

Appendix B – questions taken on notice from the public hearing

Question from Senator Georgiou on page 10 of the Hansard transcript: Is your company prepared to provide to this inquiry and to Peter detailed tax invoices for work charged for by KordaMentha and their lawyers and other engagements in relation to this receivership?

Answer: We have previously advised the borrower that we would not provide these to the borrower. The reason being that we did not want to disclose the names of the contractors (musterer, freighters, sheep sale agent) for fear of them being targeted and being put at risk. What we have provided to the borrower via his lawyer was all of our Receipts and Payments lodged with ASIC which disclosed all transactions during the Receivership, but again the names of the contractors were kept confidential on the ASIC forms – refer to **Attachment A**.

Question from Senator Georgiou on page 11 of the Hansard transcript: Will KordaMentha provide to this inquiry all correspondence, documentation, including valuations, legal advice and consultant reports in relation to this receivership?

Answer: No, as these documents are confidential to us and relate to strategy and risk management. We also consider their provision would put various parties at risk.

Question from the Chair on page 11 of the Hansard transcript: Would it be unrealistic to say that the charge was about \$120,000 cost to move the sheep?

Answer: The total cost for the preparation and coordination of the sheep muster, the muster itself, security for the muster, transport of the sheep and their subsequent care and agistment was \$105,000. This is represented by the yellow highlight on **Attachment A** and comprises the following:

- \$30,000 Agri Consultant (co-ordinated the muster, including management of muster and transport arrangements as well as animal welfare management and subsequent agistment arrangements)
- \$29,000 Security Firm (~13 guards protecting the 3 farms various entry points during the muster)
- \$28,000 Mustering (for the muster and then for care and agistment of the flock on the new farm until they were sold)
- \$18,000 Freight (3 different freight providers: Provider 1 \$7,000, Provider 2 \$3,000, Provider 3 \$7,000).

Question from the Chair on page 11 of the Hansard transcript: Can I just ask the question: are you aware that there was \$28,000 charged for security?

Answer: The cost was \$29,000 for the reasons outlined in the point above.

Statement from Senator Williams on page 13 of the Hansard transcript: It's a pity the local police weren't involved.

Response: This is factually incorrect. Kondinin Police were on-farm with us during the muster at our request.

Statements from Mr Mentha on page 13 of the Hansard transcript: In extreme circumstances, you will go to some people at short notice because you need to move those sheep quickly ... You have to make commercial and operation decisions on the run.

Response: Before the muster, two freight companies were pre-arranged by our Agri Consultant, being Provider 1 and Provider 2. A third freight company – Provider 3 – was arranged late on the day of the muster when it was established there were more sheep on-farm than expected. There was no time and no cost benefit of arranging commercial quotes at 7.00 pm for transport from farm four hours from Perth, with the activity and danger that was involved.

Statement from Mr Mentha on page 14 of the Hansard transcript: the actual cost for the period of the receivership I have in front of me \$204,000.

Response: KordaMentha's fees for the receivership, per **Attachment A**, were \$249,000, including GST and disbursements. GST is recoverable given the business operations and so the actual cost incurred will be reduced by the GST recovered.

Receipts and payments stated by Mr Mentha on page 14 of the Hansard transcript.

Response: The amounts quoted by Mr Mentha for annual firebreaks, annual spraying, annual insurance, grain proceeds, and sheep proceeds were correct.

Statement from Senator Williams on page 14 of the Hansard transcript: Receivers tried to stop the harvest.

Response: It is factually incorrect that the Receivers tried to stop the harvest. In fact, the borrower completed the harvest and funds from grain sales went into his CBH account which we as Receivers took control over.

Statement from Senator Williams on page 15 of the Hansard transcript: In June 2014, the sheep were infested with flystrike.

Response: It is not clear if this comment was meant to be suggestive of the Repacholi matter. If it is, it is factually incorrect. There was no such evidence of any animal welfare concerns and no regulatory enquiry whatsoever.

Statement from Senator Williams on page 15 of the Hansard transcript: Then we won't have to worry about the \$92,000 they had to shift a \$15,000 job.

Response: Senator Williams refers to \$15,000 being a reasonable amount for transporting that number of sheep. Our actual cost was \$18,000 as per above.

Question from the Chair on page 17 of the Hansard transcript: Why has it been left idle for four years?

Answer: It has not been idle for three years. Spring spraying was done in 2015, but not in 2016 and 2017 due to unauthorised crop on the property. Sheep were observed on property in 2017, resulting in no spraying required in any event.

Attachment A

Period	19/11/2013 - 18/05/2014	19/05/2014 - 18/11/2014	19/11/2014 - 09/12/2014	Total
Receipts				
Bank Interest	859.28	1,237.14	364.12	2,460.54
Refunds (legals)		74,082.42		74,082.42
Bank charges		106.00		106.00
Livestock sales		162,981.22		162,981.22
Selling costs	4,884.95			4,884.95
Sales (grain)	561,438.12			561,438.12
Total	567,182.35	238,406.78	364.12	805,953.25
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				-
				-
Payments				
Bank Charges	399.20	445.00	646.05	1,490.25
Insurance	13,296.67		4,967.43	18,264.10
Stamp Duty	1,181.72		463.74	1,645.46
Legal Fees	180,043.43	64,113.12	79,770.74	323,927.29
Appointee Disbursements	12,629.76		1,868.94	14,498.70
Appointee Fees	112,867.70	33,167.20	88,902.56	234,937.46
Advertising		28,007.67		28,007.67
Sub-contractors		23,355.00		23,355.00
Utilities		1,100.07		1,100.07
Other Property Expenses		87,462.30		87,462.30
Transport/Courier		17,878.49		17,878.49
Sundry Expenses	72.00	41.32		113.32
Firebreaks		3,267.00		3,267.00
Selling costs	8,384.99			8,384.99
Professional Services Fees	1,767.15			1,767.15
GST Paid	39,857.00			39,857.00
Total	370,499.62	258,837.17	176,619.46	805,956.25
Net Receipts/(Payments)	196,682.73	20,430.39	176,255.34	3.00

Appendix C – written questions on notice from the Chair

Question: Do borrowers engage your firm as their professional advisor to assist them through a challenging period where their performance is not meeting the expectations of their lenders?

