



WESTERN CAPE HIGH COURT  
 GENERAL OFFICE  
 2014 -03- 31  
 CAPE TOWN/KAAPSTAD  
 WES-KAAP HOË HOF

11 Buitengracht Street Cape Town 8001  
 P O Box 695 Cape Town 8000  
 South Africa  
 Dx 5 Cape Town  
 T +27 21 481 6300  
 F +27 21 481 6388  
 E ctn@dlacdh.com  
 W www.cliffedekkerhofmeyr.com

Also at Johannesburg

Mr S Koen / Ms Rifqah Omar  
 c/o Bisset Boehmke McBlain  
 11th Floor - Triangle House  
 22 Riebeeck Street  
 CAPE TOWN  
 8000

BY HAND

Our Reference B SCRIBA/lds/  
 Account Number 50029674  
 Your Reference Mr S Koen/Ms R Omar  
 Direct Line (021) 405-6139  
 Direct Telefax (021) 405-6073  
 Direct e-mail belinda.scriba@dlacdh.com  
 Date 31 March 2014

**URGENT  
 DRINGEND**

Dear Sir/Madam

**FIDENTIA CURATORS' COURT REPORT : 31 MARCH 2014**

We refer to the above and hand you herewith the Curators' Report as at 28<sup>th</sup> February 2014 which has been filed at Court.

Kindly acknowledge receipt.

Yours faithfully

**BELINDA SCRIBA**  
**CLIFFE DEKKER HOFMEYR INC**  
 3089646v1

/encl.

**CHAIRMAN** CH Ewing **CHIEF EXECUTIVE OFFICER** B Williams **CHIEF OPERATING OFFICER** MF Whitaker **CHIEF FINANCIAL OFFICER** ES Burger

**DIRECTORS: JOHANNESBURG** A Abro N Altini CA Barclay R Beerman E Bester P Bhagattjee R Bonnet CJ Botes TE Brincker CM Britain CWJ Charter M Chenia PJ Conradie AR Cumow CJ Daniel S de Vries ML du Preez L Erasmus CH Ewing BV Faber JJ Feris TS Fletcher L Franca TG Fuhrmann MZ Gattoo S Gill SB Gore J Govender MJ Gwanzura AJ Hofmeyr Q Honey HS Jackson WH Jacobs WH Janse van Rensburg CM Jessemann JCA Jones TTM Kali J King LJ Kruger J Latsky AM le Grange FE Leppan<sup>§</sup> BC Maasdorp Z Malinga B Meyer WJ Midgley R Moodley MG Mphahudi BP Ntsha BP O'Connor SJ Oosthuizen A Patel JS Pennington GH Plenaar V Pillay DB Pinnock AM Potgieter AW Pretorius PH Prinsloo AG Reid M Serfontein NTY Siwendu L Smith JL Stolp HR van der Merwe JJ van Dyk WPS van Wyk NJ von Ey JG Webber MF Whitaker JG Whittle KB Whyte DA Wilken B Williams JM Witts-Hewinson MP Yeates

**DIRECTORS: CAPE TOWN** RD Barendse TJ Brewis MA Bromley MR Collins A de Lange LF Egypt GT Ford S Franks DF Fyfer SAP Gie JW Green AJ Hannie AM Heiberg PB Hesseling CI Hindley RC Horn JH Jacobs R Jaga A Kariem PJ Krusche IJ Lessing GC Lumb RE Marcus A Moolman NW Muller J Naser FT Newham G Orrie<sup>§</sup> L Rhoodie BT Rubinstein GJ Stansfield BPA Strauss DM Thompson CW Williams TJ Winstanley

**EXECUTIVE CONSULTANTS:** HS Coetzee, MB Jackson

**CONSULTANTS:** HC Dagut EJ Kingdon FF Kolbe CJ Wiggett

**SENIOR ASSOCIATES:** JA Aukema G Barkhuizen-Barbosa MA Bobat B Brown L Brunton K Caddy KM Carew E Chang J Da Conceição J Darling EF Dempster J de Vos L Engelbrecht T Erasmus TV Erasmus L Horsley S Immelman T Jordaan KJ Keanly K Keylock Y Kleitman JA Krige H Lalng AG Lewis CJ Lewis HJ Louw BJ Majola G Masina N Mchunu HW Mennen SI Meyer T Moodley CP Muller DG Muller DJ Naidoo L Naidu CM O'Connor L Pillay KS Plots B Pollastrini NA Preston JR Ripley-Evans BJ Scriba AE Seaber M Sibanda P Singh-Dhulam LV Stansfield T Suliman AL Taylor FJ Terblanche RL Thomson F Valli-Gattoo M van Zweel LD Wilson NI Zwane

**CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS:** ES Burger Z Omar R van Eeden MF Whitaker B Williams

<sup>§</sup>British <sup>\*</sup>Dutch <sup>^</sup>Zimbabwean <sup>§</sup>Cape Town Managing Partner

Bissels

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION , CAPE TOWN)**

**Case No: 679/2007**

In the ex parte application of:-

**EXECUTIVE OFFICER OF THE  
FINANCIAL SERVICES BOARD**

Applicant

in re the financial services business of:-

**FIDENTIA ASSET MANAGEMENT (PTY) LIMITED**

(Registration No: 1998/024863/07)

