

Enforceable Undertaking
Insurance Act 1973
Section 126

The commitments in this undertaking are offered by Mr Geoffrey Arthur Cohen (Mr Cohen) and are accepted by the Australian Prudential Regulation Authority (APRA).


1. BACKGROUND

APRA's role

- 1.1 APRA is, pursuant to section 8 of the *Insurance Act 1973* (Insurance Act), charged with the general administration of the Insurance Act. The legislative purpose of the Insurance Act, pursuant to section 2A of the Insurance Act, is to protect the interests of policyholders and prospective policyholders under insurance policies (issued by general insurers and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry.
- 1.2 APRA is empowered by section 25A of the Insurance Act to disqualify a person if it is satisfied that the person is not a fit and proper person to be or to act as someone referred to in paragraph 24(1)(a), (b) or (c) of the Insurance Act (a senior insurance role).

Mr Cohen's involvement with HIH

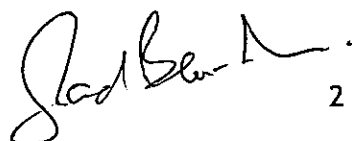
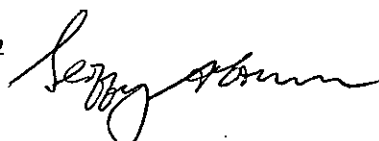
- 1.3 Mr Cohen was a non-executive director and chairman of the Board of HIH Insurance Ltd (HIH) and its predecessors from January 1992 until 15 March 2001, chairman of the Human Resources Committee from 1995 to 2001, chairman of the Audit Committee from August 1999 to February 2001, a member of the Audit Committee through the rest of his time at HIH and a member of the Investment Committee throughout most of his time on the HIH Board of Directors (HIH Board).



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Collapse of HIH

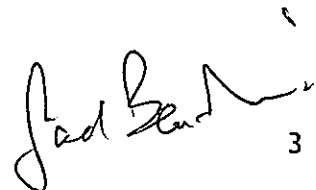
- 1.4 In March 2001, HIH, one of Australia's largest general insurance companies was placed into provisional liquidation. In August 2001 HIH, and 17 related companies, were placed in official liquidation. The collapse of HIH had a widespread impact on policyholders, creditors, employees and shareholders.
- 1.5 In June 2001, The Commonwealth Government announced the establishment of a Royal Commission to investigate and report on the causes of and the circumstances of the collapse of HIH and to consider whether decisions and actions taken in relation to HIH might have constituted a breach of any law of the Commonwealth, a State or a Territory and where appropriate to refer the breach to the relevant, Commonwealth, State or Territory agency (HIH Royal Commission)
- 1.6 In April 2003, the HIH Royal Commission delivered its report: "The Failure of HIH Insurance" (The Report). The Commissioner recommended that a number of matters be referred to the Australian Securities and Investments Commission (ASIC) and APRA for further investigation. The HIH Royal Commission did not think it was necessary to refer any matters to ASIC and APRA in respect of the conduct of the non-executive directors of HIH (other than Mr Rodney Adler) in relation to the collapse of HIH. Notwithstanding, the HIH Royal Commission was critical of the HIH Board (including the non-executive directors) finding that there was undesirable corporate governance in respect of, but not limited to, the:
 - 1.6.1 decision to reacquire CareAmerica based on a superficial, inadequate review of the reserves and unsupported belief that the Californian workers compensation market would become profitable;
 - 1.6.2 consideration given to the proposed FAI takeover on 22 September 1998 in that it was inadequate having regard to the size of the transaction, its importance and the risks it posed to HIH;



- 1.6.3 failure to adequately investigate the structure of the proposed Allianz transaction and HIH's financial ability to undertake such a transaction and the financial consequences;
- 1.6.4 consideration of HIH's outstanding claims provisions; and
- 1.6.5 inclusion of a misleading and inaccurate note in HIH's financial report in relation to the reinsurance treaty entered into between FAI and National Indemnity (Berkshire Hathaway).

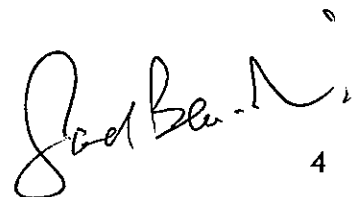
APRA's investigation

- 1.7 APRA commenced investigations into matters raised in The Report in April 2003.
- 1.8 On 26 September 2005, at the conclusion of those investigations and relying in part on evidence adduced during the conduct of the HIH Royal Commission, Mr Peter Kennedy, a delegate of APRA, concluded that Mr Cohen, when acting as the Chairman and non-executive director of HIH and Chair of the audit committee, had not competently and diligently carried out his duties and responsibilities in relation to the following:
 - 1.8.1 the conduct of meetings and other procedural matters within his responsibility, specifically he did not observe best practice for operation of the board and the audit committee (including that he concurrently held the role of Chairman of both and did not ensure agendas included all relevant matters and sufficiently detailed material) and did not properly consider and review the remuneration of directors and senior management;
 - 1.8.2 he had not properly identified and managed potential conflicts between his personal interests (primarily his consultancy with Arthur Andersen and his interest as a name in Lloyd's syndicates) and his responsibilities as Chairman of the Board and director of HIH;



