

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/04/2021 4:06:20 PM AEST 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 Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD602/2020
File Title:	ANDREW PARKIN v BORAL LIMITED (ACN 008 421 762)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Interlocutory Hearing
Time and date for hearing:	27/04/2021, 9:30 AM
Place:	Please check Daily Court List for details



*Sia Lagos*

Dated: 16/04/2021 6:47:32 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 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.

Form 19  
Rule 9.32



**Amended Originating application starting a representative proceeding  
under Part IVA of the Federal Court of Australia Act 1976**

Amended on 16 April 2021 pursuant to orders made by the Honourable Justice Lee dated 9  
April 2021

No. NSD 602 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**ANDREW PARKIN**

Applicant

**BORAL LIMITED (ACN 008 421 762)**

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:** Federal Court of Australia, Law Courts Building, Queens Square, Sydney, New South Wales 2000

Date:

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

Filed on behalf of	Andrew Parkin (Applicant)
Prepared by	Julian Schimmel
Law firm	Maurice Blackburn Pty Ltd
Tel	(02) 9261 1488 Fax (02) 9261 3318
Email	<a href="mailto:jschimmel@mauriceblackburn.com.au">jschimmel@mauriceblackburn.com.au</a>
Address for service	c/- Maurice Blackburn Pty Ltd, Level 32, 201 Elizabeth Street, Sydney NSW 2000



### Details of claim

On the grounds stated in the accompanying Amended Statement of Claim, the Applicant claims on his own behalf and on behalf of Group Members (as defined in this Amended Originating Application):

1. An order pursuant to s 1317HA of the *Corporations Act 2001* (Cth) (**Corporations Act**), that the Respondent compensate the Applicant and Group Members for the damage suffered by them which resulted from the Respondent's contraventions of s 674(2) of the Corporations Act, pleaded in the Amended Statement of Claim.
2. An order pursuant to:
  - a. s 1041I of the Corporations Act;
  - b. s 12GF of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and/or
  - c. ss 236 and/or 237 of the Australian Consumer Law set out in Sch 2 of the *Competition and Consumer Law Act 2010* (Cth) (**ACL**),that the Respondent compensate the Applicant and Group Members for the damage suffered by them which resulted from the Respondent's contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL, pleaded in the Amended Statement of Claim.
3. An order pursuant to s 33Z(1)(e) and/or 33Z(1)(f) of the *Federal Court of Australia Act 1976* (Cth) that the amounts awarded pursuant to prayers 1 and 2 above be an aggregate without specifying amounts awarded in respect of individual Group Members.
4. Interest, pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth).
5. Costs.
6. Such further or other relief as the Court deems fit.

### Questions common to claims of group members

The questions of law or fact common to the claims of the Group Members are (capitalised terms have the same meaning as those given in the Amended Statement of Claim):

1. Whether the Respondent made and/or failed to correct or qualify:
  - aa. the 2016 Due Diligence Representations;
  - ab. the 2016 Due Diligence Basis Representation;
  - a. the 2017 Successful Integration Representations;



- b. the 2017 Successful Integration Basis Representation;
  - c. the First 2018 Successful Integration Representations;
  - d. the First 2018 Successful Integration Basis Representation;
  - e. the Second 2018 Successful Integration Representation;
  - f. the Second 2018 Successful Integration Basis Representation;
  - g. the Adequate Systems Representation;
  - h. the Adequate Systems Basis Representation;
  - i. the Boral North America FY18 Financial Performance Representation;
  - j. the Boral North America FY17 Financial Performance Basis Representation;
  - k. the Boral North America FY19 Guidance Representation;
  - l. the Boral North America FY19 Guidance Basis Representation;
  - m. the Boral North America Reliable Guidance Representation;
  - n. the HY19 Financial Performance Representation;
  - o. the HY19 Financial Performance Basis Representation;
  - p. the FY19 Financial Performance Representation;
  - q. the FY19 Financial Performance Basis Representation;
  - r. the FY20 Guidance Representation;
  - s. the FY20 Guidance Basis Representation;
  - t. the Duration of Misreporting Representation;
  - u. the Duration of Misreporting Basis Representation;
  - v. the Impact of Misreporting Representation; and/or
  - w. the Impact of Misreporting Basis Representation;
2. Whether, by having regard to the answer to Question 1 above, the Respondent contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL.
3. When did the Respondent become aware, within the meaning of ASX Listing Rule 19.12, of:
- aa. the Inadequate Due Diligence Information:
    - a. the Non-integration of Windows Information;



- b. the Alternative Non-integration of Windows Information;
- c. the Manipulated Financial Reporting Information;
- d. the Manipulated Financial Reporting Margin Information;
- e. the Manipulated Financial Reporting Quantum and Duration Information;
- f. the Inadequate Systems Information;
- g. the Inadequate Understanding of Headwaters Information;
- h. the Overstated Boral North America FY18 Financial Performance Information;
- i. the Alternative Overstated Boral North America FY18 Financial Performance Information;
- j. the Overstated Boral North America HY19 Financial Performance Information;
- k. the Alternative Overstated Boral North America HY19 Financial Performance Information;
- l. the Overstated FY19 Financial Performance Information;
- m. the Alternative FY19 Financial Performance Information;
- n. the Overstated FY19 Guidance Information; and/or
- o. the Overstated FY20 Guidance Information.

**(Non-disclosed Material Information).**

- 4. Whether, having regard to the answer to Question 3 above, the Respondent contravened s 674(2) of the Corporations Act by not immediately telling the ASX the Non-disclosed Material Information after it became aware of the information.
- 5. Whether any and, if so, what contraventions of the Respondent had the effect that the prices for Boral Shares was higher during the Relevant Period than their true value and/or what the market price otherwise would have been but for the contraventions, and if so:
  - a. whether compensation is recoverable by the Applicant and Group Members; and
  - b. the correct measure of compensation for which the Respondent may be liable to the Applicant and Group Members.



### Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are persons who or which:

- a. acquired ~~an interest~~:
  - i. an interest in ordinary shares in the Respondent (**Boral Shares**); ~~and/or~~
  - ii. an interest American Depositary Receipts that represent Boral Shares (**Boral ADRs**); and/or
  - iii. long exposure to Boral Shares by entering into equity swap confirmations in respect of Boral Shares (**Boral Equity Swaps**),  
during the period between 21 November 2016 ~~30 August 2017~~ and 10 February 2020 (**Relevant Period**);
- b. suffered loss or damage by reason of the conduct of the Respondent pleaded in the Amended Statement of Claim; and
- c. were not during the Relevant Period, and are not as at the date of the Amended Statement of Claim, any of the following:
  - i. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of the Respondent;
  - ii. a related body corporate (as defined by s 50 of the *Corporations Act*) of the Respondent;
  - iii. an associated entity (as defined by s 50AAA of the *Corporations Act*) of the Respondent;
  - iv. an officer or a close associate (as defined by s 9 of the *Corporations Act*) of the Respondent; or
  - v. a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia.

**Applicant's address**

The Applicant's address for service is:

Place: Maurice Blackburn Pty Limited  
Level 32, 201 Elizabeth Street  
Sydney NSW 2000

Email: jschimmel@mauriceblackburn.com.au

The Applicant's address is: c/- Maurice Blackburn Pty Ltd  
Level 32, 201 Elizabeth Street  
Sydney NSW 2000

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 16 April 2021 ~~28 May 2020~~

A handwritten signature in black ink, appearing to read "Julian Schimmel".

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Signed by Julian Schimmel  
Lawyer for the Applicant