

PUBLIC REGISTER DOCUMENT

IN THE FEDERAL COURT OF
AUSTRALIA
NORTHERN TERRITORY DISTRICT
REGISTRY
GENERAL DIVISION

No. DG 16 of 1992

BETWEEN :

TRADE PRACTICES COMMISSION

Applicant

PUBLIC REGISTER DOCUMENT

AND :

MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED
(A.C.N. 009 657 176)

First Respondent

AND:

MERVYN ROY DAVIS

Second Respondent

DEED OF SETTLEMENT

AUSTRALIAN GOVERNMENT
SOLICITOR

Level 9, National Mutual Centre
9-11 Cavenagh Street
DARWIN NT 0800

Stephen Ridgeway
Tel: (089) 814833
Fax: (089) 819866
File: 9205979:2548

THIS DEED was made on

1993

BETWEEN

MERCANTILE MUTUAL LIFE INSURANCE COMPANY LIMITED (ACN: 009657176) ("MML")

a corporation organised and existing under the laws of the Commonwealth of Australia, whose principal office in New South Wales is at 55 Clarence Street, Sydney

AND

The TRADE PRACTICES COMMISSION ("the Commission")

a body corporate established by section 6A of the *Trade Practices Act* 1974 (Cth), of Benjamin Offices, Chan Street, Belconnen in the Australian Capital Territory

AND

MERVYN ROY DAVIS ("Davis")

of 127 Giles Street, Katherine in the Northern Territory of Australia

WHEREAS:

- A. The Commission has instituted proceedings number DG16 of 1992 in the Darwin Registry of the Federal Court of Australia against MML and Davis seeking an injunction and other orders in relation to alleged contraventions by MML and Davis of sections 52 and 52A of the *Trade Practices Act* 1974 ("the proceedings").
- B. The Commission, MML and Davis have agreed to settle the proceedings in accordance with and subject to the terms set out in this deed.

THIS DEED NOW WITNESSES

1. MML and Davis will consent to the making of an order in the proceedings granting an injunction in the following terms:

"That, for a period of three years from the date of this order, the first and second respondents, by themselves, their servants or their agents, be and are hereby restrained from engaging in conduct which is unconscionable, misleading or deceptive, or which is likely to mislead or deceive, in contravention of Parts IVA or V of the *Trade Practices Act* 1974, in the manner alleged in the statement of claim annexed hereto, or in a similar manner, in respect of the supply or sale by the first or second respondents of individual retail contracts of insurance or superannuation to aboriginal persons normally resident in rural areas in Australia."

2. MML and Davis will, prior to the making of the abovementioned order, file and serve in the proceedings a joint defence in the terms of the defence attached to this deed.
3. MML will, in relation to its trade practices compliance program ("the program"),:
 - (a) enhance the program by ensuring that all of its staff and agents are educated on the requirements of the *Trade Practices Act 1974* ("the Act") in respect of misleading, deceptive and unconscionable conduct in relation to disadvantaged groups in the community;
 - (b) nominate a senior manager as the person who will be responsible for the program and for compliance with the Act and who will be a source for advice for MML staff and agents on compliance with the Act;
 - (c) include in the program face to face or video lectures for all of its staff;
 - (d) consider developing a system for the assessment of the effectiveness of the program; and
 - (e) provide a brief report to the Commission within twelve (12) months of the date on which this deed is made outlining the steps that have been taken by MML in relation to the program and providing copy of relevant materials produced in connection with the program.
4. MML will offer restitution to each and every resident of an aboriginal rural community in the Northern Territory who entered into a contract of superannuation with MML by arrangement through Davis ("Policyholders"). Restitution will consist of a payment to each Policyholder of an amount of money equivalent to the total of all moneys paid to MML by that Policyholder and interest on those moneys at the rate of 7% compounded annually ("Restitution").
5. The offer of Restitution will be made at meetings:
 - (a) to be arranged with representatives of the managing body of each of the aboriginal communities in which the Policyholders usually reside;
 - (b) to be held at each aboriginal community in which the Policyholders usually reside;
 - (c) to which all Policyholders in that aboriginal community will be requested to attend;
 - (d) at which a senior salaried officer of MML and a suitably qualified interpreter will attend;