**BRAMBER ALTERNATIVE (PTY) LIMITED**

(Registration No: 2000/024139/07)

**FIDENTIA HOLDINGS (PTY) LIMITED**

(Registration No: 2001/022355/07)



---

**FILING SHEET**

---

Filed herewith

**CURATORS' REPORT**

**DATED at CAPE TOWN this the 31<sup>st</sup> day of MARCH 2014**

**THE JOINT CURATORS  
c/o CLIFFE DEKKER HOFMEYR INC**

Per 

**DCM GIHWALA  
JOINT CURATOR  
12<sup>th</sup> Floor - 11 Buitengracht Street  
CAPE TOWN  
PO BOX 695 Cape Town 8000  
Tel: (021) 425 8809  
Fax (021) 405-6073**

**TO: THE REGISTRAR  
High Court  
CAPE TOWN**

**MR D GIHWALA 021-425-8809  
Filing Sheet Curators' Report/March 2014**

**CURATORS' REPORT ON THE STATUS OF THE FIDENTIA GROUP CURATORSHIP  
AS AT 28<sup>th</sup> FEBRUARY 2014**

---

- 1 In this Report "Fidentia" and/or "Fidentia Group" refers to either of or all of Fidentia Asset Management (Pty) Limited ("FAM") and/or Fidentia Holdings (Pty) Limited ("Holdings") and/or Bramber Alternative (Pty) Limited ("Bramber") and/or their subsidiaries, unless otherwise indicated by context.
- 2 On 15<sup>th</sup> October 2013 Acting Justice Blommaert directed the Curators to file a further Report by not later than 31<sup>st</sup> March 2014 dealing with the following:-
  - 2.1 *"The status of the curatorship as at 28<sup>th</sup> February 2014;*
  - 2.2 *An overview of assets disposed of or alienated and how the proceeds were distributed;*
  - 2.3 *Irregularities committed by the companies or their officers or management or by other persons prior to and after the date of curatorship and the state of prosecution which may have been instituted;*
  - 2.4 *Details of civil and criminal actions which may have been instituted by or against the Curators;*
  - 2.5 *The costs of the curatorship as at 28<sup>th</sup> February 2014;*
  - 2.6 *Any recommendations as to how the continuation of the curatorship or any related matters, should be dealt with further.*
- 3 *The information referred to in paragraph 2.4 above must include a detailed breakdown of all civil legal proceedings instituted, prosecuted or defended by the Curators on behalf of the companies, indicating in respect of each matter,*
  - 3.1 *Who the attorneys of record for the companies were/are;*
  - 3.2 *The fees incurred in respect of the attorneys of record;*
  - 3.3 *The fees incurred in respect of Counsel;*
  - 3.4 *Whether the litigation has been concluded or not;*

- 3.5 *In the case of litigation which has been concluded, the success or otherwise of the litigation; and*
- 3.6 *The amounts recovered on taxation, if any."*
- 4 This Report is filed pursuant to the aforesaid Court Order.
- 5 This Report must be read in conjunction with and supplementary to previous Reports filed and noted.
- 6 In order to avoid prolixity this Report focuses primarily on developments which occurred between 1<sup>st</sup> September 2013 and the end of February 2014. There may be a measure of overlap between this Report and prior ones; but this is unavoidable for the sake of continuity.
- 7 This Report consists of a General Section, a Report in relation to the litigation undertaken and also a Financial Report. It is not practicably feasible to specifically confine any section. Whilst every attempt is made to avoid any form of overlap it nevertheless occurs because it is necessary for the sake of completeness and to ensure a continuing and comprehensive understanding of the affairs of the Fidentia Group as a whole for the period under review.
- 8 Two (2) Schedules are attached to this Report. The first is a detailed schedule ("Litigation Report") in response to paragraph 3 herein above. The second Schedule is a detailed Financial Report which speaks to the disposal of assets, recoveries made, costs incurred and paid and distribution effected to the end of February 2014.
- 9 Schedule One comprises what is referred to as the "Litigation Report". The following needs to be highlighted; -
- 9.1 The report is substantially similar to the one filed with the previous report. However, during the period under review mainly 3 matters were continued with namely, the suits against Cunningham and S Dekker and Steve De Kock.
- 9.2 The Cunningham litigation is extremely difficult.. Cunningham's estate is under curatorship. His legal representatives have adopted an uncompromising attitude. As a result legal costs which could be largely reduced or possibly even avoided are being incurred to prosecute the matter to finality. Cunningham is presently standing trial on criminal charges which have a direct bearing on the civil claims being made against him.

