

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 140 OF 2019

BETWEEN:

- (1) TRADED LIFE POLICIES FUND (IN OFFICIAL LIQUIDATION)
- (2) MICHAEL PENNER (IN HIS CAPACITY AS A JOINT OFFICIAL LIQUIDATOR OF TRADED LIFE POLICIES FUND)

Plaintiffs

AND

- (1) JEREMY LEACH
- (2) WILLIAM MCCLINTOCK
- (3) MANAGING PARTNERS LIMITED
- (4) TAURUS ADMINISTRATION SERVICES S.L.
- (5) MPL ASSET MANAGEMENT SA
- (6) PRAESIDIUM INVESTMENT FUND
- (7) SOVEREIGN HIGH SECURITY FUND SPC
- (8) CORINTHIAN GROWTH FUND
- (9) TRADED POLICIES FUND



Defendants

WRIT OF SUMMONS

TO:

- 1 Jeremy Leach, 1 The Chapel, Tortington Manor, Arundel, West Sussex, England, United Kingdom, BN18 0FE
- 2 William McClintock, The Old Vicarage, Lockerley, Romsey, England, United Kingdom, SO51 0JJ
- 3 Managing Partners Limited, Stuarts Corporate Services Limited, P.O. Box 2510, George Town. Grand Cayman, KY1-1104
- 4 Taurus Administration Services S.L., Palacio de Miraflores, Carrera de San Jeronimo 15, Madrid, Spain
- 5 MPL Asset Management Sa, Quai du Seujet 12, CH 1201 Geneva, Switzerland

THIS WRIT was issued by Maples and Calder, attorneys for the Plaintiffs, whose address for service is PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: JSE/MCL/731607.000002/59416622)

- 6 Praesidium Investment Fund, Stuarts Corporate Services Limited, P.O. Box 2510, George Town, Grand Cayman, KY1-1104
- 7 Sovereign High Security Fund SPC, Stuarts Corporate Services Limited, P.O. Box 2510, George Town. Grand Cayman, KY1-1104
- 8 Corinthian Growth Fund, Stuarts Corporate Services Limited, P.O. Box 2510, George Town. Grand Cayman, KY1-1104
- 9 Traded Policies Fund, Stuarts Corporate Services Limited, P.O. Box 2510, George Town. Grand Cayman, KY1-1104

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 28 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registrar of the Financial Services Division, Court Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff[s] may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 25th day of July 2019

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

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- (8) CORINTHIAN GROWTH FUND**
- (9) TRADED POLICIES FUND**

Defendants

STATEMENT OF CLAIM

INTRODUCTION

- 1 These claims arise as a result of the First and Second Defendants' breaches of their fiduciary duties owed to the First Plaintiff ("TLPF") as its directors, having caused and / or permitted TLPF, to dissipate its assets through a combination of: (i) obvious and dramatic mismarking of asset values; (ii) improper related party transactions; and (iii) overpayment of fees charged by related party service providers in which the First Defendant controlled and / or had a personal financial interest.

