



THE HUNTLEY GROUP

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Dear Grower,

AUSTRALIAN OLIVES PROJECTS 1, 2, 3, and 4

A year has passed since our last correspondence in which we advised of our intention to wind-up Projects 1, 2, 3 and 4.

In the past twelve months we have committed a great deal of time and money in Court proceedings with Australian Olives Limited (AOL).

In summary these proceedings were:

1. The action brought by a colleague of one of the AOL directors seeking to set aside our appointment as Responsible Entity of Project 3 was defeated and costs awarded against the AOL associate.
2. The action we took against AOL as owners of 237 lots in Project 4 for non payment of their management fees is continuing. AOL provided us with a members register when we assumed control of this project which showed they were the holders of these lots. They have also been credited with a share of proceeds of sale of olives on the basis that they were the owners of these 237 lots in Project 4.
3. Australian Olives Holdings Ltd (AOHL) brought an action against us seeking payment of millions of dollars for non payment of charges for water and loss of profit in relation to charges in future years ("Water Case"). AOHL was a party to contract to supply water to AOL in respect of projects for which AOL was Responsible Entity. The court dismissed the action and awarded costs in favour of HML. AOHL have appealed this decision.

4. We undertook an action against AOL for recovery of money they received from growers in Project 1, 2, 3, 4 and 6 for periods beyond the date of their replacement by HML as Responsible Entity ("Money Case"). Unfortunately this case was lost and a judgment, including costs amounting to approximately \$300,000, was awarded against Huntley. We have appealed this decision.

The Australian Securities and Investments Commission (ASIC) have at last taken an interest in all matters which have been brought to their attention in the past. A copy of an extract from a letter written by our solicitors, Piper Alderman, to ASIC which provides a detailed account of relevant issues can be found in the Investors section of our website www.huntleygroup.com.au.

The position we currently face is that AOHL have appealed the "Water Case" and we have appealed the "Money Case". The projects cannot be finally wound up until all litigation is finalised.

As you are aware we have not invoiced growers for fees beyond 31 May 2009. The main reason for this is that we had expected that the Court would have ordered AOL to handover the funds they had collected from growers for management fees charged for periods beyond the date of their sacking. This has not occurred and, as we are owed substantial amounts by growers in Projects 1, 2, 3 and 4 for fees covering periods up to 31 May 2009, we must now commence action to recover the fees due to us to cover the substantial costs we have incurred on behalf of Growers with respect to the management of their Groves.

We have now assigned these outstanding debts to Managed Recoveries Pty Ltd to undertake immediate collection.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'John H Knox', written in a cursive style.

John H Knox
Managing Director
Huntley Management
ABN 52 089 240 513

Extract from letter from HML solicitor to Australian Securities & Investment Commission dated 15 February 2010.

" we are instructed and note as follows:

1. "The problems with the above schemes were created by the failure of the former responsible entity AOL to comply with its duties as responsible entity, details of which have on numerous occasions been furnished to ASIC with respect to which to date no action has been but could have been taken by ASIC. Our client has done the best that it can bearing in mind these problems including in particular the way the schemes were structured and misrepresented in the various disclosure documents to investors so that:
 - 1.1 the water was located in a lagoon (**Water Land**) owned by a related entity to AOL, Australian Olives Holdings Pty Ltd (**AOHL**) but as a result of this structure upon removal of AOL as responsible entity, there was no water available at least for Project 1 to 4 as confirmed by Lindgren J in *Australian Olive Holdings Pty Limited v Huntley Management Limited, in the matter of Huntley Management Limited* [2009] FCA 1479 (25 November 2009) although AOHL claim they still own the water for Projects 5 and 6 notwithstanding paragraph 127 of that judgment;
 - 1.2 it was not physically possible for Projects 5 and 6 to be irrigated from the water land owned by AOHL, a matter not drawn to the attention of investors in those Projects in the disclosure documents;
 - 1.3 the land owner, Collective Olive Groves Limited (In Liquidation) (**COGL**) although being majority owned by the Growers was controlled by the directors of AOL and AOHL and as a result of AOL ceasing to be responsible entity the directors of COGL caused the COGL to go into administration and then liquidation;
 - 1.4 the trees are not owned by the Growers but by COGL;
 - 1.5 the water infrastructure is not owned by the Growers.