- 9.3 Every possible attempt has and is being made to settle with De Kock who has indeed made an offer but the terms thereof are unacceptable to the Curators who believe De Kock has not a full and complete disclosure of his financial position.
- 9.4 The matter against Dekker regrettably has to proceed to trial. She continues to adopt an intransigent and uncompromising attitude.
- 9.5 JAW Brown and 6 others instituted an application, under Case Number 679/2007, against the Financial Services Board, Fidentia Holdings (Pty) Limited, Fidentia Asset Management (Pty) Limited and Bramber Alternative (Pty) Limited for an order *inter alia* setting aside the curatorship and removal of the Curators. The Curators were not cited as parties to the application, which was also not served on them. The Curators were compelled to bring an application for leave to intervene in this application, which intervention was eventually granted by consent. The Curators filed comprehensive answering affidavits. The applicants failed to file any replying affidavits. The matter which was enrolled for hearing on 9<sup>th</sup> September 2013, at the instance of the Financial Services Board, was eventually dismissed.
- 10 The Curators reported in their previous report that costs incurred to that date by the Curators either as Plaintiff/Applicant or Defendant/Respondents amounted to R19 363,695.07 made up as follows:-
- 10.1 Attorneys' fees: R7 399 369.60;
- 10.2 Counsel's fees and other disbursements: R11 964 325.47.
- 11 The Curators, at the instance of the FSB, are currently undertaking a comprehensive audit of all fees paid and or incurred. This investigation is complex and time consuming aggravated by the fact that the ability to gain access to source documentation is complicated by the lapse of time. However, this investigation is ongoing and the final outcome thereof will be fully reported in due course.

## 12 CURATORS' FEES

The Curators fees paid to date amount to R 18 454 053.78

### **DISTRIBUTIONS EFFECTED IN TERMS OF CURATORSHIP ORDER**

Full particulars of the distributions made to date appear from the Financial Report attached hereto. These distributions have been effected as provided for in terms of the final curatorship order and as sanctioned by the above Honourable Court.

## **13 CRIMINAL PROSECUTIONS**

- 13.1 Piet Botma's criminal trial has as yet not been finalised; it is part heard and set to resume later this year.
- 13.2 The criminal case against Cunningham is currently underway. The prosecution has completed its case. When the matter resumes the defence intends applying for the accused to be discharged.
- 13.3 The SCA has as yet not allocated a date for the hearing of the appeal against Joseph Arthur Walter Brown's sentence. It was anticipated that such appeal would be heard during the first half of 2014 but it now appears that it will probably only be heard for the earliest during the third term of 2014.

## **GENERAL**

### **14 Sante Hotel Wellness and Conference Centre**

- 14.1 This asset continues to present a challenge to the Curators.
- 14.2 The dispute between the Curators and the various homeowners' associations in regard to the payment of levies and security to the estate remains unresolved. It is likely that this aspect of the dispute may be referred to arbitration.
- 14.3 The Curators and the hotel operator stationed security guards in the guardhouse at the entrance to the estate. The Homeowners' Associations instituted an application against the Curators for the eviction of the Curators from the guardhouse. The application was opposed. The matter was eventually resolved by agreement in relation to access and security. The curators were ordered to pay the costs of the application.
- 14.4 The Sante hotel's capacity will shortly be increased to make it financially more viable. The FSB approved of the proposal subject to the major investors agreeing thereto which they have done.

## **LITIGATION**

### **15 MI Cunningham NO and 3 Others**

Following the postponement of the trial on 22<sup>nd</sup> July 2013 in the High Court, Western Cape it was also considered prudent to amend the particulars of claim in certain respects. Each proposed amendment was opposed. The current situation is that the application to amend the particulars of claim will be heard during May 2014.

**16 S J De Kock and Thebe Securities.**

The action against De Kock and Thebe has been enlisted for hearing in July 2014. The matter will have to run its course unless it is settled a prospect which cannot be entirely ruled out. However, in order to avoid a repetition of what happened last year when settlement negotiations faded away after the trial was postponed preparation for the trial will commence soon so that if the matter is not settled, the trial can proceed to finality.

**17 U-Bank Limited / ABSA Bank Limited – Case No: 05204/11**

**18 MIH Holdings Limited / ABSA Bank Limited – Case No: 07662/12**

Inasmuch as Ayanda has no assets it was decided to withdraw from the litigation and abide the judgment in both matters.

**19 Hendrik R Bam**

To date the curators have not been able to determine the whereabouts of Mr Bam in order to excuss him.

**DISPOSALS**

**20** The Curators have to date not been able to sell the properties at Blue Horizon Bay but are continuing in their endeavours to do so.

**21** Legatus was put up for sale via a transparent public process. Interested parties conducted due diligence exercises. Offers were received pursuant to the invitation to do so. An improved offer was received after the expiry date for interested parties to submit offers. The Curators resolved to restart the process by engaging the other interested party as the curators had not agreed to any transaction which in any case is subject to FSB approval for which the curators had not even applied. In any event a final offer was eventually negotiated and submitted to the FSB for its consideration and approval which is pending,

**DISTRIBUTION OF ASSETS DISPOSED**

**22** The distribution to Antheru has as yet not been made. Antheru's F A I S licence was cancelled some while ago. Accordingly Antheru has no authority to deal with clients or their funds. In the circumstances the FSB requires the distribution to be effected directly to Antheru's clients/ investors. This is a difficult and cumbersome exercise which is under way. The curators are contemplating a suitable relatively risk free

process to make the distribution to Antheru's investors. This process is currently being considered by the FSB and once approved will permit the curators to pay the Antheru investors directly.

