

# SUPREME COURT OF NEW SOUTH WALES

Younger v Westpac Banking Corporation & Anor  
(Proceedings 2014/335469)

## IMPORTANT NOTICE ST GEORGE BANK EMPLOYEES CLASS ACTION

### 1. What is this notice about?

On 13 November 2014, a representative proceeding was commenced in the Supreme Court of New South Wales against Westpac Banking Corporation (**Westpac**).

Following the commencement of the representative proceeding, Asgard Wealth Solutions Limited (**Asgard**) has been joined as a further defendant.

The representative proceeding is brought by Neil Younger (**the Plaintiff**) for himself and on behalf of all individuals who are members of the group which is described in section 3 below.

The Plaintiff alleges that he and other individuals employed in the St George Bank Group are entitled to a "retention incentive bonus" promised to them by St. George Bank Limited (**St George**) during the time preceding the merger of St George with Westpac.

The allegations are detailed in the Further Amended Statement of Claim filed on 21 June 2015 (**the Statement of Claim**).

The Defendants reject the allegations and defend the representative proceeding.

The Supreme Court has ordered that this notice be published for the information of persons who might be members of the group on whose behalf the representative proceeding is brought and may be affected by it. You have been identified as a potential member of the group. If you think you may be a group member you should read this notice carefully as it may affect your rights. **Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

### 2. What is a Representative Proceeding?

A representative proceeding is commonly known as a class action. It is an action that is brought by the Plaintiff on his own behalf and on behalf of a group of people (**group members**) against the Defendant, where the Plaintiff and the group members have similar claims against the Defendant.

Group members are bound by any judgment or settlement entered into in the representative proceeding unless they have opted out of the proceeding. This means that:

- (a) If the representative proceeding is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages; and
- (b) If the representative proceeding is unsuccessful, group members are bound by that result; and
- (c) Regardless of the outcome of the representative proceeding, group members will not be able to pursue their claims against the Defendant in separate legal proceedings unless they have opted out.

### 3. Are you a group member?

You are a group member in the representative proceedings if:

- (a) you were employed by St. George Bank Limited (**St George**) or Asgard or Advanced Leasing Limited ACN 063 369 488 t/a Bank of South Australia from on or before 18 June 2008 until at least 13 November 2008; and
- (b) you received a letter from the Managing Director of St George dated 18 June 2008 entitled "Additional One Off Incentive for 2007/2008 financial year" (**Fegan Letter**); and
- (c) you have not been paid the incentive referred to in the Fegan Letter; and
- (d) you did not at any time work in what was known as the Institutional & Business Banking Division, and prior to about 1999 the Treasury & Capital Markets Division, of St George; and
- (e) your employment was not terminated by Westpac; and
- (f) you had not, as at 13 November 2014, commenced proceedings against St George, Westpac or Asgard in respect of the non-payment of the incentive referred to in the Fegan Letter.

### 4. What is this Representative Proceeding?

This representative proceeding is brought by the Plaintiff on his own behalf and on behalf of all individuals who are group members as defined in the proceedings (and as described above).

The Plaintiff alleges in the proceedings (*Younger v Westpac Banking Corporation & Anor* 2014/335469) that:

- by reason of a letter he and group members received from Paul Fegan, the Managing Director of St George dated 18 June 2008, it was a term of their contracts of employment

that they would receive a one-off incentive payment if St George met its earnings per share target for 2008 (**EPS Target**);

- St George represented to group members that the EPS Target was between 8% and 10%;
- St George's actual earnings per share for 2008 was 8.3%, but it did not make the incentive payments referred to in the letters; and
- in not making those payments, St George breached its contracts of employment with group members, or was otherwise obliged to make the payments.

The Defendants to the representative proceeding are Westpac and Asgard. The Defendants do not admit the allegations made in the Statement of Claim and are defending the representative proceeding.

In addition, the Defendants seek to rely on Deeds of Release they allege were signed by certain group members to defeat those members' claims.

