

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 21/06/2021 8:49:24 AM 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: Non-Prescribed List/Chronology  
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: 21/06/2021 8:50:21 AM 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.



Form 1  
Rule 2.13(2)

## List of Issues for Determination in the proceedings

No. NSD 308 of 2021

Federal Court of Australia

District Registry: NSW

Division: General

### **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

### **Property Law Act**

1. Does section 61A of the Property Law Act 1958 (Vic) apply to the policy, such that the reference to the repealed Quarantine Act 1908 (Cth) is to be construed as a reference to the Biosecurity Act 2015 (Cth), and such that a disease determined to be a "listed human disease" under the Biosecurity Act 2015 (Cth) falls within the scope of the exclusion from cover for business interruption?

### **Prevention of access (POA) extension (page 12)**

2. Was there "closure or evacuation of all or part of the [insured's] premises" within the meaning of the policy?
3. If the answer to 2 is 'yes', was it due to any one or more of the directions as set out in Annexures A and B of the Statement of Agreed Facts?
4. If the answer to 3 is 'yes', was it an order by a competent government, public or statutory authority as a result of a human infectious or contagious disease?
5. If the answer to 3 and 4 is yes, did the "closure or evacuation of all or part of the premises":
  - (a) prevent or hinder the use of the insured's building or access thereto; or
  - (b) "result in" a cessation or diminution of trade "due to" the temporary falling away of potential customers?

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Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer) Louise Massey

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(include state and postcode)

6. Was there “interruption or interference with” the insured’s business within the meaning of the policy?
7. If the answer to 6 is yes, was the interruption or interference “in consequence of” closure or evacuation of all or part of the premises within the meaning of the policy?

**Loss**

8. Whether, having regard to the answers to issues 1 – 7 above, the Policy responds to EWT’s claim for indemnity.

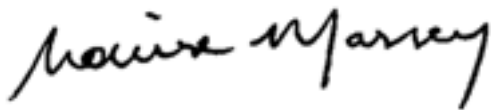
**Concurrent Causes**

9. If the answer to issue 8 is “yes”, whether:
  - (a) the appropriate counter-factual for the purposes of the “Standard Income” definition in the Policy may take into account the presence and effect of COVID-19 as relevant circumstances, so that any payment to be made reflects the results that, but for the insured events, would have been obtained during the relevant period (less any expenses saved as a result of the loss or damage); or
  - (b) to the extent EWT suffered loss that was caused concurrently by events or circumstances referable to the outbreak of COVID- 19 other than as a consequence of the matters set out in 2 to 7 above, the Prevention of Access Extension in the Policy covers EWT for the loss resulting from any such concurrent causes of that loss.

**Interest**

10. Is interest under section 57 of the *Insurance Contracts Act* (1984) payable? If so from what date is interest payable?

Date: 18 June 2021



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Signed by Louise Massey  
Lawyer for the Applicant/ Cross-Respondent



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Signed by Paul Welling  
Lawyer for the Respondents/ Cross-Claimant

**Schedule**

No. NSD 308 of 2021

Federal Court of Australia  
District Registry: NSW  
Division: General

**Applicants**

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

**Respondents**

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

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

**First Cross-Claim**

Cross-Claimant: Educational World Travel Pty Ltd (ACN 006 888 179) (In Liquidation)

Cross-Respondent: QBE Insurance (Australia) Limited (ACN 003 191 035)

Date: 18 June 2021