

Banking and finance update

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Fallout from the Cash Store Case continues

The decision in *ASIC v The Cash Store (in liquidation)* [2014] FCA 926 (Cash Store case) primarily focused on the responsible lending obligations of payday lender, the Cash Store under the *National Consumer Credit Protection Act 2009*. To view the Federal Court decision [click here](#).

Other matters were also decided in the Cash Store case including those in relation to an allegation that the Cash Store had engaged in unconscionable conduct in contravention of section 12CB of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) in selling consumer credit insurance (CCI) to customers who took out payday loans.

In the decision, Her Honour Justice Davies was scathing of the practices of the Cash Store in selling CCI. At paragraph 94 of the judgement she stated:

"I accept ASIC's submission that CCI was unlikely to be of any use to customers for a payday loan and certainly useless for those who were unemployed, a fact that must have been known to TCS. TCS collected over \$2 million from customers in insurance premiums during the period when it sold CCI and paid out claims worth about \$25,000.

The CCI was almost invariably inappropriate to offer to payday lending customers because it was very unlikely to be of any use to them. The terms of CCI were such that the insurance was self-evidently unsuited to needs of most customers and were most unlikely ever to confer a benefit. I am satisfied that TCS contravened section 12CB of the ASIC Act in relation to the selling of the CCI to its customers".

ASIC, in its [media release 15-044 MR](#), announced that Allianz Australian Insurance Ltd (**Allianz**) had agreed to refund consumers \$400,016 in consumer credit insurance premiums received by Allianz between the periods of August 2010 and March 2012 in relation to the Cash Store business.

In that media release, ASIC refers to the fact that:

- between August 2010 and March 2012 the Cash Store sold CCI to 182,838 customers;
- these customers paid \$2,278,404 in premiums for cover; and
- only 43 claims were paid to consumers, totalling only \$25,118.

The fact that many policies of CCI were sold to borrowers who were not working and therefore by definition unable to claim unemployment cover, is a matter the court regarded most seriously.

The sale of products through third parties potentially creates a reputational risk for businesses and highlights the need for adequate supervision of third parties and their selling practices.

ASIC noted in conclusion that Allianz had co-operated with ASIC to resolve concerns quickly, and provided refunds to consumers, which is to be expected given a company of Allianz's high standing.

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