



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

JUSTKAPITAL LITIGATION PTY LIMITED
Intervener

ORDER

JUDGE: JUSTICE LEE
DATE OF ORDER: 15 December 2020
WHERE MADE: Sydney

THE COURT ORDERS THAT:

Referee

1. Pursuant to s 54A(3) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**), the supplementary report prepared by Mr Mark Berry dated 20 November 2020 (**Supplementary Report**) be adopted in full.

Questions for joint expert conference

2. Pursuant to s 33ZF and/or 37P(2) of the *Federal Court of Australia Act 1976* (Cth), the questions contained in Schedule 1 are to be dealt with at the Joint Expert Conference to be held on 15 February 2021, to be facilitated by Mr Caspar Conde.

Security for Costs

3. By 4:00pm 24 December 2020, the applicants are to provide the respondents security for costs by way of a deed of indemnity from AmTrust (in the same form as the previous tranches) in the amount of \$875,000.



4. By 4:00pm 17 March 2021, the applicants are to provide the respondents security for costs by way of a deed of indemnity from AmTrust (in the same form as the previous tranches) in the amount of \$875,000.
5. Non-compliance with orders 3 or 4 will result in a temporary stay of the proceeding.

AIA Subpoena

6. The respondents have leave to issue a subpoena to AIA Australia Ltd in substantially the same form as that annexed to their request dated 1 December 2020.

Date that entry is stamped: 18 December 2020

Sia Lagos
Registrar



Schedule

Questions for Joint Expert Conference

1. What process should a reasonably competent financial adviser undertake when advising a customer regarding life insurance policies?
2. In what circumstances is it appropriate for a reasonably competent financial adviser to rely on a licensee's approved products list (*APL*) when recommending life insurance products to a customer? In what circumstances is it inappropriate?
3. If a financial adviser believed that a customer could apply to obtain the same policy as the relevant policy on an *APL*, and that the premium payable for the policy did not include the Excess Premium with the consequence that the premium would have been 4.5%-10% lower, should a reasonably competent financial adviser disclose that fact to the customer?
4. If a financial adviser believed that a customer could apply to obtain a substantially equivalent or better policy than the relevant policy on the *APL*, but for a lower premium, what should a reasonably competent financial adviser do?
5. If a financial adviser believed that another financial adviser might be able to offer:
 - a. the same policy as the relevant policy on an *APL*, but for a premium that is 4.5%-10% lower; or
 - b. a substantially equivalent or better policy than the relevant policy on the *APL*, but for a lower premium,in what circumstances (if any) should that financial adviser refuse to advise a customer and refer them to the other financial adviser?
6. Would the answer to questions 3, 4 or 5 above change if the financial adviser took into consideration the matters outlined in Annexure 1?
7. To the extent that your answers differ according to whether the advice was given before or after the introduction of the Future of Financial Advice amendments to the *Corporations Act 2001* (Cth) which commenced on 1 July 2013, please indicate in what way.



Schedule

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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