

NOTICE OF FILING

Details of Filing

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File Number: VID826/2023
File Title: DANNYALAN RAYMOND FISHER & ORS v BT FUNDS MANAGEMENT LTD (ACN 002 916 458) IN ITS CAPACITY AS TRUSTEE FOR THE RETIREMENT WRAP, BT SUPER FOR LIFE, BT SUPER AND ASGARD INDEPENDENCE PLAN DIVISION TWO (BTFM) & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

6. As to paragraph 6, WLISL:
 - a. admits the allegations in paragraphs 6(a), (b), (c), (g), (h), (j), (l), (m) and (n);
 - b. in respect of paragraph 6(d), WLISL admits that BTFM was the trustee of a superannuation fund called the Retirement Wrap which issued a number of superannuation products, some of which provided group insurance cover, and otherwise does not know and therefore cannot admit the allegations in the paragraph;
 - c. in respect of paragraph 6(e), WLISL admits that BTFM was the trustee of a superannuation fund called BT Lifetime Super and otherwise does not know and therefore cannot admit the allegations in the paragraph;
 - d. in respect of paragraph 6(f), WLISL admits that BTFM was the trustee of a superannuation fund called Asgard Independence Plan Division Two which issued a number of superannuation products, some of which provided group insurance cover, and otherwise does not know and therefore cannot admit the allegations in the paragraph;
 - e. in respect of paragraph 6(i):
 - i. WLISL admits the allegations in paragraph 6(i)(i);
 - ii. WLISL otherwise does not know and therefore cannot admit the allegations in paragraph 6(i);
 - f. in respect of paragraph 6(k):
 - i. WLISL admits that it was a related body corporate of BTFM until immediately before 1 August 2022;
 - ii. WLISL otherwise denies the allegations in paragraph 6(k).
7. As to paragraph 7, WLISL:
 - a. admits the allegations in paragraphs 7(a), (c) and (d);
 - b. admits it was a wholly owned subsidiary of Westpac Banking Corporation (ACN 007 457 141) until immediately before 1 August 2022; and
 - c. otherwise denies the allegations in the paragraph.
8. As to paragraph 8, WLISL:
 - a. admits the allegations in paragraphs 8(a), (b), (c), (f), (h), (j), (k) and (l);
 - b. in respect of paragraph 8(d), WLISL admits that WSAL was the trustee of a superannuation fund called Westpac MasterTrust Superannuation Division which issued a number of superannuation products, some of which provided group insurance cover, and otherwise does not know and therefore cannot admit the allegations in the paragraph;

- c. in respect of paragraph 8(e), WLISL admits that WSAL was the trustee of a superannuation fund called Westpac Personal Superannuation Plan which issued a number of superannuation products and otherwise does not know and therefore cannot admit the allegations in the paragraph;
- d. in respect of paragraph 8(g), WLISL:
 - i. admits the allegations in paragraph 8(g)(i);
 - ii. otherwise does not know and therefore cannot admit the allegations in paragraph 8(g);
- e. in respect of paragraph 8(i):
 - i. WLISL admits that it was a related body corporate of WSAL until immediately before 1 August 2022;
 - ii. WLISL otherwise denies the allegations in paragraph 8(i).

B. Background

B.1 Obligations of BTFM and WSAL under the SIS Act

- 9. In answer to the allegations in paragraph 9, WLISL:
 - a. admits the statutory covenants set out in sections 52(2) and 52(7) of the SIS Act (as amended from time to time) are taken to form part of the governing rules of registrable superannuation entities; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.

B.2 SIS Act

- 10. As to paragraph 10, WLISL:
 - a. repeats paragraph 9(a) above; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.

