

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/02/2021 3:45:55 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:	NSD145/2021
File Title:	GUILD INSURANCE LIMITED ACN 004 538 863 v DR JASON MICHAEL T/AS ILLAWARRA PAEDIATRIC DENTISTRY
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: 1/03/2021 10:53:59 AM 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 2021

Federal Court of Australia

District Registry: New South Wales

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

Guild Insurance Limited (ACN 004 538 863)

Applicant

Dr Jason Michael t/as Illawarra Paediatric Dentistry

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) Guild Insurance Limited, Applicant
Prepared by (name of person/lawyer) Gareth Edward Horne
Law firm (if applicable) Clyde & Co
Tel (02) 9210 4400 Fax (02) 9210 4599
Email Gareth.Horne@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 Prevention of Access Extension in the policy of insurance issued by the Applicant to the Respondent has not been engaged because:
 - i. Dr Michael was able to trade or otherwise conduct the Business at the Business Premises (as those terms are defined) in whole or in part during the period of cover;
 - ii. none of the Government and Industry Measures (as that term is defined in the Concise Statement) constituted the intervention of any lawful authority resulting from threat of damage to property in the immediate vicinity of the Business Premises which prevented access to or hindered the use of the Business Premises as is required to engage subparagraph (a) of the Prevention of Access Extension;
 - iii. none of the Government and Industry Measures constituted an order for the closure or evacuation of the whole or any part of the Business Premises as is required to engage subparagraph (c) of the Prevention of Access Extension;
 - iv. none of the following entities qualify as a “competent government or statutory authority” under subparagraph (c) of the Prevention of Access Extension:
 - i. the ADA;
 - ii. the AHPPC;
 - iii. other relevant state or territory dental bodies, including the Dental Council of NSW;
 - v. if, contrary to (a) above, the Government and Industry Measures constituted an order for the closure or evacuation of the whole or any part of the Business Premises, such order did not arise directly or indirectly from human infectious or contagious disease or the discovery of any organism likely to result in human infectious or contagious disease at the Business Premises as is required to engage subparagraph (c) of the Prevention of Access Extension; and/or



vi. COVID-19 is not caused by an organism likely to result in human infectious or contagious disease.

- b) If, contrary to the above, the Court were to find that the Prevention of Access Extension in the policy of insurance issued by the Applicant to the Respondent responds to the Claim, the Respondent is not entitled to a full indemnity because:
- i. the interruption or interference the subject of the Claim would have occurred regardless of the Government and Industry Measures, by reason of the other (uninsured) impacts of the COVID-19 pandemic; and
 - ii. the Applicant is entitled to reduce any payment for business interruption to reflect the extent to which any shortfall in Income (as that term is defined) during the relevant period was caused by other (uninsured) impacts of the COVID-19 pandemic.

Applicant's address

The Applicant's address for service is:

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

Email: Gareth.Horne@clydeco.com

The Applicant's address is Level 6, 20 Bond 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 'G. Horne'.

Signed by Gareth Edward Horne
Lawyer for the Applicant