

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 5/05/2021 12:39:51 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: Concise Statement
File Number: NSD308/2021
File Title: QBE INSURANCE (AUSTRALIA) LIMITED (ACN 003 191 035) v
DAVID COYNE IN HIS CAPACITY AS LIQUIDATOR OF
EDUCATIONAL WORLD TRAVEL PTY LTD ACN 006 888 179 (IN
LIQUIDATION) & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 5/05/2021 12:39:56 PM 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.



Concise Statement in Response

No. NSD308/2021

Federal Court of Australia

District Registry: New South Wales

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

QBE Insurance (Australia) Limited (ACN 003 191 035)

Applicant

David Coyne in his capacity as liquidator of Educational World Travel Pty Ltd (ACN 006 888 179) (In Liquidation)

First Respondent

Educational World Travel Pty Ltd (ACN 006 888 179) (In Liquidation)

Second Respondent

By way of response to the Applicant's Concise Statement filed on 9 April 2021 (**Concise Statement**) (and adopting the defined terms as they appear in the Concise Statement), the First and Second Respondents (**Respondents**) say as follows:

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

A.1 Summary

1. The Respondents admit the matters alleged at paragraphs 1-5 (inclusive) and say further that:
 - (a) EWT's travel agency business (**EWT Business**) was conducted from premises situated at Suite 2, Level 1, 441 Canterbury Road, Surrey Hills, Victoria (**Business Premises**);

Filed on behalf of Prepared by Law firm: Tel Email Address for service (include state and postcode)	David Coyne (in his capacity as liquidator of Educational World Travel Pty Ltd (in liq)) and Educational World Travel Pty Ltd (in liq), the Respondents Paul Welling KHQ Lawyers (03) 9663 9877 pwellings@khq.com.au Level 4, 600 Bourke Street, Melbourne VIC, 3000	Fax (03) 9009 5494
--	---	-----------------------

- (b) the conduct of the EWT Business in the ordinary course involved the Business Premises being open to the public and some portion of the EWT Business being conducted in person at the Business Premises; and
- (c) while the EWT Business predominantly related to the provision of services in connection with international travel, the EWT Business also provided services in relation to travel within Australia.

A.2 *The Policy*

- 2. The Respondents admit the matters alleged at paragraphs 6 to 8 (inclusive) and say further that under the Schedule to the Policy, the Second Respondent was insured for annual revenue for a sum of \$2,000,000.

A.3 *Quarantine Act*

- 3. The Respondents admit the matters alleged at paragraphs 9 to 11 (inclusive).

A.4 *COVID-19*

- 4. The Respondents admit the matters alleged at paragraphs 12 to 15 (inclusive).

A.5 *COVID-19 measures*

- 5. The Respondents admit the matters alleged at paragraphs 16 to 20 (inclusive) and say further that:
 - (a) on 25 January 2020, a case of COVID-19 was confirmed in a visitor from China to the state of Victoria;
 - (b) on 15 March 2020, the first case of community transmission of COVID-19 in Victoria was detected;
 - (c) on 16 March 2020, a state of emergency was declared in Victoria pursuant to the *Public Health and Wellbeing Act 2008 (Vic)* (***PHW Act***) in response to the risk to public health from COVID-19, which state of emergency was extended on a number of occasions;
 - (d) in the period from 16 March 2020, the Chief Health Officer of Victoria and persons authorised by the Chief Health Office under s 199(2)(a) of the *PHW Act* made a number of directions under s 200 of the *PHW Act* limiting human activity across the State of Victoria (**Lockdown Directions**);

