



Federal Court of Australia

District Registry: South Australia

Division: General

No: SAD25/2021

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

STATEWIDE SUPERANNUATION PTY LTD

Defendant

ORDER

JUDGE: JUSTICE BESANKO

DATE OF ORDER: 22 December 2021

WHERE MADE: Adelaide

THE COURT DECLARES THAT:

1. Statewide in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened s 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth), in that Statewide issued annual statements to members:
 - a. on at least 9,011 occasions in respect of the year ending 30 June 2018;
 - b. on at least 4,013 occasions in respect of the year ending 30 June 2019,that stated that the member held insurance cover as at 30 June of the relevant year, when the member did not then have insurance cover under the Statewide Insurance Policies.

2. Statewide in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened s 1041H(1) of the *Corporations Act* and s 12DA(1) of the *ASIC Act*, in that Statewide issued annual statements to members:
 - a. on at least 6,779 occasions in respect of the year ending 30 June 2018;
 - b. on at least 7,779 occasions in respect of the year ending 30 June 2019,that stated that one or more insurance premiums had been deducted from the member's superannuation account, at times when the member did not have insurance cover under the Statewide Insurance Policies, which in all the circumstances represented that, at the time the deduction(s) was (were) made:
 - (i) the member held insurance cover under the Statewide Insurance Policies, when he/she did not; and
 - (ii) Statewide was entitled to deduct that/those insurance premium(s), when it was not; and



- (iii) the member was required to pay that/those insurance premium(s), when he/she was not.
3. During the period 1 May 2017 to 30 June 2020, Statewide in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act, in that Statewide sent to members:
 - a. on approximately 14,136 occasions, 'U\$4k Warning Letters' or 'Nil Balance Warning Letters'; and
 - b. on approximately 476 occasions, 'PYS Warning Letters',which represented that:
 - c. the member had insurance cover that may cease; and
 - d. action needed to be taken in order to maintain insurance cover,at times when the member did not hold insurance cover under the Statewide Insurance Policies.
 4. By reason of the matters in paragraph 2, Statewide in connection with the supply of financial services made a false or misleading representation to each member who received an annual statement referred to in paragraph 2 with respect to the amount required to have been paid by the member as a member of the Fund, and by each such representation thereby contravened s 12DB(1)(g) of the ASIC Act.
 5. By reason of the matters in paragraph 2, Statewide in connection with the supply of financial services made a false or misleading representation to each member who received an annual statement referred to in paragraph 2 concerning the existence of a right of Statewide, namely the right to deduct the applicable insurance premium(s) and, further, a condition imposed on that member, namely the obligation to pay the applicable insurance premium(s), and by each such representation thereby contravened s 12DB(1)(i) of the ASIC Act.
 6. On each occasion that Statewide contravened ss 12DA(1), 12DB(1)(g), or 12DB(1)(i) of the ASIC Act or s 1041H(1) of the Corporations Act, as referred to in paragraphs 1 to 5 above, Statewide breached its general obligation as a financial service licensee to comply with financial services laws, in contravention of s 912A(1)(c) of the Corporations Act.
 7. By its conduct in each of:
 - a. issuing correspondence to members in respect of their insurance cover that was in error having regard to the terms of Statewide Insurance Policies, as referred to in paragraphs 1 to 3 above;
 - b. failing to adequately and properly test insurance data migrated to, and insurance coding within, its administration platform Acurity;
 - c. failing to ensure that the terms of the Statewide Insurance Policies as to cancellation were accurately reflected in rules applying in its Acurity administration system and in the administration of the U\$4K Rule;
 - d. failing to maintain and implement adequate policies for the executive authorisation or consideration of changes to be made to or within the



Acurity administration system, and the testing of changes prior to their implementation;

- e. deducting, on or after 1 July 2017, approximately \$2,700,000 in insurance premiums from member superannuation accounts in circumstances where member insurance cover had ceased under the terms of the relevant Statewide Insurance Policies;
- f. failing, on or after May 2018 when Statewide became aware of instances of Mischarging Conduct to up to 1,300 members whose insurance coverage had ceased, to (1) inform those members of the overcharging (2) prevent further overcharging of those members and (3) prevent the issue of subsequent Currently Insured Representations to those and other members,

Statewide breached its obligation to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

8. By failing to lodge a written report with ASIC before 6 August 2019, on matters relating to breaches by it of obligations under ss 912A(1)(a) or 912A(1)(c) of the Corporations Act that were significant for the purposes of s 912D(1)(b) of the same, arising from the making of false or misleading representations to Fund members concerning their insurance cover, Statewide contravened ss 912D(1B) and 912D(3) of the Corporations Act, in circumstances where it became aware of such breaches by no later than 22 July 2019.

