



ANNEXURE H

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989

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

by

Combined Insurance Company of America

ARBN 009 714 425

1. BACKGROUND

For the purposes of this Enforceable Undertaking, the term "Aboriginal Community" will mean a community, which is governed by an Aboriginal Community Council, Land Council, or similar governing body located within the Shires listed in Schedule 1.

- 1.1 Combined Insurance Company of America ("Combined") is a corporation authorised to carry on an insurance business within the meaning of the *Insurance Act 1973* and is trading in Australia under the business name Combined Insurance Company of Australia.
- 1.2 Combined sells three general insurance policies:
 - 1.2.1 The Introductory Accident Policy;
 - 1.2.2 The Accident Disability Policy (together "the Accident Policies"); and
 - 1.2.3 The Comprehensive Healthcare Policy ("the Healthcare Policies"),
(together "the Policies").
- 1.3 The Australian Securities and Investments Commission ("ASIC") investigated a complaint that agents and/or employees of Combined had sold Policies to members of Aboriginal Communities at Moama and Cummeragunja, which Policies appeared to ASIC to be inappropriate for the needs and circumstances of persons within those communities.

- 1.4 Combined identified the following communities as being among those Aboriginal Communities in which the Policies were sold:
 - 1.4.1 Cummeragunja;
 - 1.4.2 Moama;
 - 1.4.3 Deniliquin;
 - 1.4.4 Lake Cargelligo;
 - 1.4.5 Murrin Bridge;
 - 1.4.6 Condobolin;
 - 1.4.7 Bourke; and
 - 1.4.8 Werrimull.

- 1.5 The Accident Policies provide benefits in the following circumstances:
 - 1.5.1 Accidental death or dismemberment for carrier accidents, including accidents on a passenger boat, train, monorail, tram, bus or travelling in an elevator;
 - 1.5.2 Accidental death or dismemberment for travel accidents while travelling in a car, truck, taxi or moving vehicle or being struck down or run over on a public road;
 - 1.5.3 Continuous total disablement suffered as a result of a travel accident;
 - 1.5.4 Continuous total disablement suffered as a result of any other accident;
 - 1.5.5 Continuous partial disablement suffered as a result of an accident; and
 - 1.5.6 Recurrent disability.

- 1.6 ASIC formed the view that Combined sold the Accident Policies to members of the Aboriginal Communities in circumstances, which included:
 - 1.6.1 Policyholders had little or no access to common carriers such as passenger boats, trains, monorails, buses, trams, elevators and/or aircraft;
 - 1.6.2 Policyholders did not understand or had little understanding of the Accident Policies;
 - 1.6.3 Policyholders either could not read, or had difficulty reading the Accident Policies;
 - 1.6.4 Unfair tactics were used or unfair influence was exerted on intended insureds in relation to the promotion and sale of the Accident Policies;
 - 1.6.5 Policyholders were already entitled to, or were already covered by other benefits for accidents, including workers compensation insurance; and
 - 1.6.6 Policyholders did not have sufficient information in order to be able to make a properly informed decision about their need for, or the benefit of the Accident Policies.

- 1.7 The Healthcare Policy provides benefits in the following circumstances: -
 - 1.7.1 Total disablement as a result of sickness (Plan 1);
 - 1.7.2 Partial disablement as a result of sickness (Plan 1);
 - 1.7.3 Total disablement and confinement to bed under the full time care of a nurse as a result of covered sickness (Plan 2);
 - 1.7.4 Total disablement and confinement to bed under the full time care of a nurse as a result of a heart attack, stroke, renal failure or coronary artery surgery (Plan 2);
 - 1.7.5 Diagnosis of cancer (Plan 3);
 - 1.7.6 Total disablement and confinement to bed under the full time care of a nurse as a result of cancer (Plan 3);
 - 1.7.7 Total disablement as a result of cancer (Plan 3); and
 - 1.7.8 Removal of skin cancer (Plan 3).

- 1.8 ASIC formed the view that Combined sold the Healthcare Policy to members of the Aboriginal Communities in circumstances, which included;
 - 1.8.1 Policyholders did not understand or had little understanding of the Comprehensive Healthcare Policy;
 - 1.8.2 Policyholders could not read, or had difficulty reading the Comprehensive Healthcare Policy;
 - 1.8.3 Unfair tactics were used or unfair influence was exerted on prospective insureds in relation to the promotion and sale of the Comprehensive Healthcare Policy;
 - 1.8.4 Policyholders may have been entitled to other benefits in the event they were sick or disabled, including sickness and disability benefits under the Social Security legislation; and
 - 1.8.5 Policyholders did not have sufficient information in order to be able to make a properly informed decision about their need for, or the benefit of the Comprehensive Healthcare Policy.