- (e) of which adequate notice will be given to the Commission;
 - (f) at which a representative of the Commission will be permitted to attend; and
 - (g) for which MML will pay to the Commission any reasonable expenses incurred by a representative of the Commission in attending.
6. Restitution will be made by MML to those Policyholders who attend the meetings referred to in clause 5 and who notify the senior salaried officer of MML of their acceptance of the offer of Restitution and their agreement to the cancellation of their contracts of superannuation with MML.
7. MML will not continue to accept payment of moneys in relation to a superannuation contract from a Policyholder unless the following conditions are fulfilled:
- (a) the Policyholder, within 14 days of their attendance at the meetings referred to in clause 5 of this deed, advises the managing body of the relevant aboriginal community that they wish to continue with their retirement funding with MML;
 - (b) an individual appointment is held with the Policyholder by a senior salaried officer of MML and a suitably qualified interpreter at which the benefits and conditions of retirement funding and the contract of superannuation with MML have been fully explained and an individual needs analysis has been provided to the Policyholder; and
 - (c) 14 days have elapsed since appropriate written material concerning the contract of superannuation with MML has been provided to the Policyholder and a suitably qualified interpreter has explained that written material to the Policyholder if an explanation is requested.
8. In relation to each of the individual appointments held in accordance with clause 7, MML will:
- (a) give adequate notice to the Commission of the time, date and place of the appointment and permit a representative of the Commission to attend the appointment; and
 - (b) MML will pay to the Commission any reasonable expenses incurred by a representative of the Commission attending the individual appointment.
9. If any of the Policyholders fail to attend the meetings referred to in clause 5 of this deed or the individual appointments referred to in clause 7(b) of the deed, an offer of Restitution will be made by forwarding a letter to those Policyholders enclosing a cheque for the amount of Restitution by certified mail to the last known address of that Policyholder. Failure by the Policyholder to respond

to that letter or to return the cheque for the amount of Restitution within 14 days of the date of the letter, will constitute the Policyholder's acceptance of the offer of Restitution and agreement to the cancellation of their superannuation contract with MML.

10. MML and Davis will consent to the making of an order in the proceedings that MML pay, within 28 days of the date of the order, the costs of the Commission in connection with the proceedings as agreed at the amount of thirteen thousand seven hundred and fifty dollars (\$13,750), provided that the Commission or its solicitor confirms in writing that the total of the solicitor/client costs and disbursements incurred by the Commission in connection with the proceedings equal or exceed \$10,000 and the costs of the Commission's investigation of the matter equal or exceed \$7,500.
11. MML will pay to the Commission, within 28 days of the date of the making of this deed, the amount of three thousand four hundred and eighty dollars (\$3,480) in respect of the attendance of the representatives of the Commission and its solicitor based in Darwin at the meeting held in Canberra in connection with the proceedings on 2 February 1993.
12. The Commission will provide to MML a copy of each proposed media release by the Commission in relation to the proceedings at least one (1) working day prior to its release by the Commission for publication.
13. The obligations imposed on the Commission, MML and Davis under this deed, other than in clause 14 of this deed, are subject to the agreement of the Court to grant an injunction in the proceedings in the terms specified in clause 1 of this deed, or in other terms approved by the Commission, MML and Davis, and those obligations will be void and of no effect should the Court fail to agree to grant such an injunction.
14. If the Court is not willing to grant an injunction in the proceedings in the terms specified in clause 1 of this deed, or in other terms approved by the Commission, MML and Davis, the parties will seek, by their legal representatives, to adjourn the hearing of the proceedings for a period of not less than twenty one (21) days for the purpose of allowing time for the renegotiation of the terms of settlement of the proceedings.
15. Subject to clauses 13 and 14 of this deed and to fulfilment of the terms of this deed, the Commission will not institute or instigate any further legal proceedings against MML or Davis in relation to conduct or events in connection with contracts of superannuation with MML entered into by residents of an aboriginal rural community in the Northern Territory by arrangement through Davis, other than proceedings seeking the performance of obligations imposed under the terms of this deed.

