

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

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IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(IN LIQUIDATION) (ACN 092 311 469)

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP CITRUS PROJECT  
(ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)  
AND ORS ACCORDING TO THE SCHEDULE

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 23 February 2011

Filed on behalf of: The Plaintiffs

Prepared by:

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This is the exhibit marked '**PWK29**' now produced and shown to PAUL WILLIAM KIRK at the time  
of swearing his affidavit on 23 February 2011.

Before me


  
DANIELLE RUTH NAHUM  
of 530 Collins Street, Melbourne  
Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

Exhibit '**PWK29**'

Letter from Allens to FABAL and Ms  
Bezencon dated 7 October 2010



**Date** 7 October 2010

ABN 47 702 595 758

**From** Clint Hinchin / Matthew Whittle

**To** **Ms Kerree Bezencon**, Siger Super Services Pty Ltd,  
Healesville, Victoria

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Melbourne VIC 3000  
Australia  
T +61 3 9614 1011  
F +61 3 9614 4661

**Email** [kerree@siger.com.au](mailto:kerree@siger.com.au)

**To** **Mr Chris Day**, CEO, Food and Beverage Australia  
Limited, Unley South Australia

*Correspondence*  
GPO Box 1776  
Melbourne VIC 3001  
Australia  
DX 30999 Melbourne

[chris.day@fabal.com.au](mailto:chris.day@fabal.com.au)

[www.aar.com.au](http://www.aar.com.au)

**Copy To** Jane Sheridan, Partner, Arnold Bloch Leibler

**Email** [JSheridan@abl.com.au](mailto:JSheridan@abl.com.au)

Confidential Email

Dear Kerree and Chris

**Meeting of members of the 2004 Timbercorp Citrus Project  
(ARSN 108 887 538) and 2005 Timbercorp Citrus Project  
(ARSN 114 091 299)**

Please see attached.

Attach

**Our Ref** CTSM:306250099

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7 October 2010

ABN 47 702 595 758

Ms Kerree Bezencon  
Siger Super Services Pty Ltd  
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Healesville VIC 3777

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By Email

By Email

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Dear Kerree and Chris

**Meeting of members of the 2004 Timbercorp Citrus Project  
(ARSN 108 887 538) and 2005 Timbercorp Citrus Project  
(ARSN 114 091 299)**

We refer to our letter to you dated 14 September 2010 and to the meeting at the offices of PricewaterhouseCoopers (**PwC**) on 1 October 2010.

We understand that the meeting of members of the 2004 Timbercorp Citrus Project (ARSN 108 887 538) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299) (together, the **Projects**) has been adjourned until 14 October 2010 at which time the members will consider removing Timbercorp Securities Limited (In Liquidation) (**TSL**) from the role of responsible entity (**RE**) of the Projects and appointing Food and Beverage Australia Limited (**FABAL**) as RE of the Projects.

As discussed during the meeting at PwC, the receivers and managers (the **Receivers**) of Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed) (**Align**), have serious concerns about FABAL's proposal to replace TSL as RE of the Projects and the uncertainty that this would create with respect to the realisation of the Kangara assets to the potential detriment of their appointor and other stakeholders, including members of the Projects (**Growers**).

To date, the Receivers have not received any details of FABAL's proposal with respect to any proposed recapitalisation of the Projects or any related acquisition of the Kangara assets. In the circumstances, the Receivers intend to proceed with their current realisation process which contemplates an extinguishment of the Growers' rights by the RE of the Projects to permit a sale of the assets on an unencumbered basis. The net sale proceeds will then be held on trust pending a proceeding to determine the respective rights of the secured creditors and Growers to the net proceeds. The realisation process is well advanced and, at present, the Receivers consider that completing a sale of the Kangara assets on an unencumbered basis represents the best outcome for their appointor.

In our letter dated 14 September 2010, we drew your attention to the obligations that would be inherited by FABAL as RE of the Projects, including obligations under the following agreements:

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- Sale of Citrus Agreement – 2011 Financial Year 2004 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2011 Financial Year 2005 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2010 Financial Year 2004 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2010 Financial Year 2005 Timbercorp Citrus Project – Kangara;

dated 16 July 2010 between TSL, Timbercorp Limited (In Liquidation), the Liquidators, Align, the Receivers, CostaExchange Limited (**Costa**) and AgriExchange Murtho Pty Ltd (the **Sale of Citrus Agreements**).

The Sale of Citrus Agreements were entered into by the Receivers to ensure that the citrus orchards on the Kangara property continued to be managed and maintained during the period of the Receivers' realisation process. As discussed during the meeting at PwC, the terms of the Sale of Citrus Agreements include an agreement by the Receivers on behalf of Align that they would not demand payment of rent owed by Timbercorp Limited (In Liquidation) under the head lease during the term of the agreements and would instead agree to receive a "Use and Occupancy Fee" out of the crop proceeds, but only after payment of Costa's costs and expenses.

The Receivers agreed to such terms in the context of a realisation process in the form described above, namely a sale of the assets on an unencumbered basis with the assistance of the RE of the Projects, which provides certainty for the Receivers and their appointor. We confirm that, should FABAL replace TSL as RE of the Projects, the Receivers reserve all of their rights under the Sale of Citrus Agreements and will need to consider whether it is in the interests of their appointor for the agreements to continue or to seek payment of outstanding Use and Occupancy Fees and ongoing rent from FABAL.

We understand that FABAL intends to provide the Receivers with details of a recapitalisation proposal following the release of a draft government report on water allocations on or about 8 October 2010. As noted during the meeting at PwC, even if FABAL does so, this would provide the Receivers with very little time to review FABAL's proposal prior to the adjourned meeting of Growers scheduled for 14 October 2010.

In the circumstances, it may be preferable for FABAL to adjourn the meeting of Growers again rather than taking any immediate steps to attempt to replace TSL as RE of the Projects. We request that FABAL and/or Ms Bezencon confirm their position with respect to the meeting as soon as possible.

Please let us know if you have any questions or would like to discuss the Receivers' position further.

Yours sincerely



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