

FILED

12 JUN 2019



## SUMMONS

### COURT DETAILS

Court	Supreme Court
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2018/310118 and 2018/309329 (Consolidated Proceedings)

### TITLE OF PROCEEDINGS

First plaintiff	<b>KOMLOTEX PTY LTD (ACN 004 390 023) AS TRUSTEE FOR BREDASINCLAIR INDUSTRIES SUPERANNUATION FUND</b>
Second plaintiff	<b>FERNBROOK (AUST) INVESTMENTS PTY LTD (ACN 068 190 296)</b>
Defendant	<b>AMP LIMITED (ACN 079 354 519)</b>

### FILING DETAILS

Filed for	<b>Komlotex Pty Ltd and Fernbrook (Aust) Investments Pty Ltd, Plaintiffs</b>
Legal representative	Andrew Watson (Maurice Blackburn)
Legal representative reference	3052777
Contact name and telephone	Steven Foale – (07) 3014 5077

### HEARING DETAILS

This summons is listed at the Supreme Court of New South Wales, 184 Phillip Street, Sydney before Ward CJ in Eq on 28 June 2019 at 9.30 am.

### TYPE OF CLAIM

Commercially misleading conduct

**RELIEF CLAIMED**

- 1 A declaration that the defendant (**AMP**) contravened ASX Listing Rule 3.1 and s 674(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) by reason of the matters pleaded and particularised in the Commercial List Statement (**CLS**).
  
- 2 An order pursuant to s 1317HA of the Corporations Act that AMP pay compensation to the Plaintiffs and the Group Members for the loss and damage caused by its contravention/s of s 674(2) of the Corporations Act.
  
- 3 A declaration that AMP contravened s 1041H(1) of the Corporations Act, s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and/or s 18 of the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to:
  - a. s 131 of the CCA;
  - b. s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
  - c. s 28 of the *Fair Trading Act 1987* (NSW);
  - d. s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
  - e. s 16 of the *Fair Trading Act 1989* (Qld);
  - f. s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
  - g. s 19 of the *Fair Trading Act 2010* (WA);
  - h. s 14 of the *Fair Trading Act 1987* (SA); and/or
  - i. s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
 as in force after 1 January 2011 (individually, or together, the **ACL**) by reason of the matters pleaded and particularised in the CLS (**Misleading or Deceptive Conduct Contraventions**).
  
- 4 A declaration that each of the Misleading or Deceptive Conduct Contraventions were continuing contraventions that continued until such time as the undisclosed information was disclosed to the market.

- 5 An order pursuant to:
- a. s 1041I(1) of the Corporations Act that AMP pay compensation to the Plaintiffs and the Group Members for damages caused by the conduct of AMP in contravention of s 1041H of the Corporations Act referred to in paragraphs [3] and [4] above;
  - b. s 236 of the ACL that AMP pay compensation to the Plaintiffs and the Group Members for damages caused by the conduct of AMP in contravention of s 18 of the ACL referred to in paragraphs [3] and [4] above; and/or
  - c. s 12GF(1) of the ASIC Act that AMP pay compensation to the Plaintiffs and the Group Members for damages caused by the conduct of AMP in contravention of s 12DA(1) of the ASIC Act referred to in paragraphs [3] and [4] above.
- 6 Interest.
- 7 Costs.
- 8 Such further or other orders as the Court determines is appropriate.

## REPRESENTATIVE PROCEEDING

### Group Members

- 1 The Group Members to whom this proceeding relates are those persons referred to in paragraph [8] of the CLS, being persons who or which:
- a. entered into a contract (whether themselves or by an agent or trustee) to acquire an interest in:
    - i. fully paid ordinary shares in AMP (**AMP Shares**) during the period 10 May 2012 to 13 April 2018 (**Relevant Period**); and/or
    - ii. American Depository Receipts that represent AMP Shares between 7 June 2012 and the end of the Relevant Period;
  - b. suffered loss or damage by reason of the conduct of AMP pleaded in the CLS;

- c. were not during any part of the Relevant Period, and are not as at the date of the CLS, any of the following:
  - i. a related party (as defined by s 228 of the Corporations Act) of AMP;
  - ii. an officer or a close associate (as defined by s 9 of the Corporations Act) of AMP; or
  - iii. a Justice or the Chief Justice of the Supreme Court of New South Wales or the High Court of Australia

### **Nature of Claims and Relief Sought**

- 2 The nature of the claims made by the Plaintiffs on their own behalf and on behalf of the Group Members is set out in Part A of the CLS.
- 3 The relief sought by the Plaintiffs on their own behalf and on behalf of the Group Members is set out above.

### **Common Questions of Law or Fact**

- 4 Whether, and if so on what date, did AMP become aware of the Fees For No Service Policy Information, the Misleading ASIC Information and the Receipt of Legal Advice Information, within the meaning of rule 19.12 of the ASX Listing Rules.
- 5 Whether AMP was obliged to disclose the Fees For No Service Policy Information, the Misleading ASIC Information and the Receipt of Legal Advice Information.
- 6 Whether AMP contravened s 674(2) of the Corporations Act in relation to any, and if so which, of the Fees For No Service Policy Information, the Misleading ASIC Information and the Receipt of Legal Advice Information.
- 7 Whether AMP contravened s 1041H of the Corporations Act, s 18 of the ACL and/or s 12DA(1) of the ASIC Act in engaging in the alleged misleading or deceptive conduct concerning the Regulatory Compliance Representations, the Regulatory Compliance Statements, the Ethical Conduct Representations, the Ethical Conduct Statements, the Continuous Disclosure Representations and/or the Continuous Disclosure Statements.

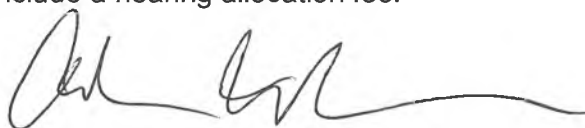
- 8 Whether AMP's alleged misleading or deceptive conduct continued from the date/s on which it first commenced to the end of the Relevant Period (as defined above).
- 9 Whether any, and if so what, conduct by AMP in contravention of statutory norms as alleged in the CLS had the effect that prices for its securities were higher than those prices would otherwise have been and, if so, to what extent.
- 10 Whether compensation is recoverable for the contraventions alleged in the CLS.
- 11 If so, the correct measure of that compensation.
- 12 Whether any, and if so what, relief other than compensation should be granted in favour of the Plaintiffs and some or all of the Group Members.

#### **SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the Plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

6 June 2019

#### **NOTICE TO DEFENDANT**

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the Plaintiffs' costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

**HOW TO RESPOND**

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

**REGISTRY ADDRESS**

Street address	184 Phillip Street, Sydney NSW 2000
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

**FURTHER DETAILS ABOUT PLAINTIFFS****First plaintiff**

Name Komlotex Pty Ltd (ACN 004 390 023)  
Address 9/57 Orrong Crescent  
Caulfield North Vic 3161

**Second plaintiff**

Name Fernbrook (Aust) Investments Pty Ltd (ACN 068 190 296)  
Address 129A Gloucester Avenue  
Hideaway Bay Qld 4800

**Legal representative for plaintiffs**

Name Andrew Watson  
Practising certificate number  
Firm Maurice Blackburn  
Contact solicitor Steven Foale  
Address Level 8  
179 North Quay  
Brisbane Qld 4000  
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**DETAILS ABOUT DEFENDANT****Defendant**

Name AMP Limited (ACN 079 354 519)  
Address 33 Alfred Street  
Sydney NSW 2000