

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/05/2021 10:10:39 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD132/2021
File Title: SWISS RE INTERNATIONAL SE v LCA MARRICKVILLE PTY LIMITED ACN 601 220 080
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 26/05/2021 8:40:35 AM AEST

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 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.



Form 33
Rule 16.32

Defence to Cross-Claim

No: NSD 132 of 2021

Federal Court of Australia
District Registry: NSW
Division: General

Swiss Re International SE ARBN 138 873 211

Applicant

LCA Marrickville Pty Limited ACN 601 220 080

Respondent

LCA Marrickville Pty Limited ACN 601 220 080

Cross-Claimant

Swiss Re International SE ARBN 138 873 211

Cross-Respondent

In answer to the allegations in the statement of cross-claim filed by the Cross-Claimant (**LCA**) on 27 April 2021 (**SOCC**), the Cross-Respondent (**Swiss Re**) states as follows. Unless indicated otherwise, this defence to the SOCC adopts the defined terms used in the SOCC.

The Parties

1 Swiss Re admits the allegation pleaded in paragraph 1 of the SOCC.

Filed on behalf of (name & role of party)	Swiss Re International SE, Applicant / Cross-Respondent		
Prepared by (name of person/lawyer)	Carmen Elder	Ref	CLE/CZO/319332/80
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[Form approved 01/08/2011]

2 Swiss Re admits the allegation pleaded in paragraph 2 of the SOCC.

The Policy

3 Swiss Re admits the allegation pleaded in paragraph 3 of the SOCC.

4 In answer to paragraph 4 of the SOCC, Swiss Re:

4.1 admits that the Policy includes terms that accord with the general description set out in the paragraph;

4.2 relies on the Policy for its full terms and effect, as if fully pleaded herein;

4.3 otherwise does not admit the allegations pleaded in the paragraph.

Claim by LCA

5 Swiss Re admits the allegation pleaded in paragraph 5 of the SOCC.

6 Swiss Re admits the allegation pleaded in paragraph 6 of the SOCC.

7 In answer to paragraph 7 of the SOCC, Swiss Re:

7.1 says that the following orders came into force after February 2020:

7.1.1 *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020;*

7.1.2 *Public Health (COVID-19 Gatherings) Order (No 2) 2020;*

7.1.3 *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020;*

7.1.4 *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 3) 2020;* and

7.1.5 *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 7) 2020;*

- 7.2 relies on the terms of the orders identified in paragraph 7.1 above for their full terms and effect;
- 7.3 reserves the right to plead more fully once “*Agreed Facts*” are identified; and
- 7.4 otherwise does not admit the allegation pleaded in the paragraph.

Response of the Disease Clause

- 8 In response to paragraph 8 of the SOCC, Swiss Re:
 - 8.1 repeats paragraphs 23, 57, 58 and 67 to 72 of the Statement of Claim filed on 26 February 2021 (**SOC**); and
 - 8.2 otherwise denies the allegation pleaded in the paragraph.

Response of the Expansion Clause

- 9 In response to paragraph 9 of the SOCC, Swiss Re:
 - 9.1 repeats paragraphs 23, 59, 60 and 73 to 77 of the SOC; and
 - 9.2 otherwise denies the allegation pleaded in the paragraph.

Response of the Catastrophe Clause

- 10 In response to paragraph 10 of the SOCC, Swiss Re:
 - 10.1 repeats paragraphs 61, 62, 64, 65, 78 and 79 of the SOC; and
 - 10.2 otherwise denies the allegation pleaded in the paragraph.

Response of the Prevention of Access Clause

- 11 In response to paragraph 11 of the SOCC, Swiss Re:
 - 11.1 repeats paragraphs 63, 64, 65, 80 and 81 of the SOC; and
 - 11.2 otherwise denies the allegation pleaded in the paragraph.

Adjustments Clause

12 In answer to paragraph 12 of the SOCC, Swiss Re:

12.1 repeats paragraphs 84 to 87 of the SOC; and

12.2 otherwise denies the allegation pleaded in the paragraph.

Test Case

13 Swiss Re admits the allegation pleaded in paragraph 13 of the SOCC.

14 Swiss Re admits the allegation pleaded in paragraph 14 of the SOCC.

Date: 25 May 2021



Signed by Carmen Elder
DLA Piper Australia
Lawyer for the Applicant / Cross-Respondent

This pleading was prepared by Clancy O'Donovan and settled by David L. Williams SC and Ross D. Glover of counsel.

Certificate of lawyer

I, Carmen Elder, certify to the Court that, in relation to the defence filed on behalf of the Cross-Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 25 May 2021



Signed by Carmen Elder
DLA Piper Australia
Lawyer for the Applicant / Cross-Respondent