

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION**

**No. VID 541 of 2009**

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

**AND**

**IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)  
ACN: 055 185 067**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469  
and OTHERS**

**Plaintiffs**

**WA CHIP & PULP CO. PTY LTD  
ACN 008 720 518  
and OTHERS**

**Defendants**

**THIRD AFFIDAVIT OF MARK KORDA (IN REPLY)**

On 31 July 2009, I, **MARK ANTHONY KORDA**, of Level 24, 333 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, SAY ON OATH that:

- 1 I am the liquidator of the First Plaintiff, Timbercorp Securities Limited (**TSL**), and of the Second Plaintiff, Timbercorp Limited (**TL**), with Leanne Kylie Chesser.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf. References

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Filed on behalf of the Plaintiffs

**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21  
333 Collins Street  
Melbourne 3000

DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier/Lucy Kirwan)



in this affidavit to "we", "us", "our" or "ourselves" are references to Ms Chesser and me.

- 3 I refer to two affidavits I have made previously in this proceeding, namely on 23 July 2009 (**my First Affidavit**) and 28 July 2009 (**my Second Affidavit**). I use the same abbreviations in this affidavit as I have used in my First and Second Affidavits.

### **Correction**

- 4 I refer to paragraph 60 of my Second Affidavit. The word "other" was missing from that paragraph: it should have read: "The rental payable in respect of the **other** land used for the 2006 Avocado Project is limited to the amount received from growers under the relevant licences."

### **Expressions of interest sought in the Forestry Schemes**

- 5 Now produced and shown to me marked **MAK-25** is an advertisement placed by the Liquidators of the Timbercorp Group in today's *Australian Financial Review*.

### **Reply to the affidavits of Ian Delroy**

- 6 At paragraphs 3 and 4 of Mr Delroy's first affidavit, he contends that the Liquidators are occupying and using the leased land. The Liquidators are not doing so. We have not elected or chosen to retain possession of the leased land for the purposes of the liquidation. We are presently considering whether such a decision should be made.
- 7 The Liquidators believe that the best chance of being able to recapitalise the Project or sell the assets and realise a return for Growers is if the Project remains on foot and all of the assets used in the Project, including any avocado trees or irrigation assets, can be dealt with together. We believe that it will not be possible to realise maximum value for Growers from their interests in the Project other than in conjunction with the realisation of the trees on which those interests are dependent.
- 8 Further, a recapitalisation of the Project or sale of the assets may not be possible if the Jasper Farms leases are terminated. I am informed by Jane Sheridan at ABL that each Grower in the Project has a licence in respect of the Jasper Farms land and a separate licence in respect of each of the Queensland plantations. Those licences are interdependent. A termination of the Jasper Farms leases may operate to terminate the licences to Growers in respect of Jasper Farms land and water. Under the terms of the existing documentation, a termination of the Jasper Farms licences




may automatically terminate the Growers' licences in respect of the Queensland avocado plantations, and in turn, the Avolot Management Agreements and the Project as a whole. If the Project is terminated, all assets used in connection with the Project must be realised and a final distribution made to Growers. This may be the position notwithstanding that a new licence may be granted by Jasper Farms to the Growers pursuant to clause 11.2(d) of the Jasper Farms land lease. It also may render inoperative clause 11.2(c) as it may not be possible for a new responsible entity of the Project to be appointed. Given the potential for adverse consequences to Growers of a disclaimer of the Jasper Farms land lease, the Liquidators therefore do not wish to do so until they are certain that a recapitalisation or sale of the Project is not possible.

- 9 Assuming the disclaimer did not cause the termination of the entire Project, and on the basis of Jasper Farms' acknowledgment that a new licence would come into effect between Jasper Farms and the Growers on the same terms as the existing licence (see paragraph 21 of Mr Delroy's second affidavit), Jasper Farms would be in no better cashflow position.
- 10 The new licence would be on the same terms as the existing licence but with Jasper Farms replacing TSL as the licensor. Therefore Jasper Farms would not be entitled to receive any licence fees from Growers until 31 October 2009.
- 11 It appears to us from paragraph 20 of Mr Delroy's second affidavit that, should such a new licence be entered into, Jasper Farms may seek to enforce directly against Participant Growers an obligation to undertake at their own expense certain matters, including compliance with "Best Horticultural Practice". Therefore the Liquidators do not believe it will be in the best interests of Growers for a new licence to be entered into.