- (e) the Lockdown Directions relevantly included the *Restricted Activity Directions (Restricted Areas) (No 6)* given on 5 August 2020 and successive directions that were made for the purpose of restricting the operation of certain businesses and undertakings within greater Melbourne (being *Restricted Activity Directions (Restricted Areas) (No 7)* given on 13 August 2020 to *Restricted Activity Directions (Restricted Areas) (No 14)* given on 26 October 2020 inclusive), each of which stipulated that a person who owns, controls or operates a “Closed Work Premises” in the “Restricted Area” must not permit persons to attend that premises during the specified “restricted activity period” (**Workplace Closure Directions**);
- (f) the Workplace Closure Directions were, for the purpose of the Prevention of Access Extension, an order of a competent government, public or statutory authority as a result of a human infectious or contagious disease;
- (g) as a consequence of the Workplace Closure Directions, given that the Business Premises was located in the “Restricted Area” and was a “Closed Work Premises”, EWT had to close the Business Premises with effect from 11:59 pm on 5 August 2020; and
- (h) for the purpose of the Prevention of Access Extension, interruption or interference to the EWT Business occurred in consequence of the closure of all or part of the Business Premises pursuant to the Workplace Closure Directions which prevented or hindered the use of the Business Premises or access thereto or resulted in the cessation or diminution of trade due to the temporary falling away of potential customers.

A.6 *EWT’s Claim*

- 6. The Respondents admit the matters alleged at paragraphs 21 to 23 (inclusive) and say further that in the period from 5 August 2020 to early November 2020 (at which time the Business Premises could have been re-opened on account of ceasing to be “Closed Work Premises” for the Workplace Closure Directions), the revenue of the EWT Business decreased compared to the same period in the previous year (2019).

A.7 *Policy wording disputes*

- 7. As to paragraph 24 of the Concise Statement, the Respondents:
 - a. deny that section 61A of the *Property Law Act 1958 (Vic)* operates such that the reference in the Policy to the *Quarantine Act 1908 (Cth)* is to be construed as a

reference to the *Biosecurity Act 2015 (Cth)* (such that a disease determined to be a "listed human disease" under the *Biosecurity Act 2015 (Cth)* falls within the scope of the exclusion forming part of the Prevention of Access Extension), including as:

- i. the *Quarantine Act 1908 (Cth)* had been repealed prior to the parties' entry into the Policy; and
 - ii. the enactment of the *Biosecurity Act 2015 (Cth)* was not, for the purposes of section 61A of the *Property Law Act 1958 (Vic)*, the repeal and re-enactment of the *Quarantine Act 1908 (Cth)*; and
 - iii. the *Biosecurity Act 2015 (Cth)* does not contain any provision by which a disease can be declared to be a "quarantinable disease"; and
- b. deny that COVID-19 otherwise falls within the exclusion forming part of the Prevention of Access Extension.
8. As to paragraph 25, the Respondents say that the Prevention of Access Extension does apply by reason of the matters set out in paragraphs 1, 5, 6 and 7 above.
9. As to paragraph 26, the Respondents say that, to the extent that EWT suffered loss that was caused concurrently by events or circumstances referable to the outbreak of COVID-19 other than the interruption or interference to the EWT Business that occurred as a consequence of the closure of the Business Premises due to the Workplace Closure Directions, the Prevention of Access Extension covered EWT for loss resulting from any such concurrent causes of that loss.
10. As to paragraph 27, the Respondents say that the calculation of interest pursuant to section 57 of the *Insurance Contracts Act 1984 (Cth)* commences from 30 March 2021 (the date of QBE's adjudication of the Claim).

B. THE RELIEF SOUGHT FROM THE COURT

B.1 Interlocutory relief sought

11. The Respondents consent to the making of an order pursuant to section 500(2) of the *Corporations Act 2001 (Cth)*, granting leave to proceed against EWT, provided such leave is made conditional upon QBE being prohibited from enforcing any judgment obtained against EWT (including in respect of the costs of the proceeding) without first obtaining leave of the Court.

B.2 Final relief sought

12. The respondents oppose the final relief sought by QBE. Further, EWT seeks the relief set out in its Concise Statement of Cross-Claim filed in this proceeding.

This Concise Statement in Response has been settled by J Slattery QC and D F McAloon of Counsel

Date: 5 May 2021



Signed by Paul Welling
Solicitor for the Respondents

Certificate of lawyer

I, Paul Welling, certify to the Court that, in relation to the concise statement in response filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 5 May 2021



Signed by Paul Welling, KHQ Lawyers
Lawyer for the Respondents