



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

ON APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA

S12/2026

BETWEEN

ZONIA HOLDINGS PTY LTD (ACN 008 565 286)

Appellant

and

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COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124)

Respondent

S13/2026

BETWEEN

PHILIP ANTHONY BARON

First Appellant

JOANNE BARON

Second Appellant

and

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COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124)

Respondent

APPELLANTS' JOINT OUTLINE OF ORAL ARGUMENT

Part I: Certification

1. This outline is in a form suitable for publication on the internet.

Part II: Outline of oral submissions

APPEALS

(a) Important facts and findings below (AS[9]-[15]; AR[2])

2. *Pleaded information: September 2015 Late TTR Information and September 2015 Account Monitoring Information* (FC [128]-[129]). Cf *Austrac v CBA* (JBA 7/35 p1825) at [15]-[16] (TTR), [20] (AMF) and SOAF at [43], [44], [60](b), [60](d) (TTR), [51], [53], [60](c) (AMF).
3. *Contraventions of s 674 of the Corps Act: CBA wrongfully failed to disclose the pleaded information on and from 24 April 2017* (FC [526], [533]).
4. *AUSTRAC's 3 August 2017 release and concise statement* (PJ[338], CBA 1/89; FC[571]-[572]): The information the subject of CBA's wrongs *formed part of* the information released to the market on 3 August 2017. It constituted two of the five substantive issues disclosed. The others were extra allegations of CBA's non-compliance with AML/CTF obligations.
5. *Price drop in value of CBA's shares (FC[539])*: Both parties accepted: **(i)** an event study, supporting a theory of market-based causation, was a suitable technique to establish causation and loss for group members; **(ii)** over the event window starting when AUSTRAC published its release, there was a statistically significant abnormal return in CBA's share price (\$3.29); **(iii)** that price decline was a reaction to all the information release to the market by the 3 August disclosures (T213.28-30, ASBFM 42) and to nothing else (T251.4-8, ASBFM 40).
6. *Causation and loss at trial*: See summary of appellants' case at FC [540] (causation), [542], [584], [609] (loss). CBA did not allege or prove that all or part of the price decline, or of its quantum, was attributable to something other than release of the pleaded information.
7. *Materiality*: See FC [446]-[460], [501]-[503]; [515]-[526] particularly [522]-[524] (brokers' reports as confirmation); [528]-[533].

(b) Causation of loss: principles (Ground 1; first part of Ground 2)

8. *Methodology and evidentiary inferences* (AS[17]-[32]; AR[7]): It is necessary to ascertain whether a wrong has caused loss before asking whether quantum of loss has been established. Where a sufficient causal connection between the wrong and the loss (relevantly, material contribution) has been proven, a plaintiff can recover the whole loss, unless the defendant disentangles concurrent causes to show that all or part of the loss is not referable to the wrong.

(i) Statutory prism: Corps Act, ss 1317HA (JBA 1/3 p145), 1325(1) (JBA 1/3 p165).

(ii) Authorities: *Watts v Rake* (JBA 5/26 p1349); *Purkess v Crittenden* (JBA 5/23 p1271); *Henville v Walker* (JBA 4/16 p994); *Bonnington v Wardlaw* (JBA 6/34 p1801).

9. *Standard for establishing causation*: This is context-dependent and does not demand certainty or precision. See *Crowley v Worley* (JBA 7/36 p1916).

(c) Causation of loss: application (Ground 1; first part of Ground 2)

10. The Full Court failed to determine causation before quantum: **FC[582], [619]; FC2[16], [20]**. Whilst the evidence establishing these matters overlapped, the legal enquiries are not coextensive. This failure caused errors in the application of evidentiary inferences (**AS[38]-[39]**).

11. The appellants established that CBA's non-disclosure of the pleaded information materially contributed to some of its loss, in the form of inflated share value (**AS[40]-[55]; AR[12]**). (i) To ground that inference, it was not necessary to establish precise identity between the pleaded information and the 3 August disclosures. The pleaded information was a subset that was far from *de minimis*. (ii) The Full Court's reasoning on quantification implicitly accepts that the pleaded information was a cause of at least some of the share price decline: **FC[575], [593], [595], [599], [600]**. (iii) CBA did not lead any evidence that displaced that inference.

20 (a) Common sense basis: On the Court's analysis of the reasons why the pleaded information was material, the uncontroversial facts ([4]-[5] above), the inference that CBA's contravention caused share price inflation *to some extent* is irresistible.

(b) Event study basis: Again, the common sense conclusion from [4]-[5] above is that the pleaded information was a cause of the abnormal market decline of \$3.29, and correspondingly, of some inflation in the value of CBA's shares.