AOHL have refused to negotiate with Huntley for the supply of water to the Projects and therefore there is no water available to enable the Projects to continue apart from perhaps Projects 5 and 6 depending on the interpretation of paragraph 127 of Lindgren J's decision in the above case.

This issue keeps getting raised by ASIC as if the problem is our client's problem when it clearly is not as confirmed by the decision of Lindgren J. In case ASIC still does not understand:

Huntley has no entitlement and never has had entitlement to water under the Consolidated Water Supply Agreement. The trees will not grow without water.

If ASIC has issue with this, the culprits are clearly the directors and common shareholders behind AOHL and AOL and that is where ASIC's attention should be directed **not** our client.

2. Our client has acted in the best interests of Growers by bringing the Management Agreements to an end so that they have no further obligations to pay any further monies as and from the date of commencing of the winding up.
3. AOL have collected management fees from Growers for Projects 1 to 3 for the year ended 30 June 2009 but only performed their functions as responsible entity for the periods ended respectively:
 - 3.1 for Project 1 – 6 November 2008;

3.2 for Project 2 – 17 November 2008;

3.3 for Project 3 – 12 December 2008.

AOL have collected management fees from Growers for Project 6 for the year ended 30 June 2008 but only performed their functions as responsible entity for the period ended 18 March 2008.

Notwithstanding an earlier concession by AOL but subsequently withdrawn and further as represented by AOL to Growers in order to extract full payment of management fees from Growers that they would apportion those management fees, only the relevant date being in issue because of ASIC's dilatoriness in processing the Form 5107, as a result of the decision by Lindgren J in *Huntley Management Limited v Australian Olives Limited (No 3)* [2009] FCA 1549 (10 December 2009) AOL have received monies which should have been applied to the benefit of Growers and made a windfall. This has left our client in the position of having to bear the total cost of the performance of its functions as responsible entity without the appropriate funds to do so. It is quite extraordinary that AOL has been paid for work not performed notwithstanding that it is clear that such fees were only payable in consideration for that work to be performed.

It is clear therefore that AOL is in breach of their duties in failing to carry out the work for which they have been paid. This has been pointed out to ASIC but nothing has been done to date.

4. Further following the decision of Lindgren J on the operation of section 601FJ of the Corporations Act, our client has suffered substantial loss and damage by reason of ASIC's dilatoriness in failing to record the change of responsible entity in accordance with the Form 5107 lodged by our client being the fees to which our client was entitled between the date of lodgement and the date of recording by ASIC.
5. Notwithstanding the above, resulting in our client being substantially out of pocket in carrying out work for which it has not been paid by the Growers or reimbursed by AOL for the work that they did not carry out for the fees they received, our client has honoured its statement to Growers in Projects 1 to 4 that it would cease charging management fees from the date of commencement of the winding up so that the Growers would have no further obligation to Huntley. The management agreements therefore came to an end on that date. The leases to Huntley which it is noted have never been assigned by AOL to Huntley were therefore no longer required for Projects 1 to 4 and were therefore surrendered. It is noted that the land can only be used for the purposes of those Projects and since the Projects were no longer operational they had no value. However Growers were informed that their licence agreement was with the land owner COGL and as Huntley were not a party to those agreements there may be a liability for licence fees under those agreements to COGL. Our client has however suggested to COGL that because AOL have harvested the olives that it would not be appropriate to invoice these Growers. Completion of the winding up has only been held up because of the litigation between Huntley and AOL. Until that litigation has been finalised it is not appropriate to do so.
6. As a result of the decision of Lindgren J in *Huntley Management Limited v Australian Olives Limited (No 2)* [2009] FCA 686 (24 June 2009) our client did not have the ability to act as responsible entity of Project 3 until the decision of Reeves J in *C & C Fisher Pty Ltd v Livadaras* [2010] FCA 11 (21 January 2010) was handed down. This was a most unsatisfactory position but this was beyond the control of our client. We note that we informed ASIC that ASIC should appoint a receiver to this scheme to protect the interests of investors until finalisation of the Court proceedings but note nothing has been done in that regard.
7. Consistent with the structure of agricultural managed investment schemes (to which see the decision of the Full Federal Court in *Hance*, there is no scheme property for any of these Projects.