B.3 SPS 250

- 11. WLISL admits the allegations in paragraph 11.
- 12. As to paragraph 12, WLISL:
 - a. says that SPS 250 first came into effect on 22 November 2012 through legislative instrument *Superannuation (prudential standard) determination No. 5 of 2012 (Superseded SPS 250)*;

- b. further says that legislative instrument *Superannuation (prudential standard) determination No. 1 of 2022* repealed Superseded SPS 250 and implemented a new SPS 250 (**Current SPS 250**) which came into effect on 1 July 2022;
- c. admits that Superseded SPS 250 and Current SPS 250 were made by APRA under s 34C(1) of the SIS Act;
- d. admits that the Superseded SPS 250 and the Current SPS 250 imposed obligations on RSE licensees that are generally in accordance with the terms pleaded at paragraphs 12(a) to 12(k) of the Claim, save that the Current SPS 250 [24] refers to “best financial interests”;
- e. relies on the full terms and effect of Superseded SPS and Current SPS; and
- f. otherwise denies the allegations in the paragraph.

B.4 BT Financial Group Insurance Management Framework, Insurance Strategy and insurance

- 13. WLISL denies the allegations in paragraph 13.
- 14. WLISL does not know and therefore cannot admit the allegations contained in paragraph 14.

C. WLISL and the tender

WLISL’s group insurance business

- 15. WLISL admits the allegations in paragraph 15.
- 16. As to paragraph 16, WLISL admits that, as at 1 January 2013, WLISL had group insurance policies in place with related bodies corporate within the Westpac Group, including BTFM.
- 17. WLISL admits the allegations in paragraph 17.

D. Conduct of BTFM and WSAL

- 18. WLISL does not know and therefore cannot admit the allegations in paragraph 18.
- 19. As to paragraph 19, WLISL:
 - a. admits that WLISL issued group insurance policies to BTFM in its capacity as trustee of the Retirement Wrap, BT Lifetime Super and Asgard Independence Plan Division Two funds during at least part of the Relevant Period; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.
- 20. As to paragraph 20, WLISL:

- a. admits that WLISL issued group insurance policies to WSAL in its capacity as trustee of the Westpac MasterTrust Superannuation Division and Westpac Personal Superannuation funds during at least part of the Relevant Period; and
- b. otherwise does not know and therefore cannot admit the allegations in the paragraph.

D.1 BTFM and WSAL – group insurance contract

21. As to paragraph 21, WLISL:

- a. admits that, prior to 1 January 2016, AIA and WLISL issued group insurance policies for superannuation funds of which BTFM or WSAL was the trustee; and
- b. otherwise does not know and cannot admit the allegations in the paragraph.

22. As to paragraph 22, WLISL:

- a. denies the allegation in paragraph 22 as it relates to WLISL; and
- b. otherwise does not know and therefore cannot admit the allegations in the paragraph.

23. As to paragraph 23, WLISL:

- a. says that in 2016 it responded to a Request for Proposal issued by the Trustees; and
- b. otherwise does not know and therefore cannot admit the allegations in the paragraph.

24. WLISL does not know and therefore cannot admit the allegations in paragraph 24.

25. WLISL does not know and therefore cannot admit the allegations in paragraph 25.

26. WLISL does not know and therefore cannot admit the allegations in paragraph 26.

27. As to paragraph 27, WLISL:

- a. admits that it participated in the tender process;
- b. says that it was aware that AIA was an incumbent insurer and would therefore have participated in the tender process; and
- c. otherwise does not know and therefore cannot admit the allegations in the paragraph.

28. As to paragraph 28, WLISL:

- a. admits that it responded to the proposal with a willingness to support the full scope of products in respect of which the Request for Proposal was issued;

