

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST

S CI 2011

IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067) AND
TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
AND ORS ACCORDING TO THE SCHEDULE OF PARTIES

Plaintiffs

AFFIDAVIT OF MARK ANTHONY KORDA

Date of document: 17 February 2011
Filed on behalf of: the Plaintiffs

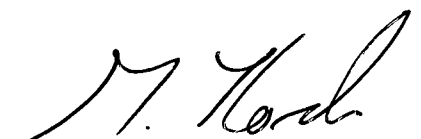
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(Bridget Slocum - bslocum@abl.com.au)

I, **MARK ANTHONY KORDA** of Level 24, 333 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, **MAKE OATH AND SAY** that:

- 1 I am a chartered account and a partner of the firm KordaMetha Pty Ltd (**KordaMentha**). I am a Registered Liquidator and an Official Liquidator of the Court.
- 2 I am, with Leanne Kylie Chessser (**Ms Chessser**) of KordaMentha, the liquidator of the First Plaintiff, Timbercorp Ltd (in liquidation) (ACN 055 15 067) (**Timbercorp**) and the Second Plaintiff, Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469) (**TSL**).
- 3 I am authorised to make this affidavit on behalf of Timbercorp, TSL and Ms Chessser. References in this affidavit to "we", "us", "our" or "ourselves" are references to Ms Chessser and me. Except where I otherwise indicate, I make this affidavit from my knowledge. Where I depose to matters from information or belief, I believe those matters to be true.



Timbercorp group

- 4 On 23 April 2009, Ms Chesser and I were appointed as voluntary administrators of Timbercorp and TSL. Also on 23 April 2009, the respective directors of Timbercorp's 39 wholly-owned subsidiaries (together the **Timbercorp Group of Companies**) appointed me and one or more of four other KordaMentha partners, namely Ms Chesser, Mark Francis Xavier Mentha, Craig Peter Shepard and Clifford Stuart Roche, as administrators of those companies. All of the appointments were made pursuant to s 436A of the *Corporations Act 2001* (Cth) (**Act**).
- 5 On 29 June 2009, at a meeting of the creditors of the Timbercorp Group of Companies and a separate meeting of the creditors of TSL, the creditors resolved to wind up the Timbercorp Group of Companies, including Timbercorp and TSL, and appointed me and Ms Chesser as the liquidators of those two entities.

Timbercorp Schemes

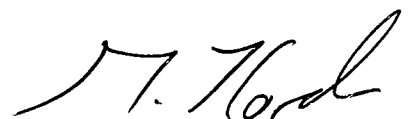
- 6 TSL is the responsible entity of various registered managed investment schemes under Part 5C of the Act. One of those schemes is the 1999 Timbercorp Eucalypts Project (ARSN 085 827 872) (**Scheme**). It is governed by a complex suite of documents including a constitution and sub-leases. The members of the Scheme are referred to in those documents as "**Growers**". They sublease from Timbercorp allotments of land known as "Woodlots". Now produced and shown to me and marked "**MAK-1**" is a copy of the Scheme Constitution (including amending deeds).

Macquarie Dispute and Court Proceedings

- 7 On 6 August 2010, Timbercorp and TSL commenced Supreme Court Proceeding SCI 2009 4280 *Timbercorp Limited & Ors v Macquarie Bank Limited & Ors* (**Proceeding**). Now produced and shown to me and marked "**MAK-2**", "**MAK-3**", "**MAK-4**", "**MAK-5**" and "**MAK-6**" respectively are copies of the Originating Motion, Affidavit in Support (excluding exhibits), Points of Claim, Points of Defence and Points of Defence to Cross-Claim filed in the Proceeding.
- 8 I am informed by Antony Munro (**Mr Munro**), a Director of KordaMentha, of the matters to which I depose below in paragraphs 9 to 20.

