

**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 (PROPRIETARY) LIMITED** First Respondent  
(Registration No. 1998/024863/07)

**BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED** Second Respondent  
(Registration No. 2000/024139/07)

**FIDENTIA HOLDINGS (PROPRIETARY) LIMITED** Third Respondent  
(Registration No. 2001/022355/07)

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**CURATORS' 17th REPORT TO COURT DATED 28 SEPTEMBER 2017**

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ANNEXURE A - ORDER OF COURT DATED 16 MARCH 2017.

SCHEDULE 1: FINANCIAL REPORT

## 1. INTRODUCTION.

- 1.1. The whole of the Respondents' business of providing financial services as contemplated by the Financial Advisory and Intermediary Services Act, 37 of 2002, ("the FAIS Act") was placed under provisional curatorship by this Honourable Court in accordance with the provisions of the Financial Institutions (Protection of Funds) Act, 28 of 2001, ("the Protection of Funds Act") on 1 February 2007, which order was made final on 27 March 2007. (In error, this latter date was incorrectly referred to in paragraph 1.2 of the 16<sup>th</sup> Report as 12 April 2007.)
- 1.2. Initially George Papadakis and Dines Chandra Gihwala were appointed as the curators of the said business but on 15 August 2014, following the resignation of Mr Gihwala on 26 June 2014, his appointment was cancelled and John Adrian Levin was appointed curator provisionally in his place, which appointment was made final on 19 September 2014.
- 1.3. The curators have reported to this honourable court from time to time on the status of the curatorship in terms of various Orders of Court, the last time by means of our 16<sup>th</sup> Report to Court dated 30 January 2017, as amplified by an Addendum of that same date, which Report was accepted by the Honourable Ms Justice Meer on 16 March 2017. A copy of Ms Justice Meer's Order dated 16 March 2017 is annexed, marked A.
- 1.4. When accepting the 16<sup>th</sup> Report on 16 March 2017 Ms Justice Meer directed, *inter alia*, in paragraph 4 of her Order that:

*"4. The curators are directed to file a further report with the Court by not later than 29 September 2017 dealing with the following:*

*4.1 the status of the curatorship as at 31 August 2017;*

*4.2 an overview of assets disposed of or alienated and how the proceeds were distributed, including the distribution to investors who invested through Antheru Beleggings Trust;*

*4.3 details of civil actions which may have been instituted by or against the Curators and specifically the progress made with regard to the litigation matters involving the Living Hands Umbrella Trust;*

*4.5 the costs of the curatorship as at 31 August 2017;*

4.6 *any recommendations as to how the continuation of the curatorship, or any related matters, should be dealt with further.*

1.5. This Report, which is being furnished pursuant to paragraph 4 of Ms Justice Meer's Order as referred to in 1.4, comprises two sections, a general report prepared by myself and a financial report prepared by Mr Papadakis. Each of us has had the opportunity of seeing and commenting on the other's report before finalising.

1.6. This general section deals briefly with matters that have been completed since our last report and gives an overview of what still needs to be done in order to bring this curatorship to an end, while the financial report gives a complete overview of the curatorship since inception up to 31 August 2017, including the matters referred to in paragraphs 4.1 to 4.4 of Ms Justice Meer's Order.

## **2. PUBLISHING OF COURT ORDER AND 16<sup>TH</sup> REPORT ON FSB WEBSITE**

In paragraph 3 of the Order referred to in 1.3 the Court directed that its Order and the curators' 16<sup>th</sup> Report should be published on the website of the Financial Services Board ("FSB"). We confirm that this was done.

## **3. REPORTING TO THE FSB.**

In accordance with the requirements of paragraph 6 of the Protection of Funds Act, we have kept the Registrar of Financial Services Providers ("the Registrar") informed of our activities in connection with the curatorship since our 16<sup>th</sup> Report by furnishing her with copies of relevant correspondence relating to matters being dealt with, and personally at meetings on 7 March 2017, 21 June 2017 and 27 July 2017.

## **4. MATTERS DEALT WITH SINCE OUR 16<sup>TH</sup> REPORT.**

### **4.1. Dispute with Orion.**

In our 16<sup>th</sup> Report it was reported that Orion, the previous tenant of Fidentia's immovable properties situated at Sante Winelands Estate near Paarl, was indebted to its landlords (which are subsidiaries of Fidentia Holdings) in the sum of approximately R5.5 million but that Orion disputed liability on the basis that it had a counterclaim for damages in an amount of R47 million. (Subsequently we found that the claim should have been stated as being approximately R4.8 million and not R5.5 million.) During September 2017, with the consent of the Registrar,

the dispute with Orion was settled on the basis that Orion will pay Fidentia the sum of R1,757,588 together with interest at prime calculated on the amount outstanding from time to time, in instalments of R100,000 per month as from 1 October 2017.

#### **4.2. Sante properties**

Following the sale of the Fidentia properties situated at Sante Winelands Estate during December 2016 for a total consideration of R43,635,965, all the properties have been transferred to their respective purchasers, the last of which transfers was registered on 31 May 2017, and the full consideration has been paid.

