

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

S CI 2011

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

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
(ACN 092 311 469) IN ITS CAPACITY AS RESPONSIBLE
ENTITY OF THE MANAGED INVESTMENT
SCHEME LISTED IN SCHEDULE 1 AND ORS
ACCORDING TO THE SCHEDULE**

First Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

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

Prepared by:

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

This is the exhibit marked "MAK-5" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 17 February 2011.

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

Before me: _____

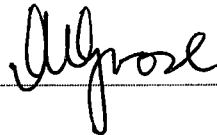


Exhibit "MAK-5"
Points of Defence dated 28 September 2010 filed in
Supreme Court Proceeding SCI 2009 4280

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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333 Collins Street
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(Bridget Slocum)

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

No. S CI 2010 4280

BETWEEN

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
AND OTHERS ACCORDING TO THE ATTACHED SCHEDULE

Plaintiff

and

MACQUARIE BANK LIMITED (ACN 008 583 542)
AND OTHERS ACCORDING TO THE ATTACHED SCHEDULE

Defendants

AND BETWEEN

MACQUARIE BANK LIMITED (ACN 008 583 542)

Cross Claimant

and

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
AND OTHERS ACCORDING TO THE ATTACHED SCHEDULE

Cross Defendants

**POINTS OF DEFENCE AND POINTS OF CROSS CLAIM PURSUANT TO
ORDERS DATED 24 AUGUST 2010**

Date of Document: 28 September 2010

Filed on behalf of the First Plaintiff

TurksLegalLevel 10 (North Tower), 459 Collins Street
Melbourne VIC 3000

Solicitor Code: 025418

DX: 30861, Melbourne Stock
Exchange

Tel: (03) 8600 5000

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Ref: Mr Turk:91192

To the Plaintiffs' Points of Claim dated 7 September 2010, the First Defendant says
as follows:

POINTS OF DEFENCE

1. The first defendant admits paragraph 1 of the Points of Claim ("POC").
2. The first defendant admits paragraph 2 of the POC.
3. In relation to paragraph 3 of the POC, the first defendant:

- (a) says that prior to 23 March 2004 the first plaintiff was the responsible entity of the Scheme;
 - (b) admits that at all material times from about 23 March 2004 the second plaintiff was the responsible entity of the Scheme.
- 4. The first defendant admits paragraph 4 of the POC.
- 5. In relation to paragraph 5 of the POC, the first defendant:
 - (a) admits that the Scheme is governed by its Constitution;
 - (b) does not admit that the Scheme is governed by the Grower sub-lease;
 - (c) relies upon all of the terms of the Constitution and the Grower sub-lease for their full effect;
 - (d) otherwise does not admit the contents of the paragraph.
- 6. The first defendant does not admit paragraph 6 of the POC.
- 7. In answer to paragraph 7 of the POC, the first defendant, says that the charge was granted on or about 15 December 2006, but otherwise admits the paragraph.
- 8. In answer to paragraph 8 of the POC, the first defendant:
 - (a) admits that on or about 29 September 2008 TL (as Borrower) entered into a premium funding agreement with the first defendant, under which, relevantly, the first defendant agreed to advance funds to TL for the purposes of TL paying the premium payable under a plantation insurance policy ("Premium Funding Agreement");

(b) says that it was a term of the Premium Funding Agreement that, where referred to in the Premium Funding Agreement, the following expressions had the following meanings:

- (i) "Refund Proceeds" was defined to mean "all money at any time paid or payable to the Borrower under or in connection with any Funded Policy by way of premium refund (whether on cancellation or otherwise) or as an indemnity for loss;
- (ii) "Secured Money" was defined to mean "all money that the Borrower is or may become liable at any time (actually or contingently) to pay the [first defendant] on any account under or in connection with the Premium Funding Agreement or otherwise";