16. MML and the Commission acknowledge that the obligations imposed under the terms of this deed are binding as between MML and the Commission notwithstanding that the deed is not executed by Davis.
17. This deed may be executed as counterpart documents.

IN WITNESS WHEREOF the parties have executed this deed on the date hereinbefore mentioned.

The Common Seal of)
MERCANTILE MUTUAL LIFE INSURANCE)
COMPANY LIMITED)
was hereunto affixed by authority of the)
company in the presence of:)

.....

The Common Seal of the)
TRADE PRACTICES COMMISSION)
was hereunto affixed by authority of the)
Commission in the presence of:)

.....

Signed, sealed and delivered by)
MERVYN ROY DAVIS)
in the presence of:)

Mervyn Roy Davis.

.....
[Signature])

IN THE FEDERAL COURT OF AUSTRALIA)
NORTHERN TERRITORY DISTRICT REGISTRY)
GENERAL DIVISION)

No DG16 of 1992

TRADE PRACTICES COMMISSION
Applicant

MERCANTILE MUTUAL LIFE
INSURANCE COMPANY LIMITED
First Respondent

MERVYN ROY DAVIS
Second Respondent

DEFENCE OF FIRST AND SECOND RESPONDENTS

1. The first and second respondents admit the facts alleged in paragraph 1 of the Statement of Claim.
2. The first respondent admits the facts alleged in paragraphs 2 and 3 of the Statement of Claim.
3. The second respondent admits the facts alleged in paragraphs 4 and 5 of the Statement of Claim.
4. The first and second respondents admit the facts alleged in paragraphs 6 and 7 of the Statement of Claim.
5. In relation to paragraphs 21, 28, 35, 42, 49, 56, 63, 70 and 77 of the Statement of Claim, the first and second respondents admit that, on some occasions, the second respondent made representations to the effect of those referred to in subparagraphs (a)-(g) of those paragraphs, to some of the persons referred to in paragraphs 8-16 of the Statement of Claim.

Filed on behalf of the respondents by:
MALLESONS STEPHEN JAQUES
Solicitors
AMP Centre
50 Bridge Street
SYDNEY NSW 2000
Tel: (02) 250 3000

by their Darwin Agents
Waters James McCormack
Barristers & Solicitors
46 Woods Street
DARWIN NT 0800
PAH32385:L155091

6. In relation to paragraphs 23, 30, 37, 44, 51, 58, 65, 72 and 79 of the Statement of Claim, the first and second respondents admit that the second respondent, on some occasions, did not inform or fully inform the persons to whom the representations referred to in paragraph 5 above were made, of the matters referred to in subparagraphs (a)-(k) of those paragraphs of the Statement of Claim.

7. In relation to paragraphs 80 and 85 of the Statement of Claim and by virtue of the admissions made in paragraphs 5 and 6 of the Defence, the first and second respondents admit that the conduct of the second respondent was, on some occasions -
 - (a) misleading or deceptive or likely to mislead or deceive contrary to section 52 of the Trade Practices Act; and
 - (b) unconscionable contrary to section 52A of the Trade Practices Act,but otherwise the first and second respondents do not admit the allegations in paragraphs 80 and 85 of the Statement of Claim.

8. The first and second respondents do not admit the remainder of the facts alleged in the Statement of Claim.

Date:

.....
Solicitor for the first and second
respondents.

CG 93/32
E/S

THIS DEED was made on 9 MARCH 1993

BETWEEN

MERCANTILE MUTUAL LIFE INSURANCE COMPANY LIMITED (ACN: 009657176) ("MML")

a corporation organised and existing under the laws of the Commonwealth of Australia, whose principal office in New South Wales is at 55 Clarence Street, Sydney

AND

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a body corporate established by section 6A of the *Trade Practices Act 1974* (Cth), of Benjamin Offices, Chan Street, Belconnen in the Australian Capital Territory

AND

MERVYN ROY DAVIS ("Davis")

of 127 Giles Street, Katherine in the Northern Territory of Australia

WHEREAS:

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- B. The Commission, MML and Davis have agreed to settle the proceedings in accordance with and subject to the terms set out in this deed.

