

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/10/2021 5:52:17 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:	VID28/2020
File Title:	SIMON MALLIA v COLONIAL FIRST STATE INVESTMENTS LTD & ANOR
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: 25/10/2021 4:21:00 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.



**Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976
filed pursuant to leave granted by Justice Beach on 13 October 2021**

No.

Federal Court of Australia
District Registry: Victoria
Division: General

Simon Mallia

Applicant

Colonial First State Investments Ltd (ACN 002 348 352)

In its capacity as trustee for Colonial First State First Choice Superannuation Trust and
Commonwealth Essential Super

First Respondent

The Colonial Mutual Life Assurance Society Limited (ACN 004 021 809)

Second Respondent

AIA Australia Limited (ACN 004 837 861)

Third Respondent

To the Respondents

The Applicant for himself and on behalf of each of the Group Members 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.

Filed on behalf of (name & role of party)	Simon Mallia (Applicant)		
Prepared by (name of person/lawyer)	Rebecca Jancauskas		
Law firm (if applicable)	Shine Lawyers		
Tel	07 3006 6000	Fax	07 3229 1999
Email	rjancauskas@shine.com.au		
Address for service (include state and postcode)	Shine Lawyers, Level 13, 160 Ann Street, Brisbane, QLD 4000		

**Time and date for hearing:**

Place: 305 William St, Melbourne Victoria 3000

Date:

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

Details of claim

On the grounds stated in the accompanying Amended Statement of Claim, the Applicant for himself and on behalf of each of the Group Members claims:

1. An order pursuant to s 55(3) of the *Superannuation Industry (Supervision) Act 1993* (Cth) that the Respondents pay compensation to the Applicant and each of the Group Members for loss and damage suffered by them by reason of the First Respondent's contraventions of the covenants set out in ss 52(2)(b), (c) and (d) and 52(7)(a), (b) and (c) of the *Superannuation Industry (Supervision) Act 1993* (Cth) on an aggregate basis pursuant to s 33Z(1)(f) of the *Federal Court of Australia Act 1976* (Cth).
2. Alternatively to the order referred to in paragraph 1 above, an order that, in the event that the Applicant and the Group Members so elect, the Respondents pay equitable compensation to the Applicant and each of the Group Members for loss and damage suffered by them by reason of the First Respondent's breaches of fiduciary duty and trust.
3. Alternatively to the orders referred to in paragraphs 1 and 2 above, an order that, in the event the Applicant and Group Members so elect, the First Respondent accounts for and pays to the Applicant and each of the Group Members all benefits, profits and gains made or derived by the First Respondent from the receipt and use by the Second Respondent of the Excess Premiums.
4. An order that an enquiry be held to determine the amount payable to the Applicant and each of the Group Members pursuant to the order referred to in paragraph 3 above.
5. Alternatively to the orders referred to in paragraphs 1, 2, 3 and 4 above, an order that, in the event the Applicant and Group Members so elect, the Second Respondent and/or Third Respondent accounts for and pays to the Applicant and each of the Group Members all benefits, profits and gains made or derived by the Second Respondent from the receipt and use by it of the Excess Premiums.



6. An order that an enquiry be held to determine the amount payable to the Applicant and each of the Group Members pursuant to the order referred to in paragraph 5 above
7. An order that the Respondents pay to the Applicant 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.
8. Alternatively to the order referred to in paragraph 7 above, an order that the Respondents pay to the Applicant and each of the Group Members interest pursuant to s 51A(1) of the *Federal Court of Australia Act 1976* (Cth).
9. Costs.
10. Such further or other order or orders as the Court sees fit.

Representative action

- 1 The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.
- 2 The Group Members to whom this proceeding relates are all persons who:
 - (a) were members of at least one of the following superannuation funds:
 - (i) FirstChoice Personal Super and Pension;
 - (ii) FirstChoice Wholesale Personal Super and Pension;
 - (iii) FirstChoice Employer Super;
 - (iv) Commonwealth Essential Super; and
 - (b) held insurance cover under a group policy of insurance issued by Colonial Mutual Life Assurance Society Limited to Colonial First State Investments Ltd as trustee of those funds in the period 22 January 2014 to 22 January 2020.

Questions common to claims of Group Members

Defined terms have the meaning given to them in the Statement of Claim filed ~~22 January 2020~~ 22 October 2021.

The questions of law or fact common to the claims of the Group Members are:



1	Did the FirstChoice Trust Deed and the Commonwealth Essential Trust Deed contain the covenants set out in ss 52(2)(b), (c) and (d) and 52(7)(a), (b) or (c) of the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth) (SIS Act)?
2	<p>If the answer to question 1 is 'yes', what was the scope and content of the duties imposed by the covenants in:</p> <ul style="list-style-type: none"> (a) s 52(2)(b) of the SIS Act; (b) s 52(2)(c) of the SIS Act; (c) s 52(2)(d) of the SIS Act; (d) s 52(7)(a) of the SIS Act; (e) s 52(7)(b) of the SIS Act; and (f) s 52(7)(c) of the SIS Act.
3	Was there a conflict between CFSIL's duties to, and the interests of, the Applicant and each of the Group Members, on the one hand, and CFSIL's own interests and the interests of CommInsure on the other?
4	Did CFSIL know, or ought it to have known, of the conflict between CFSIL's duties to, and the interests of, the Applicant and Group Members and the interests of CFSIL and CommInsure?
5	<p>Did CFSIL contravene the covenant in s 52(2)(b) of the SIS Act by:</p> <ul style="list-style-type: none"> (a) making the IMF approval decision; (b) implementing the IMF approval decision; (c) making any of the group insurance decisions; (d) implementing any of the group insurance decisions; (e) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (f) charging the members of the CFSIL funds premiums which included the Excess Premiums.