- 1.9 As a result of its investigation, ASIC formed the view that Combined's conduct in selling the Policies in Aboriginal Communities breached provisions of Part 2, Division 2 of the ASIC Act.

- 1.10 In July 2000, ASIC commenced proceedings in the Federal Court of Australia against Combined; proceedings number N866 of 2000 ("the Proceedings"). Among other things, ASIC alleged that Combined by itself, and/or its agents when selling in Aboriginal Communities;
 - 1.10.1 Acted unconscionably in contravention of sections 12CA and/or 12CB of the ASIC Act;

- 1.10.2 Engaged in conduct that was misleading and/or deceptive or likely to mislead and/or deceive in contravention of section 12DA of the ASIC Act;
- 1.10.3 Represented that financial products or services had performance characteristics, uses or benefits they did not have, in contravention of section 12DB(1)(c) of the ASIC Act;
- 1.10.4 Made false and misleading representations concerning the need for financial products or financial services in contravention of section 12DB(f) of the ASIC Act.
- 1.11 Combined has offered, and ASIC has agreed to settle the Proceedings on the basis of Court Orders, made by consent and without admission, and by offering the commitments in this undertaking on the same basis.
- 1.12 This undertaking is to be read and interpreted together with the Court Orders.

2. UNDERTAKING

Combined undertakes the following for the purposes of section 93AA of the ASIC Act.

- 2.1 The parties will, as soon as practicable, but in any event within 7 days of the execution of this Undertaking execute the Court Orders and take all steps necessary to have the Orders filed in the Federal Court.

Complaints Mechanism

- 2.2 Combined will, on or by 22 December 2000, implement a complaints handling process, to be approved by ASIC, and which complies with the Australian Standards on Complaints Handling, AS 4269/1995, for complaints and/or disputes from, or in relation to a Policyholder who purchased a Policy as a result of the promotion, marketing or sale of a Policy by or on behalf of Combined in an Aboriginal Community, and who:
 - 2.2.1 Has a Policy, which lapsed prior to the date of this Enforceable Undertaking;
 - 2.2.2 Does not receive a notice in accordance with Order 1 of the Court Orders;
 - 2.2.3 Receives a notice in accordance with Order 1 of the Court Orders, but has difficulty reading or cannot read and/or understand the notice;
 - 2.2.4 Does not attend a meeting with a representative of Combined and an Aboriginal Facilitator ("Community Meeting") to be arranged in accordance with Order 3 of the Court Orders; or
- 2.1.1 Attends a Community Meeting, and opts to retain their Policy.

- 2.2 The complaints handling process will provide for the handling of disputes that will include, but not be limited to, disputes between Combined and a Policyholder who purchased a Policy as a result of the promotion, marketing or sale of a Policy in an Aboriginal Community and which relates to the duty of utmost good faith, the duty of disclosure, unconscionable conduct, misleading and deceptive conduct and misleading representations.
- 2.3 Combined will not, in connection with the handling of a complaint (as referred to in paragraph 2.2) from an Accident Policyholder or a Healthcare Policyholder identified in Order 1 and/ or 6, reject a claim for benefit on the sole basis of a breach by the insured of the insured's duty of disclosure under section 21 of the Insurance Contracts Act.

Education and Training Program

- 2.4 Combined will, on or by 22 December 2000, with assistance from its legal consultants and with assistance from an expert on Aboriginal cultural issues review, assess and make recommendations in relation to Combined's existing education and training programs, protocols, marketing and promotional material in relation to direct sales, covering all staff and agents involved in direct sales, including but not limited to, sales staff, agents, regional managers, sales managers, compliance managers and/or auditors.
- 2.5 Combined will, on or by 22 December 2000, nominate a senior officer of Combined, to be responsible for the implementation and monitoring of the education and training program, such officer to agree with ASIC a timetable for the implementation of the education and training program for all staff.
- 2.6 Combined will as soon as practicable, but in any event on or by 16 February 2001, with assistance from its legal consultants draft new education and training programs to incorporate any recommendations made as part of the reviews conducted in accordance with paragraph 2.4 above, and design specific education and training in relation to:
- 2.6.1 Indigenous cultural issues relating to the marketing of insurance products (including education and training covering the obligations imposed on Combined pursuant to Order 8 of the Court Orders); and
 - 2.6.2 The consumer protection provision of the ASC Law and ASIC's consumer protection role in relation to financial services and products.
- 2.7 Combined will, on or by 22 December 2000, appoint an external independent auditor in relation to consumer protection law ("Consumer Consultant") and an external independent auditor in relation to Aboriginal cultural issues ("Indigenous Consultant"), whose appointments and terms of reference are to be approved by ASIC, to review and assess the education and training program referred to in 2.6 and

to report to Combined and ASIC in writing on or by 16 March 2001, on their assessment and recommendations.

