



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1241/2021

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

WESTPAC BANKING CORPORATION (ACN 007 457 141)
Defendant

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 21 April 2022

WHERE MADE: Melbourne

THE COURT DECLARES THAT:

Duplicate Policies

1. Westpac Banking Corporation (WBC) contravened each of ss 12DB(1)(b), (h) and (i) of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) in relation to each of the customers identified in Part A of Schedule 1 to the Statement of Agreed Facts and Admissions filed 29 November 2021 (DP Customers), during the period 30 November 2015 to 30 June 2021 (Relevant Period), by reason of the following:
 - (a) WBC caused Westpac General Insurance Limited ACN 003 719 319 (WGIL) to issue to each of the DP Customers, a home and contents insurance policy or landlord insurance policy (Policy), in circumstances where the DP Customer already held a Policy in respect of the same 'risk address' (together, Duplicate Policies);
 - (b) Duplicate Policies were issued to each DP Customer in the following circumstances:



- (i) the DP Customer requested a change (Change) to their Policy (Original Policy);
 - (ii) due to system limitations, the Change required a new Policy to be created (New Policy);
 - (iii) this gave rise to the need for a cancellation request to be made for the Original Policy by WBC's representative;
 - (iv) the cancellation request for the Original Policy was not made by WBC's representative; and
 - (v) as a result, Duplicate Policies remained in effect - the Original Policy, being the Policy to be cancelled, and the New Policy, which was the Policy that the Customer agreed to be issued and in place from the time of the Change;
- (c) after the Change, WBC collected premiums for an overlapping period in respect of both Policies, and in respect of the DP Customers, sent annual renewal documents in respect of the Original Policy;
- (d) during the course of the conduct referred to in (b) and (c) above, in trade or commerce, and in connection with the supply of the financial services covered by its Australian financial services licence number 2337149 (the Services), WBC represented to each DP Customer (the DP Representations) that:
- (i) WBC had arranged or would arrange for the cancellation of the Original Policy, which was a representation concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act;
 - (ii) the DP Customer had agreed to continue to acquire services provided by the Original Policy, within the meaning of s 12DB(1)(b) of the ASIC Act;
 - (iii) the DP Customer had a continuing need for the Original Policy upon the issuance of the New Policy, which was a representation within the meaning of s 12DB(1)(h) of the ASIC Act;



- (iv) the DP Customer was liable to pay the premiums for the Original Policy and that WBC and/or WGIL had a continuing right to collect amounts for premiums in respect of the Original Policy, which were representations concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act; and
- (e) the DP Representations were false or misleading because:
 - (i) WBC did not arrange for the cancellation of the Original Policy;
 - (ii) each DP Customer had not agreed to the Original Policy continuing from the time of the Change;
 - (iii) the DP Customer did not have a need for the Original Policy upon the issuance of the New Policy; and
 - (iv) WBC did not have a right to collect the premiums for the Original Policy from the time of the Change.
- 2. WBC contravened s 12DA(1) of the ASIC Act and s 1041H(1) of the *Corporations Act 2001* (Cth), during the Relevant Period, by reason of the matters set out in Declaration 1 above, in that WBC engaged in conduct, in this jurisdiction, that was misleading or deceptive or likely to mislead or deceive.
- 3. WBC contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act between 13 March 2019 to 24 May 2021, by failing to do all things necessary to ensure that the Services were provided efficiently, honestly and fairly, in that WBC failed to have in place adequate:
 - (a) risk management procedures the objectives of which were to detect breaches of the “financial services laws” (as defined in the Corporations Act) in relation to the issuance of Duplicate Policies (the DP Detective Controls);
 - (b) risk management procedures the objectives of which were to prevent breaches of the financial services laws in relation to the issuance of Duplicate Policies (the DP Preventative Controls); and



- (c) risk management procedures the objectives of which were to monitor the success or otherwise of the DP Detective Controls and DP Preventative Controls (the DP Monitoring Controls).
4. WBC contravened ss 912A(1)(ca) and 912A(5A) of the Corporations Act between 13 March 2019 to 24 May 2021, by reason of the matters set out in Declaration 3 above, in that WBC failed to take reasonable steps to ensure that its representatives complied with the financial services laws.
 5. WBC contravened s 912A(1)(a) of the Corporations Act during the Relevant Period prior to 13 March 2019, by failing to do all things necessary to ensure that the Services were provided efficiently, honestly and fairly, in that WBC failed to have in place adequate DP Detective Controls, DP Preventative Controls and DP Monitoring Controls.
 6. WBC contravened s 912A(1)(ca) of the Corporations Act during the Relevant Period prior to 13 March 2019, by reason of the matters set out in Declaration 5 above, in that WBC failed to take reasonable steps to ensure that its representatives complied with the financial services laws.
 7. WBC contravened s 912A(1)(c) of the Corporations Act during the Relevant Period, by reason of the matters set out in Declarations 1 to 6 above, in that WBC failed to comply with the financial services laws.