THIS DEED NOW WITNESSES

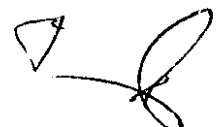
- 1. MML and Davis will consent to the making of an order in the proceedings granting an injunction in the following terms:

"That, for a period of three years from the date of this order, the first and second respondents, by themselves, their servants or their agents, be and are hereby restrained from engaging in conduct which is unconscionable, misleading or deceptive, or which is likely to mislead or deceive, in contravention of Parts IVA or V of the *Trade Practices Act 1974*, in the manner alleged in the statement of claim annexed hereto, or in a similar manner, in respect of the supply or sale by the first or second respondents of individual retail contracts of insurance or superannuation to aboriginal persons normally resident in rural areas in Australia."

2. MML and Davis will, prior to the making of the abovementioned order, file and serve in the proceedings a joint defence in the terms of the defence attached to this deed.
3. MML will, in relation to its trade practices compliance program ("the program"),:
 - (a) enhance the program by ensuring that all of its staff and agents are educated on the requirements of the *Trade Practices Act 1974* ("the Act") in respect of misleading, deceptive and unconscionable conduct in relation to disadvantaged groups in the community;
 - (b) nominate a senior manager as the person who will be responsible for the program and for compliance with the Act and who will be a source for advice for MML staff and agents on compliance with the Act;
 - (c) include in the program face to face or video lectures for all of its staff;
 - (d) consider developing a system for the assessment of the effectiveness of the program; and
 - (e) provide a brief report to the Commission within twelve (12) months of the date on which this deed is made outlining the steps that have been taken by MML in relation to the program and providing copy of relevant materials produced in connection with the program.
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 - (d) at which a senior salaried officer of MML and a suitably qualified interpreter will attend;



- (e) of which adequate notice will be given to the Commission;
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 - (c) 14 days have elapsed since appropriate written material concerning the contract of superannuation with MML has been provided to the Policyholder and a suitably qualified interpreter has explained that written material to the Policyholder if an explanation is requested.
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to that letter or to return the cheque for the amount of Restitution within 14 days of the date of the letter, will constitute the Policyholder's acceptance of the offer of Restitution and agreement to the cancellation of their superannuation contract with MML.

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A handwritten signature or mark, possibly a stylized 'D' or a similar character, located at the bottom right of the page.

16. MML and the Commission acknowledge that the obligations imposed under the terms of this deed are binding as between MML and the Commission notwithstanding that the deed is not executed by Davis.
17. This deed may be executed as counterpart documents.

A handwritten signature or set of initials, possibly 'T' followed by a stylized flourish, located in the lower right quadrant of the page.

IN WITNESS WHEREOF the parties have executed this deed on the date hereinbefore mentioned.

The Common Seal of
MERCANTILE MUTUAL LIFE INSURANCE
COMPANY LIMITED

was hereunto affixed by authority of the company in the presence of:



[Handwritten signature]

The Common Seal of the
TRADE PRACTICES COMMISSION
was hereunto affixed by authority of the Commission in the presence of:

Signed, sealed and delivered by
MERVYN ROY DAVIS
in the presence of:

.....)

IN THE FEDERAL COURT OF AUSTRALIA)
NORTHERN TERRITORY DISTRICT REGISTRY)
GENERAL DIVISION)

No DG16 of 1992

TRADE PRACTICES COMMISSION
Applicant

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7. In relation to paragraphs 80 and 85 of the Statement of Claim and by virtue of the admissions made in paragraphs 5 and 6 of the Defence, the first and second respondents admit that the conduct of the second respondent was, on some occasions -
- (a) misleading or deceptive or likely to mislead or deceive contrary to section 52 of the Trade Practices Act; and
 - (b) unconscionable contrary to section 52A of the Trade Practices Act,
- but otherwise the first and second respondents do not admit the allegations in paragraphs 80 and 85 of the Statement of Claim.
8. The first and second respondents do not admit the remainder of the facts alleged in the Statement of Claim.

Date:

.....
Solicitor for the first and second
respondents.