- 2.8 Combined will, on or by 13 April 2001, implement, or agree with ASIC a timetable to implement, any recommendations made by either, or both the Consumer Consultant and the Indigenous Consultant.
- 2.9 The senior officer mentioned in paragraph 2.5 above will, on or by 16 March 2001, report to ASIC in writing on the progress of the implementation and monitoring of the education and training program for all staff.
- 2.10 Combined will instruct the Consumer Consultant and the Indigenous Consultant to, report in writing to ASIC, within 12 months from the date of the Enforceable Undertaking, on the implementation of the education and training program and the procedures in place to monitor future education and training of employees and/or agents.

Compliance Program

- 2.11 Combined will, on or by 22 December 2000, with assistance from its legal consultants, review and assess Combined's compliance systems and program.
- 2.12 The compliance assessment will include, but not be limited to, the identification and recommendations for changes with respect to compliance to ensure full compliance with the requirements of the insurance legislation, the ASIC Act, the Door-to-Door Sales Act and the General Insurance Code of Practice, including such issues as:
 - 2.12.1 The presentation, form and content of the Policies;
 - 2.12.2 Whether the marketing and promotional material provide an accurate and fair impression of the benefits, limitations and exclusions of the Policies;
 - 2.12.3 Sales techniques, including the need for the obligations imposed on Combined in Orders 7 of the Court Orders;
 - 2.12.4 Advertising; and
 - 2.12.5 Complaints handling procedures, including the procedure implemented in accordance with clause 2.1.
- 2.13 Combined will, with assistance from its legal consultants, on or by 16 February 2001, prepare in writing a compliance program ("Compliance Program"), to be formulated in the manner prescribed by the Australian Standard AS 3806 - 1998, and which incorporates the recommendations referred to in clause 2.11.

- 2.14 Combined will, on or by 16 March 2001, appoint an external independent auditor ("Compliance Consultant") in relation to compliance whose appointment and terms of reference are to be approved by ASIC to review, assess and make recommendations in relation to the Compliance Program and to report to Combined and ASIC in writing within 1 month from the date of completion of the Compliance Program on their assessment and recommendations.
- 2.15 Combined will, on or by 22 December 2000, nominate a senior officer of Combined (the "Senior Officer"), to be responsible for the implementation and monitoring of the Compliance Program, such officer to agree with ASIC a timetable for the implementation of the Compliance Program.
- 2.16 The Senior Officer will, on or by 19 January 2001, report to ASIC in writing on the progress of the drafting of the Compliance Program.
- 2.17 Combined will instruct and engage the Compliance Consultant to, report in writing to ASIC on the implementation of the Compliance Program within 6 months from the date of implementation of the Compliance Program.

Future Selling of Insurance Policies in Aboriginal Communities

- 2.18 Combined will not sell its Policies to more than 6 persons who are members of an Aboriginal Community within a 24 hour period. For the purpose of this calculation a family to be covered by the one Policy is to be counted as one "person".

Funding of Community Educative Brochure

- 2.19 On receipt of a tax invoice, Combined will contribute \$40,000 to ASIC's costs of preparing and producing educative materials in relation to insurance, the content, form and presentation to be wholly determined by ASIC, which brochure shall be made available to indigenous consumers and will not make any mention of Combined.

3. Acknowledgements

- 3.1 Combined acknowledges that ASIC: -
 - 3.1.1 May from time to time publicly refer to this undertaking;
 - 3.1.2 May issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution; and
 - 3.1.3 Will place a copy of the executed undertaking on a Public Register.
- 3.2 Combined acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.

- 3.3 Combined acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.4 ASIC acknowledges that nothing in this Enforceable Undertaking, the Court Orders or any notices or documents envisaged by this undertaking, constitutes any admission to ASIC or any other person or entity by Combined.
- 3.5 Combined acknowledges that this undertaking has no operative force until accepted by ASIC.

EXECUTED on 13 November 2000

SIGNED SEALED and DELIVERED)
 on behalf of COMBINED)
 INSURANCE COMPANY OF)
 AMERICA (ARBN 990 714 425) by its)
 duly appointed attorney CARL NAGLE)
 under power of attorney dated 21st)
 September 1998 in the presence of)

Carl Nagle

 Signature

OCTOBER 2000

[Handwritten Signature]

 Signature

[Handwritten Signature]

 Witness

LEGAL & INSURANCE SERVICES DIRECTOR

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION PURSUANT TO ASIC ACT, SECTION 93AA BY ITS DULY AUTHORISED DELEGATE

[Handwritten Signature]

 Jan Redfern
 General Counsel, NSW Regional Office

