

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 27 August 2021**

2019/00193556-001 / Summons: Kerry Michael Quirk v Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust

I make the orders in the document entitled Short Minutes of Order which I have initialled, dated today's date and placed with the papers.

Short Minutes of Order

Interrogatories

1. Pursuant to rules 22.1 (1) and 22.1 (5) of the Uniform Civil Procedure Rules 2005 (NSW) (Rules), the First Defendant is to file and serve answers verified by affidavit to each of the interrogatories in the form enclosed with these orders by 13 September 2021.

Sample group members

2. Subject to further order, the matters to be determined at the initial trial will be:

a. the entirety of the claim of a Sample Group Member, Dean Mibus,

b. the entirety of the claim of a Sample Group Member, Angela Thompson,

c. the entirety of the Plaintiff's claim, and

d. the common questions the subject of the Order of this Court made on 5 July 21.

3. By 10 September 2021, points of claim in respect of the claim of Dean Mibus and Angela Thompson be filed and served. The points of claim will not advance claims other than those which the plaintiff advances on behalf of the group members.

4. By 1 October 2021, the Defendants file and serve their points of defences to the points of claim served in accordance with Order 8.

5. By 22 October 2021, any reply to the points of defence in respect of the claim of Dean Mibus and Angela Thompson be filed and served.

6. In relation to the determination of the claims of the Sample Group Members referred to in Orders 2(a) and 2(b) above, costs incurred in relation to the Sample Group Members' claims will be costs in the proceedings.

Other matters

7. Liberty to apply on three days' written notice.

Justice D Hammerschlag

Signed

Date

Enclosure – Interrogatories on the First Defendant

1. In respect of which of the products issued under the Master Trust, other than Risk-Only Products, did Suncorp pay, on or after 1 July 2013, commissions in its capacity as trustee of the Master Trust?
2. In respect of which of the products issued under the Master Trust, other than Risk-Only Products, does Suncorp contend that it paid, on or after 1 July 2013, commissions other than in its capacity as trustee of the Master Trust?
3. In respect of the products identified in answer to interrogatory 1, identify any categories of documents which show that Suncorp paid commissions in its capacity as trustee of the Master Trust, and identify a representative example of a document within each category.
4. In respect of the products identified in answer to interrogatory 2, identify any categories of documents that are Directly Relevant to Suncorp's contention that it paid commissions, on or after 1 July 2013, other than in its capacity as trustee of the Master Trust, and identify a representative example of a document within each category.
5. In respect of which of the products issued under the Master Trust, other than Risk-Only Products, did Suncorp reimburse Suncorp Life, Suncorp Financial, Standard Pacific or Guardian, in its capacity as trustee of the Master Trust, for commission payments made by them on or after 1 July 2013?
6. In respect of which of the products issued under the Master Trust, other than Risk-Only Products, does Suncorp contend that it reimbursed Suncorp Life, Suncorp Financial, Standard Pacific or Guardian, other than in its capacity as trustee of the Master Trust, for commission payments made by them on or after 1 July 2013?
7. In respect of the products identified in answer to interrogatory 5, identify any categories of documents which show that Suncorp reimbursed Suncorp Life, Suncorp Financial, Standard Pacific or Guardian for commission payments made by them, on or after 1 July 2013, in its capacity as trustee of the Master Trust, and identify a representative example of a document within each category.

8. In respect of the products identified in answer to interrogatory 6, identify any categories of documents that are Directly Relevant to Suncorp's contention that it reimbursed Suncorp Life, Suncorp Financial, Standard Pacific or Guardian for commission payments made by, on or after 1 July 2013, other than in its capacity as trustee of the Master Trust, and identify a representative example of a document within each category.
9. In respect of which of the products identified in answer to interrogatories 1 and 2 did Suncorp pay commissions, in its capacity as trustee of the Master Trust, between 1 January 2012 and 30 June 2013 (inclusive)?
10. In respect of which of the products identified in answer to interrogatories 1 and 2 does Suncorp contend that it paid commissions, other than in its capacity as trustee of the Master Trust, between 1 January 2012 and 30 June 2013 (inclusive)?
11. In respect of the products identified in answer to interrogatory 9, identify any categories of documents which show that Suncorp paid commissions in its capacity as trustee of the Master Trust, and identify a representative example of a document within each category.
12. In respect of the products identified in answer to interrogatory 10, identify any categories of documents that are Directly Relevant to Suncorp's contention that it paid commissions other than in its capacity as trustee of the Master Trust, and identify a representative example of a document within each category.
13. In respect of which products identified in answer to interrogatories 5 and 6 did Suncorp reimburse Suncorp Life, Suncorp Financial, Standard Pacific or Guardian, in its capacity as trustee of the Master Trust, for commission payments made by them, between 1 January 2012 and 30 June 2013 (inclusive)?
14. In respect of which products identified in answer to interrogatories 5 and 6 does Suncorp contend that it reimbursed Suncorp Life, Suncorp Financial, Standard Pacific or Guardian, other than in its capacity as trustee of the Master Trust, for commission payments made by them between 1 January 2012 and 30 June 2013 (inclusive)?
15. In respect of the products identified in answer to interrogatory 13, identify any categories of documents which show that Suncorp reimbursed Suncorp Life, Suncorp Financial, Standard Pacific or Guardian, in its capacity as trustee of the Master Trust,

for commission payments made by them between 1 January 2012 and 30 June 2013 (inclusive), and identify a representative example of a document within each category.

