

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/12/2021 9:23:10 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 Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID769/2021
File Title:	WATSON & CO SUPERANNUATION PTY LTD v DIXON ADVISORY AND SUPERANNUATION SERVICES LTD & 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



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

Dated: 23/12/2021 9:34:36 AM 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.



ORIGINATING APPLICATION
starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976

No. VID of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

**WATSON & CO SUPERANNUATION PTY LTD (ACN 601 686 828) ATF WATSON & CO
SUPERANNUATION FUND**
Applicant

DIXON ADVISORY AND SUPERANNUATION SERVICES LTD (ACN 103 071 665) and Others
according to the Schedule
Respondents

To the Respondents

The Applicant applies 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:

Place:

Filed on behalf of (name & role of party) Watson & Co Superannuation Pty Ltd, Applicant
Prepared by (name of person/lawyer) Janice Saddler
Law firm (if applicable) Shine Lawyers
Tel 07 3006 6000 Fax 07 3229 1999
Email jsaddler@shine.com.au
Address for service Level 13, 160 Ann Street, Brisbane QLD 4000
(include state and postcode)



Date:

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

DETAILS OF CLAIM

On the grounds stated in the accompanying Statement of Claim, the Applicant claims on its own behalf (as Trustee of the Watson SMSF) and on behalf of the Group Members (together and severally **Claimants**):

Against the First Respondent (DASS)

1. As to the breaches of contract alleged in paragraphs 43 to 46 of the Statement of Claim – damages.
2. Declarations that DASS contravened:
 - a. s 961L of the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. s 12DA(1) of the *Australian Securities and Investment Committee Act 2001* (Cth) (**ASIC Act**);
 - c. s 1041H of the *Corporations Act*; further or alternatively
 - d. s 18 of the *Australian Consumer Law (ACL)*.
3. An order pursuant to s 961M(2) and (4) of the *Corporations Act* that DASS pay compensation to the Applicant and each of the Group Members (together and severally **Claimants**) for loss and damage suffered by them because of the contraventions of:
 - a. s 961B(1), 961G and 961J by the DASS Advisors; and
 - b. s 961L by DASS,



including by disbursing to the Claimants any profits received by DASS resulting from the said contraventions.

4. Further or in the alternative to order 3, compensation pursuant to:

- a. s 12GF(1) of the ASIC Act;
- b. s 1041I of the Corporations Act; and/or
- c. s 236(1) of the ACL,

in respect of the Claimants' loss and damage resulting from the misleading conduct alleged in paragraphs 73 to 87 of the Statement of Claim (**Misleading Conduct**).

5. As to the fiduciary obligations set out in paragraphs 66 to 72 of the Statement of Claim (**Fiduciary Obligations**):

- a. declarations that DASS breached the Fiduciary Obligations; and
- b. equitable compensation, alternatively an account of profits.

6. As to the negligence alleged in paragraphs 88 to 99 of the Statement of Claim (**Negligence**) – damages.

Against the Second to Fourth Respondents (together and severally)

7. As to the Misleading Conduct:

- a. declarations that each Respondent was involved in the contraventions by DASS, further or alternatively DASS Advisors, of:
 - i. s 12DA(1) of the ASIC Act;
 - ii. s 1041H of the Corporations Act, further or alternatively
 - iii. s 18 of the ACL;
- b. compensation pursuant to:
 - i. s 12GF(1) of the ASIC Act;
 - ii. s 1041I of the Corporations Act; and/or



iii. s 236(1) of the ACL.

8. As to the Fiduciary Obligations:
 - a. declarations that each Respondent was knowingly involved in breaches of the Fiduciary Obligations by DASS, further or alternatively the DASS Advisors; and
 - b. equitable compensation, alternatively an account of profits.

As against all Respondents

9. Interest pursuant to s 51A(1) of the *Federal Court of Australia Act 1976* (Cth).
10. Costs.
11. 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 Claimants are:

Characteristics of URF

1. Whether and if so at what times URF Securities had any and if so which of the characteristics referred to in paragraph 34 of the Applicants' Statement of Claim.

Breaches of contract (Retainers)

2. Whether terms of engagement in the form of the Retainer included the terms alleged in paragraph 36 of the Statement of Claim.



3. Whether and if so at what times the URF Recommendations were or would have been a breach of a Retainer having the terms alleged in paragraph 36 of the Statement of Claim.
4. What principles ought be applied in determining:
 - (a) causation of loss; and
 - (b) the measurement of compensable loss,in respect of the alleged breaches of Retainer.