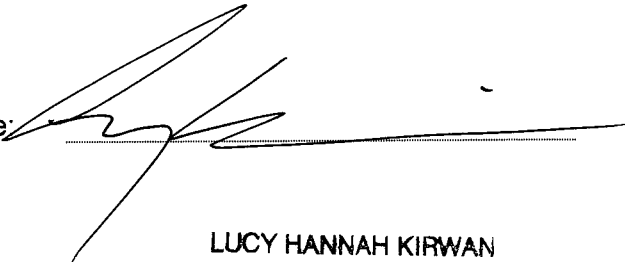


- 12 Paragraphs 23 and 24 of Mr Delroy's second affidavit makes assertions about whether Growers will be adequately protected in the event the Project continues and regarding the ownership of certain assets. These assertions are simply wrong: the rights and interests of Growers in the Project are uncertain. The rights and interests of Growers can only be determined by a Court. We are bound by to act in the best interests of Growers and not for our own benefit. It is because of the uncertainty surrounding Growers' rights and interests that the Liquidators commenced this proceeding, so that their rights and interests can be safeguarded.

**SWORN** by the abovenamed deponent at )  
 Melbourne in the State of Victoria )  
 this 31<sup>st</sup> day of July 2009 )



Before me:



**LUCY HANNAH KIRWAN**  
 Arnold Bloch Leibler  
 Level 21, 333 Collins Street  
 Melbourne 3000  
 An Australian Legal Practitioner within the  
 meaning of the Legal Profession Act 2004

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**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469 and OTHERS  
(see attached Schedule of Parties)**

**AFFIDAVIT - CERTIFICATE OF COMPLIANCE**

**(Order 14, rule 5A)**

I, **LUCY HANNAH KIRWAN**, certify to the Court that the affidavit of **MARK ANTHONY KORDA** sworn on 31 July 2009 filed on behalf of the Plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 31 July 2009



.....  
Lucy Hannah Kirwan  
A solicitor of Arnold Bloch Leibler  
Solicitor for the Plaintiffs

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Filed on behalf of the Plaintiffs

**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
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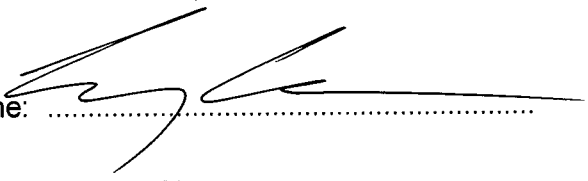
WA CHIP & PULP CO. PTY LTD  
and OTHERS  
ACN 008 720 518

Defendants

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-25**" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on 31 July 2009.

Before me: .....

  
LUCY HANNAH KIRWAN  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

AUSTRALIA'S PREMIER FORESTRY ASSETS

Expressions of Interest Sought

## Timbercorp Group

(In Liquidation)

The Liquidators of the Timbercorp Group in Australia are seeking expressions of interest to acquire or recapitalise:

- 97,500 hectares (241,000 acres) of high-yielding premium quality Eucalyptus Globulus in various stages of growth, located close to seaports.
- 38,800 hectares (96,500 acres) of freehold land and leasehold interest in 58,700 hectares (145,000 acres) of land in the Green Triangle (Victoria and South Australia) and south-west Western Australia – two of the world's best forestry locations for soil and climate.
- An established and highly skilled forestry management business, awarded FSC Australia Award for best large forest manager in 2008, with seed-to-port management and processing rights for up to 1.8 million GMT/year.
- 50% ownership in Albany Chip Terminal with loading capacity of 1.3 million GMT/year.

Expressions of Interest are sought from parties to acquire or recapitalise the full complement of forestry assets.

For further information, please contact:

Scott Langdon on (03) 8623 3335 or by email on [slangdon@kordamentha.com](mailto:slangdon@kordamentha.com)  
[www.kordamentha.com](http://www.kordamentha.com)



**TIMBERCORP**  
AGROBUSINESS  
INVESTMENT MANAGERS



**KordaMentha**