- b. admits that the following AIA policies were novated to WLISL following the conduct of the tender:
- (i) MP9961;
 - (ii) MP8128;
 - (iii) MP9962 Group Life (GL) and MP9962 Group Salary Continuance (GSC);
 - (iv) MP9959;
 - (v) MP9960;
 - (vi) MP9785;
 - (vii) MP8118;
 - (viii) MP9784 GL and MP 9784 GSC;
 - (ix) MP9867;
 - (x) MP8119;
 - (xi) MP9878 GL and MP 9878 GSC; and
- c. otherwise does not know and therefore cannot admit the allegations in the paragraph.
29. As to paragraph 29, WLISL:
- a. admits that it was a related party of BTFM and WSAL until immediately before 1 August 2022; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.
30. As to paragraph 30, WLISL:
- a. admits that in 2017, BTFM and WSAL entered into an Insurance Services Deed with WLISL with effect from 1 January 2018;
 - b. relies on the terms of the Insurance Services Deed for their full force and effect; and
 - c. otherwise denies the allegations in the paragraph.
31. As to paragraph 31:
- a. in respect of paragraph 31(a), WLISL:
 - i. says that with effect from 1 January 2018, 8 group insurance policies issued to BTFM as trustee were novated from AIA to WLISL;

Particulars

Insurance Services Deed effective 1 January 2018
 Group Insurance Takeover Deed effective 1 January 2018
 Asgard Personal Master Superannuation Master Policy No. MP9959 and MP
 9961

Group Life (Death & TPD) Insurance Policy No. MP 8118

Group Life (Death & TPD) Insurance Policy No. MP 9784

Group Salary Continuance Insurance Policy No. MP9784

Former BT Lifetime Super Personal Plan, BT Retirement Selection Personal Super Plan: Policy Document Death & TPD Insurance Policy No. 9785

Group Life (Death and Total and Permanent Disablement) Insurance Policy No. MP 9962

Group Salary Continuance Insurance Policy No. MP 9962

Group Life (Death and Total and Permanent Disablement) Insurance Policy No. MP 8128

- ii. says that with effect from 1 January 2018, 1 ordinary group insurance policy issued to BTFM as trustee was novated from AIA to WLISL;

Particulars

Insurance Services Deed effective 1 January 2018

Group Insurance Takeover Deed effective 1 January 2018

Asgard Retail Master Policy No. MP 9960

- iii. says that with effect from 1 January 2018, 3 group insurance policies issued to WSAL as trustee were novated from AIA to WLISL;

Particulars

Insurance Services Deed effective 1 January 2018

Group Insurance Takeover Deed effective 1 January 2018

Group Life (Death & TPD) Insurance Policy No. MP 8119

Group Life (Death & TPD) Insurance Policy No. MP 9878

Group Salary Continuance Insurance Policy No. MP 9878

- iv. says that with effect from 1 January 2018, 1 group insurance policy issued to BT Funds Management No.2 Limited (ACN 000 727 659) as trustee was novated from AIA to WLISL;

Particulars

Insurance Services Deed effective 1 January 2018

Group Insurance Takeover Deed effective 1 January 2018

BT Classic Lifetime – Personal Super Plan Insurance Policy No. 9867

- v. otherwise denies the allegations in paragraph 31(a); and

- b. in respect of paragraph 31(b), WLISL:

- i. says that with effect from 1 January 2018, WLISL issued 2 group insurance policies to N.M Superannuation Pty Ltd (ACN 008 428 322) as trustee;

Particulars

Portfolio Care Corporate Superannuation Master Policy No. MP 9956

otherwise denies the allegations in paragraph 31(a); Portfolio Care Personal Superannuation Master Policy No. MP 9957

- ii. says that with effect from 1 January 2018, WLISL issued 2 group insurance policies to CCSL Ltd (ACN 104 967 964) as trustee;

Particulars

Personal Choice Private Fund Master Policy No. MP 8016

Life Focus Insurance Services Master Policy No. MP 8098

- iii. says that Asgard Capital Management Limited (ACN 009 279 592) is listed as the administrator for each trustee in the relevant Insurance Services Deed for the above policies; and

Particulars

Insurance Services Deed between WLISL and N.M Superannuation Pty Ltd effective 1 January 2018

Insurance Services Deed between WLISL and CCSL Ltd effective 1 January 2018.

- iv. otherwise denies the allegations in paragraph 31(b).