23 The Financial Report sets out the particulars of the distributions made to date.

#### **ASSETS STILL TO BE DISPOSED OF**

24 The following assets still have to be disposed of:

24.1 The property and business of Sante Hotel and Spa;

24.2 Properties at Blue Horizon Bay;

24.3 The Fidentia Group's interest in Moshate (Pty) Limited;

24.4 The uncut Tanzanite gemstone; and

24.5 Maddock's house at Cape Infanta unless he settles the amount owing by him.

#### **FUTURE CONDUCT AND RECOMMENDATION**

25 The Curators recommend that the remaining assets be realized as and when it is considered most favourable to do so and that the pending litigation be brought to finality as expeditiously as possible.

26 The Curators believe that the realisation of assets and the pursuit of debtors be approached with discretion. In this regard costs benefit analyses are considered regularly.

27 Inasmuch as the Curators report on a regular basis to the FSB it is proposed that the next status report to the Court be as at the end of December 2014.

DATED at CAPE TOWN this <sup>3<sup>rd</sup></sup>~~1<sup>st</sup>~~ day of MARCH 2014.



**DINES GIHWALA**

**On behalf of the Fidentia Curators**

## Curators' Report as at 28 February 2014

Case Number	Plaintiffs/Applicants Attorneys of record	Defendants/Respondents	Defendants' / Respondents' Attorneys of record	Amount of Claim	Amount Recovered	Fees (excluding WIP)	Counsel's fees and disbursements	Status of matter
43116/08	Port Ferry Properties 48 Petersen Herzig	Fidentia Administration Services (Pty) Ltd DCM Gihwala NO G Papadakis	Cliffe Dekker Hofmeyr - J Jones	R 3,872,867.37	Nil	R 6,728.28		No changes
73145/09	Clubview Ontwikkelings (Pty) Limited	Infinity Rewards	Cliffe Dekker Hofmeyr - J Jones	R 320,189.55	Nil	R 10,859.00		No changes
20891/09	Ilakane Trading	Werksmans Attorneys	Cliffe Dekker Hofmeyr - J Jones	R 176,538.12	Nil	R 25,078.83	R 50,422.01	No changes
MC Randburg (38259/09)	Legatus Trust (Pty) Ltd	R H Meyerdricks	None	R 68,300.00	Gold Coins recovered	R 8,508.40	R 1,589.00	No changes
No case no.	Fidentia Software Futures	Department of Health	None	Potential claim against Department - R 1.2 million	R 700,000.00	R 32,360.61	R 7,128.24	No changes
27734/08	Legatus Trust (Pty) Ltd	RH Meyerdricks	None	R 175,520.99	Nil			No changes
27849/09	DCM Gihwala NO G Papadakis Legatus Trust (Pty) Ltd	RH Meyerdricks	Garb & Joffe Attorneys	R 5,758,416.54	Nil	R 280,593.38	R 254,184.29	Application to amend quantum claimed by curators was granted
25849/2010	TEBA Bank Ltd	Corporate Money Managers (Pty) Ltd; ABSA Bank Ltd; mCubed Unit Trust	Cliffe Dekker Hofmeyr - J Jones	R 220,000,000.00	Nil			Matter withdrawn and re-instituted
05024/2011	U-Bank Limited	ABSA Bank Ltd, Ayanda Collective Investment Solutions, Corporate Money Managers, JH Bakkes, JRG Polson, L Strydom, PH Strydom & Registrar of Collective Investment Schemes	Rudolph Barnstein & Associates	R 222,158,281.85	Nil			Legal action was instituted by U-Bank against ABSA in February 2011, based on a breach of the defendants' duties i.to a written Deed concluded by mCubed Unit Trust Management Co Ltd (Ayanda Collective Investment Solutions Ltd) and ABSA on or about 10 March 2003. Ayanda was joined by ABSA as a third party to the proceedings. Pleadings have closed and the matter was enrolled for hearing during September 2013. Matter was subsequently removed from the roll. No new trial date has been allocated.
07662/2012	MIH Holdings Limited	ABSA Bank Ltd, Ayanda Collective Investment Solutions, Corporate Money Managers, JH Bakkes, JRG Polson, L Strydom, PH Strydom & Registrar of Collective Investment Schemes	Rudolph Barnstein & Associates	R 21,989,201.00	Nil			MIH Holdings Limited instituted legal proceedings against ABSA Bank Limited in February 2012 as an alleged breach by ABSA of its duties i.to a written Deed concluded by mCubed Unit Trust Management (Ayanda Collective Investments Solutions Limited) and ABSA on or about 10 March 2003. Pleadings have closed and the matter was enrolled for hearing during 2013. Matter was subsequently removed from the roll. No new trial date has as yet been allocated.

