



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
Defendant

JUSTKAPITAL LITIGATION PTY LIMITED and another named in the schedule
Interveners

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 15 April 2020

WHERE MADE: Sydney

THE COURT NOTES THAT:

1. By 17 April 2020, the applicants are to provide the respondents with a deed of indemnity in the agreed form and the agreed amount for execution.

THE COURT ORDERS THAT:

Opt Out Notice

1. Pursuant to s 33J of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**), 4.00pm on **30 June 2020** is fixed as the date before which a group member (as defined in the third further amended statement of claim) may opt out of this proceeding in accordance with these Orders.
2. Pursuant to s 33X of the FCAA, the form and content of the notice annexed to these orders be approved (**Opt Out Notice**).
3. The Opt Out Notice should be sent according to the following procedure:
 - a. by 4pm on 4 May 2020, the respondents are to provide to the Court and Computershare, a third party distribution agent (**Distribution Agent**), a schedule



containing, according to the respondents' records (and in so far as such information is able to be retrieved by that date from the respondents' records), the last known names, email addresses and/or postal addresses of persons and entities who are likely to fall within the terms of the group member definition in paragraph 9 of the Third Further Amended Statement of Claim filed on 13 November 2018 (**Updated Group Member Schedule**);

- b. the solicitors for the respondents are to instruct the Distribution Agent to cause the distribution of the Opt Out Notice by **15 May 2020**, to be sent by email to the email addresses (to the extent that such email addresses have been provided) of the group members referred to in the Updated Group Member Schedule;
- c. to the extent that there is not an email address recorded in the Updated Group Member Schedule, the respondents are to instruct the Distribution Agent to send the Opt Out Notice by prepaid ordinary post to the group member at the address recorded for that customer as listed in the Updated Group Member Schedule;
- d. to the extent that any email referred to in order 3(b) above experiences a delivery failure, the respondent shall cause the Distribution Agent to send the Opt Out Notice by prepaid ordinary post to that group member at the address recorded for that group member in the Updated Group Member Schedule;
- e. the solicitors for the respondents are to instruct the Distribution Agent to inform the solicitors of the responses to any notices that are returned to the Distribution Agent undelivered;
- f. the solicitors for the applicants have liberty to apply for access to the Updated Group Member Schedule, giving the respondents 3 days' written notice of such application, for the purpose of the applicants discharging their role as representatives for the group members;
- g. continuously throughout the period from **15 May 2020** to **30 June 2020**, the solicitors for the applicants are to display the Opt Out Notice on their website at <https://www.shine.com.au/service/class-actions/westpac-class-action/>;
- h. the costs of providing a copy of the Opt Out Notice to group members using email or postal addresses as provided for in Order 3b, 3c or 3d above, be initially



paid by the applicants, on the basis that all of those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceedings.

Issues for trial commencing 10 May 2021

4. By 4.00 pm on **1 May 2020**, the applicants file and serve submissions and evidence in relation to:
 - a. what common questions and other issues are to be dealt with at the hearing commencing on 10 May 2021;
 - b. the appointment of a Referee to inquire and report on the account of profits claim by the applicants;
 - c. the scope and timing of any such Reference;
 - d. the powers to be granted to the Referee in the event that a Reference is ordered.
5. By 4.00 pm on **15 May 2020**, the respondents are to file and serve any submissions and evidence in relation to the matters outlined in orders 4 (a) to (d).
6. By 4.00pm on **19 May 2020**, the parties are to provide the Court a hard copy and electronic court book.
7. The matter be listed for a further case management hearing on **21 May 2020** for oral submissions on the matters outlined in orders 4(a) to 4(d).

Pleadings

8. Leave be granted to the applicants to file and serve any reply, with such leave to be exercised by 4.00pm on **20 April 2020**.

Mediation

9. The parties attend a mediation before the Honourable Peter Jacobson QC with such mediation to commence no later than **1 September 2020**.

Date that entry is stamped: 21 April 2020

Sia Lagos
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



ANNEXURE

OPT OUT NOTICE

WESTPAC LIFE INSURANCE CLASS ACTION

THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE FEDERAL COURT OF AUSTRALIA

It is about the WESTPAC LIFE INSURANCE CLASS ACTION.

It is sent to you because the Court considers it is likely you are a class member.

As explained below, you may do one of three things in response to this notice:

1. **opt out** of the class action by **30 June 2020** (4.00PM (Sydney time)) and lose a right to getting any money compensation out of the class action (but keep your right to try to get some money compensation in an action you start yourself);
2. **sign up** to the class action (which you can do in two ways); or
3. **do nothing**.

A SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

1. The class action claims compensation (that is, money) because of amounts paid by you (and persons like you) in purchasing insurance issued by Westpac Life to you or your superannuation fund on the recommendation of financial advisers at Westpac, St George Bank, Bank of Melbourne, BankSA or BT Advice (**Westpac Advisers**).
2. The solicitors running the case are Shine Lawyers, and a company called JustKapital Litigation Pty Limited (**JKL**) is currently funding the case.
3. As a likely class member, you may already have received a notice about a proposed order requiring class members to pay a share of legal and funding costs. This order was made, but it later turned out there was no power to make it.