32. WLISL does not know and therefore cannot admit the allegations in paragraph 32.

33. As to paragraph 33, WLISL:

- a. denies the allegations in paragraph 33(a);
- b. says further that WLISL ceased to be the issuer of a group insurance policy to BTFM with effect from 1 July 2020; and

Particulars

Group Insurance Takeover Deed dated 30 June 2020.

- c. otherwise does not know and therefore cannot admit the allegations in the paragraph.

34. As to paragraph 34, WLISL:

- a. says that the following group insurance policies which BTFM held with WLISL for certain members of the Retirement Wrap and Asgard Independence Plan Division Two funds terminated with effect from 1 July 2020:
 - i. BT Super for Life – Westpac Group Plan. Group Life and Group Salary Continuance Insurance (WGP 01);
 - ii. BT Super for Life Group Life Policy (BTSFL 1 (Group Life));
 - iii. BT Super for Life Group Salary Continuance Policy (BTSFL 1 (Salary Continuance));
 - iv. Group Life (Death and Total and Permanent Disablement) Insurance Policy (MP 8128);
 - v. Group Life (Death and Total and Permanent Disablement) Insurance Policy (MP 9962);

- vi. Group Salary Continuance Insurance Policy (MP 9962);
- vii. Asgard Personal Superannuation Master Policy No. MP 9959 and MP 9961;
- viii. Former BT Lifetime Super Personal Plan, BT Retirement Selection Personal Super Plan and BT Superannuation Investment Fund members: Policy Document Death & TPD (MP 9785);
- ix. Group Life (Death and Total and Permanent Disablement) Insurance Policy - Former BT Classic Lifetime – Personal Super Plan members (MP 9867);
- x. Group Life (Death & TPD) Insurance Policy (MP 8118);
- xi. Group Life (Death & TPD) Insurance Policy (MP 9784);
- xii. Group Salary Continuance Insurance Policy (MP 9784);

Particulars

Group Insurance Takeover Deed dated 30 June 2020 Schedule 1

- b. admits that WLISL ceased to be the provider of group insurance to BTFM immediately before 1 July 2020;
 - c. says that BTSM, WLISL and AIA entered into a Group Insurance Takeover Deed by which, among other things, AIA agreed to issue policies to BTFM that would replace the group insurance policies listed in paragraph 34(a) above with effect from 1 July 2020; and
 - d. otherwise does not know and therefore cannot admit the allegations in the paragraph.
35. As to paragraph 35, WLISL:
- a. repeats paragraph 34(c) above; and
 - b. otherwise does not know and therefore cannot admit the allegations in paragraph 35.

D.2 Asgard

36. As to paragraph 36, WLISL:
- a. repeats paragraphs 19 and 34 above; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.
37. WLISL does not know and therefore cannot admit the allegations in paragraph 37.
38. WLISL does not know and therefore cannot admit the allegations in paragraph 38.

39. WLISL does not know and therefore cannot admit the allegations in paragraph 39.
40. WLISL does not know and therefore cannot admit the allegations in paragraph 40.
41. WLISL does not know and therefore cannot admit the allegations in paragraph 41.
42. As to paragraph 42, WLISL:
- a. admits that BTFM entered into group life insurance policies with WLISL in respect of certain members of the Asgard Independence Plan Division Two with effect from 1 January 2018 to 30 June 2020; and
 - b. otherwise denies the allegations in the paragraph.
43. As to paragraph 43, WLISL:
- a. repeats paragraphs 19 and 34 above;
 - b. says in respect of paragraph 43(a), that group insurance policies MP 8128 and MP 9962 issued by WLISL to BTFM as trustee applied to certain members of the Asgard Independence Plan Division Two fund who held the Asgard Employee Superannuation Account product (AESAs) from 1 January 2018 to 30 June 2020;
 - c. says in respect of paragraph 43(b), that the group insurance policy MP 9959 issued by WLISL to BTFM as trustee applied to certain members of the Asgard Independence Plan Division Two fund who held the Asgard Personal Protection Package from 1 January 2018 to 30 June 2020; and
 - d. otherwise denies the allegations in the paragraph.
44. WLISL does not know and therefore cannot admit the allegations in paragraph 44.
45. As to paragraph 45:
- a. in respect of paragraph 45(a), WLISL says:
 - i. under MP 8128, WLISL provided cover for death and total and permanent disability to BTFM in respect of certain members of the Asgard Independence Plan Division Two fund who were covered under MP 8128 from 1 January 2018 until 30 June 2020;
 - ii. under MP 9962, WLISL provided cover for death and total and permanent disability, and salary continuance to BTFM in respect of certain members of the Asgard Independence Plan Division Two fund who were covered under MP 9962 Group Life and MP 9962 Salary Continuance from 1 January 2018 until 30 June 2020;
 - iii. under the group insurance policy called 'Asgard Personal Superannuation Master Policy No. MP 9959 and MP 9961', WLISL provided cover for life protection, total and permanent disability and salary continuance to BTFM as trustee in respect of certain members who were covered under the policy from 1 January 2018 until 30 June 2020; and