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- 1.8.3 he had not taken all reasonable steps in relation to the concerns raised in Ernst & Young's report of December 2000 about HIH's solvency;
 - 1.8.4 the Allianz transaction and the financial viability and consequences of proceeding with the joint venture arrangement;
 - 1.8.5 responding appropriately to issues of the legality of the Pacific Eagles Equities transaction;
 - 1.8.6 he had not ensured that Mr Adler and Mr Williams (who had an interest in the outcome of the decision) were not present when the decision of the investment committee to invest in Business Thinking Systems was ratified by the HIH board.
- 1.9 By reason of the conclusions referred to in paragraph 1.8, APRA's delegate was satisfied that Mr Cohen should be disqualified under section 25A of the Insurance Act from holding a senior insurance role.
 - 1.10 On 26 September 2005 Mr Cohen was disqualified under section 25A of the Insurance Act.
 - 1.11 On 21 November 2005, pursuant to section 63 of the Insurance Act, Mr Cohen requested APRA review the decision to disqualify him.
 - 1.12 On 9 December 2005, Ms Susan Tongue, a delegate of APRA, confirmed the decision to disqualify Mr Cohen.
 - 1.13 On 6 January 2006, Mr Cohen commenced proceedings in the Administrative Appeals Tribunal (AAT Proceedings) by which he challenged the delegate's decision, asked for a review of the decision to disqualify him and sought orders that the decision to disqualify him be set aside.



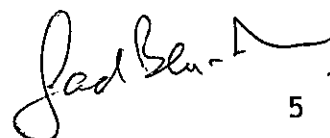
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Basis of Compromise of the AAT Proceedings

- 1.14 In settlement of the AAT Proceedings, Mr Cohen has offered to give, pursuant to section 126 of the Insurance Act, the undertakings contained in paragraph 2 below (Undertakings).
- 1.15 In settlement of the AAT proceedings, APRA has agreed that on Mr Cohen giving the Undertakings and relying upon the acknowledgements at paragraph 3 below, APRA will consent to the AAT setting aside the disqualification of Mr Cohen under section 25A of the Insurance Act.
- 1.16 Mr Cohen acknowledges the concerns of APRA referred to in paragraph 1.8 which led to the making of the decision to disqualify.
- 1.17 Mr Cohen accepts that with the benefit of hindsight and what has since transpired, he should have acted differently in relation to a number of the matters the subject of APRA's concerns as referred to in paragraph 1.8 and regrets the consequences that arose therefrom.
- 1.18 APRA accepts this Undertaking and acknowledges that it disposes of all issues between Mr Cohen and APRA arising out of, or in any way connected with, the matters the subject of the decision of Mr Kennedy dated 26 September 2005 and will not take any action against, or with respect to, Mr Cohen except in the event of breach by Mr Cohen of this Undertaking.
- 1.19 Mr Cohen acknowledges that APRA accepts this Undertaking without derogating from the rights and remedies available to it in relation to any other person or entity relating to or arising from any conduct described in this Undertaking.

2. UNDERTAKINGS

Under section 126 of the Insurance Act, Mr Cohen has offered the following undertakings:



Not to hold a senior insurance role

- 2.1 Mr Cohen undertakes that he will not be or act in, or otherwise undertake the duties and responsibilities of, a senior insurance role prior to 26 September 2015.

Provision of Information

- 2.2 Mr Cohen undertakes to provide APRA with any documents or information relevant to ascertaining his compliance with the Undertaking in paragraph 2.1 within 7 days of APRA requesting such documents or information (or, in the event Mr Cohen is interstate or overseas at the time of APRA's request, within 7 days of his return).

3. ACKNOWLEDGMENTS

- 3.1 Mr Cohen acknowledges that:
- 3.1.1 since the date of his disqualification on 26 September 2005 he has not acted in, nor applied for, a senior insurance role;
 - 3.1.2 the Undertakings are given by Mr Cohen and are accepted by APRA pursuant to section 126 of the *Insurance Act*;
 - 3.1.3 he has voluntarily offered these Undertakings;
 - 3.1.4 he has obtained or has had the opportunity to obtain legal advice before executing this Undertaking;
 - 3.1.5 APRA may issue a media release on execution of this Undertaking referring to the fact of the Undertaking and the terms of this document;
 - 3.1.6 APRA may, from time to time, publicly refer to this Undertaking;
 - 3.1.7 APRA may enforce this Undertaking regardless of whatever publicity such enforcement action may cause;

3.1.8 APRA may monitor compliance with this Undertaking by, inter alia, periodic reviews of relevant public filings and databases at its disposal;

3.1.9 APRA may make this undertaking available for public inspection; and

3.1.10 in the event of him failing to comply with the terms of the Undertaking, APRA may take further action against him as it sees fit.

3.2 Mr Cohen further acknowledges that this Undertaking has no operative force until accepted by APRA.

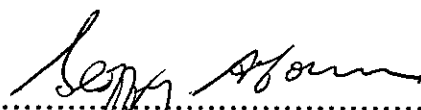
Signed this 5th day of May 2009

By Geoffrey Arthur Cohen

In the presence of:


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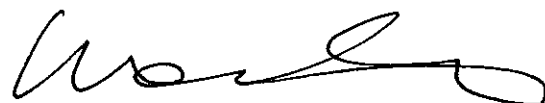
Witness


.....
Geoffrey Arthur Cohen

GAD BEN-MEIR
.....
Name (please print)

Suite 414, 370 St. Kilda Road,
Address Melbourne, Victoria 3004

ACCEPTED BY THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY PURSUANT TO THE INSURANCE ACT SECTION 126 BY ITS DULY AUTHORISED DELEGATE:


.....
WARREN SCOTT
.....
Name (please print)

Delegate of the Australian Prudential Regulation Authority

Dated this 19 day of May 2009