to the breaches of those fiduciary duties?
 - (b) of the circumstances that would have indicated to an honest and reasonable person the material facts referred to in (a) and (b) above?
- 32B. Is AMP Life liable to account for and pay to the First and Third Applicants and those Group Members all benefits, profits and gains made or derived by AMP Life from its receipt and use of the AMP Life Premiums paid by the First and Third Applicants and those Group Members, including the Excess Premiums?



32C. Is AMP Life liable to pay equitable compensation to the First and Third Applicants and those Group Members for loss or damage suffered by reason of AMP Life knowingly receiving the AMP Life Premiums, including the Excess Premiums, in breach of the fiduciary duty of ASL?

OSF contractual breach

33. Did the ~~Second and Fourth~~ Applicants and the OSF Sub-Group Members who paid OSFs have a contractual right to receive ongoing personal advice?
34. Are the AMP Licensees liable to pay damages to the ~~Second and Fourth~~ Applicants and the OSF Sub-Group Members for a breach of contract for the failure by the AMP Authorised Representatives to provide ongoing personal advice pursuant to s 917E(1) of the Corporations Act?

Unconscionable conduct

35. By contractually promising to provide ongoing personal advice to the ~~Second and Fourth~~ Applicants and the OSF Sub-Group Members, as alleged in paragraphs 73 and 181.1 of the Further Amended Statement of Claim, were the AMP Authorised Representatives engaging in conduct:

- (a) in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act?
- (b) in trade or commerce within the meaning of s 12BA(1) of the ASIC Act?

36. Did the circumstances alleged in paragraph 194 of the Further Amended Statement of Claim give rise (without more) to the ~~Second and Fourth~~ Applicants and the OSF Sub-Group Members being in a position of special disadvantage with respect to the AMP Licensees?

36A. By engaging in the conduct pleaded in 103E of the Further Amended Statement of Claim, were the AMP Licensees engaging in conduct:

- (a) in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act?
- (b) in trade or commerce within the meaning of s 12BA(1) of the ASIC Act?

36B. By engaging in the conduct pleaded in paragraphs 197B and 197C of the Further Amended Statement of Claim, were the AMP Authorised Representatives engaging in conduct:



(a) in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act?

(b) in trade or commerce within the meaning of s 12BA(1) of the ASIC Act?

36C. Did the circumstances alleged in paragraph 197B of the Further Amended Statement of Claim give rise (without more) to the Applicants and Group Members being in a position of special disadvantage with respect to the AMP Licensees?

36D. By engaging in the conduct pleaded in 197K of the Further Amended Statement of Claim, were the AMP Licensees engaging in conduct:

(a) in connection with the possible supply of a financial service within the meaning of s 12BAB(1) of the ASIC Act?

(b) in trade or commerce within the meaning of s 12BA(1) of the ASIC Act?

36E. Did the circumstances alleged in paragraph 197P.1 of the Further Amended Statement of Claim give rise (without more) to the Applicants and Group Members being in a position of special disadvantage with respect to the AMP Licensees?

37. If the AMP Licensees are liable for unconscionable conduct in contravention of s 12CB(1) of the ASIC Act, what is the proper methodology for assessing statutory compensation?

37A. During the Relevant Period, did AMP know:

(a) the matters set out in paragraphs 199A.1 and 199A.2 of the Further Amended Statement of Claim?

(b) the matters set out in paragraphs 199C.1 and 199C.2 of the Further Amended Statement of Claim?

37B. During the Relevant Period, did AMP:

(a) make the decisions or recommendations to the AMP Licensees alleged in paragraphs 199B.1 to 199B.4 of the Further Amended Statement of Claim?

(b) engage in the conduct alleged in paragraphs 199D.1 and 199D.2 of the Further Amended Statement of Claim?

~~Misleading or deceptive conduct~~

~~38. Did the AMP Licensees make the Representations or any of them?~~

~~39. Were the Representations or any of them continuing representations?~~



- ~~40. By making and subsequently maintaining the Representations or any of them, did the AMP Licensees engage in conduct:~~
- ~~(a) in trade or commerce within the meaning of s 12BA(1) of the ASIC Act and/or s 18 of the ACL?~~
 - ~~(b) in relation to a financial service within the meaning of s 12BAB(1) of the ASIC Act and/or s 766A(1) of the Corporations Act?~~
 - ~~(c) in relation to a financial product within the meaning of s 76A(1) of the Corporations Act?~~
- ~~41. Were the Representations or any of them misleading?~~
- ~~42. In making the Representations, did the AMP Licensees engage in conduct in trade or commerce that was:~~
- ~~(a) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18(1) of the ACL?~~
 - ~~(b) in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act?~~
 - ~~(c) in relation to a financial product or a financial service, that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H(1) of the Corporations Act?~~

Loss or damage

43. Should the Court order that damages be awarded in an aggregate amount (**Aggregate Damages**) pursuant to s 33Z(1)(f) of the *Federal Court of Australia Act 1976*, and if so, what is the formula by which each individual Group Member's loss is to be determined and satisfied from the Aggregate Damages?



Representative action

The Applicants bring this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The Group Members to whom this proceeding relates are persons who:

- (a) [not used];
- (b) received personal advice from an AMP Authorised Representative (as that term is defined in paragraph 6 of the Further Amended Statement of Claim) to acquire, renew or continue to hold (by themselves or through their superannuation funds as members) Commissioned Products (as that term is defined in paragraph 37 of the Further Amended Statement of Claim);
- (ba) pursuant to that advice, acquired, renewed or continued to hold (by themselves or through their superannuation funds as members) Commissioned Products in respect of which Commissions (as that term is defined in paragraph 41 of the Further Amended Statement of Claim) were paid from 23 July 2014;
- (bb) by reason thereof (by themselves or through their superannuation funds as members):
 - (i) suffered loss or damage; or
 - (ii) claim an account of profits;
- (c) are not a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and
- (d) are not an AMP Authorised Representative.

Applicants' address

The Applicants' address for service is:

Place: Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

Email: applicants@classactionamp.com.au



Service on the Respondents

It is intended to serve this application on all the Respondents.

Date: 15 December 2023

A handwritten signature in blue ink, appearing to read "C Allsopp".

Signed by Craig Allsopp
Jointly appointed lawyer for the Applicants

A handwritten signature in blue ink, appearing to read "M del Gallego".

Signed by Martin del Gallego
Jointly appointed lawyer for the Applicants



Schedule

No. VID 489 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Nigel Peter Stack
First Applicant

Melita Anna Winterton
Second Applicant

~~**Janelle Lodge John Leslie Bretton**~~
Third Applicant

David James Brittain
Fourth Applicant

AMP Financial Planning Pty Limited (ACN 051 208 327)
First Respondent

Charter Financial Planning Limited (ACN 002 976 294)
Second Respondent

Hillross Financial Services Limited (ACN 003 323 055)
Third Respondent

AMP Limited (ACN 079 354 519)
Fourth Respondent

Resolution Life Australasia Limited (ACN 079 300 379)
Fifth Respondent