27737/09	Schoombie Oudleure	None	G Papadakis NO & DCM Gihwala NO	Cliffe Dekker Hofmeyr - J Jones	R	89,490.00	Nil	R	96,154.00	R	12,724.24	Matter withdrawn
G207/2007	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - J Jones	Insolvent estate Worthytrade 185 (Pty) Ltd	None	R	R37 297 603.76 claim lodged for Fidentia Capitanwise (Pty) Ltd (In Curatorship)	Nil	Nil	Nil	Nil	Nil	No changes
G207/2007	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - J Jones	Insolvent estate Worthytrade 185 (Pty) Ltd	None	R	R6 864 960.32 claim lodged for Fidentia Asset Management (Pty) Ltd (In Curatorship)	Nil	Nil	Nil	Nil	Nil	No changes
T3324	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - J Jones	Insolvent estate Intabrand	None	R	R5 658 000.00 claim lodged for Fidentia Asset Management (In Curatorship)	Nil	Nil	Nil	Nil	Nil	No changes
T3324	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - J Jones	Insolvent estate Intabrand	None	R	R37 847 725.74 claim lodged for Fidentia Holdings (Pty) Limited (In Curatorship)	Nil	R	70,623.28	Nil	Nil	No changes
0797/2010	SML Gore NO, EW Prinsloo NO & LW Theunissen NO	Webber Wentzel	Legatus Trust (Pty) Ltd, GCM Gihwala NO & G Papadakis NO	Cliffe Dekker Hofmeyr - J Jones	R	R 4,800,000.00	Nil	R	423,742.56	R	289,919.95	Matter settled
2010/45006	SML Gore NO, PD Kruger NO & NM Phosa NO	Webber Wentzel	Legatus Trust (Pty) Ltd	Cliffe Dekker Hofmeyr - J Jones	R	R 1,150,000.00	Nil	R	196,382.23	R	135,089.20	Matter settled
14172/2010	PD Kruger NO EM Motlala NO	Webber Wentzel	Bramber Alternative (Pty) Ltd / Legatus Trust (Pty) Ltd	Cliffe Dekker Hofmeyr - J Jones	R	Dispute in respect of ownership Legatus Trust (Pty) Ltd	Nil	R	215,032.20	R	250,200.24	Matter settled
T740/07	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - J Jones	Insolvent estate Cruickshank	None	R	R 59,000,000.00	Nil	Nil	Nil	Nil	Nil	No changes
5126/2012	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - N Muller	Adam Cloete Iza Franschoek Estate Security & Sheriff Paarl	Faure & Faure	R	Release of property from attachment	Successful	R	24,377.30	R	14,421.00	Matter finalised
5126/2012 (H.C)	DCM Gihwala NO and G Papadakis NO	T Erasmus Attorneys	Adam Cloete; Sheriff Paarl	Faure & Faure Paarl	R	Interpleader and High Court Stay of Warrant	Nil	R	23,000.00	Nil	Nil	Matter finalised
6517/2012 (H.C)	DCM Gihwala	T Erasmus Attorneys	JAW Brown, J Theart	June Marks Attorneys	R	Stay and setting aside of subpoena	Sitting aside of subpoena granted by agreement	R	18,962.50	Nil	Nil	Matter finalised
4269/2008	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - L Rhoadie	L HR Bam	Acting personally	R	R9,868,434.18 and R96,744.41	R	601,147.47	R	1,050,123.85	Nil	Judgment granted against defendant in the amount claimed together with interest and costs, as well as the costs for the sequestration. In the process of tracing their whereabouts.



679/2007	JAW Brown; Carter & Koor; M J Van Schaikwyk; JAW Brown Family Trust; ZC Brown Family Trust; Antheru Mandated Investors; Brown Brothers Holdings	None	The Financial Services Board; Cliffe Dekker Hofmeyr - L Rhoochie	Application for setting aside curatorship and intervention application by curators	Nil	R	405,132.63	R	258,630.78	Application dismissed with costs. No instructions to recover costs	
7394/2012	H Heydemych N.O.; Joubert NO	June Marks Attorneys	D Gihwala NO; G Papadakis NO; Fidentia Management (Pty) Limited; Fidentia Asset Holdings (Pty) Limited; Bramber Alternative (Pty) Limited	Application to declare investment of Antheru Beleggings Trust R33,727,389	Nil	R	134,703.43	R	63,005.94	Application dismissed with costs due to failure by Antheru to put up security for costs. Costs to be recovered	
7242/2013	Akarava Masters Homeowner's Association; La Bella Vita Wine Estate Property Owners Association; The Body Corporate of the Sante Winelands Estate	Van der Spuy & Partners	Bramber Property (Pty) Limited; Dines Gihwala N.O.; George Papadakis N.O.; Minister of Public Works, Orton Hotels and Resorts (Pty) Limited	Application for ejection of Bramber and curators from occupying guardhouse at entrance of Sante estate	Nil	R	298,589.15	R	68,389.86	Order taken by agreement with Curators ordered to pay the applicants' costs as taxed	
3042/2010	D Gihwala NO; G Papadakis NO; Fidentia Capitalwise (Pty) Limited	Cliffe Dekker Hofmeyr - B Scriba	Bramber Alternative (Pty) Limited; Threadneedle Holdings Company (Pty) Limited; Threadneedle Consulting (Pty) Limited; R Reed; JNP ds Jongh	R 20,000,000.00	Nil	R	30,090.02	R	120,732.23	No changes	
2054/08	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - B Scriba	JPN de Jongh; N de Jongh NO; L Spies NO; JPN de Jongh NO; M de Jongh NO; JM de Jager NO	R 6,737,778.00	R	3,290,950.00	R	315,000.25	R	661,460.87	Settled for R5 100 000 plus costs and interest. Taxation complete
3350/08	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - B Scriba	Nicci Ferguson Attorneys, Level c, The Adderley, 25 Adderley Street, Cape Town	R 4,000,000.00	R	2,470,360.00	R	347,349.34	R	835,642.27	Settled for R1 750 000, plus costs at R500 000 and interest on settlement figure
3349/08	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - B Scriba	Werksmans Attorneys	R 1,173,333.00	Nil	R	109,231.66	R	158,366.64	Matter is in process of being set down. Pre-trial conference postponed to April 2014	
1832/08	Curators of Ovation Global Investment Services (Pty) Limited and Ovation Global Investment Nominees (Pty) Limited	Webber Wentzel	Fidentia Curators and Fifteen Others	Total divestment of investors' funds	Nil	R	277,896.80	R	710,815.85	Fidentia and Common Cents Curators' were unsuccessful and ordered to pay costs. Fidentia Curators' taxed down original bills of costs from R1 237 615.32 to R156 368.63	
24476/09	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - B Scriba & L Rhoochie	MI Cunningham N.O.; Anton Slabber; MI Cunningham; D Warren	R 149,522,422.00	R	149,522,422.00	R	1,353,251.88	R	2,070,228.64	Amendment applications set down for 22 and 23 May 2014
			Knowlies Husein Lindsay, 10th Floor, 2 Long Street, Cape Town	R42 869.45 by 4th Defendant being payment of the taxed costs for the dismissed exception							