#### **4.3. Electricity dispute with Home Owners Associations.**

Against registration of transfer of the Fidentia properties as referred to above, we paid the Drakenstein Municipality the outstanding electricity account of approximately R1.2 million in accordance with the undertakings which we had previously furnished, as reported on in our 16<sup>th</sup> Report, and with that brought to an end the last of the outstanding disputes with the Home Owners Associations.

#### **4.4. Moshate.**

In paragraph 11 of our 16<sup>th</sup> Report we reported that the Registrar had consented to our closing down any further enquiry regarding Moshate and that we had informed Mr Mitch Dyer, a co-shareholder who had contacted us with a view to making common cause in trying to recover some of the monies lost in connection with the investment into this company, of this decision. On 13 February 2017 we received an email from Mr Dyer requesting that in the light of our decision not to pursue the matter, he be permitted to purchase Fidentia's shareholding in Moshate for nominal sum of R1. With the consent of the Registrar this was agreed to, albeit for the nominal sum of R100, so as to cover any bank costs necessitated by the transaction.

#### **4.5. Tanzanite Stone**

The Tanzanite stone was sold by Stephen Weltz and Company on our behalf at a public auction held in Cape Town during February 2017 for a net consideration of R6 450.

#### **4.6. Insolvent estate of J A W and SJ Brown.**

The dispute with the liquidator of the insolvent estate of J A W and SJ Brown on which we reported in paragraph 14 of our 16<sup>th</sup> Report, relating to the writ of execution issued against Fidentia Holdings in an amount of R725,387.50, in respect of which amount we contended that a substantial amount had already been paid, has been resolved by means of our paying the liquidator the sum of R195 367 in full settlement of the writ.

### **5. LIVING HANDS UMBRELLA TRUST (“LHUT”)**

5.1. We have previously reported to this Honourable Court that:

5.1.1. LHUT has three trustees, namely the original corporate trustee, Living Hands (Pty) Ltd, a wholly owned subsidiary of Fidentia Holdings (Pty) Ltd, and Ms Wilna Lubbe, an attorney, and advocate Xola Stimelo, the latter two being referred to as the so-called independent trustees and that the nominee of Living Hands in terms of section 6 (4) of the Trust Property Control Act is Mr Fred Eksteen, a chartered accountant;

5.1.2. Ms Lubbe and Adv Stimelo had obtained an opinion from Adv Japie Vorster SC in which he had advised that the Order of Court placing the financial services business of the Respondents under curatorship does not extend to the business of Living Hands, which is to act as a corporate trustee of LHUT, and as such the Fidentia curators have no interest in the legal proceedings instituted against Old Mutual & Others;

5.1.3. the Registrar then sought her own legal advice from Adv Derek Mitchell SC, who agreed with the earlier opinion and advised the Registrar accordingly;

5.2. Following Advocate Mitchell’s advice, the Registrar authorised us to disengage from LHUT. However, the Registrar considered it important that in the absence of the continued involvement of the curators in the affairs of LHUT, one or other of the bigger source funds of LHUT should have representation as a trustee of LHUT in order to be in a position to ensure that the interests of beneficiaries are properly looked after.

5.3. To that end we approached the Mine Workers Provident Fund (“MWPF”), by far the largest of the source funds, to nominate a representative to be appointed as a

trustee of LHUT. They agreed and nominated Mr Mkuseli Mbomvu, the chief executive officer of the MWPF and Mr Mpho Lesabe, a trustee of the MWPF, to be so appointed.

- 5.4. We then wrote a detailed letter to the Master of the High Court, Pretoria, to seek an appointment with him to make representations in this regard but despite further efforts we were unable to obtain any response. We accordingly suggested to the Registrar that instead, the next most effective manner to obtain representation for an MWPF representative on the LHUT Board, would be for Fidentia Holdings to transfer the total issued shares of Living Hands to the MWPF, which would then be in a position in terms of Section 6(4) of the Trust Property Control Act to appoint a representative as trustee. The MWPF however has some or other sensitivity to taking over the Living Hands and turned down the offer.
- 5.5. As this sensitivity does not extend to Messrs Mbomvu and Lesabe being appointed as additional trustees of LHUT we decided to make another attempt at getting an appointment with the Master for the purpose of making representations to appoint them, and to that end wrote to the Chief of Staff in the Department of Justice and Constitutional Development to seek his assistance in obtaining an appointment. We received a response from his office at the end of August 2017, saying that the matter has been referred to the office of the acting-Chief Master, who is investigating the matter. Hopefully, we will receive a substantive response in the near future; the file is apparently being awaited from Metrofile where it had been sent for storage.
- 5.6. We have also previously reported on the litigation instituted by LHUT against Old Mutual and Others for recovery of its losses incurred as a result of Old Mutual having complied with the instruction given by Fidentia Asset Management to transfer all of LHUT's funds from Old Mutual to Fidentia Asset Management. Indeed, in paragraph 4.3 of Ms Justice Meer's Order referred to in 1.4 above, in which we are directed to provide details of civil actions which may have been instituted by or against the curators, we are directed specifically to provide details of the progress made with regard to the matter.
- 5.7. Pursuant to Ms Justice Meer's directive we hereby furnish the following report which has been prepared by Mr Ian Lindsay of Knowles Hussein Lindsay of