Particulars

Clause 1.1 Premium Funding Agreement

(c) says that it was a term of the Premium Funding Agreement that TL assigns to the first defendant, by way of mortgage, all of its right, title and interest in and to each Funded Policy, all Refund Proceeds and all rights, remedies to cancel or enforce any Funded Policy and obtain Refund Proceeds ("Security");

Particulars

Clause 8.1 Premium Funding Agreement

(d) says that it was a term of the Premium Funding Agreement that the Security continues until all Secured Money had been paid in full;

Particulars

Clause 8.2 Premium Funding Agreement

- (e) says that it was a term of the Premium Funding Agreement that TL must not (or attempt to) assign, transfer, mortgage or otherwise deal with, and right or power relating to any Refund Proceeds;

Particulars

Clause 8.3(a) Premium Funding Agreement

- (f) otherwise relies upon all of the terms and conditions of the Premium Funding Agreement for their full effect;
- (g) on or about October 2008, the first defendant advanced to TL the sum of \$3,297,460.60 pursuant to the terms of the Premium Funding Agreement for the purposes of TL paying the premium and associated fees and charges in respect of the Allianz contract;
- (h) the sum advanced by the cross claimant was used by TL to pay the premium and associated fees and charges in respect of the Allianz contract;
- (i) says that the Allianz contract (referred to in paragraph 9 below) is a "Funded Policy" as defined in the Premium Funding Agreement;
- (j) says that the amount advanced by the first defendant to TL under the Premium Funding Agreement has not been repaid to the first defendant, and is "Secured Money" for the purposes of the Premium Funding Agreement;
- (k) Otherwise does not admit paragraph 8 of the POC.

9. In answer to paragraph 9 of the POC, the first defendant:

- (a) denies sub-paragraph (a);
- (b) admits sub-paragraphs (b) and (c);

(c) further says that on or about 14 October 2008 TL entered into a contract of insurance with Allianz ("Allianz contract"), on terms that included:

- (i) coverage attached from 1 October 2008;
- (ii) the total declared value was \$600,942,905;
- (iii) a deposit premium payable in an amount of \$3,220,034.37;
- (iv) the Allianz contract was subject to premium adjustment, to be determined after 15 December 2008;
- (v) the property the subject of insurance was referred to in the plantations information summary ("plantations information summary"), which, inter alia, recorded:

Note: The above details represent a summary of the plantations insured in the above shires in this state. The summary is based on the detailed plantation listing provided by AgrRisk Services.

A detailed listing of insured blocks and plantations will be incorporated in a subsequent Schedule of insurance post 15 December 2008 once details of uninsured lots has been provided.

Particulars

The Allianz contract comprised: (a) Plantation Timber Insurance policy wording; and (b) Plantation Insurance Schedule of Insurance dated 14 October 2008.

- (d) says that the only insured party to the Allianz contract was TL;
- (e) further says that on or about 15 January 2009 the Allianz contract was amended in the following ways:

- (i) the total declared value was reduced from \$600,942,905 to \$571,147,777;
- (ii) the premium was reduced from \$3,220,034.37 to \$3,100,476.57;
- (iii) the plantations information summary was amended, including a change in the note, which then recorded:

Note: The above details represent a summary of the plantations insured in the above shires as at the effective date.

A separate listing of plantations within each shire including number of insured lots and insured hectares is attached and forms part of the Policy.

A separate listing of uninsured lots in each plantation is attached and forms part of the Policy.

- (iv) a further 12 page schedule was added, which recorded information concerning each insured plantation.

Particulars

The amended Allianz contract comprised: (a) Plantation Timber Insurance policy wording; and (b) Plantation Insurance Schedule of Insurance dated 15 January 2009.