THE PARTIES

- 2 The First Plaintiff, TLPF, is a company incorporated in the Cayman Islands with its registered office at PO Box 1787, Grand Cayman, KY1-1109, Cayman Islands. TLPF was at all material times registered as a mutual fund with the Cayman Islands Monetary Authority. TLPF was at all material times an investment company which purported to be carrying on business of investing in traded life policies or companies that invested in traded life policies. TLPF was placed into voluntary liquidation by resolution of the sole voting shareholder, the Third Defendant ("**MPL**"), on 28 June 2017, and Michael Penner and Stuart Sybersma appointed as Joint Voluntary Liquidators ("**JVLs**").
- 3 The JVLs (including the Second Plaintiff) were subsequently appointed as Joint Official Liquidators of TLPF ("**JOLs**") by order of the Grand Court (the "**Court**") dated 21 July 2017.
- 4 The First Defendant is an individual resident in the United Kingdom, Switzerland and / or Malta and was at all material times a director of the First Plaintiff, and the principal of MPL.
- 5 The Second Defendant is an individual resident in the United Kingdom and was at material times a director of the Plaintiff.
- 6 The Third Defendant, MPL is a company incorporated in the Cayman Islands with its registered office at Stuarts Corporate Services Limited, P.O. Box 2510, George Town, Grand Cayman, KY1-1104. MPL was at all material times the Investment Manager, and the sole voting shareholder, of TLPF. MPL was at all material times directly or indirectly controlled and owned by the First Defendant.
- 7 The Fourth Defendant, ("**Taurus**"), is a company incorporated in Spain with its registered offices at Palacio de Miraflores, Carrera de San Jeronimo 15, Madrid, Spain. Taurus was appointed as TLPF's Administrator on 1 December 2015. Taurus was at all material times directly or indirectly controlled and owned by the First Defendant.
- 8 The Fifth Defendant, ("**MPL AM**" or the "**Adviser**") is a company incorporated in Switzerland with its offices at Quai du Seujet 12, CH 1201 Geneva, Switzerland. MPL AM was appointed as the Investment Adviser to TLPF on 1 September 2013. MPL AM

was at all material times directly or indirectly controlled and owned by the First Defendant.

- 9 The Sixth Defendant ("PIF") is a company incorporated in the Cayman Islands with its registered office at Stuarts Corporate Services Limited, P.O. Box 2510, George Town, Grand Cayman, KY1-1104. PIF was at all material times directly or indirectly controlled and owned by the First Defendant.
- 10 The Seventh Defendant ("**Sovereign**") is a company incorporated in the Cayman Islands with its registered office at Stuarts Corporate Services Limited, P.O. Box 2510, George Town, Grand Cayman, KY1-1104. Sovereign previously held shares in the Ninth Defendant, Traded Policies Fund ("**TPF**"). At all material times, and until 30 June 2016, Sovereign held 68,473 shares and 54,948 Series 1 bonds issued by TLPF.
- 11 The Eighth Defendant ("**Corinthian**") is a company incorporated in the Cayman Islands with its registered office at Stuarts Corporate Services Limited, P.O. Box 2510, George Town, Grand Cayman, KY1-1104. Corinthian previously held shares in the Ninth Defendant, TPF. At all material times, and until 30 October 2016, Corinthian held 8,787 Series 2 Bonds issued by TLPF.
- 12 The Ninth Defendant, TPF, is a company incorporated in the Cayman Islands, with its registered office at Stuarts Corporate Services Limited, P.O. Box 2510, George Town, Grand Cayman, KY1-1104. TPF was in effect the predecessor fund to TLPF and was established by the First Defendant to carry on business as an investment company investing in traded life policies.
- 13 The Third to Ninth Defendants were at all material times controlled by the First Defendant, or alternatively by the First and Second Defendants. Matters within the knowledge of the First Defendant are, or are deemed to be, within the knowledge of each of the Third to Ninth Defendants.

FACTUAL BACKGROUND

- 14 TLPF was incorporated on 11 November 2010 (registration number 248057) in the name Corinthian Capital Plc. The company changed its name to Traded Policies Portfolio on 22 April 2013 and then to Traded Life Policies Fund on 24 October 2013.

- 15 On 23 September 2013, MPL sent a letter to investors in TPF indicating that it would be subject to a restructuring and that a new company TLPF, had been set up. On or around this date, all of TPF's cash and non-cash assets, consisting of a portfolio of 187 life policies and cash of US\$119,082, were transferred to TLPF in exchange for 1,309,007.3101 non-voting participating shares in TLPF.
- 16 Investors in TPF were given the option to redeem their shares in TPF and in exchange be issued with either shares or Series 1 bonds to be issued by TLPF. Between December 2013 to October 2015, TLPF issued 474,362 Series 1 bonds with a total issue price of US\$45,690,857 (the "**Series 1 Bonds**") and 293,043 Series 2 bonds with a total issue price of US\$17,550,394 (the "**Series 2 Bonds**", the Series 1 Bonds and the Series 2 Bonds, together the "**Bonds**"). The Series 1 Bonds were issued with a maturity period of five years and a maturity price of 133% of the original issue price. The Series 2 Bonds were issued with maturity period of one year and a yield of 5% per annum (compounded). Series 2 Bonds were issued only to TPF investors who had redeemed their shares in TPF and were due payment of the redemption amounts.
- 17 TPF investors who did not elect to redeem their shares in TPF in exchange for shares or bonds in TLPF had their shares in TPF compulsorily redeemed and were issued with shares in TLPF.