Johannesburg, the attorneys attending to the matter of Living Hands and Others NNO v Old Mutual and Others, case 42728/10, namely:

- 5.7.1. *“As indicated in our 13th Report action was instituted in October 2010. A number of exceptions were raised after the action was instituted and settlements were concluded with various parties which ultimately led to the removal of certain defendants;*
- 5.7.2. *Plaintiffs have withdrawn the action as against certain of the defendants previously listed in the 15<sup>th</sup> Report. The pending action is now against Brown, Tucker and Old Mutual Unit Trust Managers. The third party defendants remain Brown, Tucker, Malan, Mulder, De Jongh and Living Hands (Pty) Ltd from whom Old Mutual is seeking a contribution in the event they are found liable for payment of the dissipated funds.*
- 5.7.3. *As indicated in our 14th Report, Judge Wright was appointed the case manager in this matter and is still currently the case manager; this process requires all of the parties to be fully prepared for trial before a date will be allocated.*
- 5.7.4. *Pleadings have closed. In our 15<sup>th</sup> report we indicated that Plaintiffs had received a vast amount of additional documentation and were in the process of considering that documentation/information for the purpose of further discovery. Such further discovery has now been made by the Plaintiffs and the Plaintiffs are in the process of preparing for the trial.”*
- 5.8. We respectfully submit that as the LHUT trustees are not in any way answerable to us or to the Registrar, but to the Master of the High Court, and as the Fidentia curators have no interest whatever in the outcome of the above litigation for the reasons outlined in 5.1.2 and 5.1.3 above, we should be excused from having to furnish any further reports on the Old Mutual litigation.

## **6. CLAIM AGAINST CLIFFE DEKKER HOFMEYR (“CDH”).**

- 6.1. Attached as annexure “B” to the financial report forming part of our 16<sup>th</sup> Report to Court was a report prepared by Mr Papadakis dated 5 January 2017 and titled “*Court Draft Report on Analysis of Fee Notes Rendered by CDH and Identified Irregularities*”, in which Mr Papadakis analysed all invoices submitted by CDH to the curators since inception of the curatorship and all statements in which CDH

accounted in respect of trust monies collected on behalf of Fidentia, and came to the conclusion that the curators have a substantial claim against CDH.

- 6.2. The background to this possible claim against CDH is the following:
  - 6.2.1. during 2015 CDH claimed an amount of R2.8 million from the curators in respect of fees and disbursements;
  - 6.2.2. the curators disputed liability for the amount claimed as Mr Papadakis was of the opinion that CDH was in fact indebted to Fidentia in a far larger amount than that being claimed from Fidentia;
  - 6.2.3. Richard Marcus on behalf of CDH and I on behalf of the curatorship acting with the consent of the FSB, subsequently settled the matter on the basis that Fidentia would pay CDH the sum of R1 million in full settlement, which amount plus VAT was duly paid;
  - 6.2.4. Mr Papadakis, however, remained firmly of the view that there were so many anomalies in CDH's accounting relating to Fidentia that they could not have been included in the settlement, and accordingly he carried out a detailed analysis from the records available to him of all CDH invoices and of all statements in which CDH account for monies held by them in trust and reported to the FSB that:
    - 6.2.4.1. he had found many instances of fee duplication where work done by their Johannesburg office was invoiced by that office and reflected as an expense of the Cape Town office when accounting to Fidentia but that the same entries would then show up again in an invoice from the Cape Town office as if they had done the work;
    - 6.2.4.2. he had found numerous amounts paid from trust funds for which he contended there was no authority given to do so;
    - 6.2.4.3. he had found a number of invoices which did not relate to work done on Fidentia's behalf but on behalf of third parties, which were paid out of Fidentia monies;
  - 6.2.5. Mr Papadakis furthermore reported to the FSB that in order to complete his investigation he required more information from CDH but that he had



been unable to obtain this information despite asking for it. This resulted in Fairbridges Wertheim Becker ("Fairbridges") being instructed to demand the further records from CDH.

6.2.6. During the course of 2016 and 2017 further correspondence ensued between Fairbridges and Richard Marcus as a result of which further documents relating to the fees paid to CDH were obtained and Marcus emailing Fairbridges on 4 May and 2017 to say that as far as CDH is concerned:

6.2.6.1. Fidentia's claim regarding the payment of costs and disbursements has been settled; and

6.2.6.2. CDH has on previous occasions invited the curators to set out specific details of any specific issues where they believe that there has been incorrect presentation of accounts, an invitation which Marcus had previously issued in a letter dated 28 November 2016.

6.2.7. At a meeting with the FSB on 27 July 2017 at which the possible claim against CDH was discussed, it was decided that having regard to advice obtained from senior counsel, Mr Papadakis would amend his report to include only those items which counsel advises would not have been included in the settlement and then only in respect of such matters in respect of which clear documentary evidence exists in support of the amounts claimed and we would then approach CDH to discuss the matter in an effort to resolve the matter without the need for litigation. Failing a satisfactory resolution, further action will have to be considered.