There is nothing available to sell on behalf of the Growers. The structure was designed to ensure that Growers would get nothing for their outlays other than any return from sale of olives which in turn has proved to be so little that the outlays will never be recovered. AOL would have continued to receive on their own admission at a Growers' meeting fees for the balance of the Project with no possibility of Growers ever receiving a return on their investment.

Firstly, the olive trees are owned by COGL. This means that our client cannot sell the olive trees because it does not have title to those trees. COGL owns them.

Secondly AOHL owns the irrigation and water facilities. This position has been accepted by the liquidator of COGL. Therefore there is no evidence available to our client to indicate that the irrigation and water facilities are scheme property within the meaning of section 9 of the Corporations Act, 2001. Our client therefore has no claim on the same on behalf of the Growers.

Thirdly the leases of the land cannot be used for anything other than the Projects and therefore came to an end when the winding up commenced.

There is nothing available to Growers as a result of the commencement of the winding up.

However on the other hand, as a result of the actions taken by Huntley in the best interests of Growers, there are no further obligations by the Growers to Huntley for any further management fees from that time for Projects 1 to 4.

No management fees have been charged for Projects 5 and 6 until the current litigation has been completed and it can be determined whether these Projects are viable with access to the Project 5 dam (which the decision of Lindgren J appears to be of the view that there is such access although that is disputed by AOHL). However the Growers Groves are still being maintained.

8. Our client has received hundreds of letters from relieved Growers congratulating our client on relieving them of the stress of continuing to pay out management fees without any return or any prospect of return. We note that AOLs directors have publicly stated that the Growers had an obligation to continue to pay AOL management fees even though there were no prospects of any return.
9. Our client has been informed that a reporter of one of the major newspapers is wishing to report on this matter including on the lack of assistance given to Growers by ASIC despite their valid complaints about AOL and its directors. Despite pressure from the Growers for this report to be published, our client has to date been able to have this report suppressed because of the current litigation with AOL and its directors.
10. Without water, the Projects are not viable. The Projects were structured so that water could be shut off if AOL were removed. This is confirmed by the Federal Court. A plebiscite was carried out by Growers for each Project as to whether they favoured a winding up. The overwhelming majority wanted the Projects to be wound up and they be let out of any further obligations. To allege that our client has not acted in the interest of members is beyond belief. It is easy to pontificate from ivory towers without entering the real world of Growers faced with onerous obligations and no prospects of any return.
11. Projects 1, 2 and 4 have effectively been wound up but for the finalisation of the litigation with the former responsible entity and its directors. As promised to the Growers, as part of the winding up of the Projects, their obligations under the scheme documents, to the extent that Huntley were able to do so, were immediately brought to an end. This has avoided any further payments by the Growers. Once this occurred there was nothing left for Huntley to do in relation to these Projects because there was no scheme property available to the Growers. Therefore the leases of the land (which we note have never been assigned to our client by AOL in any event) could not be maintained under the terms of those leases and came to an end. But for the litigation,

these schemes would have been wound up immediately on the final audited accounts being presented shortly after the commencement of the winding up.