Insolvency

- 18 TLPF was insolvent at all material times from no later than 15 December 2014. In particular:
 - 18.1 The adjusted value of TLPF's assets as at 15 December 2014 was US\$56,609,670.
 - 18.2 The total amount of TLPF's liabilities (principally, in the form of the Bonds) as at 15 December 2014 was US\$78,370,404.
 - 18.3 At all times from that date TLPF's liabilities exceeded its assets.
 - 18.4 TLPF had no realistic prospect of ever being able to pay its debts in full as they fell due, or at all.

- 19 On 11 May 2015, Oliver Wyman, an independent actuary firm engaged by MPL, conducted an actuarial review on the valuation of TLPF's life policy assets as at 15 December 2014. This concluded that the discount rate of 2.5% applied by the First and Second Defendants was extremely low compared with other market rates and suggested that a discount rate of 17.9% p.a. was more appropriate:

"We believe the discount rate of 2.5% p.a. to be significantly lower than those seen elsewhere in the market. This issue should be addressed with high priority.

...

Over the last year the market PDR has ranged from just under 15% to nearly 20%. As at 31 December 2014 the rate was 17.9% p.a.

...

When using a discount rate of 17.9% p.a. the results from the sample policies suggest that the valuation of the Fund reduces by approximately 45-55%."

(Emphasis added)

- 20 The financial statements prepared by the First and Second Defendants on behalf of TLPF for the period 29 November 2013 (date of inception) to 15 December 2014 (the "**2014 Financial Statements**"), stated that TLPF's Net Asset Value ("**NAV**") was US\$32,519,362.
- 21 However, the audit of the 2014 Financial Statements conducted by TLPF's independent auditors, Kinetic Partners Cayman LLP ("**Kinetic Partners**"), concluded that based on the appropriately adjusted financial position, TLPF's liabilities exceeded its assets by US\$21,760,734.
- 22 In particular, the audit report included a disclaimer of opinion which states:

"Basis for Disclaimer

As disclosed in note 15, a key variable in the valuation of investments is the discount rate for traded life policies. The Directors have applied an estimated discount rate in accordance with the Fund's offering document, however this is

not in accordance with IFRS 13 as explained on page 31. The application of a discount rate advised by an independent actuary to conform to IFRS 13, would result in the Fund's total liabilities exceeding its total assets by US\$21,760,734. This position under the IFRS basis of accounting casts doubt over the Fund's ability to continue as a going concern. Also, note 7 explains that liabilities include certain bonds and related interest that have a 5 year term to maturity. The Directors state that they are confident the Fund's investments will realise their carrying amounts over the term of the bonds and that, based on cash flow forecasts, the Fund will be able to meet its liabilities as they fall due for the foreseeable future. Accordingly the Directors have prepared the financial statements on the going concern basis. (Emphasis added)

We have been unable to obtain reasonably reliable audit evidence that the Fund will be able to realise its traded life policies at their carrying amounts and that the Fund will have sufficient resources to meet its liabilities as they fall due for the foreseeable future. As a result, we are unable to determine whether the financial statements are appropriately prepared on the going concern basis under the IFRS basis of accounting. (Emphasis added)

Disclaimer of Opinion

Because of the significance of the matter described in the Basis for Disclaimer of Opinion paragraph, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly we do not express an opinion on the financial statements."