THE COURT ORDERS THAT:

9. Pursuant to s 12GBA(1) and 12GBB(3) of the ASIC Act (the former in respect of contraventions arising from conduct prior to 13 March 2019), Statewide pay to the Commonwealth pecuniary penalties in the aggregate amount of \$3,500,000 in respect of Statewide's contraventions of ss 12DB(1)(g) and (i) of the ASIC Act referred to in declarations [4] and [5] above.
10. Pursuant to s 1317G(1) of the Corporations Act, Statewide pay to the Commonwealth a pecuniary penalty in the amount of \$500,000 in respect of Statewide's contravention of s 912D((3) of the Corporations Act referred to in declaration [8] above.
11. Pursuant to section 12GLB(1)(a) of the ASIC Act within 30 days of this Order, Statewide publish, at its own expense, a written adverse publicity notice (Written Notice) in terms set out in Annexure A to this Order, by, for a period of no less than 90 days, maintaining a copy of the Written Notice, in font no less than 10 point in an immediately visible area of:
 - a. the following web addresses:
 - i. <https://www.statewide.com.au>;
 - ii. <https://www.statewide.com.au/resources/statewide-super-newsroom>;



- b. the webpage to appear before a person uses credentials to log into Statewide’s secure online service via the ‘member’ or ‘employer’ sections of the webpage; and
- c. if practicable, on the “Statewide app” controlled by Statewide and ensure that notification:
 - A. appears immediately after a person uses credentials to log into the app, stating

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- B. is hyperlinked, via the words referred to in A. above, to the Written Notice published under order 11.a.ii.

12. Pursuant to s 1101B(1) of the Corporations Act, Statewide is to by 31 March 2022:

- a. establish and implement a review and remediation program to:
 - i. identify all past and present members of the Fund whose insurance status was subject to application of the U\$4K Rule or Nil Balance Rule during the period from 1 May 2017 to (and including) 30 June 2020 (the Relevant Period);
 - ii. determine whether the insurance status of past and present members of the Fund was correct under the terms of the Statewide Insurance Policies in place at all applicable times during and after the Relevant Period;
 - iii. identify all past and present members of the Fund who during the Relevant Period either or both (1) received correspondence from Statewide indicating current insurance under Statewide Insurance Policies at a time when the member did not hold such insurance or (2) were charged insurance premiums when the member did not hold insurance cover under the Statewide Insurance Policies in place at the relevant time;
 - iv. inform past and present members of the Fund of any corrections to their insurance status during or after the Relevant Period arising from



the undertaking of the review and remediation programme, and any compensation entitlement;

- v. compensate past and present members of the Fund for all overcharged premiums arising from any failure to apply the U\$4K Rule or Nil Balance Rule in accordance with Statewide Insurance Policies (including for loss of return on amounts incorrectly charged, with the aim to place the member in the position they would have been had incorrect charging not occurred);
 - vi. further to (i) to (v), make payment to any affected past and present members of the Fund of all such entitlements to compensation assessed in accordance with the review and remediation programme;
- b. appoint (at its cost) a suitably qualified independent expert agreed by the plaintiff or determined by the Court to prepare and provide to ASIC a report on the review and remediation program, including as to whether the expert perceives any deficiencies in the implementation and effectiveness of that review and remediation program.
13. Statewide pay the plaintiff's costs of and incidental to this proceeding fixed in the amount of \$240,000.
14. Pursuant to s 47B of the *Federal Court of Australia Act 1976* (Cth), counsel for the plaintiff be permitted to deliver oral submissions by way of internet connection at the hearing on 22 December 2021.

Date that entry is stamped: 22 December 2021

Sia Lagos
Registrar