12. As a result of the decision of Lindgren J, AOL was the responsible entity of Project 3 until finalisation of the meeting proceedings in the Federal Court. The decision of Reeves J has now confirmed that our client was validly appointed. Unfortunately our client is not in a position to deal with this Project because the records of this Project have not been provided to it by the former responsible entity AOL. However we note that in accordance with the promise given to Growers, our client has not charged any management fees from 31 May 2009 when the winding up would have commenced but for the decision of Lindgren J. The position in any event with this Project is the same as with Projects 1, 2 and 4. Further regardless of the Court proceedings challenging our client's appointment as responsible entity our client accepted and carried out the responsibility to manage and care for Project 3 up until 31 May 2009.
13. Our client currently is a party to proceedings on behalf of Growers funded by a litigation funder against AOL and its directors for various breaches of duties with respect to Projects 5 and 6. The hearing is set down for May 2010 but our client is informed that AOL and its directors are continuously trying to frustrate the matter being heard through various interlocutory steps. It may be that similar proceedings will be instituted with respect to Projects 1 to 4. This is the only reason for not completing the winding up of these Projects.
14. Our client will shortly be commencing proceedings against AOL for recovery of the cost of carrying out the work for the Growers for which AOL was paid fees but did not carry out. The winding up of the Projects cannot be finalised until this occurs.
15. It would appear that ASIC wants Growers to continue to pay management fees and carry out their obligations under the scheme agreements between the commencement of the winding up and the finalisation of the winding up. This is an absurd proposition given that the Growers will be further out of pocket for no return i.e. ASICs position is that the Growers must continue to bear a negative return. How this is in the best interests of Growers is beyond belief.
16. We note the following evidence given by a director of AOL in *C & C Fisher Pty Ltd v Livadaras* [2010] FCA 11 (21 January 2010):

"Mr Johnston (note: an AOL and AOHL director) told Mr Fisher, among other things, that:

- the olive groves were held in a number of managed investment schemes;
- the olive trees had been affected by drought and were not yielding the forecast yields and, as a result, the investors in the schemes were complaining;
- he had invested \$20 million in the schemes and he needed to find a way to make them work;
- the managed investment scheme structure was an expensive and unduly complex one;
- they may be able to collapse the schemes and run the olive groves as an integrated agricultural operation; and
- this was where the business opportunity lay."

Even AOL agrees that the Projects are not viable in their current structure. It can only be inferred from the above that the end game of the former responsible entity and its directors has been to ensure collapse of the schemes and to shut out the investors.

We note that we still are waiting on a response to the complaints made to ASIC in our following letters:

- letter dated 8 May 2008 in which our client notified you accordance with section 601FC(2)(l) of numerous breaches of section 60FC(2)(b) and (c) by AOL which has had, or is likely to have, a materially adverse effect on the interests of members;
- letter dated 20 November 2008 in which our client complained of what it considered to be serious misconduct by the directors of COGL in relation to the affairs of COGL that needed investigation;
- letter dated 1 December 2008 in which our client complained about the directors of AOL placing their interests over the interests of investors in the schemes by their actions contrary to their prior representations to investors;
- letter dated 13 December 2008 in which our client made a formal complaint to ASIC concerning the failure of AOL to comply with section 601FR of the Corporations Act, 2001;
- letter dated 27 February 2009 in which our client lodged a complaint about unsolicited offers being made contrary to the provisions of the Corporations Act, 2001;
- letter date 27 February 2009 in which our client made a complaint, amongst other things, about the conduct of AOL in relation to recovery of fees from Growers;
- letter dated 4 March 2009 in which our client requested ASIC to write to AOL and their lawyers requesting that AOL comply with their obligations under the Corporations Act, 2001 with respect to all 6 Projects;
- letter dated 11 March 2009 in which our client complained of the failure of AOL to comply with section 601FR of the Corporations Act, 2001 and querying why in the circumstances, ASIC continued to allow AOL to hold an AFSL;
- letter dated 13 July 2009 in which our client complained amongst other things of no action on its previous complaints to ASIC.

Our client awaits a response from ASIC on the issues it has repeatedly raised concerning the conduct of AOL and its directors.”