Werkmans Inc, 18th Floor, 1  
 Thibault Square, Cape Town  
 Mark W. Nixon Attorneys, 2nd  
 Floor, Hatfield Plaza North,  
 424 Hilde Street, Pretoria

Case No	Plaintiff	Defendant	Amount	Case Status	Value	Notes
20937/2010	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - B Scriba D Warren	R 10,897,230.00	R 172,557.80	R 98,538.19	Matter finalised
		Cliffe Dekker Hofmeyr Incorporated				Unrepresented
		Michael John Lane NO				Unrepresented
		Abia Edwin Tjale NO				Unrepresented
		Hjalmar Mulder NO				Korbers Inc, Unit 6A, Graphic Centre, 5 Bulten Street, Cape Town
		Pieter Eduard Stoffberg NO				Korbers Inc, Unit 6A, Graphic Centre, 5 Bulten Street, Cape Town
		Johannes Weessels De We NO				Korbers Inc, Unit 6A, Graphic Centre, 5 Bulten Street, Cape Town
3357/2008	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - L Stansfield	R 4,000,000.00 / R2,737,778.00 / R100,000.00	R 86,207.00	R 137,233.40	Matter still ongoing. Awaiting notification of R37(B) hearing before matter can be certified ready for trial
		L H Mulder; S L Mulder N.O.; A Tucker N.O.; H Mulder N.O.; P Stofberg N.O.; J de Wet				
3352/2008	DCM Gihwala NO and G Papadakis NO	Cliffe Dekker Hofmeyr - L Stansfield	R 4,000,000.00 / R2,737,778.00	R 30,092.59	R 8,171.17	Matter is still ongoing. Awaiting notification of R37(B) hearing before matter can be certified ready for trial
		MR Khan and Associates, 2 Struben Road, Claremont				
2010/02938	DCM Gihwala NO and G Papadakis NO	Wertheim Bekker Attorneys - A Kika	R 17,600,000.00	R 85,215.00	R 66,286.49	The matter is set down for trial on 24 July 2014
		Stephanus de Kock				Edward Nathan Sonnenbergs Inc, 150 West Street, Sandton
		Thebe Securities Limited				Phukubje Piare Masithela Attorneys, Level 4, 17 Baker Street, Rosebank

R 103,688,861.17 R 7,903,037.44 R 12,366,968.10

## Curators' Financial Report – February 2014

---

### 1. Introduction

- 1.1 This financial report deals with the administration and financial performance of the remaining companies comprising the private equity portfolio for the period ended 28 February 2014. Legatus represents the remaining trading entity in the private equity portfolio. With regards to the other companies, these have either been disposed of with the consent of the FSB, alternatively, those companies for which no offers were received and which could not continue trading profitably have been wound down.
- 1.2 The remaining companies comprising the private equity portfolio, for the period covered by this report, are:
- Legatus; and
  - Moshate (not trading).

### 2. Legatus Trust (Pty) Ltd (“Legatus”)

#### 2.1 Introduction

- 2.1.1 Legatus continues to provide specialised fiduciary products to the South African Market, and specifically administers deceased estates and Trusts. It is a member of the Fiduciary Institute of South Africa.
- 2.1.2 The audited financial statements of Legatus for the year ended 31 March 2013 have been finalised.
- 2.1.3 The income statement, statement of financial position, cash flow statement and statement of changes in equity for the eleven months ended 28 February 2014, together with a commentary thereon, are recorded at paragraphs 2.2 to 2.5 *infra*.
- 2.1.4 The legal matters and disputes are recorded at paragraph 2.6 *infra*. The proposed sale of Legatus is now in progress in view of the fact that the dispute as to the ownership was resolved in terms of the agreement referred to in 2.6.2.