There may be, however, circumstances upon which you could rely in establishing that any Deed of Release signed by you is of no effect in these proceedings.

## 5. What is Opt Out?

The plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by opting out of the representative proceeding. An explanation of how group members are able to opt out is found below in the section headed "What should Group Members do?".

## 6. What should Group Members do?

If you fit the definition of a "group member" in the representative proceeding you must choose one of the following:

### **Choice A: Doing Something**

**Option (1):** If you wish to remain a group member and make a claim for loss or damage you claim to have suffered as a result of the events described in the Statement of Claim, you should contact Gillis Delaney Lawyers as follows:

**Postal:** Michael Gillis  
Gillis Delaney Lawyers  
Level 40, 161 Castlereagh Street,  
Sydney NSW 2000

**Email:** mlg@gdlaw.com.au; vjo@gdlaw.com.au  
**Telephone:** (02)9394 1144

Group members who register with the Plaintiffs' solicitors will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share the in the benefit of any order,

judgment or settlement in favour of the Plaintiff and group members. (You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you, before your entitlement arises.)

If the representative proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

**Option (2):** **If you do not wish to be a group member** you should opt out of the proceeding by completing the "Opt Out Notice" referred to below. If you opt out then you will not be affected by any orders made in the representative proceeding.

You will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative proceeding, but you will be at liberty to bring your own claim against the Defendants, however you should be aware that any time limit applicable to your claim may have expired or may expire very soon after you choose to opt out.

If you wish to bring your own claim against the Defendants, **you should seek your own legal advice about your claim and the applicable time limit before opting out.**

A copy of the "Opt-Out Notice" is enclosed.

A MS Word version and PDF version of an opt out notice is also available at <http://www.ucprforms.iustice.nsw.gov.au/>. It is Form 115.

### **Choice B: Doing Nothing**

**If you do nothing**, (i.e. you do not complete an opt out notice and do not contact Gillis Delaney Lawyers), you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding, but unless you identify yourself as a "group member" no-one may be aware of that fact such that you may not be able to share in any possible benefit flowing from the proceeding. You may also have to satisfy certain conditions before your entitlement arises.

If the representative proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

**You must decide what to do BEFORE 4:00pm on 12 October 2015.** If you want to opt out you must send your "Opt Out Notice" to the Supreme Court so that it arrives **before** that deadline. You must also provide a copy of your "Opt Out Notice" to the Plaintiff's solicitor:

<b>Postal:</b>	Michael Gillis Gillis Delaney Lawyers Level 40, 161 Castlereagh St Sydney NSW 2000	<b>Email:</b>	mjg@gdlaw.com.au;
		<b>Telephone:</b>	(02) 9394 1144

#### **7. Will you be liable for legal costs?**

You will **not become liable for any legal costs** simply by remaining a group member under Choice A, or by doing nothing under Choice B. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Gillis Delaney Lawyers or another lawyer to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Plaintiff in running the representative proceeding but which are not able to be recovered from the Defendants; and
- (c) representative proceedings are often settled out of court. If this occurs in this representative proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

#### **8. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Opt Out Notice, Statements of Claim, and defences, may be obtained by:

- (a) downloading them from:

[http://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_class\\_action/st\\_george\\_bank.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_class_action/st_george_bank.aspx)

- (b) inspecting them between 9am and 5pm at the offices of Gillis Delaney Lawyers at Level 40, 161 Castlereagh Street, Sydney NSW 2000; or
- (c) inspecting them at the Registry of the Supreme Court of New South Wales in Sydney at Level 5, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney NSW 2000 or by calling the Registry on 1300 679 272.

Please consider the above matters carefully. If there is anything of which you are unsure, you should seek your own legal advice or contact Gillis Delaney Lawyers on (02) 9394 1144.

You should not delay in making your decision as the deadline for opting out is **12 October 2015**.

This notice is published pursuant to Orders made by the Supreme Court on **7 August 2015**.