6.2.8. We have consulted with advocate Jeremy Muller SC and following his advice Mr Papadakis is presently in the process of amending his report, following which we will approach CDH as aforesaid.

## **7. FURTHER DISTRIBUTION.**

7.1. Following a meeting with the Registrar on 27 July 2017, when we discussed what remains to be done in order to bring this curatorship to finality having regard to the amount of cash on hand, we have made the following further distributions to creditors/investors totalling R45,725,321:

	During August 2017	During September 2017	Total
<b>TETA</b>	<b>R 10,731,641</b>		
<b>Antheru</b>	<b>R 308,676</b>		
<b>Balltron</b>	<b>R2,237,616</b>	<b>R225,322</b>	
<b>LHUT</b>		<b>R31,996,745</b>	
<b>Subtotal</b>	<b>R13,277,933</b>	<b>R32,222,067</b>	<b>R45,500,500</b>

- 7.2. In regard to this distribution we respectfully refer this Honourable Court to paragraph 2 of the Order referred to in 1.4 above, in which Ms Justice Meer directed that:

*“It is confirmed that further distributions to investors shall be pro-rated in the same manner as contemplated in the orders of court dated 7 November 2011 and 26 March 2012.”*

- 7.3. According to the table at the end of note 2.1 of paragraph 6.2.1.6 of the financial report, as at 31 August 2017 of the 171 Antheru investors qualifying for participation in the total of all distributions up to that date, amounting to R2,213,780, an amount of only R1,500,216 has been distributed to 120 investors, whilst the claims of 4 investors totalling R74,213 are still awaiting proper documentation. The shares of the remaining 47 investors, totalling R449,042, will have to be paid into the Guardian’s Fund, as referred to in 8.3 below.
- 7.4. Following the above-mentioned distribution, the remaining cash on hand amounts to R4,921,914, being the balance of R37,143,981 reflected in paragraph 6.2.1.6 of the financial report, less the amount of R32,222,067 paid out during September 2017, as reflected in 7.1 above, which amount has been retained to cover further curatorship expenses, including the costs of any litigation which may have to be instituted against CDH.

## **8. MATTERS REMAINING OUTSTANDING BEFORE THE CURATORSHIP CAN BE DISCHARGED**

### **8.1. Possible claim against CDH.**

As stated in 6.2.6 above, we have consulted with advocate Jeremy Muller SC and as soon as Mr Papadakis has completed amending his report, we will approach CDH in an effort to resolve the matter, failing which such further action as we may then be advised will be instituted.

### **8.2. Collection of Orion settlement amount.**

As mentioned in 4.1 above, the dispute with Orion has been settled and all that remains to be done is to collect the settlement amount of R1,757,588 together with interest thereon, which is to be paid in instalments of R100,000 per month with effect from 30 September 2017.

### **8.3. Unclaimed Antheru monies.**

Before the curatorship order is discharged, it will be necessary for the shares of those Antheru investors whom we have been unable to trace to be paid into the Guardian's Fund. This has already been arranged on our behalf with the Master of the High Court, Cape Town, by Mr Barend Petersen who at the time was the curator of the business of Ovation Global Investment Services (Pty) Ltd, which was then also under curatorship. We approached Mr Peterson for assistance in this regard as he had previously entered into a similar arrangement with the Master in respect of those Ovation investors whom he had been unable to trace. The names and addresses of the investors involved will be furnished to the Master once the final unclaimed amounts have been determined.

### **8.4. Living Hands Umbrella Trust**

8.4.1. As reported in 5 above, we are still trying to arrange a meeting with the Master of the High Court, Pretoria, in an effort to have additional trustees appointed for LHUT.

8.4.2. Furthermore, before the Fidentia curatorship order is discharged, it will be necessary for us to transfer the total issued shares of Living Hands (Pty) Ltd from Fidentia Holdings to the trustees for the time being and from time to time of LHUT in their capacity as such, to ensure that Living

Hands (Pty) Ltd continues as an active company after the discharge of the curatorship order and the probable deregistration of Fidentia Holdings thereafter.

#### **8.5. Further unresolved litigation.**

- 8.5.1. In paragraph 17 of the general section of our last report, I reported that as at date of our 15<sup>th</sup> report the only litigation then still outstanding, besides the LHUT/Old Mutual matter on which we reported separately, consisted of a claim against Thebe and two matters against Absa in both of which Ayanda Collective Investment Solutions Ltd, a Fidentia subsidiary, had been cited as a third party and that since then the position had remained unchanged in respect of those matters.
- 8.5.2. These matters are all being attended to under the supervision of Mr Papadakis, who has informed me that since then, in so far as the two matters relating to Ayanda are concerned, Ayanda had indicated that it will abide the decision of the court. As the company is dormant and has no assets, it has been decided that we will be doing nothing further in respect of this litigation and from a reporting point of view the matters can thus be treated as finalised.
- 8.5.3. In so far as the Thebe matter is concerned, which is being attended to by Fairbridges Wertheim Becker ("Fairbridges"), I have asked Mr Papadakis to let me know who at Fairbridges is dealing with the matter so that I can obtain a report from them on the merits of the matter and then decide in conjunction with Mr Papadakis, whether it is worth pursuing the matter after all this time.
- 8.5.4. Mr Papadakis has brought to my attention that besides these matters there are four other matters that have been dormant since 2014 when he terminated the mandate of CDH who was dealing with the matters at the time. In respect of two of the matters where litigation had been instituted. I am informed that there are no assets with which any judgement could be satisfied even if successful and as such I have advised Mr Papadakis that I do not consider it worth pursuing either of the matters. In the remaining two matters where summons had not been issued, I have advised that the matters have prescribed.