- 23 The First, Second and Third Defendants caused and continued to cause TLPF to significantly overstate the value of TLPF's assets in the financial statements which they prepared or approved for the period 16 December 2014 to 15 November 2015 (the "2015 Financial Year").
- 24 The audit report prepared by Kinetic Partners in respect of TLPF's financial statements for the 2015 Financial Year contained an adverse audit opinion. The basis for the auditor's adverse opinion is stated as follows:

"Basis for Adverse Opinion

As disclosed in note 15, the Fund's investments in illiquid traded life policies are valued based on Management's estimate of fair value, which applies a rate of 2.5%. However, this does not apply exit values required by IFRS 13, which would entail pervasive but unquantified adjustments to the financial statements to apply a discount rate of 17% based on an independent actuarial report.

The Directors have prepared the financial statements on the going concern basis, and state that they are confident that, based on cash flow forecasts, the Fund will be able to meet its liabilities as they fall due for at least the next 12 month. We are unable to obtain reasonably reliable evidence to determine that the Fund can remain a going concern for the foreseeable future, the uncertainty of which has not been adequately disclosed. (Emphasis added)

Adverse Opinion

In our opinion because of the significance of the matter described in the Basis for Adverse Opinion paragraph, the financial statements do not present fairly the financial position of the Fund as at 15 November 2015, and its financial performance and cash flows for the period then ended in accordance with International Financial Reporting Standards."

- 25 Between 29 November 2013 and 15 November 2015 the First and Second Defendant caused TLPF to sell 88 life policies with a combined marked value of US\$61,037,182 for total sale price US\$12,768,816. The sale prices represented an average discount of 79% on the marked value of each of the policies.
- 26 On 22 April 2016, Oliver Wyman issued a further actuarial review on the valuation of a representative sample of TLPF's life policy assets as at 15 December 2015. This report concluded that the valuation of TLPF's assets continued to be far too high, and that applying the recommended discount rate of 17% p.a. the valuation of the life policy assets would have been reduced by at least 38%.

27. In premise of the matters pleaded at paragraphs 19 to 26 above, the First, Second and Third Defendants knew that the marked value of TLPF's portfolio of life policies did not reflect their actual value.

Extension of maturity dates and liquidation

28. On 14 March 2015, the First and Second Defendants, in their capacity as directors of TLPF, resolved to extend the maturity dates of the Series 2 Bonds for a complete year, such that the Series 2 Bonds would mature on 16 January 2016 (the "Rollover"). In particular it was resolved that:

"The Rollover be and is hereby approved and the Bondholders be notified immediately;"

29. The JOLs understand that the First and Second Defendants caused the Rollover to be effected and notification letters to be issued to Series 2 Bondholders as resolved.

30. On 21 October 2016, TLPF sent an email to investors informing them of the immediate intention to appoint Delta Group Limited, an insolvency and liquidation specialist, to advise on the best options for liquidating TLPF as follows:

"The Fund's auditors, Kinetic Partners Cayman LLP have stated that they are unable to obtain any reasonably reliable evidence to determine that the Fund can remain a going concern for the foreseeable future.

Although the directors believe that the Fund is currently cash flow solvent, the comments from the Auditors are of great concern to the directors of the Fund and accordingly the Fund believes that it is in the best interests of the creditors of the Fund to immediately appoint Lawrence Edwards of Delta Group Limited ("Delta") to advise on the best options for liquidating the Fund and selling all the assets of the Fund and distributing these to creditors in an orderly and timely manner.

We are obviously very disappointed that these actions are required but we would like to assure you that the directors of the Fund will be working diligently to wind up the affairs of the Fund as soon as possible. Delta has a great deal of

experience in this area and we believe they are well placed to initiate this process.

We will naturally keep you fully informed of any developments and hope to bring matters to as swift and economic conclusion as possible." (Emphasis added)

- 31 On 15 January 2017, MPL wrote a letter to at least one of TLPF's Series 2 Bondholders informing it that the maturity date of their bonds would be extended yet again. The letter states:

"Your Bond was originally due to mature on 16th July 2015, but due to the liquidity constraints of the Fund it was necessary to enforce a rollover of your Bond for two further complete Terms of one year.

