

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989

Undertaking to the Australian Securities and Investments Commission  
given for the purposes of section 93AA

by

American Home Assurance Company  
ARBN 007 483 267

and

Family Insurance Advisory Services Pty Limited  
ACN 050 053 551

1. Background

- 1.1 American Home Assurance Company ("AHAC") is incorporated with limited liability in the United States of America. AHAC is a member insurance company of American International Group. It has been licensed to operate as an insurance underwriter in Australia since 1959. AHAC provides a range of insurance products to the Australian market, with a strong emphasis on personal accident insurance.
- 1.2 Family Insurance Advisory Services Pty Ltd ("FIAS") is incorporated in Australia. FIAS has operated for over 15 years promoting various insurance products around the world on behalf of insurance companies such as Sun Alliance and AHAC. FIAS acted as the agent of AHAC in regard to the promotional material at issue in this Undertaking.
- 1.3 During late 1998 and early 1999, the Australian Securities and Investments Commission ("ASIC") received complaints from consumers about advertising material which they had received through the mail and which promoted a death and disability insurance policy called the "F.I.A.S. 3 Way Accident Cash Plan" ("the 3 Way Plan").
- 1.4 ASIC subsequently received some complaints about advertising material which promoted an insurance policy called the "F.I.A.S. 4 Way Accident Cash Plan

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("the 4 Way Plan"). This policy, and its advertising material were very similar to the policy and advertising material referred to at 1.3.

- 1.5 AHAC later advised ASIC that, from time to time, FIAS promoted, and AHAC sold, a number of insurance policies similar to those referred to at 1.3 and 1.4. At the time of giving the undertakings which follow, AHAC and FIAS had the following insurance policies at issue available for promotion and sale within Australia:

F.I.A.S. 3 Way Accident Cash Plan

F.I.A.S. 3 Way Accident Cash Plan (Double Cover)

F.I.A.S. The 4 way Accident Cash Plan

F.I.A.S. The 4 Way Accident Cash Plan (Double Cover)

F.I.A.S. Senior Accident Cash Plan

F.I.A.S. Senior Accident Cash Plan (Double Cover)

("the Policies"). The feature of the Policies which chiefly distinguishes them from other death and disability insurance policies sold in Australia is their promotion in conjunction with sweepstakes which are run by FIAS. By way of example, a substantial proportion of the 3 Way Plan package is devoted to a sweepstake styled "\$1,250,000 Cash Giveaway". Included in the sweepstake offer is a cash prize, which in the 3 and 4 Way Plan packages is referred to as a "Good Luck Cash Award".

- 1.6 In December 1998 ASIC advised AHAC and FIAS of its concern that a number of aspects of the advertising material provided to consumers in promotion of the 3 Way Plan might be misleading.
- 1.7 In March 1999, after an exchange of correspondence between ASIC and AHAC and FIAS in which they contested ASIC's conclusions, AHAC and FIAS voluntarily ceased the sale and promotion of all of the Policies, while pursuing a resolution of this matter satisfactory to ASIC.

1.8 ASIC was concerned that the FIAS/AHAC promotional material might be misleading because of the:

- use of wording and layout;
- explanation regarding maximum benefits payable in the event of the coincidence of several relatively unusual factors;
- limited disclosure to consumers who entered the sweepstakes and provided details of their bank account for the crediting of cash prizes to their account that they would be committed to an insurance policy and the automatic debiting of their bank account for premium unless action was taken to cancel the policy; and
- limited extent to which it stated that consumer information might be provided by AHAC to other businesses for the purpose of other promotions.

1.9 In subsequent discussions between ASIC and FIAS and AHAC, FIAS and AHAC agreed to make changes to the wording and layout of the material used in promotion and sale of the Policies, and any similar policies which might be promoted in future within Australia, in conjunction with an offer of entry in sweepstakes administered by FIAS, ("future policies"). These changes have been made to clarify to consumers:

- (a) the level of benefits generally available under the Policies and future policies;
- (b) ongoing insurance cover, and the deduction of premium payments by direct debits or credit card account payments to AHAC, resulting from entering any sweepstake; and



- (c) the supply by FLAS to other businesses, of information about sweepstake entrants.

1.10 As a resolution of ASIC's concerns about the Policies and future policies AHAC and FLAS agree to be bound by the following undertakings to ASIC.

## 2. Undertakings

AHAC and FLAS where it acts as an agent of AHAC undertake the following with regards to their activities in Australia or otherwise directed to the Australian Market for the purposes of section 93AA of the ASIC Act.

2.1 When any representation is made by, or on behalf of AHAC, in any material in relation to the Policies or future policies, whether in print or on the internet, AHAC and FLAS will ensure that such representation is accurate, prominent and clear. For example, any representations made in AHAC promotional material about maximum benefits will clearly and accurately describe those benefits.

2.2 When, in the course of promoting the Policies or future policies, AHAC and FLAS also promote prizes to be won in any sweepstake or other competition, AHAC and FLAS will in the promotional material accurately, prominently and clearly advise consumers:

- (a) that they may enter the sweepstake or other competition without being required also to apply for any insurance cover,
- (b) of any limitation on any prizes or other advantages which may not be available to consumers who do not apply for any insurance cover, and
- (c) that if they enter the "Good Luck Cash Award" offer (or any like offer from time to time as part of the sweepstakes), entry will constitute an acceptance of a contract of insurance with AHAC.

