

FOURTH FURTHER AMENDED SUMMONS

(filed pursuant to leave granted by The Honourable Justice Einstein on 6 May 2009)

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney Registry
Case number	50092 of 2005

TITLE OF PROCEEDINGS

Plaintiff	Jeffrey Alan Kernahan
First defendant	ACN 003 135 475 Pty Ltd (formerly known as LifeTrack Management Ltd (ACN 003 135 475)) (in its own capacity and as trustee of the LifeTrack Superannuation Fund, the AM Pooled Superannuation Trust, the AM Pooled Superannuation Trust No 1, the AM Pooled Superannuation Trust No 5)
Number of defendants	4

FILING DETAILS

Filed for	Plaintiff
Legal representative	C/- Maurice Blackburn ABN: 21 105 657 949 Level 10, 456 Lonsdale Street, Melbourne VIC 3000 PO Box 13167, Law Courts, Melbourne VIC 8010 Telephone: (03) 9605 2700 Facsimile: (03) 9258 9610 Level 20, 201 Elizabeth Street, Sydney NSW 2000 PO Box A266, Sydney NSW 1235 DX 13002, Sydney Market Street Telephone: (02) 9261 1488 Facsimile: (02) 9261 3318

HEARING DETAILS

This summons is listed on 16 October 2009.

TYPE OF CLAIM

Mercantile Law – Consumer Protection & Trade Practices

RELIEF CLAIMED

THE PLAINTIFF CLAIMS

AGAINST THE FIRST DEFENDANT

1. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the first defendant engaged in conduct in contravention of section 52 of the *Trade Practices Act 1974* (Cth).
2. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the first defendant engaged in conduct in contravention of section 12DA of the *Australian Securities & Investments Commission Act 2001* (Cth).
- 2A. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the first defendant engaged in conduct in contravention of section 42 of the Fair Trading Act 1987 (NSW).
- 2B. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the first defendant engaged in conduct in contravention of section 55A of the Trade Practices Act 1974 (Cth).
- 2C. A declaration that by reason of the matters pleaded in paragraph 60C of the further amended commercial list statement, the first defendant engaged in conduct in contravention of section 50 of the Fair Trading Act 1987 (NSW).
3. A declaration that by reason of the matters pleaded in paragraph 61 of the further amended commercial list statement, the first defendant has contravened section 162 of the *Superannuation Industry (Supervision) Act 1993* (Cth).
4. Compensation pursuant to:
 - (a) section 82 of the *Trade Practices Act 1974* (Cth); and/or
 - (b) section 12GF of the *Australian Securities & Investments Commission Act 2001* (Cth); and/or
 - (ba) section 68 of the Fair Trading Act 1987 (NSW); and/or
 - (c) section 162 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

AGAINST THE SECOND DEFENDANT

5. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the second defendant engaged in conduct in contravention of section 52 of the *Trade Practices Act 1974* (Cth).

6. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the second defendant engaged in conduct in contravention of section 12DA of the *Australian Securities & Investments Commission Act 2001* (Cth).
- 6A. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the second defendant engaged in conduct in contravention of section 42 of the *Fair Trading Act 1987* (NSW).
- 6B. A declaration that by reason of the matters pleaded in paragraph 60 of the further amended commercial list statement, the second defendant engaged in conduct in contravention of section 55A of the *Trade Practices Act 1974* (Cth).
- 6C. A declaration that by reason of the matters pleaded in paragraph 60C of the further amended commercial list statement, the second defendant engaged in conduct in contravention of section 50 of the *Fair Trading Act 1987* (NSW).
7. Compensation pursuant to:
- (a) section 82 of the *Trade Practices Act 1974* (Cth); and/or
 - (b) section 12GF of the *Australian Securities & Investments Commission Act 2001* (Cth); and/or
 - (c) section 68 of the *Fair Trading Act 1987* (NSW).

AGAINST THE THIRD DEFENDANT

- 7A. A declaration that by reason of the matters pleaded in paragraph 60A of the further amended commercial list statement, the third defendant engaged in conduct in contravention of section 12DA of the *Australian Securities & Investments Commission Act 2001* (Cth).
- 7B. A declaration that by reason of the matters pleaded in paragraph 60A of the further amended commercial list statement, the third defendant engaged in conduct in contravention of section 42 of the *Fair Trading Act 1987* (NSW).
- 7C. A declaration that by reason of the matters pleaded in paragraph 60C of the further amended commercial list statement, the third defendant engaged in conduct in contravention of section 50 of the *Fair Trading Act 1987* (NSW).
8. A declaration that the third defendant was a person involved in the first defendant's and/or the second defendant's contraventions of sections 52 and/or 55A of the *Trade Practices Act 1974* (Cth) and/or section 12DA of the *Australian Securities & Investments Commission Act 2001* (Cth) and/or sections 42 and/or 50 of the *Fair Trading Act 1987* (NSW) as alleged in paragraph 63 of the further amended commercial list statement.
9. Compensation pursuant to:
- (a) section 82 of the *Trade Practices Act 1974* (Cth); and/or

(b) section 12GF of the *Australian Securities & Investments Commission Act 2001* (Cth); and/or

(c) section 68 of the *Fair Trading Act 1987* (NSW).