16. In respect of the products identified in answer to interrogatory 14, identify any categories of documents that are Directly Relevant to Suncorp's contention that it reimbursed Suncorp Life, Suncorp Financial, Standard Pacific or Guardian, other than in its capacity as trustee of the Master Trust, for commission payments made by them between 1 January 2012 and 30 June 2013 (inclusive), and identify a representative example of a document within each category.

17. In respect of the products identified in answer to interrogatories 1, 2, 5 and 6, does Suncorp contend that any commissions that were paid to financial services licensees on or after 1 July 2013 were paid under an arrangement within the meaning of s 1528(1) of the Corporations Act or regulations 7.7A.16—7.7A.16B of the Corporations Regulations evidenced by a document(s) (or a combination of documents) applying to three or more financial services licensees other than the following documents:
 - a. the Superseded Distribution Agreement;
 - b. the Suncorp Financial Distribution Agreement;
 - c. the Guardian Distribution Agreement;
 - d. the Standard Pacific Distribution Agreement;
 - e. any of the following documents:
 - i. the "Terms of Trade" document identified as SUN.001.003.0003;
 - ii. the "Terms of Trade" document identified as SUN.001.030.0004;
 - iii. the "Terms of Trade" document identified as SUN.001.030.0006;
 - iv. the "Terms of Trade" document identified as SUN.001.030.0008;
 - v. the "Terms of Trade" document identified as SUN.001.030.0010?

18. If the answer to interrogatory 17 is affirmative, identify those documents.

19. [Not used]

20. [Not used]

21. Identify any documents containing or comprising standard terms that have application to three or more members by which Suncorp contends that members of the Master Trust could have or did entitle, direct or authorise Suncorp to:

- a. charge fees to fund the payment of commission to financial services licensees from 1 July 2012 onwards; or
- b. pay financial services licensees commission (or reimburse Suncorp Life, Suncorp Financial, Standard Pacific or Guardian for commission payments made by them) from 1 July 2012 onwards.

22. In respect of the products identified in answer to interrogatories 1, 2, 5 and 6, identify:

- a. the products which Suncorp contends it issued in the capacity of a platform operator from 1 July 2013 and any categories of documents Directly Relevant to that contention (in each case identifying a representative example of a document within each category); and
- b. the products which Suncorp did not issue in the capacity of a platform operator from 1 July 2013 and any categories of documents which show that (in each case identifying a representative example of a document within each category).

23. In respect of the products identified in answer to interrogatories 1, 2, 5 and 6, identify:

- a. the products in respect of which Suncorp contends it acted in the capacity of a platform operator when providing financial services to the Plaintiff and Group Members from 1 July 2013 and any categories of documents Directly Relevant to that contention (in each case identifying a representative example of a document within each category); and

- b. the products in respect of which Suncorp did not act in the capacity of a platform operator when providing financial services to the Plaintiff and Group Members from 1 July 2013 and any categories of documents that show that (in each case identifying a representative example of a document within each category).

24. In relation to the products identified in answer to interrogatories 22(a) and 23(a), identify the activities which Suncorp contends were undertaken in connection with the platform as a result of instructions to Suncorp from the Plaintiff and Group Members that relate to:

- a. commission payments made by Suncorp on or after 1 July 2013;
- b. Suncorp reimbursing Suncorp Life, Suncorp Financial, Standard Pacific or Guardian for commission payments made by them on or after 1 July 2013.

25. Did Suncorp, in the period from 1 July 2012 to 21 June 2019, provide any standard form advice to the Plaintiff or Group Members that they had the right to request Suncorp to transfer their investment to a product in respect of which:

- a. members would not be charged fees to fund the payment of commissions; or
- b. Suncorp would not (directly or through Suncorp Financial, Standard Pacific, or Guardian) pay financial services licensees any commissions?

26. If the answer to interrogatory 25 is affirmative, identify a document constituting a representative example of each such standard form advice.

In these interrogatories the following are defined terms:

Unless otherwise defined in this document, the definitions in the Plaintiff's Amended Commercial List Statement apply.

A document is **Directly Relevant**, if it meets any one of the following criteria:

- (a) the document is one on which Suncorp intends to rely;
- (b) the document adversely affects Suncorp's own case;
- (c) the document supports the Plaintiff's case; or
- (d) the document adversely affects the Plaintiff's case.

Guardian Distribution Agreement means the "Product Issue and Distribution Agreement" between Suncorp and Guardian entered into on or about 27 June 2013.

Risk-Only Product means a life risk insurance product within the meaning of s 963B(1)(b)(i) of the Corporations Act which has no investment component or balance and is not either a group life policy for members of a superannuation entity or a life policy for a member of a default superannuation fund within the meaning of s 963B(1)(b)(ii) of the Corporations Act

Suncorp Financial Distribution Agreement means the "Product Issue and Distribution Agreement" between Suncorp and Suncorp Financial entered into on or about 27 June 2013.

Superseded Distribution Agreement means the distribution agreement between Suncorp and Suncorp Financial dated 7 July 2004 and varied on 26 May 2009.

Standard Pacific Distribution Agreement means the "Product Issue and Distribution Agreement" between Suncorp and Standard Pacific entered into on or about 27 June 2013.