## 9. ENDING OF THE CURATORSHIP.

- 9.1. In our 16<sup>th</sup> Report we indicated that once the proceeds of the sale of the Fidentia properties has been distributed we will be in a position to recommend to the Registrar that she should apply for the discharge of the curatorship order. At that point the only matters of any significance which still needed to be attended to, was to Institute action against Orion, the previous tenant of the Fidentia properties for outstanding rent and the possible claim against CDH, on both of which matters we have reported above.
- 9.2. Subsequently, we have been advised by counsel that while there are outstanding claims, the curatorship Order will have to remain in force.

## 10. RECOMMENDATIONS

I respectfully submit that it is apparent from this report that there are matters which still need to be attended to by the curators and accordingly recommend that the financial services business of the Respondents continue under curatorship in accordance with the Provisional Order dated 1 February 2007, as read with the Final Order dated 27 March 2007 (but date stamped 12 April 2007) and the Order of Ms Justice Meer dated 16 March 2017, and that we be directed:

- 10.1. to furnish the Registrar with progress reports relating to the matter is still being dealt with in such manner and at such intervals as she may from time to time require; and
- 10.2. to deliver a further report to this Honourable Court by 30 June 2018 or in the event of the last few matters remaining outstanding having been disposed of before then or some other circumstances having arisen which the curators or the Registrar consider necessary to be brought to the Court's attention, then within 45 days of the happening of such event or circumstances, such report to contain the same information as directed by Ms Justice Meer on 16 March 2017 save that there will be no further need to report on the litigation between LHUT and Old Mutual and Others in connection with the matter referred to in 5.7 above.

**Dated at Cape Town on this 28<sup>th</sup> day of September 2017**

  
\_\_\_\_\_  
**J A LEVIN: co-curator**

Annexure "A"  
XV

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

CASE NO: 679/2007

On 16 March 2017 at Cape Town

Before the Honourable Ms Justice Meer

In the ex parte application of-

**EXECUTIVE OFFICER OF THE FINANCIAL SERVICES BOARD** Applicant

re the financial services business of

**FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED** First Respondent  
(Registration No. 1998/024863/07)

and

**BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED** Second Respondent  
(Registration No. 2000/024139/07)

and

**FIDENTIA HOLDINGS (PROPRIETARY) LIMITED** Third Respondent  
(Registration No. 2001/022355/07)



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**ORDER**

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Having heard counsel for the Applicant,

**IT IS ORDERED THAT:**

1. The Curators' sixteenth report dated 31 January 2017 has been considered and accepted.
2. It is confirmed that further distributions to investors shall be prorated in the same manner as contemplated in the orders of Court dated 7 November 2011 and 26 March 2012.
3. The Applicant is directed to publish this order and the Curators' sixteenth report on its website.
4. The Curators are directed to file a further report with the Court by not later than 29 September 2017 dealing with the following:
  - 4.1 the status of the curatorship as at 31 August 2017;
  - 4.2 an overview of assets disposed of or alienated and how the proceeds were distributed, including the distribution to investors who invested through Antheru Beleggings Trust;
  - 4.3 details of civil actions which may have been instituted by or against the Curators and specifically the progress made with regard to the litigation matters involving the Living Hands Umbrella Trust;
  - 4.4 the costs of the curatorship as at 31 August 2017;
  - 4.5 any recommendations as to how the continuation of the curatorship or any related matters, should be dealt with further.
5. On receipt of the Curators' report referred to in paragraph 4 above, the Applicant shall within 20 days set the matter down for consideration of the report.

6. The costs of this application shall be costs in the curatorship.

BY ORDER OF THE COURT

WESTERN DISTRICT OF VIRGINIA  
FOURTH DIVISION  
2017  
COURT REGISTRAR  
GWES-KAASBOLD ROAD  
Box 9 Bisset Boehmke McBlain  
SIDÉ HOF



**JOINT CURATORS REPORT**  
**COVERING THE PERIOD 01 NOVEMBER 2016 TO 31 AUGUST 2017**

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**JOINT CURATORS REPORT**  
**COVERING THE PERIOD 01 NOVEMBER 2016 TO 31 AUGUST 2017**

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**1. INTRODUCTION**

- 1.1 This report has been prepared by me, in my capacity as joint curator and deals with matters affecting the curatorship between the last report presented to Court and 31 August 2017.
- 1.2 The remaining company comprising the private equity portfolio, for the period covered by this report, is Moshate Holdings (Pty) Ltd and its subsidiaries.
- 1.3 The report also deals with proceeds realised from the sale of assets and other recoveries affected, and how such proceeds have been applied, distinguishing between proceeds applied toward costs associated with the curatorship and distributions to investors.
- 1.4 The report also deals with matters affecting the assets under the control of the curators and how these have been dealt with since the last report, with a particular focus on the Sante asset.