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| 6 | <p>Did CFSIL contravene the covenant in s 52(2)(c) of the SIS Act by:</p> <ul style="list-style-type: none"> (a) making the IMF approval decision; (b) implementing the IMF approval decision; (c) making any of the group insurance decisions; (d) implementing any of the group insurance decisions; (e) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (f) charging the members of the CFSIL funds premiums which included the Excess Premiums. |
| 7 | <p>Did CFSIL contravene the covenant in s 52(2)(d) of the SIS Act by:</p> <ul style="list-style-type: none"> (a) making the IMF approval decision; (b) implementing the IMF approval decision; (c) making any of the group insurance decisions; (d) implementing any of the group insurance decisions; (e) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (f) charging the members of the CFSIL funds premiums which included the Excess Premiums. |
| 8 | <p>Did CFSIL contravene the covenants in any or all of s 52(7)(a), (b) or (c) of the SIS Act by:</p> <ul style="list-style-type: none"> (a) making any of the group insurance decisions; (b) implementing any of the group insurance decisions; (c) obtaining from CommInsure group insurance at premiums which included the Excess Premiums; or (d) charging the members of the CFSIL funds premiums which included the Excess Premiums. |
| 9 | <p>If the answer to any or all of the questions 5 to 8 is 'yes', did CFSIL's contraventions cause loss or damage to the Applicant and the Group Members?</p> |



10	If the answer to any or all of the questions 5 to 9 is 'yes', is CFSIL liable to compensate the Applicant and the Group Members for their loss or damage?
11	If CFSIL is liable to compensate the Applicant and Group Members, what is the proper methodology for assessing statutory compensation and awarding damages on an aggregate basis?
Breach of trust and fiduciary duty	
12	If the answer to any or all of the questions 5 to 8 is 'yes', did the contraventions of the covenants in ss 52(2)(b), 52(2)(c), 52(2)(d) and 52(7)(a), (b) and (c) of the SIS Act also constitute breaches of trust by CFSIL?
13	Did CFSIL owe fiduciary duties to the Applicant and Group Members?
14	If the answer to question 13 is 'yes', what was the scope and content of those fiduciary duties?
15	Did CFSIL breach its fiduciary duties owed to the Applicant and Group Members?
16	<p>If CFSIL is liable for breach of trust or breach of fiduciary duty to the Applicant and Group Members:</p> <p>(a) is CFSIL liable to pay equitable compensation to the Applicant and each of the Group Members;</p> <p>(b) what is the proper methodology for assessing equitable compensation?</p> <p>(c) alternatively, is CFSIL liable to account for all benefits, profits and gains made or derived by it; and</p> <p>(d) what is the proper methodology for quantifying those benefits, profits and gains?</p>
Involvement	
17	Was CommInsure involved in CFSIL's contraventions of ss 52(2)(b),(c) and (d) and 52(7)(a), (b) and (c) of the SIS Act?



18	If the answer to question 17 is 'yes', is CommInsure liable to compensate the Applicant and the Group Members for their loss or damage?
19	If CommInsure is liable to compensate the Applicant and the Group Members, what is the proper methodology for assessing statutory compensation and awarding damages on an aggregate basis?
Knowing receipt	
20	Did CommInsure know the matters alleged at paragraph 119 of the Statement of Claim?
21	Would an honest and reasonable person have known each of the matters in paragraph 119 of the Statement of Claim?
22	<p>If CommInsure is liable for knowing receipt to the Applicant and Group Member</p> <p>(a) is CommInsure liable to pay equitable compensation to the Applicant and each of the Group Members;</p> <p>(b) what is the proper methodology for assessing equitable compensation?</p> <p>(c) alternatively, is CommInsure liable to account for all benefits, profits and gains made or derived by it; and</p> <p>(d) what is the proper methodology for quantifying those benefits, profits and gains?</p>
<u>Scheme</u>	
23	<u>What effect did the life insurance scheme under Part 9 of the <i>Life Insurance Act 1995</i> (Cth) dated 1 April 2021 have on the liabilities the subject of the allegations pleaded against CommInsure in the Amended Statement of Claim?</u>

**Applicant's address**

The Applicant's address for service is:

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

Email: rjancauskas@shine.com.au

The Applicant's address is: Shine Lawyers, Level 13, 160 Ann Street, Brisbane, QLD 4000

Service on the Respondents

It is intended to serve this application on the Respondents.

Date: ~~22 January 2020~~ 22 October 2021

A handwritten signature in black ink, which appears to read "R Jancauskas", is written over a horizontal dotted line.

Signed by Rebecca Lee Jancauskas
Lawyer for the Applicant