Answer: Yes

Question: What experience, expertise, advice and support do you provide in these situations?

Answer: The scope of work we undertake is dependent on the terms of our engagement as set out in our engagement letter. Every engagement is different and the scope of work will reflect the situation and requirements of our client.

Question: Who is your client when you're providing this advice and support?

Answer: The identity of our client is set out in our engagement letter.

Question: To whom do you owe a duty of care when providing such advice and support to your client?

Answer: Our client and the duty of care we owe them is set out in our engagement letter.

Question: How long do such engagements typically last?

Answer: Every engagement is different and there is no typical time frame for how long an engagement will last.

Question: Do the borrowers listen to your advice and act on your recommendations?

Answer: Whilst we may provide advice and recommendations as part of our scope of work, the decision to act on any recommendations is at the discretion of the borrowers as they retain management control and responsibility.

Question: Do the lenders have visibility of the support you're providing your client?

Answer: Our reporting obligations, including to lenders if at all, is set out in our engagement letter.

Question: Do you engage directly with the lender on behalf of borrower to provide such visibility?

Answer: Our reporting obligations, including whether we engage with the lenders, is set out in our engagement letter.

Question: Do you have back channel conversations with the lender that the borrower is unaware of?

Answer: We do not have details of the lender, the borrower or the details of conversations. We require specific information as to those matters to enable us to respond.

Question: Who is advising the lender?

Answer: We have not been provided with details of the lender or borrower or the circumstances. We require specific information as to those matters to enable us to respond.

Question: What are the potential outcomes in these 'workout' situations?

Answer: The range of outcomes in a 'workout' situation depends on the circumstances of the borrower.

Question: What are the typical fees paid to you by the borrower? Roughly, as a percentage of the bank debt?

Answer: Every engagement is different and there is no typical level of fees either as a dollar value or as a percentage of bank debt. Our fee arrangements are set out in our engagement letter.

Question: Do you advise the borrower about the solvency of the company?

Answer: Solvency is a legal question based on factual circumstances. Whilst we may assist in confirming the factual circumstances, we are not legal advisors and so do not advise on the solvency of the company.

Question: If the company is likely to become insolvent, do you take an appointment as Voluntary Administrator?

Answer: Whether we take an appointment as Voluntary Administrators is dependent on a number of factors including, our strict engagement acceptance procedures and the Corporations Act. Please note it is the directors of the company who choose who to appoint as Voluntary Administrators.

Question: Why not?

Answer: See above.

Question: What are the typical fees earned by the Voluntary Administrator over what time frame? Roughly, as a percentage of creditor recoveries?

Answer: Every engagement is different and there is no typical level of fees either as a dollar value or as a percentage of creditor recoveries.

Question: When the other firm is appointed as Voluntary Administrator, do you take an appointment as the bank's Receiver and Manager?

Answer: We have not been provided with details of the other firm, the bank or the circumstances. We require specific information as to those matters to enable us to respond.

Question: How can you take an appointment as R&M when you couldn't take an appointment as Voluntary Administrator?

Answer: We have not been provided with details of the proposed receivership appointment, the proposed Voluntary Administration appointment or the circumstances of this question. We require specific information as to those matters to enable us to respond.

Question: Who is your client and to whom do you owe a duty of care when you change horses to act for the secured creditor as their Receiver & Manager?

Answer: We have not been provided with details of the client, the secured creditor or the circumstances related to this question. We require specific information as to those matters to enable us to respond.

Question: Why would the bank choose to appoint the borrower's professional advisor, particularly given that advisor could not accept appointment as Voluntary Administrator and the lender had its own advisor?

Answer: We have not been provided with details of the bank, the borrower, the advisor or the circumstances related to this question. We require specific information as to those matters to enable us to respond.

Question: What are the typical fees earned by a Receiver & Manager over what time frame? Roughly, as a percentage of secured creditor recoveries?

Answer: Every engagement is different and there is no typical level of fees either as a dollar value or as a percentage of secured creditor recoveries.

Question: Has it ever been alleged that the advice and support you provide to a borrower is actually skewed to the interests of the lenders to maximise their potential future recoveries at the cost of other stakeholders?

Answer: We have not been provided with details of the advice, the borrower, the lenders or the circumstances related to this question. We require specific information as to those matters to enable us to respond.

Question: What was the outcome of these allegations?

Answer: See above

Question: Who is responsible for investigating your actions as the borrower's professional advisor prior to your appointment as the lenders R&M?

Answer: We have not been provided with details of the borrower, the lenders or the circumstances related to this question. We require specific information as to those matters to enable us to respond.

Question: When was the last time your actions as the borrower's professional advisor was subjected to such review?

Answer: See above