- 10. The first defendant denies paragraph 10 of the POC.
- 11. The first defendant does not admit paragraph 11 of the POC.
- 12. The first defendant admits paragraph 12 of the POC.
- 13. The first defendant admits paragraph 13 of the POC.
- 14. In answer to paragraph 14 of the POC, the first defendant:

- (a) says that the Proceeds (as defined in paragraph 13 of the POC) are "Refund Proceeds" under the Premium Funding Agreement;
 - (b) says that in the circumstances recorded in paragraph 8(a), (b), (c), (d), (e), (g), (h), (i) and (j) above, the first defendant is entitled to recover the Proceeds;
 - (c) otherwise denies the contents of the paragraph.
15. In answer to paragraph 15 of the POC, the first defendant:
- (a) repeats paragraph 14 above;
 - (b) denies that the Proceeds belong beneficially to the Branton Participating Growers;
 - (c) admits that the BOSI charge does not attach to the Proceeds and that BOSI is not entitled to the Proceeds;
 - (d) otherwise denies the contents of the paragraph.

POINTS OF CROSS-CLAIM

16. At all material times the cross claimant was duly incorporated and liable to be sued in its corporate name and style.
17. At all material times the first cross defendant (TL), the second cross defendant (TSL), the third cross defendant (BOSI) and the fourth cross defendant (Allianz) were companies duly incorporated and liable to be sued in their respective corporate names and styles.
18. On or about 29 September 2008 TL (as Borrower) entered into a premium funding agreement with the cross claimant, under which, relevantly, the cross claimant agreed to advance funds to TL for the purposes of TL paying the premium payable under a plantation insurance policy ("Premium Funding Agreement").

19. The following were terms of the Premium Funding Agreement:

(a) where referred to in the Premium Funding Agreement, the following expressions had the following meanings:

(i) "Refund Proceeds" was defined to mean "all money at any time paid or payable to the Borrower under or in connection with any Funded Policy by way of premium refund (whether on cancellation or otherwise) or as an indemnity for loss;

(ii) "Secured Money" was defined to mean "all money that the Borrower is or may become liable at any time (actually or contingently) to pay the [cross claimant] on any account under or in connection with the Premium Funding Agreement or otherwise";

Particulars

Clause 1.1 Premium Funding Agreement

(b) TL assigns to the cross claimant, by way of mortgage, all of its right, title and interest in and to each Funded Policy, all Refund Proceeds and all rights, remedies to cancel or enforce any Funded Policy and obtain Refund Proceeds ("Security");

Particulars

Clause 8.1 Premium Funding Agreement

(c) the Security continues until all Secured Money had been paid in full;

Particulars

Clause 8.2 Premium Funding Agreement

- (d) TL must not (or attempt to) assign, transfer, mortgage or otherwise deal with, and right or power relating to any Refund Proceeds;

Particulars

Clause 8.3(a) Premium Funding Agreement

20. On or about 14 October 2008 TL entered into a contract of insurance with Allianz ("Allianz contract"), on terms that included:

- (a) coverage attached from 1 October 2008;
- (b) the total declared value was \$600,942,905;
- (c) a deposit premium payable in an amount of \$3,220,034.37;
- (d) the Allianz contract was subject to premium adjustment, to be determined after 15 December 2008;
- (e) the property the subject of insurance was referred to in the plantations information summary ("plantations information summary"), which, inter alia, recorded:

Note: The above details represent a summary of the plantations insured in the above shires in this state. The summary is based on the detailed plantation listing provided by AgrRisk Services.

A detailed listing of insured blocks and plantations will be incorporated in a subsequent Schedule of insurance post 15 December 2008 once details of uninsured lots has been provided.

Particulars

The Allianz contract comprised: (a) Plantation Timber Insurance policy wording; and (b) Plantation Insurance Schedule of Insurance dated 14 October 2008.

