

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY

NOTICE OF FILING

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CASE DETAILS

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IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

NSD 2020 of 2007

BETWEEN:

JOHN WATSON & KAYE WATSON
(in their own right and as representatives of the Group Members)

Applicants

And

AWB LIMITED (ACN 081 890 459)

Respondent

SECOND FURTHER AMENDED APPLICATION

(filed pursuant to leave granted by his Honour Justice Foster on 21 July 2009)

This Second Further Amended Application is made by the applicants on their own behalf and, pursuant to Part IVA of the Federal Court of Australia Act 1976, the Group Members (as that term is defined in paragraph 1 of the Second Further Amended Statement of Claim), for declarations, under section 21 of the Federal Court of Australia Act 1976 (Cth), that the respondent, on one or more occasions, contravened section 674(2) of the Corporations Act 2001 (Cth); section 1041H(1) of the Corporations Act 2001 (Cth); section 12DA(1) of the Australian Securities and Investment Commission Act 2001 (Cth); section 52 of the Trade Practices Act 1974 and/or section 9 of the Fair Trading Act 1999 (Vic); orders are also sought by the applicants under sections 1317HA and/or 1041I and/or 1325 of the Corporations Act 2001 (Cth); section 12GF and/or section 12GM of the Australian Securities and Investment Commission Act 2001 (Cth); section 82 and/or section 87 of the Trade Practices Act 1974 (Cth); and/or section 159 of the Fair Trading Act 1999 (Vic) that the respondent compensate the applicants and/or the Group Members.

Filed for the applicants by:
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Further Amended
Application.doc

1. This Second Further Amended Application is brought by the applicants as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976*.
2. The Group Members to whom this proceeding relates are persons who are defined in paragraph 1 of the Second Further Amended Statement of Claim, being those persons who:
 - (a) between 11 March 2002 and 13 January 2006 inclusive (“**Relevant Period**”) obtained an interest in the respondent’s “B Class” securities (“**AWB securities**”) being an interest that was the result of a purchase of AWB securities on the financial market (“**ASX**”) operated by the corporation then known as Australian Stock Exchange Limited and now known as ASX Limited (trading as Australian Securities Exchange);
 - (b) at the close of business on 13 January 2006 held an interest in AWB securities obtained during the Relevant Period; and
 - (c) suffered loss and damage by reason of the Contraventions, as defined in the Second Further Amended Statement of Claim (“**Group Members**”).
3. On the grounds set out in the Second Further Amended Statement of Claim, the applicants claim for themselves and the Group Members:
 - (1) A declaration that the respondent contravened section 674(2) of the *Corporations Act 2001* by not informing the corporation then known as Australian Stock Exchange Limited and now known as ASX Limited (trading as Australian Securities Exchange) immediately that it was or ought to have been aware of some or all of the Relevant information as defined in paragraph 39 of the Second Further Amended Statement of Claim.
 - (2) An order pursuant to section 1317HA and/or section 1325 of the *Corporations Act 2001* that the respondent pays to the applicants and Group Members compensation for damage that resulted from or because of the contravention of section 674(2) of the *Corporations Act 2001* referred to in (1) above.

(3) A declaration that, by reason of the matters pleaded in the Second Further Amended Statement of Claim, the respondent engaged in conduct in contravention of:

(a) section 1041H(1) of the *Corporations Act 2001*;

(b) section 12DA(1) of the *Australian Securities and Investment Commission Act 2001*;

(c) section 52 of the *Trade Practices Act 1974*; and/or

(d) section 9 of the *Fair Trading Act 1999* (Vic).

(4) An order pursuant to:

(a) section 1041I and/or section 1325 of the *Corporations Act 2001* that the respondent pays to the applicants and Group Members compensation for damage suffered by and/or because of conduct of the respondent in contravention of section 1041H(1) of the *Corporations Act 2001* referred to in (3)(a) above;

(b) section 12GF and/or section 12GM of the *Australian Securities and Investment Commission Act 2001* that the respondent pays to the applicants and Group Members compensation for damage suffered by conduct of the respondent in contravention of section 12DA(1) of the *Australian Securities and Investment Commission Act 2001* referred to in (3)(b) above;

(c) section 82 and/or section 87 of the *Trade Practices Act 1974* that the respondent pays to the applicants and Group Members compensation for damage suffered by conduct of the respondent in contravention of section 52 of the *Trade Practices Act 1974* referred to in (3)(c) above;

(d) section 159 of the *Fair Trading Act 1999* (Vic) that the respondent pays to the applicants and Group Members compensation for damage suffered because of contravention of section 9 of the *Fair Trading Act 1999* (Vic) referred to in (3)(d) above.

- (5) Such further or other relief as the Court deems fit.
 - (6) Interest on any compensation or monetary amount awarded.
 - (7) Costs.
4. The questions of law or fact common between the claims of the applicants and the Group Members or between Group Members are:
- (a) Whether and when the respondent became aware of the matters referred to in paragraphs 26 - 28 of the Second Further Amended Statement of Claim;
 - (b) Whether and when the respondent contravened ASX Listing Rule 3.1 or Chapter 6CA of the *Corporations Act 2001*;
 - (c) Whether the matters referred to in subparagraph (a) above had the effect that the price of acquisition for securities in the respondent was higher than it otherwise would have been, and if so to what extent;
 - (d) If the respondent's conduct is found to have had the effect that prices for its securities were higher than those prices otherwise would have been, whether statutory compensation is recoverable by the applicants and some or all of the Group Members;
 - (e) The correct measure of the statutory compensation for which the respondent may be liable to the applicants and some or all of the Group Members;
 - (f) Whether the respondent contravened section 1041H(1) of the *Corporations Act 2001*; section 12DA(1) of the *Australian Securities and Investment Commission Act 2001*; section 52 of the *Trade Practices Act 1974* and/or section 9 of the *Fair Trading Act 1999* (Vic); and

- (g) Whether any, and if so what, relief other than monetary relief should be granted in favour of the applicants and some or all of the Group Members.

Dated: 21 July 2009

A handwritten signature in black ink, appearing to read 'R. Gilsenan', with a long horizontal flourish extending to the right.

REBECCA GILSENAN FOR BEN SLADE
Maurice Blackburn Pty Ltd, Solicitor for the applicants

TO THE RESPONDENT:

Respondent: **AWB LIMITED (ACN 081 890 459)**
Level 21, 380 La Trobe Street,
Melbourne, VIC 3000

A directions hearing in this application will be heard by the Court at the time and place specified below.

If there is not attendance before the Court by you or a legal practitioner representing you, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at that time, you must file an appearance in the Registry.

TIME: 9:30 am

PLACE: Federal Court of Australia
Level 14, 80 William Street
Sydney NSW 2000

DATE: 21 July 2009

Registrar

**The applicants' address
for service is:**

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The applicants may be served at the following exchange box in the Sydney Market Street Document Exchange:

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