



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

No: NSD1812/2017

GREGORY JOHN LENTHALL and others named in the schedule
Plaintiffs

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the
schedule
Defendants

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 26 October 2018

WHERE MADE: Sydney

Pursuant to ss 33ZF(1) and 37P(2) of the *Federal Court of Australia Act 1976* (Cth) and FCR 28.65, the Court orders that:

1. Mr Mark Berry, the referee appointed by the Court in this proceeding pursuant to the orders made by the Court on 1 August 2018 (**Referee**) to conduct the Reference (as defined in those orders), forthwith provide to ClearView Life Assurance Limited (**Insurer**):
 - a. a copy of the orders made on 1 August 2018;
 - b. a copy of these orders; and
 - c. an underwriting information pack, in respect of each of Gregory John Lenthall, Sharmilla Lenthall, Shane Thomas Lye and Kylie Lee Lye, containing such information and documents as determined by the Referee so as to enable the Insurer to comply with order no 2 below.
2. The Insurer provide the following information (in written form) and documents to the Referee by no later than 4.00pm on 5 November 2018 (or such later date as the Court may further order):
 - a. the product disclosure statement (and all supplementary product disclosure statements (if any)) and insurance policy documents (**Pleaded Policy**) that had



been issued by it and which was in force and effect as at each of the following dates:

- i. 21 March 2012 and under which it offered cover in respect of term life and total and permanent disability insurance, including details of any automatic enhancements passed onto policyholders since 21 March 2012;
- ii. 26 May 2015 and under which it offered cover in respect of term life, total and permanent disability, trauma and income protection insurance, including details of any automatic enhancements passed onto policyholders since 26 May 2015; and
- iii. 30 June 2015 and under which it offered cover in respect of term life, total and permanent disability, trauma and income protection insurance, including details of any automatic enhancements passed onto policyholders since 30 June 2015

together with all other documents amending, varying or replacing the same (whether by a supplementary disclosure statement or otherwise) until 12 October 2017;

- b. based on the underwriting information pack for Gregory John Lenthall, and based on (1) its underwriting manual and its other guidelines and policies (including premium calculation tables) in relation to its assessment of whether to offer cover and premium calculation (including any computer systems utilised by it in relation to the same) as in effect on 21 March 2012; and (2) its guidelines and policies (including premium calculation tables) in relation to premium calculation for renewals of cover (including any computer systems utilised by it in relation to the same) from that date until 12 October 2017:
 - i. whether or not the Insurer would have been likely to have been willing to offer cover to him for either or both of term life and total and permanent disability insurance;
 - ii. whether or not the Insurer would have been likely to have imposed any additional exclusions (that is, additional to the exclusions already contained in the applicable Pledaded Policy) in respect of that cover; and
 - iii. if the Insurer would have accepted him for either or both of that cover, what premiums would have been payable on the Pledaded Policies for that cover since 21 March 2012 until 12 October 2017;



- c. based on the underwriting information pack for Sharmilla Lenthall, and based on (1) its underwriting manual and its other guidelines and policies (including premium calculation tables) in relation to its assessment of whether to offer cover and premium calculation (including any computer systems utilised by it in relation to the same) as in effect on 21 March 2012 and; (2) its guidelines and policies (including premium calculation tables) in relation to premium calculation for renewals of cover (including any computer systems utilised by it in relation to the same) from that date until 12 October 2017:
- i. whether or not the Insurer would have been likely to have been willing to offer cover to her for term life insurance;
 - ii. whether or not the Insurer would have been likely to have imposed any additional exclusions (that is, additional to the exclusions already contained in the applicable Pleded Policy) in respect of that cover; and
 - iii. if the Insurer would have accepted her for cover, what premiums would have been payable on the Pleded Policies for that cover since 21 March 2012 until 12 October 2017;
- d. based on the underwriting information pack for Shane Thomas Lye, and based on (1) its underwriting manual and its other guidelines and policies (including premium calculation tables) in relation to its assessment of whether to offer cover and premium calculation (including any computer systems utilised by it in relation to the same) as in effect on 26 May 2015; and (2) its guidelines and policies (including premium calculation tables) in relation to premium calculation for renewals of cover (including any computer systems utilised by it in relation to the same) from that date until 12 October 2017:
- i. whether or not the Insurer would have been likely to have been willing to offer cover to him for any or all of term life, total and permanent disability, trauma and income protection insurance;
 - ii. whether or not the Insurer would have been likely to have imposed any additional exclusions (that is, additional to the exclusions already contained in the applicable Pleded Policy) in respect of that cover; and




- iii. if the Insurer would have accepted him for any or all of that cover, what premiums would have been payable on the Pledaded Policies for that cover since 26 May 2015 until 12 October 2017; and
- e. based on the underwriting information pack for Kylie Lee Lye, and based on (1) its underwriting manual and its other guidelines and policies (including premium calculation tables) (including premium calculation tables) in relation to its assessment of whether to offer cover and premium calculation (including any computer systems utilised by it in relation to the same) as in effect on 30 June 2015; and (2) its guidelines and policies (including premium calculation tables) in relation to premium calculation for renewals of cover (including any computer systems utilised by it in relation to the same) from that date until 12 October 2017:
 - i. whether or not the Insurer would have been likely to have been willing to offer cover to her for either or both of term life and income protection insurance;
 - ii. whether or not the Insurer would have been likely to have imposed any additional exclusions (that is, additional to the exclusions already contained in the applicable Pledaded Policy) in respect of that cover; and
 - iii. if the Insurer would have accepted her for either or both of that cover, what premiums would have been payable on the Pledaded Policies for that cover since 30 June 2015 until 12 October 2017.
- 3. The Insurer provide to the Referee, by no later than 4.00pm on 14 November 2018 (or such later date as the Court may further order):
 - a. a copy of or access to its underwriting manual and its other guidelines and policies (including premium calculation tables) in relation to its assessment of whether to offer cover and premium calculation as in effect on each of 21 March 2012, 26 May 2015 and 30 June 2015;
 - b. a copy of or access to its guidelines and policies (including premium calculation tables) in relation to premium calculation for renewals of cover as from each of those dates until 12 October 2017;



- c. access to its computer systems utilised by it in relation to the matters referred to in orders 3a and 3b as in effect on and from the dates referred to in orders 3a and 3b until 12 October 2017; and
 - d. a copy of or access to such other of its documentary or computerised procedures used by it and which are relevant to its assessment of cover and the calculation of premiums as contemplated by orders 3a and 3b
- in respect of each of the term life, total and permanent disability, trauma and income protection insurance offered by it.
4. The Insurer must only use and disclose the information and documents contained within each of the underwriting information packs referred to in order no 1(c) for the purposes of complying with these orders.
 5. The Referee, the parties and the parties' legal representatives must only use the documents provided pursuant to order 3, and any information obtained from any access given pursuant to order 3, for the purposes of the proceeding.
 6. If the Insurer wishes to apply to set aside or vary these orders, it have liberty, on or before 4.00pm on Tuesday, 30 October 2018, to communicate with the Associate of Justice Lee to seek an urgent hearing date for that application.

Date that entry is stamped: 26 October 2018


Registrar



Schedule

No: NSD1812/2017

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

Second Plaintiff	SHARMILA LENTHALL
Third Plaintiff	SHANE THOMAS LYE
Fourth Plaintiff	KYLIE LEE LYE
Second Defendant	WESTPAC LIFE INSURANCE SERVICES LIMITED ABN 31 003 149 157
Intervener	JUSTKAPITAL LITIGATION PTY LIMITED