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- 2.3 AHAC will continue its practice of cancelling automatic debit orders on customers' accounts immediately upon cancellation or lapsing of any Policy or future policy.
- 2.4 In the promotion material of any of the Policies or future policies, which provides for deductions to be made from the bank or credit card accounts of consumers, AHAC and FIAS will advise that policies may be cancelled for any reason and at any time, either by way of written advice or by telephoning AHAC's Customer Service Hotline.
- 2.4A. AHAC and FIAS will ensure that, in the promotional material of any Policies or future policies, when a consumer is requested to complete a direct debit or credit authority in respect of any bank or credit account, the consumer should be requested to nominate the cover and the amount of the premium being authorised by the consumer within the same section as the direct debit or credit authority is completed.
- 2.5 If a consumer notifies AHAC that he or she wishes to cancel a policy in accordance with clause 2.5 of this undertaking, AHAC, subject to the provisions of the policy document, will take all steps necessary to ensure that no deductions are made from the bank or credit card account of the consumer after the notification and will refund within thirty (30) days any premium received by AHAC after this notification.
- 2.6 In relation to the Policies and future policies, AHAC and FIAS will provide the advice referred to at 2.5, clearly and prominently, and adjacent to whatever part of AHAC's relevant promotional material must be completed by consumers in order to authorise deductions from bank and credit card accounts.
- 2.7 While in its current promotional layout, AHAC and FIAS will provide the advice in relation to the Policies and future policies referred to in clause 2.5, in a

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box enclosed by a bold border and under a heading in bold uppercase type reading: CANCELLATION PROVISIONS. If AHAC and FIAS change the layout of the promotional material the advice referred to in clause 2.5 will be included in a similarly clear and prominent layout with the same heading in bold uppercase type reading: "CANCELLATION PROVISIONS".


2.8 In addition to providing the advice referred to in clause 2.5 AHAC will, when posting policy documents while in the present format for the Policies or future policies, to any consumer, attach to the policy a slip of paper in the words and format of the attachment to this undertaking marked "B", and of no lesser size than the border around the message on "B". If the formatting changes, AHAC and FIAS will continue to insert the words set out in attachment "B" in the new layout and the new layout will ensure that the words are clear and prominent.

2.9 AHAC and FIAS will prominently and clearly:

- (a) advise in the material used for the promotion of the Policies and future policies that the names and addresses of consumers who apply for insurance or enter sweepstakes may be added to lists which are supplied to other persons and used to promote other products provided either by AHAC or by those other persons,
- (b) provide consumers with the option to be removed from the lists; and
- (c) undertake to refrain from supplying the names and addresses of consumers who indicate they either want their details removed from the lists or do not want their details to be provided to other parties.

2.10 AHAC will amend the Policies by:

- (a) changing the definition for "Public Holiday" from "means a gazetted and published State or Federal government public holiday" to "means an



official government declared public holiday in the jurisdiction where the injury occurs"; and

(b) including a provision for cancellation to the effect that the consumer may cancel the Policy for any reason and at any time.

2.11 AHAC and FLAS will not divulge any confidential or private information relating to a customer of AHAC, or potential customer of AHAC without the specific prior written approval of the customer, or potential customer, as the case may be.

2.12 AHAC and FLAS where it acts as an agent of AHAC will apply the undertakings 2.1 to 2.10, which each has made above, to the promotion and/or sale of each of the Policies or future policies.

2.13 AHAC will take all reasonable steps to ensure that persons employed by AHAC, whether as employees, agents or otherwise, and whose responsibilities include the preparation, publication, broadcast or placement of promotional material, are aware of AHAC's obligations under these undertakings.

2.14 FLAS will take all reasonable steps to ensure that persons employed by FLAS, whether as employees, agents or otherwise, and whose responsibilities include the preparation, publication, broadcast or placement of promotional material, are aware of FLAS's obligations under these undertakings.

2.15 AHAC will, within ~~60~~ 90 days of the acceptance of this undertaking by ASIC, prepare and submit for consideration by ASIC, a written analysis and explanation of a compliance program ("the compliance program") designed to address AHAC's obligations under the ASIC Act and the Insurance Contracts Act, and meeting Australian Standard 3806-1998, Compliance Programs.

2.16 AHAC will implement revisions to the Compliance Program, agreed between ASIC and AHAC, within 30 days of ASIC notifying AHAC that the Compliance Program is otherwise acceptable.

### 3. Acknowledgments

AHAC and FIAS acknowledge that ASIC:

- 3.1 May from time to time publicly refer to this undertaking;
- 3.2 May issue a media release on execution of this undertaking referring to the details of the undertaking document;
- 3.3 Will place a copy of the executed undertaking on a Public Register;
- 3.4 AHAC and FIAS acknowledge that ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order arising from future conduct;
- 3.5 This undertaking in no way derogates from the rights and remedies available to ASIC or any other person to seek compensation arising from any conduct described in this undertaking; and
- 3.6 This undertaking has no operative force until accepted by ASIC.

 2000.1.17.20



EXECUTED on the

20<sup>th</sup> day of April

~~1999~~ 2000

EXECUTED by AMERICAN HOME ASSURANCE COMPANY by being signed, sealed and delivered by JOHANNES GYSBERTUS BUTSELAAR attorney under power of Attorney dated 27 November 1995 who declares that he has no notice of revocation of the power of attorney in the presence of:

*[Signature]*  
JOHN G BUTSELAAR

*[Signature]*  
Witness

PAUL C. KORTE  
Name of Witness

Authorized Person

Office held

Office held

Name of Authorized Person  
(block letters)

Name of Authorized Person  
(block letters)

Signed for and on behalf of  
Family Insurance Advisory Services Pty Ltd (ACN 050 053 551)

*[Signature]*  
Signature of Authorized Person

Signature of Authorized Person

DIRECTOR  
Office held

Office held

L. BEHRMANN  
Name of Authorized Person  
(block letters)

Name of Authorized Person  
(block letters)

ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORIZED DELEGATE

39903, DCA  
*[Signature]*  
Jan Reijnen  
NSW General  
Counsel