AGAINST THE FOURTH DEFENDANT

9A. A declaration that by reason of the matters pleaded in paragraph 60B of the further amended commercial list statement, the fourth defendant engaged in conduct in contravention of section 12DA of the *Australian Securities & Investments Commission Act 2001* (Cth).

9B. A declaration that by reason of the matters pleaded in paragraph 60B of the further amended commercial list statement, the fourth defendant engaged in conduct in contravention of section 42 of the *Fair Trading Act 1987* (NSW).

9C. A declaration that by reason of the matters pleaded in paragraph 60C of the further amended commercial list statement, the fourth defendant engaged in conduct in contravention of section 50 of the *Fair Trading Act 1987* (NSW).

10. A declaration that the fourth defendant was a person involved in the first defendant's and/or the second defendant's contraventions of sections 52 and/or 55A of the *Trade Practices Act 1974* (Cth) and/or section 12DA of the *Australian Securities & Investments Commission Act 2001* (Cth) and/or sections 42 and/or 50 of the *Fair Trading Act 1987* (NSW) as alleged in paragraph 62 of the further amended commercial list statement.

11. Compensation pursuant to:

(a) section 82 of the *Trade Practices Act 1974* (Cth); and/or

(b) section 12GF of the *Australian Securities & Investments Commission Act 2001* (Cth); and/or

(c) section 68 of the *Fair Trading Act 1987* (NSW).

AGAINST ALL DEFENDANTS

12. Interest on any compensation awarded.

13. Costs.

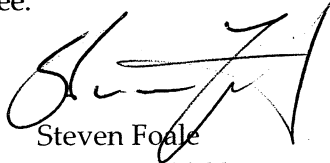
14. Such further or other orders as the Court thinks fit.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this proceeding has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during this proceeding. These fees may include a hearing allocation fee.

Signature



Name

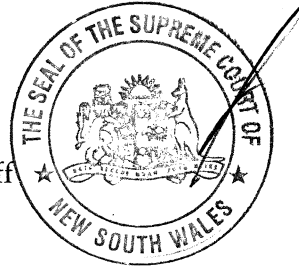
Steven Foale
Maurice Blackburn

Capacity

Solicitor for the plaintiff

Date of signature

7 May 2009



- 8 MAY 2009

NOTICE TO DEFENDANTS

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

You must enter an appearance before you can appear before the court.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- The court registry.
- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address Law Courts Building
 Queens Square
 184 Phillip Street
 SYDNEY NSW 2000

Postal address GPO Box 3
 SYDNEY NSW 2001

Telephone (02) 9230 8111

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff

Jeffrey Alan Kernahan (Plaintiff)

Defendants

ACN 003 135 475 Pty Ltd (First defendant)

PM Corporation Pty Ltd (Second defendant)

Alan Sydney Rich (Third defendant)

David Richard Smith (Fourth defendant)

FURTHER DETAILS ABOUT PLAINTIFF

Name Jeffrey Alan Kernahan

Address 92 Montmeith Avenue
Turramurra NSW 2074

Legal representative for plaintiff

Name Steven Foale

Firm Maurice Blackburn

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Level 10, 456 Lonsdale Street
Melbourne VIC 3000
DX 466, Melbourne

Level 20, 201 Elizabeth Street, Sydney NSW 2000
PO Box A266, Sydney NSW 1235
DX 13002, Sydney Market Street

Telephone (03) 9605 2700

Fax (03) 9258 9610

Email sfoale@mauriceblackburn.com.au

DETAILS ABOUT DEFENDANTS

First defendant

Name ACN 003 135 475 Pty Ltd (ACN 003 135 475)

Address C/- Brophy Management Services
Suite 502, Level 5, Pilgrim House
262 Pitt Street
Sydney NSW 2000

Second defendant

Name PM-Corporation Pty Ltd (ACN 001 372 676)
Address C/- Brophy Management Services
Suite 502, Level 5, Pilgrim House
262 Pitt Street
Sydney NSW 2000

Third defendant

Name Alan Sydney Rich
Address 188 Beecroft Road
Cheltenham NSW 2119

Fourth defendant

Name David Richard Smith
Address 11 Coronation Avenue
Mosman NSW 2088