- iv. it otherwise does not know and therefore cannot admit the allegations in paragraph 45(a);
 - b. in respect of paragraph 45(b), WLISL says:
 - i. under the policies listed in 45(a) above, premiums were payable by BTFM to WLISL in accordance with the terms of the relevant policy; and
 - ii. it otherwise does not know and therefore cannot admit the allegations in paragraph 45(b); and
 - c. in respect of paragraph 45(c), WLISL does not know and therefore cannot admit the allegations in the paragraph.
- 46. As to paragraph 46, WLISL:
 - a. says in respect of policies MP 9962 Group Life and MP 9962 Group Salary Continuance:
 - i. the premium rates set out in the policies for employer sub-plans established prior to 22 October 2013 included a 25% 'adviser commission' where the employer and the employer's adviser negotiated that such an adviser commission would be payable;
 - ii. the premium rates for employer sub-plans established prior to 22 October 2013 did not include an adviser commission where the employer and the employer's adviser negotiated nil adviser commission; and
 - iii. the premium rates for employer sub-plans established on or after 22 October 2013 did not include adviser commission;
 - b. says in respect of the group insurance policy MP 9959:
 - i. the premium rates set out in the policy for certain pre-1 July 2014 members included a 25% 'adviser commission' where the member negotiated such an adviser commission to be payable;
 - ii. the premium rates set out in the policy did not include an adviser commission where the member had not negotiated such an adviser commission to be payable; and
 - iii. the premium rates set out in the policy for members who became insured under the policy on or after 1 July 2014 did not include an adviser commission;
 - c. the policies at paragraphs 46(a) and 46(b) above were novated from AIA to WLISL with effect from 1 January 2018;
 - d. WLISL provided insurance under the policies at paragraphs 46(a) and 46(b) above from 1 January 2018 until 30 June 2020; and
 - e. it otherwise denies the allegations in the paragraph.

47. As to paragraph 47, WLISL:
- a. repeats paragraph 46(a) above; and
 - b. otherwise denies the allegations in the paragraph.
48. As to paragraph 48, WLISL:
- a. repeats paragraphs 43 and 46(b) above; and
 - b. otherwise denies the allegations in the paragraph.
49. As to paragraph 49, WLISL:
- a. repeats paragraphs 42 and 43 above; and
 - b. otherwise does not know and cannot admit the allegations in the paragraph.

50. WLISL does not know and therefore cannot admit the allegations in paragraph 50.

E. Premiums for insurance cover

51. WLISL does not know and therefore cannot admit the allegations in paragraph 51.

52. As to paragraph 52, WLISL:
- a. says that it was not the group insurer for the First and Third Respondents at all times during the Relevant Period; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.