...

Although the Fund is not currently subject to a Suspension of Redemptions, we write to advise that the Fund is still currently suffering from liquidity constraints and as a result the Fund will be unable to issue the Bond maturity settlement payment that is due to you.

After consultation with the Manager, the Directors of the Fund have resolved that due to the liquidity constraints of the Fund that it will be necessary to enforce a rollover of your Bond for a further complete Term of one year.

The revised maturity date of your Bond will be 16th January 2018 with a further 5% yield due on the maturity date of your Bond." (Emphasis added)

- 32 On 28 June 2017, MPL passed a written resolution placing TLPF into voluntary liquidation and appointed Michael Penner and Stuart Sybersma as JVLs. Neither the First nor the Second Defendant signed declarations of solvency. The JVLs were subsequently appointed as Joint Official Liquidators to TLPF by Court order dated 21 July 2017.

Overpayment of Management fees

- 33 Between 29 November 2013 and 28 June 2017 (the "**Management Fee Period**") the First and Second Defendants caused TLPF to pay (alternatively, failed to prevent TLPF from paying) approximately US\$3,068,781 to MPL in respect of what were described as "management fees" (the "**Management Fees**").
- 34 Pursuant to clause 12.1 of an Investment Management Agreement dated 2 September 2013 (as amended) ("**IMA**") and Addendum (dated 8 April 2014), MPL as Manager to TLPF was entitled to receive a fee of 1% of gross asset value ("**GAV**") of TLPF in consideration of the services to be performed by the Manager under the IMA.
- 35 Pursuant to clause 3 of the IMA, the primary services to be provided by MPL consisted of managing the investment and realisation of TLPF's investments, subject to compliance with the Offering Document, on a fully discretionary basis.
- 36 The services which were provided by MPL to TLPF during the Management Fee Period were in fact very limited. In particular:
- 36.1 TLPF's sole non-cash asset consisted of its portfolio of life policies and MPL's role consisted almost exclusively of instructing the custodian to hold, and from time to time to sell, certain of these life policies.
- 36.2 Under clause 3 of the IMA, MPL was permitted to instruct and appoint third party service providers, including amongst others, an Administrator (initially Apex Fund Services Limited ("**Apex**")) in relation to the affairs of TLPF.
- 36.3 Apex was responsible for providing substantially all of the operational services to TLPF, including calculation of tax liabilities, operation of TLPF's bank accounts and payment of policy premiums. These services were charged to TLPF in addition to the Management Fees being paid to MPL.
- 36.4 Custody and other trust and policy related administration services were outsourced to Mills, Potoczak & Company, who dealt with substantially all policy related matters, including arranging premium payments, tracking of insured,

liaison with insurance companies, and tax filings. These services were also charged to TLPF in addition to the Management Fees.

- 36.5 The Fifth Defendant, MPL AM, was appointed as Investment Adviser and to advise the Manager as to the investment and reinvestment of TLPF's assets. These services were also charged to TLPF in addition to the Management Fees.
- 36.6 No arm's length investments were made by TLPF during the Management Fee Period. Such policies as were acquired by TLPF during the Management Fee Period were acquired from parties controlled by and / or otherwise connected to the First Defendant and, it is to be inferred, at the direction and / or on the instruction of the First Defendant.
- 36.7 Policies were sold, from time to time, at deep discounts to the stated value of the policies, principally in order to meet ongoing expenses of TLPF (including the Management Fees).
- 36.8 No new subscriptions were accepted or sought during this period and the pool of investors was static.
- 37 Further, in addition to TLPF receiving little to no benefit from the limited services actually being provided by MPL, the amounts paid to MPL in respect of Management Fees were incorrect. In particular:
- 37.1 As set out at paragraphs 19 to 26 above, TLPF's assets, upon which its GAV was being calculated for the purpose of the Management Fees, were being continually marked at over inflated values by the First, Second and Third Defendants.
- 37.2 Further, no GAVs (or NAVs) at all were calculated for the period 15 November 2015 to 28 June 2017, and Management Fees during that period were based on management estimates prepared and / or approved by the First, Second and Third Defendants.
- 38 Under clause 20.1.2 of the IMA, TLPF had the right to terminate the appointment of MPL as manager, without cause, by giving it not less than 60 days' notice in writing.