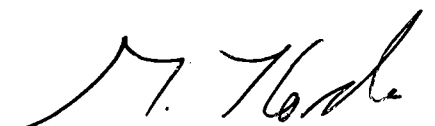



- 9 The primary issue in the Proceeding is the person entitled to insurance proceeds totalling \$467,434.09 (**Proceeds**) payable by Allianz Australia Insurance Limited (**Allianz**) pursuant to a contract of plantation insurance taken out by Timbercorp on behalf of Growers (**Plantation Policy**). All of the Growers on the Branton Treefarm were insured under the Plantation Policy. Now produced and shown to me and marked "**MAK-7**" is a bundle of documents relevant to the Plantation Policy.
- 10 The Plantation Policy was triggered by the loss of trees in a fire at Branton Treefarm, on which part of the Scheme was conducted (**Fire**). 112 Woodlots out of the total of 192 Woodlots on the Branton Treefarm were affected by the Fire
- 11 On or about 29 September 2008, Timbercorp entered into a Premium Funding Agreement (**Premium Funding Agreement**) with Macquarie Bank Limited (**Macquarie**) in relation to funding the premium due under the Plantation Policy. Pursuant to clause 8.1 of the Premium Funding Agreement, Timbercorp granted Macquarie a mortgage over its interest in the Plantation Policy. Now produced and shown to me and marked "**MAK-8**" is a copy of the Premium Funding Agreement.
- 12 The Proceeding concerned competing claims between TSL and Macquarie to the Proceeds. TSL claims that the Proceeds belong to the Growers who had Woodlots on the Branton Treefarm that were affected by the Fire and who were invoiced by TSL for their proportionate share of the Plantation Policy premium (there are 7 Growers in that category). On the other hand Macquarie claims that the Proceeds are subject to its mortgage under the Premium Funding Agreement. Allianz did not actively participate in the Proceeding, but agreed to be bound by the outcome of the Court's decision or a settlement. BOSI dropped out of the proceeding.
- 13 On 8 February 2011, Macquarie, Timbercorp and TSL attended a Court-ordered mediation. Mr Munro represented us, Timbercorp and TSL at that mediation. During the mediation Timbercorp and TSL agreed to settle the Proceeding on the basis of the Terms of Settlement (**Terms of Settlement**). I consider that the Terms of Settlement should remain confidential, as I am concerned about the effect their disclosure may have if the Proceeding continues. Now produced and shown to me and marked "**Confidential Exhibit MAK-9**" is a signed copy of the handwritten Terms of Settlement, together with a typed version of those terms.
- 14 Mr Munro instructed the Plaintiffs' solicitors, Arnold Bloch Leibler (**ABL**), to execute the Terms of Settlement on the basis of Counsel's opinion. The opinion is privileged



and confidential. Now produced and shown to me and marked "**Confidential Exhibit MAK-10**" is a copy of Counsel's opinion dated 11 February 2011, which is consistent with his oral advice to Mr Munro during the mediation.

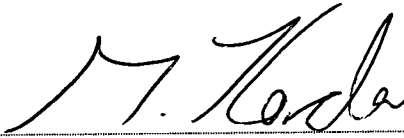
- 15 On the basis of Counsel's advice, of which I am informed by Mr Munro, I consider the settlement as described in the Terms of Settlement is an appropriate compromise of the Proceeding.
- 16 Upon receipt of the amount payable under the Terms of Settlement, we intend to distribute those funds, after deducting realisation and legal costs, to the relevant 7 Growers in proportion to their share of burnt Woodlots on the Branton Treefarm.
- 17 When the Timbercorp Forestry assets were sold in September 2009, the sale proceeds from that transaction were distributed on a scheme-by-scheme basis whereby the proceeds from the sale of trees in the Scheme were distributed on a pooled basis among all of the Growers in the Scheme, including the Branton Growers. We did this pursuant to an order of the Honourable Justice Davies dated 17 December 2009 made in Supreme Court Proceeding SCI 2009 10514. Historically, Timbercorp has disbursed insurance proceeds received in respect of fire events only to those Growers directly affected by the relevant fire. We propose to adopt this practice and distribute the Proceeds to the 7 affected Branton Growers, rather than all Scheme Growers .
- 18 On 15 February 2011, ABL received a copy of a letter from David and Robin Dugdale-Bradley (who are Branton Growers) addressed to Primacy Underwriting Agency (agents for Allianz). Now produced and shown to me and marked "**MAK-11**" is a copy of this correspondence.
- 19 On around 8 February 2011 and again on 16 February 2011, Mr Munro spoke with Mr David Haintz (who is a financial advisor for one of the 7 affected Growers) regarding the Terms of Settlement. Over the course of those two conversations, Mr Haintz said words to the effect that while reserving his position until he had time to consider our letter of 16 February 2011 (Confidential Exhibit MAK-12) he recognised we were best placed to assess the reasonableness of the Terms of Settlement.
- 20 On 16 February 2011 we sent a letter to each of the relevant 7 Growers to inform them of the settlement of the Proceeding. I consider that this letter should remain confidential as it discloses material terms of the Terms of Settlement. Now produced



and shown to me and marked "**Confidential Exhibit MAK-12**" is a copy of this correspondence.

SWORN at Melbourne
in the State of Victoria
by **MARK ANTHONY KORDA** this
17th day of February 2011

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Before me:



MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

SCHEDULE OF PARTIES

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)

First Plaintiff

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
1999 TIMBERCORP EUCALYPTS SCHEME (ARSN 085 827 872)**

Second Plaintiff

**MARK ANTHONY KORDA AND LEANNE KYLIE CHESSER IN THEIR CAPACITY
AS JOINT AND SEVERAL LIQUIDATORS OF THE FIRST AND SECOND PLAINTIFFS**

Third Plaintiffs