

## NOTICE OF SETTLEMENT

### STORM FINANCIAL LTD CLASS ACTION AGAINST WESTPAC BANKING CORPORATION

DATE OF NOTICE: 26 October 2017

#### THE IMPORTANCE OF THIS NOTICE

This Notice contains important information regarding the settlement of a representative proceeding (or class action) brought against Westpac Banking Corporation.

If you are a Group Member you have legal rights that are affected by the settlement. Please read this Notice carefully.

This Notice is made pursuant to the order of the Honourable Justice Derrington made on 19 October 2017.

#### 1. Background

1.1 A representative proceeding (also known as a class action) was commenced in the Federal Court of Australia by John Charles Lee and Glenda Marian Lee (**Mr and Mrs Lee**) against Westpac Banking Corporation (**Westpac**) (**Class Action**).

1.2 The Class Action was brought by Mr and Mrs Lee on their own behalf and on behalf of all persons who are “Group Members”.

1.3 You are a Group Member if you have not opted out of the Class Action and:

- a. borrowed money from Westpac in the period between on or after 22 October 2004 and 31 October 2008 (the “**Relevant Period**”), or who increased their borrowings from Westpac during the Relevant Period, to invest in one or more of the Special Funds (as defined in paragraph 9(e) of the Settlement Scheme); and
- b. suffered loss and damage as a result of:
  - i. Storm’s breaches of contract pleaded in paragraphs 73 and 74 of the Further Amended Statement of Claim; and, or alternatively
  - ii. Storm’s misrepresentations pleaded in paragraphs 83 to 88 of the Further Amended Statement of Claim; and
- c. have not settled with Westpac the claims the subject of these proceedings.

1.4 The term “Group Member” is defined in the Further Amended Originating Application and the Further Amended Statement of Claim. Copies of these documents may be obtained in the manner set out in paragraph 1.13 below.

- 1.5 Mr and Mrs Lee brought three claims against Westpac in the Class Action.
- 1.6 First, Mr and Mrs Lee claimed that Westpac breached various terms of:
- (a) their home loan agreement and business loan agreement; and
  - (b) the home loan agreements and business loan agreements of some or all of the Group Members.
- 1.7 Secondly, Mr and Mrs Lee claimed that Westpac, by entering into their home loan agreement and business loan agreements and the home loan agreements and business loan agreements of some or all of the Group Members, and by providing advances under those agreements, engaged in unconscionable conduct which resulted in breaches of the *Australian Securities and Investments Commission Act 2001* (Cth).
- 1.8 Thirdly, Mr and Mrs Lee claimed that Westpac was a “linked credit provider” of Storm for the purposes of section 73(14) of the *Trade Practices Act 1974* (Cth) such that it is liable for Storm’s breaches of contract and/or misrepresentations in relation to the provision of investment advice to her and some or all of the Group Members.
- 1.9 Westpac filed a defence and disputed each of the claims brought in the Class Action.
- 1.10 The Class Action was set down for hearing for five weeks from 13 November 2017.
- 1.11 A mediation was held between Mr and Mrs Lee and Westpac and their legal representatives over two days in late June 2017.
- 1.12 The matter did not resolve at the mediation but after further negotiations Mr and Mrs Lee and Westpac reached a proposed settlement of the Class Action (see Part 2 below).
- 1.13 Copies of relevant documents in the Class Action, including the Further Amended Originating Application, the Further Amended Statement of Claim, and Westpac’s Defence, may be obtained:
- (a) from Levitt Robinson Solicitors’ (**Levitt Robinson**) website at the following address: [www.levittrobinson.com](http://www.levittrobinson.com);
  - (b) by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133 and requesting that copies be sent to you;
  - (c) from the Federal court web site at [www.fedcourt.gov.au](http://www.fedcourt.gov.au); or
  - (d) by calling the Federal Court Queensland District Registry on (07) 3248 1100.

