

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/02/2021 3:10:38 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 - Form 15 - Rule 8.01(1)
File Number:	NSD135/2021
File Title:	ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850) v MAYBERG PTY LTD ACN 011 024 070
Registry:	NEW SOUTH WALES 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: 26/02/2021 12:19:48 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.



## Originating application

No. of 20

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations National Practice Area (Insurance List)

### Allianz Australia Insurance Limited (ACN 000 122 850)

Applicant

### Mayberg Pty Ltd (ACN 011 024 070)

Respondent

To the Respondent

The Applicant 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.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to

Date:

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

Filed on behalf of (name & role of party) Allianz Australia Limited, Applicant  
Prepared by (name of person/lawyer) Avryl Jessica Lattin  
Law firm (if applicable) Clyde & Co  
Tel (02) 9210 4400 Fax (02) 9210 4599  
Email Avryl.Lattin@clydeco.com  
**Address for service** Level 15, 333 George Street, SYDNEY NSW 2000  
(include state and postcode)



## Details of claim

On the grounds stated in the statement of claim, accompanying affidavit or other document prescribed by the Rules, the Applicant claims:

1. Declarations pursuant to section 21 of the *Federal Court Act 1976* (Cth) that:
  - a) On its proper construction, the Murder, Suicide and Infectious Disease Extension in the policy of insurance issued by the Applicant to the Respondent has not been engaged because:
    - i. the Government Measures (as that term is defined in the Concise Statement) did not constitute the closure or evacuation of all or part of the Premises by a legal authority; and/or
    - ii. the Government Measures were not implemented as a result of an outbreak of an infectious disease within a 20-kilometre radius of the Premises (as that term is defined in the Concise Statement).
  - b) On its proper construction, the Public Authority Extension in the Respondent's policy of insurance does not respond to the Claim because:
    - i. the Government Measures did not prevent or restrict access to the Premises;
    - ii. the Government Measures did not constitute an order for the evacuation of the public; and
    - iii. the Government Measures were not implemented as a result of Damage (as that term is defined in the policy) to or threat of Damage to property or persons within a 50-kilometre radius of the Premises.
  - c) If, contrary to the above, the Court were to find either extension in the Respondent's policy of insurance responds to the Claim, the Respondent is not entitled to a full indemnity because:
    - i. the Interruption the subject of the Claim would have occurred regardless of the Government Measures, by reason of the other (uninsured) impacts of the COVID-19 pandemic; and
    - ii. the Applicant is entitled to adjust any payment made for business interruption to reflect the (uninsured) circumstances affecting the Business arising from the COVID-19 pandemic, so that the payment reflects the results that, but for the insured events, would have been obtained during the relevant period.

**Applicant's address**

The Applicant's address for service is:

Place: Clyde & Co, Level 15, 333 George Street, SYDNEY NSW 2000

Email: Avryl.Lattin@clydeco.com

The Applicant's address is 2 Market Street, SYDNEY NSW 2000

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 24 February 2021

A handwritten signature in black ink, appearing to read 'Avryl Lattin', written in a cursive style.

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Signed by Avryl Jessica Lattin  
Lawyer for the Applicant