## 2.2 Income statement for the eleven months ended 28 February 2014

		Eleven months ended 28 Feb 2014 (Unaudited)	Eleven months ended 28 Feb 2013 (Unaudited)	Year ended 31 Mar 2013 (Audited)
	Note	R	R	R
Revenue	2.2.1	4 274 983	4 703 355	5 360 906
Operating expenses	2.2.3	4 764 371	4 463 769	4 922 998
Operating( Loss) Profit		(489 388 )	239 586	437 908
Investment Income		80 620	75 756	82 178
Net (Loss) Profit before taxation		(408 768)	315 342	520 086
Taxation		0	88 296	145 624
<b>(Loss) Profit after tax</b>		<b>(408 768)</b>	<b>227 046</b>	<b>374 462</b>
Abnormal item-legal expenses	2.2.4	(989 451)	0	0
<b>(Loss) Profit after abnormal item</b>		<b>(1 398 219)</b>	<b>227 6</b>	<b>374 462</b>

- 2.2.1 Total revenue for the eleven months ended 28 February 2014 decreased by 10% compared to the eleven months ended 28 February 2013. The numbers of estates on which executor's fees were taken in the eleven months ended 28 February 2014 was 171 (2013: 205) at an average executor fee of R 20 688 (2013: R18 543).
- 2.2.2 The decline in revenue is attributed in part to the non-finalisation of estates which were projected to be completed by 28 February 2014. This is caused by *inter alia* the delay in effecting transfer of immovable properties sold and in obtaining consent from the various Masters' Offices to proceed with the disposal of properties occupied by family of the deceased owner.
- 2.2.3 Operating expenses for the eleven months ended 28 February 2014 increased by 6.7% compared to the comparative period.
- 2.2.4 The legal fees were incurred in respect of a claim against the former director and shareholder of the company which is addressed at paragraph 2.6.1 *infra*. The amount of R989 451 is included in the total amount reported as expenditure incurred on legal services, as appearing in previous Court reports filed.

## 2.3 Statement of financial position

	Note	28 Feb 2014 (Unaudited) R	31 Mar 2013 (Audited) R
<b>Assets</b>			
<b>Non-current assets</b>			
Property plant and equipment	2.3.1	40 889	41 493
Intangible Assets – Trust Licence	2.3.2	200 376	200 376
		<u>241 265</u>	<u>241 869</u>
<b>Current assets</b>			
Trade and other receivables	2.3.3	149 158	576 877
Cash and cash equivalents		710 390	1 921 411
		<u>859 548</u>	<u>2 498 288</u>
<b>Total assets</b>		<u>1 100 813</u>	<u>2 740 157</u>
<b>Equity and liabilities</b>			
<b>Equity</b>			
Share capital		312	312
Retained income		471 577	1 869 795
	2.3.4	<u>471 889</u>	<u>1 870 107</u>
<b>Current Liabilities</b>			
Current tax payable		161 721	161 720
Trade and other payables		467 203	708 330
<b>Total Current Liabilities</b>		<u>628 924</u>	<u>870 050</u>
<b>Total Liabilities and equity</b>		<u>1 100 813</u>	<u>2 740 157</u>

- 2.3.1 Property Plant and Equipment comprises of computers and equipment, which is being depreciated using the straight line method to write down the cost, less residual value over the useful lives of the assets.
- 2.3.2 The intangible assets comprise of the Trust Licence and are regarded as having an indefinite life. Based on all relevant factors, there is no foreseeable limit to the period over which the asset is expected to generate cash flows.
- 2.3.3 Trade and other receivables largely include a rental deposit and an amount owing by the former shareholder.

2.3.4 The movement in shareholders' equity is addressed through the statement of changes in equity (refer paragraph 2.5).

## 2.4 Cash Flow Statement

	11 months ended 28 Feb 2014 (Unaudited)	Year ended 31 Mar 2013 (Audited)
	R	R
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Cash receipts from customers	4 651 110	5 170 928
Cash paid to suppliers and employees	(5 921 632)	(4 790 256)
Cash applied to from operations	(1 270 522)	380 672
Interest income	80 620	82 178
Tax paid	-	(121 439)
<b>Net cash from operating activities</b>	<b>(1 189 902)</b>	<b>341 411</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Purchase of property plant and equipment	(21 118)	
Dividends paid	-	(1 200 000)
<b>Total cash movement for the year</b>	<b>(1 211 020)</b>	<b>(858 589)</b>
Cash at the beginning of the year	1 921 410	2 780 000
<b>Total cash at end of the year</b>	<b>710 390</b>	<b>1 921 411</b>

## 2.5 Statement of changes in equity

	Share Capital	Retained Income	Total Equity
	R	R	R
<b>Balance at 31 March 2012</b>	<b>312</b>	<b>1 495 333</b>	<b>1 495 645</b>
Profit for the year		374 463	374 463
<b>Balance at 31 March 2013</b>	<b>312</b>	<b>1 869 796</b>	<b>1 870 108</b>
(Loss) for the eleven months		(1 398 219)	(1 398 219)
<b>Balance at 28 February 2014</b>	<b>312</b>	<b>471 577</b>	<b>471 889</b>

## **2.6 Legal Matters**

- 2.6.1** Summonses have been issued to RH Meyerdricks, a former director and shareholder of Legatus. The details are recorded at paragraphs 2.6.1.1 to 2.6.1.2 *infra*.
- 2.6.1.1** While acting as director of Legatus, Meyerdricks allegedly received certain monies "secret profits" to which he was not entitled.
- 2.6.1.2** Monies lent and advanced to Meyerdricks have not yet been repaid.
- 2.6.2** The Joint Trustees of the estate of AL Cruickshank withdrew all the actions instituted in terms of an agreement concluded with the Fidentia curators, in terms of which 12.5% of the sales proceeds from the sale of Legatus Trust (Pty) Ltd will be paid to the estate of AL Cruickshank. This settlement allowed the curators to proceed with the disposal process.