## 2. Proposed Settlement of the Class Action

- 2.1 Mr and Mrs Lee have reached an agreement with Westpac to settle their own claims, and the claims of the Group Members in the Class Action. The settlement was reached on a commercial basis without any admission of wrongdoing by Westpac.
- 2.2 The settlement requires the approval of the Federal Court of Australia before it can take effect.
- 2.3 A copy of the Deed of Settlement which sets out the terms of the settlement (**Deed**) can be found on the Levitt Robinson website at [www.levittrobinson.com](http://www.levittrobinson.com), and accessed using the PIN number [ ]. If the copy of the Settlement Notice you have does not contain a PIN number to allow access to the Deed or the Settlement Scheme then you may obtain a PIN number by telephoning the offices of Levitt Robinson on (02) 9286-3133 who will provide you with the necessary PIN. It may be necessary for you to provide some information to show you are a Group Member in order to obtain a PIN. If you do not have access to the internet a hard copy of this document may be provided to you by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133.
- 2.4 Subject to the terms of the Deed, the parties have agreed that the claims by Mr and Mrs Lee and the Group Members will be settled in return for payment by Westpac of \$7.5 million inclusive of interest and costs (**Settlement Amount**) and a further \$15,000 payment to Mr and Mrs Lee.
- 2.5 The Deed will bind the parties and the Group Members if the settlement is approved by the Court. However, clauses 1, 3, 4, 8, 9, 14, 18.1 and 18.6 to 18.14 of the Deed will remain binding even if the settlement is not approved.
- 2.6 Clause 14 of the Deed requires the parties and Group Members to maintain the confidentiality of the terms of the Deed. It is important that you observe this requirement as it is a legal obligation which the Court has ordered which must be observed by Group Members whether or not the settlement is ultimately approved (including prior to the Approval Hearing referred to in paragraph 3.1 below). You should read the terms of the Deed carefully.
- 2.7 **Important: It is a breach of the Deed for you to disclose the terms of the Deed to any person (other than a lawyer or other professional advisor for the purpose of obtaining legal or financial advice) unless one of the exceptions to the confidentiality requirements in the Deed applies.**
- 2.8 Once the settlement is approved by the Court and subject to the terms of the Deed, the Settlement Amount (plus any interest which has accrued on that sum) will be paid into a Settlement Distribution Fund (**Fund**). This will be distributed to Group Members who sign a deed poll (**Participating Group Members**) (and Mr and Mrs Lee) in accordance with a document to be approved by the Court setting out the manner of distribution of the Settlement Amount to Participating Group Members (the **Settlement Scheme**) after payment of the following amounts:
- (a) the reasonable legal costs and disbursements incurred by Mr and Mrs Lee to conduct the Class Action in the period up to the execution of the Deed

(expected to be approximately \$2,100,000 including GST or such other amount as may be approved by the Court). Payments already made in respect of legal costs by the Group Members who contributed to the funding of the Class Action (**Funding Group Members**) and which forms part of the estimated \$2.1 Million, will be repaid to those persons together with interest at Court rates;

- (b) legal costs and disbursements incurred (after the execution of the Deed) in connection with obtaining Court approval of the settlement (expected, subject to Court approval, to be approximately \$200,000 (including GST));
- (c) administration costs payable to the Fund Administrator (Stewart Levitt of Levitt Robinson) in relation to the administration of the Settlement Scheme, estimated at about \$200,000 (including GST) inclusive of costs payable to Williams Hall Chadwick Chartered Accountants to calculate the amounts to be repaid to Funding Group Members and to review the Administrator's calculations of the amounts to be paid to Participating Group Members.

2.9 A copy of the Settlement Scheme can be found on the Levitt Robinson website at [www.levittrobinson.com](http://www.levittrobinson.com), and accessed using the PIN number [ ]. If the copy of the Settlement Notice you have does not contain a PIN number to allow access to the Deed or the Settlement Scheme then you may obtain a PIN number by telephoning the offices of Levitt Robinson on (02) 9286-3133 who will provide you with the necessary PIN. It may be necessary for you to provide some information to show you are a Group Member in order to obtain a PIN. If you do not have access to the internet, a copy of this document may be provided to you by telephoning the offices of Levitt Robinson on the following number (02) 9286-3133.

2.10 It is presently expected that approximately \$5 Million will be available for distribution to Participating Group Members (including Mr and Mrs Lee, the Funding Group Members and the remaining Participating Group Members) net of the amounts referred to in paragraph 2.8(a) to (c) and calculated as follows:

Settlement Amount	\$7,500,000
Costs and Disbursements incurred up to the execution of the Deed	(\$2,100,000)
Costs of obtaining Approval Order	(\$ 200,000)
Administrator's costs	(\$ 200,000)
Distribution Sum	\$5,000,000

\*The above amounts (other than the Settlement Amount) are estimates only. The Distribution Sum may vary depending on the amount approved for costs as set out in paragraphs 2.8(a), 2.8(b) and 2.8(c) above and the ultimate costs incurred in obtaining Court approval of the settlement and in administering the Settlement Scheme. It is not expected that the interest on costs to be paid to Funding Group Members, nor any interest which will accrue on the Settlement Amount will have any significant impact on the Distribution Sum.