39 Notwithstanding the limited value being obtained by TLPF under the IMA, and the significant expenses that continued to be incurred thereunder, the First and Second Defendants made no attempt to renegotiate the terms of the IMA, or effect its termination.

Management Expenses

40 Between 31 July 2015 to 31 May 2017 the First and Second Defendants caused TLPF to pay (alternatively, failed to prevent TLPF from paying) MPL approximately US\$86,149 in respect of unspecified expenses purportedly incurred on behalf of TLPF (the "**MPL Recharges**").

41 The MPL Recharges are not supported by any underlying documentation. Accordingly, there was no evidence (or no satisfactory evidence) that the MPL Recharges were payable pursuant to clause 13 of the IMA or at all.

42 The MPL Recharges were paid when TLPF was both balance sheet and cash flow insolvent.

43 Those payments were made at a time when, as known to the First and Second Defendants, TLPF could not pay and was never going to be able to pay its debts in full.

44 The MPL Recharges were paid to MPL in addition to the Management Fees referred to in paragraph 33 above.

45 The MPL Recharges include payments totalling US\$7,233 which were made within the six months immediately preceding the commencement of TLPF's liquidation (the "**2017 Recharges**").

Policy Movement Fees

46 Between 29 November 2013 to 28 June 2017, the First and Second Defendants caused TLPF to pay (alternatively, failed to prevent TLPF from paying) MPL approximately US\$1,675,961 in respect of "**Policy Movement Fees**" relating to the transfer of life policies to and from TLPF.

- 47 The Policy Movement Fees were charged at a rate of 5% of the stated value of the life policy being transferred.
- 48 MPL had no entitlement to charge, and TLPF had no obligation to pay, these "Policy Movement Fees". Neither the IMA, nor the Addendum makes any reference to the Manager's entitlement to charge TLPF the Policy Movement Fees.
- 49 Further and in any event, the asset values on which the Policy Movement Fees were calculated were grossly overstated as compared to the actual value of those policies. In particular:
- 49.1 the Plaintiffs repeat paragraphs 19 to 26 above.
- 49.2 Four of the invoices issued by MPL in respect of Policy Movement Fees, totalling US\$461,946 related to the transfer of policies from TLPF to other parties controlled directly or indirectly by the First Defendant.
- 49.3 Further, Policy Movement Fees of approximately US\$160,519 were charged by MPL and paid by TLPF in relation to a policy in respect of an individual named Roberta Fields which was not sold or transferred, but in fact matured on the death of the insured party.

Overpayment of Directors Fees

- 50 Between November 2013 and June 2017 the First and Second Defendants caused TLPF to pay themselves approximately US\$301,170 in respect of Directors Fees.
- 51 It is understood that the First and Second Defendants were engaged as Directors to TLPF under Director Services Contracts.
- 52 The Offering Document states that:

"The Directors shall each receive an annual fee of USD33,000 as of 1st December 2013, which will be increased annually at the beginning of each financial year of the Fund in line with inflation and in consultation and agreement with the Manager.

The Directors may elect to waive all or part of their Directors' Fees."

- 53 Under the Offering Document the Directors were to participate in setting the investment strategy for TLPF. Under the heading "Investment Process and Methodology" it states:

"An Investment Strategy Committee convenes monthly to review the current assets of the Fund and to specify appropriate buying criteria. Consideration is given to, amongst other criteria, liquidity, weighting by insurance companies and purchase criteria. The Investment Strategy Committee comprises the Directors, the directors of the Manager as well as other members of the Manager's management team."