**2. ANALYSIS OF CDH FEES**

- 2.1 Pursuant to my last Court report an opinion on this matter has been received from Senior Counsel appointed to consider the merits of any potential claim against CDH. This aspect is dealt with in more detail in the report of my co-curator.

**3. STATUS REPORT ON LEGAL MATTERS**

- 3.1 Details pertaining to the status of outstanding legal matter are dealt with in the report of my co-curator.

**4. CRIMINAL MATTERS**

**4.1 State vs Dr P Bothma, the previous CEO of TETA**

- 4.1.1. I completed tendering evidence in this matter on 29 August 2017. The trial continues in the Johannesburg Commercial Crimes Court.

**JOINT CURATORS REPORT**  
**COVERING THE PERIOD 01 NOVEMBER 2016 TO 31 AUGUST 2017**

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**4.2 Moshate Holdings (Pty) Ltd (“Moshate”)**

4.2.1 The criminal charge that I laid in this matter, and dealt with in my previous Court report, is still under investigation. I was supported by other Moshate shareholders in the initiation of this criminal complaint.

4.2.2 The shares acquired by Fidentia in Moshate in the total amount of R15.5 million were sold during the period under review to one of the existing Moshate shareholders for R100.00.

**4.3 Finalisation of the Fraudulent Sanek Trust Claim**

**4.3.1 Report on Events Subsequent to the 16th Court Report**

4.3.1.1 On 15 May 2017 in an email addressed to Ernst James, the appointed liquidator of the insolvent estate JAW Brown, from Sanek Trust it was represented that, “for the purposes of settlement we confirm that the R466,784.34 we received was in part settlement of our claim for fees from Insolvent Estate JAW Brown.” This admission accords with what I have consistently maintained was the position i.e. that the amount of R466,784.34 Sanek sought to claim in respect of fees and in respect of which a writ of execution was obtained, had previously been paid to Sanek. In terms of this email Sanek Trust effectively abandoned its claim for the amount of R466,784.34.

4.3.1.2 The correspondence emanating from this matter subsequent to my laying of the criminal complaint, has been provided to the relevant investigating and prosecuting authorities.

**4.3.2 Financial Implications of Defending the Fraudulent Sanek Claim**

4.3.2.1 An amount of R345 911 was spent by the curators in defending the fraudulent claim that Sanek had, until 15 May 2017 persisted with.

4.3.2.2 During the period covered by this report an amount of R195,367.40 was paid to Sanek Trust.

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**5. COMPILATION OF ACCOUNTING RECORDS**

5.1 Further to our previous report the statutory audits of Bramber Property (Pty) Ltd, Fidentia Administration Services (Pty) Ltd and Fidentia Facilities (Pty) Ltd in respect of the financial years ended August 2015 have been finalised and the applicable tax returns filed with SARS. The financial statements for the year ended August 2016 are in the process of being finalised.

5.2 As regards the statutory audit of Fidentia Holdings (Pty) Ltd, there is nothing further to report, and the audit of this company has not commenced. In light of the difficulties associated with obtaining the necessary information from the previous auditors, coupled with the costs of conducting the audit, it is recommended that the curators be excused from conducting the audit of Fidentia Holdings (Pty) Ltd.

**6. COURT SANCTIONED DISTRIBUTION PLAN**

**6.1 Admitted Claims**

6.1.1 The curators have 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>

6.1.2 In respect of the Evertrade transactions, there is nothing further to report.

6.1.3 In terms of the distribution plan as approved by the Western Cape High Court, the amounts as recorded at 6.2.1.6 *infra* have, as at 31 August 2017, been distributed to the TETA, Balltron, qualifying individual investors who invested with Antheru Trust and LHUT. The distribution to those persons and entities that invested directly with Antheru Trust has been made in accordance with a directive from the Registrar FAIS, and as directed by this Honourable Court.

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- 6.1.4 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.
- 6.1.5 During the period since the last Court report, a second distribution in the amount of R45.5 million has been made. The second distribution was made applying the same principle as done for the first distribution plan, which plan was approved by this Honourable Court.

<b>Investor</b>	<b>First Distribution R</b>	<b>Second Distribution R</b>	<b>Total</b>
TETA	33 758 238	10 731 641	44 489 879
Antheru	1 679 782	533 998	2 213 780
Balltron	7 038 808	2 237 616	9 276 424
LHUT	93 523 172	31 996 745	125 519 917
<b>Total Distribution</b>	<b>136 000 000</b>	<b>45 500 000</b>	<b>181 500 000</b>

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**6.2 Disposal of capital assets to date, and recoveries of other amounts**