21. The only insured party to the Allianz contract is TL.

Particulars

The definition of "Insured" in the Plantation Timber Insurance policy wording means "The person or entity specified in the Schedule of Insurance as the Insured." The "Name of the Insured" recorded in the Plantation Insurance Schedule of Insurance dated 14 October 2008 is TL

22. On or about October 2008, the cross claimant advanced to TL the sum of \$3,297,460.60 pursuant to the terms of the Premium Funding Agreement for the purposes of TL paying the premium and associated fees and charges in respect of the Allianz contract.
23. The sum advanced by the cross claimant was used by TL to pay the premium and associated fees and charges in respect of the Allianz contract.
24. The Allianz contract is a "Funded Policy" as defined in the Premium Funding Agreement.
25. The sum advanced by the cross claimant to TL as described in paragraph 7 above has not been repaid to the cross claimant.
26. The said sum is "Secured Money" for the purposes of the Premium Funding Agreement.
27. On or about 15 January 2009 the Allianz contract was amended in the following ways:
- (a) the total declared value was reduced from \$600,942,905 to \$571,147,777;
 - (b) the premium was reduced from \$3,220,034.37 to \$3,100,476.57;

- (c) the plantations information summary was amended, including a change in the note, which then recorded:

Note: The above details represent a summary of the plantations insured in the above shires as at the effective date.

A separate listing of plantations within each shire including number of insured lots and insured hectares is attached and forms part of the Policy.

A separate listing of uninsured lots in each plantation is attached and forms part of the Policy.

- (d) a further 12 page schedule was added, which recorded information concerning each insured plantation.

Particulars

The amended Allianz contract comprised: (a) Plantation Timber Insurance policy wording; and (b) Plantation Insurance Schedule of Insurance dated 15 January 2009.

28. The only insured party to the Allianz contract (as amended) is TL.

Particulars

The definition of "Insured" in the Plantation Timber Insurance policy wording means "The person or entity specified in the Schedule of Insurance as the Insured." The "Name of the Insured" recorded in the Plantation Insurance Schedule of Insurance dated 15 January 2009 is TL.

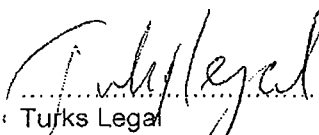
29. At all material times the Branton Treefarm situated in the South Gramplans Shire was property insured under the Allianz policy, both prior and after the amendments referred to in paragraph 12 above.
30. On 29 January 2009 a fire occurred at Branton Treefarm and the trees on that farm were lost and/or damaged.

31. As a result of the loss and/or damage to the trees in the Branton Treefarm fire, insurance proceeds, in an amount of \$467,434.09 ("Proceeds") have become payable under the Allianz policy (such amount being acknowledged as payable by Allianz).
32. The Proceeds are "Refund Proceeds" under the Premium Funding Agreement.
33. By reason of the matters identified in paragraphs 3-17 above, the cross claimant is entitled to the Proceeds.

AND THE PLAINTIFFS SEEK THE FOLLOWING ORDERS:

- A. A declaration that in the events which have happened, the cross claimant is entitled to be paid \$467,434.09 by the fourth cross defendant in respect of the proceeds of the claim made under the Allianz policy in respect of the fire which occurred on 29 January 2009 on Branton Treefarm.
- B. An order that the fourth cross defendant pay to the cross claimant the sum of \$467,434.09.
- C. Interest.
- D. Costs
- E. Further or other relief as the Court thinks fit or the nature of the case requires.

DATED: 28 SEPTEMBER 2010


Turks Legal
Solicitors for the First Defendant

SCHEDULE

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

First Plaintiff and First Cross Defendant

**TIMERCORP SECURITIES LIMITED (IN LIQUIDATION) (CAN 092 311 469)
IN ITS CAPACTIY AS RESPONSIBLE ENTITY OF THE 1999
TIMBERCORP EUCALYPTS PROJECT (ARSN 085 827 827)**

Second Plaintiff and Second Cross Defendant

MACQUARIE BANK LIMITED (ACN 008 583 542)

First Defendant and Cross Claimant

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) AS TRUSTEE FOR
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357
522) AND BOS INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) AND
WESTPAC BANKING CORPORATION (ACN 007 457 141)**

Second Defendant and Third Cross Defendant

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)

Third Defendant and Fourth Cross Defendant