- 2.11 The process by which distributions from the Fund will be calculated is outlined in the Settlement Scheme.
- 2.12 **You have until 30 November 2017** to consider this Notice, the Deed and the Settlement Scheme and obtain any advice in respect to it. Any objections to the proposed settlement must be lodged by that date.

### 3. **Need for Court Approval**

3.1 The application by Mr and Mrs Lee for the Court's approval of the settlement, including the proposed Settlement Scheme, will take place at a hearing in Brisbane on 15 December 2017 at 10:15am (**Approval Hearing**). In determining the application for approval, the Court will consider whether the settlement is fair and reasonable having regard to the interest of the Group Members.

3.2 You may attend the Approval Hearing if you wish. It will take place at the following address:

Federal Court of Australia  
Commonwealth Law Courts  
119 North Quay  
BRISBANE QLD 4000

3.3 If the settlement is approved by the Court at the Approval Hearing, the settlement will be binding on every Group Member and no Group Member will be able to take any further action against Westpac in respect of the conduct that formed the basis of the Class Action and the matters covered by the releases set out in Settlement Deed. All Group Members will, however, be entitled to have their claims assessed under the process set out in the Settlement Scheme.

3.4 This means that if the settlement is approved, Group Members will not be able to claim any further compensation from Westpac.

3.5 If the settlement is not approved by the Court following the Approval Hearing, the Class Action will continue.

### 4. **What You Must Do**

4.1 **If you are in favour of the proposed settlement**, there is nothing you need to do at this time. If you wish, you can support the settlement by sending a written expression of support to the attention of Stewart Levitt of Levitt Robinson, or you can appear in person or through a legal representative that you retain at the Approval Hearing on 15 December 2017 at 10:15am. A further notice will be sent to you if the settlement is approved and it will tell you what you need to do moving forward.

4.2 **If you wish to object to the proposed settlement**, you must file a written notice of objection with the Federal Court in the form **attached to this Notice and marked "A"** and lodge a copy with your nearest Federal Court Registry office and provide a copy of your notice to Levitt Robinson Solicitors at the address below, by no later than 30 November 2017.

- 4.3 If you file a notice of objection, you or your legal representative may attend the Approval Hearing on 15 December 2017 at 10:15am and make further submissions to the Court in support of your objection.

**5. If the Settlement is Approved**

- 5.1 If the proposed settlement is approved by the Court, the Administrator of the Settlement Scheme (Stewart Levitt of Levitt Robinson) will send you a document setting out what you need to do to claim from the Fund. You will not be able to make a claim on the Fund if you fail to respond within this required timeframe set out in that document.
- 5.2 If approved by the Court, all Group Members will be bound by the Deed and all Participating Group Members will be entitled to participate in the Settlement Scheme and eligible for consideration under the Settlement Loan Relief Scheme. You will not be able to opt out.
- 5.3 Please consider the above carefully. If there is anything of which you are unsure, you should contact Brett Imlay of Levitt Robinson (whose contact details are set out below) or seek your own legal advice.

**6. Contact Details**

**Levitt Robinson Solicitors:**

Address: Level 6, 162 Goulburn Street, SYDNEY (EAST) NSW 2010

Phone: (02) 9286 3133

Fax: (02) 9283 0005

Email: [bimlay@levittrobinson.com.au](mailto:bimlay@levittrobinson.com.au)

**Attachment A**

**IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY  
GENERAL DIVISION**

**No. QUD 211 of 2013**

**JOHN CHARLES LEE  
GLENDAMARIAN LEE**  
Applicants

**WESTPAC BANKING CORPORATION**  
**ABN 33 007 457 141**  
Respondent

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

TO: The Registrar, Federal Court of Australia  
Queensland Registry  
Commonwealth Law Courts  
119 North Quay  
BRISBANE QLD 4000

Name of Group Member:  
(If a company, insert  
name and company ACN) \_\_\_\_\_

I am a Group Member in these Proceedings and I object to the proposed settlement of these Proceedings on the terms proposed [and/or object to the proposed Settlement Scheme] because [*set out below the reasons for objection or attach additional pages as required*]:

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name of person signing notice: \_\_\_\_\_  
Position within company (if any): \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone number: (w) \_\_\_\_\_ (m) \_\_\_\_\_  
Email address: \_\_\_\_\_