6.2.1 The disposal of the capital assets as at 31 August 2017 is summarised as:

6.2.1.1 Proceeds from the Sale of Assets Comprising the Fixed Property Portfolio (exclusive of VAT):

Description of Property	Sales Proceeds R
Facets	43 480 824
Facets - Occupational Rental	6 177 054
Thaba Manzi	34 099 998
Thaba Manzi - Occupational Rental	2 100 000
Sante-Rental ( <b>Note 1</b> )	(8 374 476)
Syco Deli	1 750 000
Syco Deli - Occupational Rental	176 250
Waterford Place	34 415 887
Wavelengths 231	5 302 552
Villa Marais	3 900 352
Recovery Transfer Duty & Deposit – Bell Sombre	1 510 268
Recovery Teewaterskloof	265 000
Erf 403, 410 & 411 Blue Horizon Bay	2 760 884
Sante Hotel Furniture	220 000
Furniture ex Villas	34 000
Villa Midagkrans	4 373 377
Villa Drakenstein	4 002 626
Villa Tierkloof	4 593 953
Villa Haumann	2 708 278
Spa Suite	2 811 433
Sante Hotel	24 102 614
<b>Total</b>	<b>170 410 874</b>

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**Note 1** The rental figure is recorded net of costs incurred associated with the hotel operation and which are invoiced in the name of the landlord (a Fidentia company). The hotel and spa was previously operated under a lease agreement by an independent contractor for its own account. As reported in the last report, the lease agreement was cancelled and in terms of the settlement agreement with the tenant, which was made an order of court on 26 April 2016, the tenant continued to operate the hotel and spa with effect from 1 May 2016 until 4 May 2017 when the properties were transferred to the purchaser. During this period the curators paid the costs associated with charges levied by the Home Owners Association and the municipal rates, which under the previous lease was recovered from the independent contractor. Further details regarding the Sante asset are contained in the legal report.

The deficit of approximately R8.34 million has been funded out of the proceeds from the sale of capital assets. It is the expenses associated with the Sante asset that has primarily contributed to the significant reduction, since the last report, in cash available for distribution.

The amount of approximately R8.34 million excludes legal fees, curator fees and consultancy fees incurred and paid and which are directly associated with the Sante asset.

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6.2.1.2 The proceeds from the sale and realisation of assets associated with such sales, comprising the Private Equity Portfolio, exclusive of VAT, are.

Description	Net Sales Proceeds R
AOS	9 993 668
Software Futures	14 366 636
Fidentia Rangers	3 050 000
Boland Rugby	201 397
Polex	5 293 284
Infinity	13 464 626
Legatus	1 900 000
Saambou Board of Executors (Pty) Ltd	1 900 000
Modus Versekeringsmakelaars (Pty) Ltd	10 000
Sundry Legatus Receipts	361 543
Legatus Settlement	(237 500)
<b>Total</b>	<b>50 303 654</b>

6.2.1.3 Other recoveries comprise:

Description	Proceeds R
Sale of Movable Assets ( <b>Note 1</b> )	11 528 656
Sale of Cricket Suite	319 200
Recoveries from Previous Directors & Staff ( <b>Note 2</b> )	31 819 434
Recoveries from Third Parties ( <b>Note 2</b> )	8 124 190
Guarantee ( <b>Note 3</b> )	4 418 311
Liquidation Dividend Schekels & Sante Leisure	468 436
Liquidation Dividend E/L Cruickshank ( <b>Note 4</b> )	291 963
Painting	500
Sale of Tanzanite Stone	6 450
Other	111 318
<b>Total</b>	<b>57 088 458</b>



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**Note 1:** This amount is reported inclusive of VAT.

**Note 2:** Queries relating to amounts received in trust by DLA have been raised. DLA has ignored the queries and has not responded thereto. This may result in the reported figures being amended in future reports.

**Note 3:** The guarantee represents funds previously held as a guarantee deposited by Balltron.

**Note 4:** The dividend originates from a claim submitted by Fidentia Holdings in the amount of R59 million in the Deceased Estate Cruickshank. The dividend is paid in terms of the 4<sup>th</sup> and final liquidation and distribution account.

6.2.1.4 The inflow of funds as detailed *supra* can be summarised as:

Description	Proceeds R
Sale/rental of fixed properties	170 410 874
Sale of private equity	50 303 654
Other Recoveries (See 5.2.1.3 above)	57 088 458
<b>Inflows from sales and recoveries</b>	<b>277 802 986</b>
Interest earned ( <b>Note 1</b> )	27 854 540
Interest Porex	2 260 809
Interest Infinity	729 455
Proceeds from trading activities	95 158 406
<b>Total inflows</b>	<b>403 806 196</b>

**Note 1:** No provision for tax on the interest earned has been raised, as it is anticipated that the interest income will be offset against the assessed losses and trading expenses of the various companies within the Fidentia Group.

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6.2.1.5 The total outflows, representing expenditure by the Curators (exclusive of VAT), to 31 August 2017 are:

Description	Expenditure R
Curators Fees: D. Gihwala	16 110 111
Curators Fees: G. Papadakis	10 948 588
Curators Fees: J. Levin	5 728 367
Forensic Accounting Services	8 612 249
Legal Services-DLA CDH	49 335 008
Legal Services-Other Legal Practitioners	7 760 398
Recoveries-Legal Fees	(1 958 141)
FSB costs	3 143 542
Advertising & Photography Costs	196 185
Sanek Trust: Insolvent JAW Brown	195 367
<b>Total expenditure</b>	<b>100 071 674</b>

The curator fees paid in respect of Papadakis covers the period February 2007 to 31 August 2017, and for Levin, for the period August 2014 to 31 August 2017.