Financial advisor obligations

5. What principles ought be applied in determining whether and if so at what times URF Recommendations were in the best interests of a retail client with a conservative or balanced risk profile, within the meaning of s 961B(1) of the *Corporations Act*.
6. Whether and if so at what times the URF Recommendations were appropriate (within the meaning of s 961G of the *Corporations Act*) for retail clients with conservative or balanced risk profiles:
 - (a) at all; alternatively,
 - (b) as to more than a very minor portion of the investor's portfolio.
7. Whether and if so at what times:
 - (a) the IC Conflicts existed;
 - (b) the DASS Conflicts existed; and/or
 - (c) the Advisor Conflicts existed.
8. What principles ought be applied in determining whether DASS Advisors, in making URF Recommendations, gave priority to the Client's interests within the meaning of s 961J(1) of the *Corporations Act*.
9. What principles ought be applied in determining:
 - (a) causation of loss; and
 - (b) the measurement of compensable loss.



in respect of the alleged contraventions of Chapter 7 of the *Corporations Act*.

Breaches of fiduciary obligations

10. Whether DASS by itself or by the DASS Advisors owed any and if so which of the Fiduciary Obligations.
11. Whether any and if so what conduct alleged against DASS and the DASS Advisors constituted Fiduciary Breaches, to the extent that the Fiduciary Obligations were owed to any Claimant.
12. Whether any and if so which of the Respondents knowingly assisted any and if so what Fiduciary Breaches.
13. What principles ought be applied in determining:
 - (a) causation of loss; and
 - (b) the measurement of compensable loss,in respect of the alleged Fiduciary Breaches.

Misleading etc conduct

14. Whether and if so at what times and in what respects the Misleading Conduct was misleading or deceptive or likely to mislead or deceive within the meaning of:
 - (a) s 1041H of the *Corporations Act*;
 - (b) s 12DA of the ASIC Act; further or alternatively,
 - (c) s 18 of the ACL.
15. Whether any and if so which of the Respondents was involved in DASS's contraventions referred to in the preceding question.
16. What principles ought be applied in determining:
 - (a) causation of loss; and



- (b) the measurement of compensable loss,
in respect of the alleged Misleading Conduct.

Negligence

17. Whether any and if so which of the Respondents owed the Duty of Care.
18. Whether and if so how the conduct alleged would have breached the Duty of Care, to the extent that the conduct occurred in respect of any Claimant.
19. What principles ought be applied in determining:
- (a) causation of loss; and
- (b) the measurement of compensable loss,
in respect of the alleged breaches of the Duty of Care.

REPRESENTATIVE ACTION

The Applicant brings 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 all those persons who:

- (a) at any time during the period from 15 April 2011 to 23 December 2021 (the **Relevant Period**) were, within the meaning of s.761G of the *Corporations Act 2011 (Cth)* (the **Corporations Act**), retail clients of the financial advisory business carried on by DASS and described below; and
- (b) on or after 22 December 2015, while a client of DASS, held or acquired interests in the property investment fund known as the US Masters Residential Property Fund (the **URF**, and such interests being **Relevant URF Interests**); and
- (c) allege they suffered loss and damage in respect of their Relevant URF Interests, by reason of the matters set out in this Statement of Claim; and
- (d) are not, as at the date of commencement of this proceeding:



- (i) any of:
- A. a director or officer, or a close associate (as defined by s 9 of the Corporations Act);
 - B. a related party (as defined by s 228 of the Corporations Act);
 - C. a related body corporate (as defined by s 50 of the Corporations Act); or
 - D. an associated entity (as defined by s 50AAA of the Corporations Act);
- of a respondent; or
- (ii) a Justice or Registrar of the Federal Court of Australia or the High Court of Australia.

APPLICANT'S ADDRESS

The Applicant's address for service is:

Place: Level 13, 160 Ann Street, Brisbane QLD 4000

Email: jsaddler@shine.com.au

The Applicant's address is 4 Thomas Street, Brunswick VIC 3056

SERVICE ON THE RESPONDENTS

It is intended to serve this application on all Respondents.

Date: 22 December 2021

A handwritten signature in black ink, appearing to read 'J. Saddler'.

Signed by Janice Mary Saddler

Lawyer for the Applicant

**Schedule of Respondents**

	No.	VID	of 2021
Federal Court of Australia District Registry: Victoria Division: General			
Dixon Advisory and Superannuation Services Ltd (ACN 103 071 665)			First Respondent
E&P Financial Group Limited (ACN 609 913 457)			Second Respondent
Alan Cochrane Dixon			Third Respondent
Christopher Matthew Brown			Fourth Respondent

Date: 22 December 2021