

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/12/2021 1:12:39 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:	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



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

Dated: 24/12/2021 1:29:08 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.



**Consolidated 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 4—2(b) of the orders made by Beach J on 23
December 26 February 2021)

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

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Date:

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

Definitions

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

Details of claim

On the grounds stated in the Consolidated 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 ~~Consolidated~~ 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 ~~Consolidated~~ 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 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 ~~Consolidated~~ 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 ~~Consolidated~~ Amended Statement of Claim;
7. In the alternative to the order referred to in paragraph 6 above, an order pursuant to s 1041I(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 ~~Consolidated~~ 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 ~~Consolidated~~ 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 ~~Consolidated~~ 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 ~~Consolidated~~ 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 Applicant 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;
13. An order that an enquiry be held to determine the amount payable to the First Applicant and Stack Sub-Group Members pursuant to the order referred to in paragraph 12 above;
14. In the alternative to the orders referred to in paragraphs 12 and 13 above, an order that, in the event the First Applicant and Stack Sub-Group Members so elect, AMP Life pay equitable compensation to the First Applicant 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;
15. In respect of the amounts payable under the orders referred to in paragraphs 12 to 14 above, an order that AMP Life pay to the First Applicant 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 the matters set out in paragraphs 45 and 46 of the ~~Consolidated~~ Amended Statement of Claim 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?
2. Could the matters set out at paragraphs 48 to 50 of the ~~Consolidated~~ Amended Statement of Claim 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?
3. Could the matters set out at paragraphs 52 and 53 of the Amended ~~Consolidated~~ Statement of Claim 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?
4. Could the matters set out at paragraphs 98 and 106 of the Amended ~~Consolidated~~ Statement of Claim 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?
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 Applicant 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 ~~Consolidated~~ 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 ~~Consolidated~~ 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 ~~Consolidated~~ 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 ~~Consolidated~~ 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?
16. By reason of the conduct alleged in paragraphs 141 and 142 of the ~~Consolidated~~ 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 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 Consolidated 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 Consolidated 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 ~~Consolidated~~ Amended Statement of Claim?
24. By reason of the matters alleged at paragraphs 165 and 166 of the ~~Consolidated~~ 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 ~~Consolidated~~ Amended Statement of Claim?
26. By reason of the matters alleged at paragraphs 169 and 170 of the Amended ~~Consolidated~~ 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?

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?

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 ~~Consolidated~~ 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 ~~Consolidated~~ 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?
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?

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 s76A(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)~~ acquired, renewed or continued to hold Commissioned Products (as that term is defined in paragraph 37 of the Consolidated Statement of Claim), in respect of which Commissions (as that term is defined in paragraph 41 of the Consolidated Statement of Claim) were paid from 23 July 2014;
- ~~(b)~~ received personal advice from an AMP Authorised Representative (as that term is defined in paragraph 6 of the Consolidated 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 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 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;
- ~~(b)(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
- ~~(e)(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: 23 December ~~2 March~~ 2021

A handwritten signature in black ink, appearing to be "CA Allsopp".

Signed by Craig Allsopp
Jointly appointed lawyer for the Applicants

A handwritten signature in blue ink, appearing to be "S. Morris".

Signed by Simon Morris
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

John Leslie Brotton
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 ~~AMP Life Limited~~ (ACN 079 300 379)
Fifth Respondent