(d) Quantification: principles (Ground 1(c)(ii); second part of Ground 2)

30 12. Quantification of damages necessarily involves matters of estimation. Ultimately, a plaintiff must prove the amount of its loss with as much precision as the subject matter reasonably permits: *Placer v Thiess* (JBA 8/47 p2486). This idea is buttressed by: (i) the "facilitation principle", which applies where the defendant's conduct has created uncertainty in quantifying the loss: *Armory v Delamirie* (JBA 6/29 p1437); *Cessnock* (JBA 3/11 p485); *Crowley v Worley* (JBA 7/36 p1916); (ii) the proposition that disputed factual questions must be decided according to the evidence adduced by the parties, not speculation about what might have been led: *ASIC v Hellicar* (JBA 3/8 p296). (**AS[33]-[36]; AR[13]**)

(e) Quantification: application (Ground 1(c)(ii); second part of Ground 2)

13. The \$3.29 abnormal decline, translating to corresponding inflation in the value of the appellants' shares when purchased, was the whole quantum of the appellants' loss of which CBA's wrong was a material contributing cause. (AS[56]-[57])

14. Speculation that the appellants might have been able to go further to quantify their loss was an insufficient basis to conclude that they failed to prove any quantum: cf FC[585], [596], [599], [600], [608]. (i) CBA did not establish that the \$3.29 should be reduced or apportioned to reflect the responsibility of other matters for the share price inflation. (ii) The evidence led by both sides was that it was not possible to attribute parts of the \$3.29 to particular pieces of information (Taylor pp498-499, 507-8 [37]-[39], 510). (iii) Dr Unni said no more than it is theoretically necessary to try to draw conclusions about the relative economic importance of pieces of information from eg broker reports, but he did not conduct that exercise (FC[596]; Taylor pp252 [249], 222 [173], 261 [262], p498). (iv) In cross-examination, the example put to Professor Easton differed from this case, and he did not substantively retreat from his evidence (ASBFM 48). (v) In these circumstances, the facilitation principle applied. (AS[59]-[64]; AR[14]-[15]).

15. The \$3.29 figure was an appropriate measure of the appellants' loss (AS[58]).

16. Alternatively, \$3.29 was a rational starting point, and the Full Court should have used the evidence to reduce it modestly, taking account of the divergence between the pleaded information and the information disclosed on 3 August. Evidence available to assist included: (i) the Full Court's materiality analysis; (ii) brokers' reports; (iii) CBA's 9 August 2017 announcement (ABFM 4); (iv) Dr Unni's event study of NAB's 7 June 2021 announcement (PJ[856]; Taylor pp283-287; ABFM 14 row 7); (v) Lieser paper (ASBFM 50, 70). (AS[65]-66]; AR[16]-[17])

PROPOSED CROSS-APPEALS

17. **Special leave** should be refused: (1) the "completeness and accuracy issue" was not pleaded or clearly run as a threshold issue at trial; (2) the materiality findings involved the correct application of a settled legal standard and raise no point of principle (AR [18]).

18. **No "threshold issue" (ground 1).** (i) The Full Court correctly held CBA had not shown it had pleaded, clearly run, or the appellants had acquiesced in its conduct of, the "completeness and accuracy" issue as a threshold issue (FC[333],[340], AR[20]). (ii) The Full Court correctly held that contextual matters should be considered as part of the materiality assessment

(FC[366]-[372]). (ii) The statutory framework does not accommodate an implied “threshold” assessment of “completeness and accuracy” (AR[27]). (iv) Contextual matters may negate materiality, but short of that, the pleaded information must still be disclosed. If the contextual matters are necessary to avoid misleading the market, they will themselves be disclosable (FC[366], [371], AR[27]-[28]). If disclosures were required to include everything necessary to assess materiality (*cf* RR[5]) crucial information would be buried. (v) CBA misreads *Jubilee Mines* (JBA 8/45 p2400) and fails to address *ANZ v ASIC* (JBA 6/27 p1366).

10 **19. Materiality: approach (ground 2(a)).** (i) Having correctly identified errors in the primary judge’s approach, the Full Court decided materiality focussing on the information itself as a matter of commercial common-sense and emphasising particular evidence (broker reports), as it was entitled to do (AR[31]; FC[343]-[365]; [502]; *cf* RR[12]). The Full Court was in as good a position as the trial judge, with the benefit of appellate perspective, to decide materiality. No trial findings depended on witness impressions. (AR [32]). The Full Court did not need to treat expert evidence (referred to by it at FC[174]-[197]) as determinative. (ii) The Full Court correctly held (*contra* the primary judge) that material information is not confined to matters affecting the company’s financial performance (FC[498]); it is not confined to fundamental value (AR[31]). (iii) The Full Court correctly held (*contra* the primary judge) the pleaded information was not “historical” as at 24 April 2017; CBA knew AUSTRAC regarded it as serious and was contemplating penalty proceedings (FC[456]-[459], [471], [518], [529]).

20 **20. Materiality: conclusions (ground 2(b)-(c)).** (i) None of the contextual matters relied on by CBA rendered the Late TTR information incomplete or misleading (FC[446]-[460]; AR[22]). (ii) The AMF information was material even though there were contextual details missing from it, which would have clarified any misleading impression it conveyed, particularly in combination with the Late TTR Information (FC[468], [528]-[530]). (iii) The Full Court’s conclusions were supported by findings and the evidence (including the broker reports) (FC[516]-[530]). (iv) The pleaded information was likely to influence persons who commonly invest in securities because it conveyed that CBA was exposed to significant financial and reputational consequences for its compliance failures, which AUSTRAC was likely to take seriously (AR[36]-[38]).

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11 June 2026



J T Gleeson



W A D Edwards



C Winnett



C Ernst



T Rawlinson