6.2.1.6 The amount currently available can accordingly be summarised as:

Description	R
Total inflows	403 806 196
Less: Total expenditure	(100 071 674)
Less: Distributions for benefit of LHUT	(113 389 614)
Less: Distribution of Guarantee to Balltron	(4 418 311)
Less: Amounts distributed in terms of Court Approved Distribution Order ( <b>Note 1</b> )	(148 781 103)
<b>Amount available</b>	<b>R37 145 494</b>

After accounting for the distribution paid to LHUT and qualifying Antheru investors during September 2017, there remains an amount of approximately R5 million.

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**Note 1:** The amounts distributed as at 31 August 2017 comprise:

<b>Investor</b>	<b>Amount Distributed</b>	<b>Remaining Amount to be Distributed</b>	<b>Total Court Approved Distribution</b>
TETA	44 489 879	0	44 489 879
Balltron	9 276 424	0	9 276 424
LHUT ( <b>Note 1.1</b> )	93 523 172	31 996 745	125 519 917
Antheru ( <b>Note 2.1</b> )	1 491 989	721 791	2 213 780
<b>TOTAL</b>	<b>148 781 103</b>	<b>32 718 536</b>	<b>181 500 000</b>

**Note 1.1:** According to the Trustees of LHUT, as at 31 August 2017, an amount of R33 060 021 of the R93 523 172 first distribution paid to LHUT in accordance with the Court approved distribution plan, has been paid to the individual beneficiaries of the source funds. This represents 35.3% of the first distribution paid to the LHUT. The curators distributed the majority of the R93 523 172 to LHUT in October and November 2012. The Trustees of the LHUT have advised that they are proceeding to make the distributions in accordance with the provisions of an Order obtained in the Gauteng North High Court.

The second distribution due to LHUT in the amount of approximately R32 million was paid to the LHUT during September 2017.

**Note 2.1:** The individuals and entities that invested funds via Antheru Trust have been sent, by registered post, correspondence detailing the process and documents that need to be submitted in order for their distributions to be processed. The letters were sent to the addresses as appearing in the records maintained by Fidentia of individual Antheru investors.

Those individual Antheru investors that have contacted the curators and provided the required documentation have upon verification thereof been paid the distribution due to them.

The table below reflects an analysis of the number of qualifying individual Antheru investors, how much these individuals have been paid and the status of the remaining R721 791 that has not been paid.

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Qualifying number of investors	171	Qualifying investors paid as at 31 August 2017	120
Total amount to be distributed	R2 213 780	Amount paid to qualifying investors	R1 491 989
Individuals positively contacted by Registered Post and e-mail who have not responded	7	Value of claims	R98 002
Individuals positively contacted by Registered Post who have not responded	18	Value of claims	R138 437
Individual claims under consideration/awaiting requested documents	4	Value of claims	R74 213
Registered letters returned as unclaimed/untraced. Investors who need to be traced	22	Value of claims	R212 603

**7. DISTRIBUTIONS**

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

Distribution	R
Distribution to LHUT in terms of Curatorship Order	113 389 614
Distribution to LHUT pursuant to litigation instituted against Lekana (Note 1)	33 440 196
Distribution to LHUT pursuant to the Global Funding Agreement	340 000
Amounts paid in terms of the Court Approved Distribution Order	148 781 103
Balltron Guarantee Refund	4 418 311
<b>Total Distribution/Refund to Investors</b>	<b>300 369 224</b>

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

The amount of R70.5 million was provided by the attorneys who attended to this matter. Since the date of the last report, it has become apparent that there are more than one source fund affected by the secret profits made by Lekana Employee Benefits ("Lekana"). Lekana paid an amount of R33 440 196 directly to the Mineworkers Pension Fund, and on this basis the trustees of LHUT appear to have abandoned the action against Lekana. In calculating the second distribution to LHUT, its distribution has been reduced by the amount of R33 440 196.

7.2 To date, a total amount of R300 369 224 has been returned to the investors since curatorship. To date distributions to LHUT, Balltron, and TETA have been made in amounts which represent 21.7% 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 22%.

**8. LEGAL FEES**

8.1 For the period 01 November 2016 to 31 August 2017 legal fees in the amount of R298,678 (including VAT) have been paid.

8.2 In respect of the matter Sanek/Estate JAW Brown the amount for legal fees paid of R345,911 (excluding VAT), excludes fees paid to the curators to attend to dealing with this matter. It is my view, that the fees incurred relate to dealing with an attempt on the part of third parties to perpetrate a fraud on the Fidentia investors.

*Sgd G.N. Papadakis*

**GN Papadakis CA (SA)**

**Issued in my Capacity as Co-curator Appointed under Case Number 679/2007**

**27 September 2017**

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**GN Papadakis CA (SA)**

**Issued in my Capacity as Co-curator Appointed under Case Number 679/2007**

**27 September 2017**