Policies Issued Without Consent

8. During the Relevant Period:
 - (a) WBC caused WGIL to issue to each of the customers identified in Part B of Schedule 1 to the said Statement of Agreed Facts and Admissions (the Non-Consent Customers), the Policies identified in Part B of Schedule 1 (the Non-Consent Policies) in circumstances where the Non-Consent Customer did not consent to the issuance of the Non-Consent Policy relevant to that customer;
 - (b) after the Non-Consent Policy was issued, WBC sent to each of the Non-Consent Customers a pack of documents (the New Business Welcome Pack) which:



- (i) informed the Non-Consent Customer that he or she had been issued with a Policy;
 - (ii) included statements regarding the premium that would be payable by the customer (to WBC for its own benefit and on behalf of WGIL) on either a monthly or annual basis;
- (c) during the course of the conduct referred to in (a) and (b) above, in trade or commerce, and in connection with the Services, WBC represented to each Non-Consent Customer (the Non-Consent Representations) that:
- (i) the Non-Consent Customer had agreed to acquire the services provided by the Non-Consent Policy, within the meaning of s 12DB(1)(b) of the ASIC Act;
 - (ii) the Non-Consent Customer was liable to pay the premiums for the Non-Consent Policy set out in the New Business Welcome Pack and that WBC had a continuing right to be paid amounts for premiums in respect of the Non-Consent Policy set out in the New Business Welcome Pack, which were representations concerning the existence of a right, within the meaning of s 12DB(1)(i) of the ASIC Act;
- (d) the Non-Consent Representations were false or misleading because:
- (i) the Non-Consent Customers did not agree to the Non-Consent Policy being issued;
 - (ii) WBC was not entitled to be paid the amount of premium set out in the New Business Welcome Pack for the Non-Consent Policies; and
- (e) by reason of (a), (b), (c) and (d) above, in respect of each of the Non-Consent Customers, WBC contravened each of ss 12DB(1)(b) and (i) of the ASIC Act.
9. During the Relevant Period, by reason of the matters set out in Declaration 8 above, WBC engaged in conduct, in this jurisdiction, that was misleading or deceptive or likely



to mislead or deceive, and thereby contravened s 12DA(1) of the ASIC Act and s 1041H(1) of the Corporations Act.

10. During the Relevant Period, by reason of the matters set out in Declaration 8 above, WBC in trade or commerce asserted on one or more occasions to Non-Consent Customers a right to payment from another person for unsolicited financial services, and by each such assertion contravened s 12DM(1) of the ASIC Act.
11. During the Relevant Period, by reason of the matters set out in Declarations 8 to 10 above, WBC failed to comply with the financial services laws, and thereby contravened s 912A(1)(c) of the Corporations Act.

AND THE COURT ORDERS THAT:

Pecuniary Penalties

12. Pursuant to ss 12GBA (as in force before 13 March 2019) and s 12GBB (as in force on and from 13 March 2019) of the ASIC Act, WBC pay to the Commonwealth of Australia pecuniary penalties in an amount of \$13 million in respect of its contraventions of ss 12DB(1)(b), (h) and (i) and 12DM(1) of the ASIC Act referred to in Declarations 1, 8, and 10.
13. Pursuant to s 1317G of the Corporations Act, WBC pay to the Commonwealth of Australia pecuniary penalties in an amount of \$2 million in respect of its contraventions of s 912A(5A) of the Corporations Act referred to in Declarations 3 and 4.

Compliance Programme

14. Pursuant to s 1101B(1) of the Corporations Act and s 12GLA(1) of the ASIC Act, WBC is required at its expense to:
 - (a) within 1 month of the date of this order, engage an independent expert with expertise in regulatory compliance, the identity of whom is to be agreed between the parties, or in the absence of agreement, as proposed by the parties and determined by the Court;



- (b) instruct the expert to:
- (i) review WBC's arrangements for ensuring that it complies with ss 912A and 1041H of the Corporations Act and ss 12DA, 12DB and 12DM of the ASIC Act in relation to dealing in home and contents insurance policies and landlord insurance policies;
 - (ii) prepare a written report which:
 - A. describes his or her expertise and confirms his or her independence;
 - B. identifies any aspects of the arrangements referred to in sub-paragraph (i) above that, in the opinion of the expert, is not appropriate or adequate to cause WBC to comply with ss 912A and 1041H of the Corporations Act and ss 12DA, 12DB and s 12DM of the ASIC Act in the future; and
 - C. provides recommendations to WBC to remedy any aspects of WBC's arrangements of the kind described in sub-paragraph B above identified in the course of the expert's review;
- (c) within 7 months of the date of this order, provide to ASIC a copy of the report referred to in sub-paragraph (b)(ii) above which has been signed by the expert;
- (d) within 13 months of the date of this order, provide to ASIC a written report signed by the expert and a Group Executive of WBC which:
- (i) annexes a copy of the report referred to in sub-paragraph (b)(ii) above;
 - (ii) states what steps WBC has taken to give effect to the expert's recommendations;
 - (iii) annexes a copy of all internal documents that have been amended as a consequence of the expert's recommendations; and
 - (iv) identifies any of the expert's recommendations not given effect to by WBC, and the reasons why WBC did not give effect to those recommendations.



Other orders

15. Pursuant to s 43 of the *Federal Court of Australia Act 1976* (Cth), WBC pay ASIC's costs of the proceedings.

Date that entry is stamped: 21 April 2022

Sia Lagos
Registrar