### **3. Moshate Holdings Pty Ltd (Moshate)**

- 3.1 This is a non-trading company in which approximately R15 million of investor funds was invested, with a view to the company procuring land upon which cemeteries would be established. The dispute regarding the effective shareholding in Moshate has not been resolved.
- 3.2 Despite repeated assurances from the directors of Moshate that audited financial statements would be prepared from the date of commencement of operations, to date the directors have failed to provide audited financial statements for the company.
- 3.3 The curators are exploring other alternatives with a view to recovering investor funds transferred to Moshate.

### **4. Compilation of Accounting Records**

- 4.1 Further to our previous report the statutory audits of Bramber Property (Pty) Ltd, Fidentia Administration Services (Pty) Ltd and Fidentia Facilities (Pty) Ltd have been completed, and the statutory audit for Fidentia Holdings (Pty) Ltd is in the process of finalisation.
- 4.2 The curators have also engaged over the period with the trustees of the LHUT to assist them in preparing the audited annual financial statements of LHUT.

## 5. Court Sanctioned Distribution Plan

### 5.1 Admitted Claims

5.1.1 The curators admitted the following claims:

<b>Investor</b>	<b>Capital Claim</b>
TETA	R 185 000 000
Antheru	R 9 205 449
Balltron	R 38 573 680
LHUT	R1 133 911 822
<b>Total admitted claims at date of this report</b>	<b>R1 366 690 951</b>

5.1.2 In respect of the Evertrade transactions there is nothing further to report from the previous report.

5.1.3 In terms of the distribution plan as approved by the Western Cape High Court, the amounts as recorded at 5.1.4 *infra* have been distributed to the TETA, Balltron and LHUT. The distribution to those persons and entities that invested directly with Antheru Trust will be made once approval is received from the Registrar. A calculation of the amount to be distributed to each investor has been submitted to the Registrar. The calculation has been made in accordance with the admitted claim of Antheru Trust in the amount of R9, 205,449.

5.1.4 With the approval of the FSB a guarantee held for the benefit of Balltron, in the amount of R4 418 311 was returned to Balltron. This amount does not form part of the capital claim of Balltron.

<b>Investor</b>	<b>Capital Claim</b>
TETA	R 33 300 361
Balltron	R 6 943 338
LHUT	R 90 741 051
<b>Total distribution</b>	<b>R130 984 750</b>

## **5.2 Accounting for Investor Funds**

- 5.2.1 Proceeds from the disposal of assets and recoveries of funds from previous directors, staff and third parties have, in the main, been deposited with the firm DLA Cliffe Dekker Hofmeyr, to be held in trust. Disbursements relating to legal fees and other professional fees have, in the main, also been disbursed from the funds held in trust.
- 5.2.2 In line with the audit of all fees paid and/or incurred the audit has been extended to all income and expenditure conducted through the trust account of DLA Cliffe Dekker Hofmeyr for the period 1 July 2013 to 28 February 2014. For this purpose, information and documents has been requested from DLA Cliffe Dekker Hofmeyr. At the time of writing, the requested information and documentation has not been presented, and as a consequence thereof it is not possible to prepare a financial report. The financial report will be prepared upon receipt of the information and documentation requested and the attendant audit thereof.

## 6. Distributions

6.1 Since curatorship, the following distributions to investors have been made:

Distributions	R
Distribution to LHUT in terms of Curatorship Order	113 389 614
Distribution to LHUT pursuant to litigation instituted against Lekana <b>Note 1</b>	70 501 913
Distribution to LHUT pursuant to the Global Funding Agreement	340 000
Distribution in terms of Court Approved Distribution Plan	130 972 587
Balltron Guarantee Refund	4 418 311
<b>Total Distribution/Refund to Investors</b>	<b>319 622 425</b>

**Note 1:** Pursuant to litigation initiated by the curators against Lekana Employee Benefits, which litigation was subsequently prosecuted by the trustees of LHUT, settlement was reached in terms of which this amount was paid directly to one of the source funds of the LHUT. The beneficiary funds that originated from this source fund were invested by LHUT with Fidentia Asset Management (Pty) Ltd.

6.2 To date, a total amount of R319 634 588 has been returned to the investors since curatorship. To date distributions to LHUT, Balltron and TETA have been made in amounts which represent 23% of the total admitted claims of all investors. This percentage excludes the refund of the Balltron Guarantee. Including the Balltron guarantee refund the percentage increases to 23.4%.