

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 TABLE GRAPE
PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE PROJECT
(ARSN 113 512 236) AND ORS ACCORDING TO THE SCHEDULE

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs

Prepared by:

Allens Arthur Robinson
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This is the exhibit marked '**PWK41**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 22 December 2010.

Before me

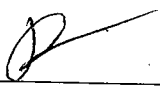

DANIELLE RUTH NAHUM
530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
in the meaning of the
Legal Profession Act 2004

Exhibit 'PWK41'

**Copy of letter from Mr Messenger
to Receivers dated 1 December
2009**

DAVID MESSENGER

SOLICITOR
ABN 87 139 825 472

111 LIME AVE
MILDURA 3500

PO BOX 10013
TELEPHONE: (03) 5023 5982
Email: dmessenger@ncable.com.au

DX: 50004
FAX: (03) 5022 1313

Your Ref:

My Ref: DRM/JE 18194

1 December 2009

Mr Michael Fung
PricewaterhouseCoopers
PO Box 1331L
MELBOURNE VIC 3001

Email: michael.fung@au.pwc.com

Dear Sir,

Re: Andriske Research Pty Ltd & Align Funds Management Ltd ACN 105 684.231

I refer to my letter dated the 13th of November 2009 and to my conversations with you of the 24th of November 2009 and the 25th of November 2009.

I confirm my client does not accept that all scion material protected by Plant Breeders Rights have been removed from the root stock "top grafted" to Crimson Seedless and Autumn Royal as those varieties were placed directly into the root stock.

An inspection of the vines will reveal that 100 acres have been "top grafted" to "Crimson Seedless" and 50 acres have been "top grafted" to Autumn Royal directly into the scion material protected by Plant Breeders Rights.

I confirm that my client requires all scion material protected by Plant Breeders Rights to be removed.

Alternatively, in the event you wish to negotiate a commercial resolution of the matter, my client would accept \$894,375.00 payable simultaneously with the sale of the property with a proviso that the sale takes place within 180 days of the date of this letter.

In the event that the scion material was removed and the vines replaced, your cost per vine would be in the vicinity of:

Vine	\$ 5.50
Labour Planting	\$1.00
Labour Vine Training	\$2.00
Water fertiliser etc two years	\$ 4.00
2 seasons loss of crop at \$10.00 per vine	<u>\$20.00</u>
Total	<u>\$32.50</u>

150 acres at 450 vines per acre = 67,500 x \$26.50 = \$2,193,750.00

In addition it may well be that a right of action exists against the Unit Holders for losses arising from the breaches of the original Agreement by the Responsible Entity. Such a claim if successful would yield many millions of dollars to my client.

In the event you wish to reach a commercial resolution of the matter my client would accept the sum of \$1,000,000.00 payable simultaneously with the settlement of the sale of the

Mr Michael Fung

1 December 2009

property with the proviso that this takes place within 180 days of the execution of the agreement. My client would release the Unit Holders from any further liability.

My instructions are that unless a commercial resolution is reached within 30 days I am to arrange for Senior Counsel to draw Proceedings seeking a declaration that the vine material protected by Plant Breeders Rights be removed damages and costs.

It is my understanding that negotiations are proceeding with another party regarding the sale of the property. Please confirm that a copy of this letter will be provided to it.

Yours faithfully

A handwritten signature in black ink, appearing to read "David Messenger", written in a cursive style.

David Messenger