F. Contraventions

53. As to paragraph 53, WLISL:
- a. says that in respect of the group insurance policies issued by WLISL to the Trustees referred to at paragraphs 19(a) and 20(a) above, the premium rates for certain members included a 'policy owner's administration fee', an 'administration fee' and/or an 'adviser fee'; and
 - b. otherwise does not know and therefore cannot admit the allegations in the paragraph.
54. WLISL denies the allegations in paragraph 54.
55. As to paragraph 55, WLISL:
- a. repeats paragraphs 19, 20 and 34 above;
 - b. says that WLISL was not the group insurer for the First and Third Respondents at all times during the Relevant Period; and

c. otherwise denies the allegations in the paragraph.

56. WLISL denies the allegations in paragraph 56.

57. WLISL denies the allegations in paragraph 57.

58. WLISL does not know and therefore cannot admit the allegations in paragraph 58.

59. WLISL does not know and therefore cannot admit the allegations in paragraph 59.

60. As to paragraph 60, WLISL:

a. repeats paragraph 55 above; and

b. otherwise denies the allegations in the paragraph.

61. WLISL does not know and therefore cannot admit the allegations in paragraph 61.

G. Fiduciary obligations

62. As to paragraph 62, WLISL:

a. admits that, by reason of their status as trustees, each of BTFM and WSAL owed the members of their respective funds fiduciary duties;

b. says that the scope of those duties will depend on the terms of the governing rules of the funds, including the covenants taken to be contained in the governing rules of the funds by virtue of section 52 of the SIS Act; and

c. otherwise does not know and cannot admit the allegations in paragraph 62.

63. As to paragraph 63, WLISL:

a. repeats paragraph 55 above; and

b. otherwise denies the allegations in the paragraph.

64. WLISL does not know and therefore cannot admit the allegations in paragraph 64.

65. WLISL does not know and therefore cannot admit the allegations in paragraph 65.

H. Claim against Westpac Life (WLISL)

66. WLISL denies the allegations in paragraph 66.

67. WLISL denies the allegations in paragraph 67.

68. WLISL denies the allegations in paragraph 68.

69. WLISL denies the allegations in paragraph 69.

70. WLISL denies the allegations in paragraph 70.

H.1 Knowing receipt

- 71. WLISL denies the allegations in paragraph 71.
- 72. WLISL denies the allegations in paragraph 72.
- 73. WLISL denies the allegations in paragraph 73.
- 74. WLISL denies the allegations in paragraph 74.
- 75. WLISL denies the allegations in paragraph 75.

I. Loss or Damage (statutory claims)

- 76. WLISL does not know and therefore cannot admit the allegations in paragraph 76.
- 77. WLISL does not know and therefore cannot admit the allegations in paragraph 77.

J. Relief Claimed

- 78. As to paragraph 78, WLISL:
 - a. admits that the Applicants have, on behalf of themselves and the Group Members, claimed the relief set out in the Originating Application; and
 - b. denies that the Applicant and Group Members are entitled to the relief sought from WLISL.

Date: 31 May 2024



Signed by Cameron Hanson
Herbert Smith Freehills
Solicitor for the Second Respondent

This pleading was prepared by Imtiaz Ahmed SC of Counsel and Herbert Smith Freehills.

Certificate of lawyer

I Cameron Hanson certify to the Court that, in relation to the defence filed on behalf of the Second Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 31 May 2024



Signed by Cameron Hanson
Herbert Smith Freehills
Solicitor for the Second Respondent

Schedule

No: VID826/2023

Federal Court of Australia

District Registry: Victoria

Division: General

First Applicant **DANNYALAN RAYMOND FISHER**

Second Applicant **JONATHAN FEDSON**

Third Applicant **ROY FERGUSON**

First Respondent **BT FUNDS MANAGEMENT LTD (ACN 002 916 458) IN ITS CAPACITY AS TRUSTEE FOR BT RETIREMENT WRAP, BT SUPER FOR LIFE, BT SUPER AND ASGARD INDEPENDENCE PLAN DIVISION TWO (BTFM)**

Second Respondent **TAL LIFE INSURANCE SERVICES LIMITED (WLISL) (ACN 003 149 157)**

Third Respondent **WESTPAC SECURITIES ADMINISTRATION LIMITED (WSAL) (ACN 000 049 472)**