4. If you wish, you may now sign up with JKL and Shine Lawyers, by either: (a) entering into funding and retainer agreements (and becoming a **Represented Group Member**); or (b) not entering into funding and retainer agreements but submitting your claim details to Shine Lawyers (with the result you will be a **Registered Unrepresented Group Member**).
5. An aspect of the funding of the class action is that it can be withdrawn by JKL. The Court has been told that if not enough group members sign litigation funding agreements with JKL and become Represented Group Members, there is a real risk that this class action may not be able to continue.
6. Class members are not, and will not be, liable for any "out of pocket" legal costs by remaining in this class action. The costs of running it are being picked up at present by JKL and Shine Lawyers.
7. If the class action is unsuccessful, class members will have no liability.
8. If the class action is successful (that is, if money compensation is recovered), the Court might be asked to distribute the legal and funding expenses among all persons who have benefitted from the class action (although Westpac disputes the power to make such an order). But the effect of any such order, if made, would be that all class members who benefit will contribute to the costs and pay reasonable litigation funding charges. That means even those who do not sign up to a funding agreement might have to contribute out of their share.
9. But at the moment, JKL's continued involvement may depend upon a sufficient number of class members entering into funding agreements. It is therefore important that you take this matter into consideration when choosing between the three options set out below.

B YOUR THREE OPTIONS

OPTION 1 – OPT OUT AND CEASE TO BE A GROUP MEMBER

10. Class members who opt out will not be bound by the outcome of the class action and will not receive any money from the class action if it wins or settles.



11. Because some of the relevant conduct of Westpac occurred a long time ago, if this class action had not been brought, then some claims may have been lost from around October 2017 onwards. This class action "stopped the clock" on those claims being lost and if you are one of these class members, and you opt out, you may only have a very short period of time to take your own action before your claim is lost. Class members should seek legal advice before opting out. To opt out is to take a serious step - you should not do it unless you understand what it means.
12. Opt out forms must be sent directly to the New South Wales District Registry of the Federal Court of Australia before **4:00pm on 30 June 2020.**

OPTION 2 – SIGN UP TO THE CLASS ACTION

13. Class members who sign up provide their details to the solicitors, Shine Lawyers, and information about their claims. This means it is possible for their claims to be specifically considered if there are settlement talks.
14. Although you do not have to sign up (see Option 3 below), it is likely that at some point you will need to register your interest to participate - either to get money in any settlement, or to take further steps to bring your claim forward.
15. If you wish to sign up, it would assist the solicitors in being ready for any settlement talks for you to register by **30 June 2020**. If you have already signed up, you do not need to sign up again.
16. But, as noted above, if you wish to sign up, you may choose whether to sign up as a Represented Group Member or a Registered Unrepresented Group Member.
17. Becoming a Represented Group Member will mean you agree to pay JKL an amount for litigation funding costs and for commission out of any money you get, which Registered Unrepresented Group Members are not obliged to pay. That commission is likely to be 30% or an amount the Court thinks is reasonable. However, if you remained a Registered Unrepresented Group Member, this may still involve you making some contribution out of any money you receive. If you want to become a Represented Group Member, what you need to do is to:



- enter into the funding agreements online at www.shine.com.au/service/class-actions/westpac-class-action; or
- telephone 1800 066 105 or email wpac@shine.com.au.

18. Of course, if you are considering becoming a Represented Group Member, you should read carefully the funding agreements including the retainer and, if you then do not understand everything, you should get legal advice from your own family solicitor or a solicitor you choose.

19. Becoming a Registered Unrepresented Group Member will mean you will not enter into any contract with JKL and Shine Lawyers. It will be possible for your claim to be specifically considered to some extent if there are settlement talks, but if further steps are required to bring your individual claim (that is after all the common issues are sorted out), you will have to pay any legal costs yourself. Also, at the end of the class action, an order may be sought requiring Registered Unrepresented Group Members who benefit, to contribute to the costs and the funding out of any money they receive.

OPTION 3 – DO NOTHING

20. Class members who do not opt out by **30 June 2020**, or sign up will remain as class members and await the outcome. You will be an Unregistered Group Member but, as noted above, at some point Unregistered Group Members will need to register to get any money out of any settlement (if that happens) or run their individual case (and because you are not a Represented Group Member you will have to pay any legal costs yourself).

C THREE IMPORTANT THINGS TO NOTE

21. *First*, this is not a scam. You can check (and get any copies of relevant documents) by visiting Shine Lawyers' website <https://www.shine.com.au/service/class-actions/westpac-class-action> or by telephoning 1800 066 105.

22. *Secondly*, as explained above, if there are not enough Represented Group Members, there is a real risk that this class action may not be able to continue.



23. *Thirdly*, if there is anything of which you are unsure and you don't want to speak with Shine Lawyers (or you want to understand their involvement or the funding agreements or retainer better), you should get legal advice from your own family solicitor or a solicitor you choose.



OPTION 1 – OPT OUT

Form 21
Rule 9.34

OPT OUT NOTICE

Federal Court of Australia
NSD1812/2017
District Registry: New South Wales
Division: General

No.

GREGORY JOHN LENTHALL and others named in the schedule
Applicants

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

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building
Queens Square
Sydney NSW 2000

..... (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that he, she or it is opting out of the representative proceeding.

Date:.....

Signed by



..... (signature)

..... (print name)
Group Member / Lawyer for the Group Member

(please complete the next page)



Address of group member:

.....
.....

ACN/ABN:(if a company or trustee)

If you are signing as the solicitor or representative of the group member:

Name:

Capacity in which you are signing:

Address:

.....
.....