- 54 In addition the Directors were responsible for determining the NAV of each class of Participating Shares on each Valuation Day by reference to the value of the Fund on the relevant Valuation Day. Under the heading "Valuations, Dealings and Distributions" it states:

"In calculating the Net Asset Value the Directors shall apply such generally accepted accounting principles as they may determine. The assets of the Fund shall be valued in accordance with such policies as the Directors may determine."

- 55 Under section V of the Offering Document, the Directors were responsible for determining what amounts were to be reimbursed to MPL as Manager as follows:

"The Fund will also reimburse the Manager for all expenditure properly incurred by the Manager for work undertaken in connection with the following matters in relation to the Fund: advertising and promotion, public relations, cost of sales, marketing allowances, training, accounting, administration, investment adviser and other such expenses (including introducers or promoters) deemed appropriate by the Directors of the Fund." (Emphasis added)

- 56 TLPF received little to no benefit arising out of the payment of the Directors Fees. The Directors failed to provide the services as envisaged in the Offering Document. In particular:

- 56.1 The Directors' activities in setting the investment strategy of TLPF were extremely limited given that TLPF's sole non-cash asset consisted of its portfolio of life policies, and no policies were purchased from arm's length third parties.
- 56.2 The Directors failed to calculate the assets of TLPF in accordance with generally accepted accounting principles (or at all, during the period 15 November 2015 to 28 June 2017, when no NAVs or GAVs were struck).
- 56.3 The Directors failed to ensure that that fees and expenses paid to MPL as Manager were appropriate. In this regard they caused and / or permitted TLPF to pay:
- (a) Management Fees based on inflated, and in certain instances estimated, GAV. The Plaintiffs repeat paragraphs 19 to 26 above; and
 - (b) Policy Movement Fees where TLPF was not contractually required to do so under the terms of the IMA and at an inappropriately high rate.

57 Further, the Directors committed various breaches of duty owed to TLPF, as is set out further below.

Overpayment of Adviser Fees

- 58 Between 29 November 2013 and 28 June 2017 the First and Second Defendants caused TLPF to pay (alternatively, failed to prevent TLPF from paying) approximately US\$595,300 to the Fifth Defendant, MPL AM, in its capacity as Adviser to TLPF.
- 59 Under Clause 5 of an Investment Advisory Agreement between TLPF, MPL and MPL AM dated 1 September 2013 (the "IAA"), TLPF was obliged to pay MPL AM fees prescribed in the Fee Schedule, in consideration of the services to be performed by MPL AM under the IAA.
- 60 Under Clause 2 of the IAA, MPL appointed MPL AM as its adviser regarding the investment strategy of TLPF as follows:

"The Manager hereby appoints the Adviser and the Adviser hereby agrees with effect from the date of this Agreement, to advise the Manager as to the

investment and reinvestment of the assets of the Company in traded life policies ("Policies") and other companies or collective investment schemes that invest in Policies ("Policy Funds") in accordance with the provisions of the Memorandum of Association and Articles of the Company, this Agreement, any Private Placement Memorandum, the laws of the Cayman Islands and any other applicable laws or regulations for the time being in force (hereinafter together called the "Laws") within the investment policy from time to time laid down by the Directors until its appointment shall be terminated as hereinafter provided."

61 MPL AM's specific duties are prescribed under Clause 3 of the IAA which states as follows:

"Without prejudice to the generality of Clause 2 the Adviser shall:-

3.1 advise the Manager concerning all actions which it appears to the Adviser would be advantageous to the Company in implementing investment policy of the Directors in relation to the Company (subject to sub-Clause 3.4 hereof);

3.2 evaluate the opportunities for possible investment in Policies and Policy Funds by the Company and communicate its advice to the Manager;

3.3 keep constantly under surveillance and review the Assets for the time being of the Company comprising Policies and Policy Funds and to recommend, as circumstances may require, changes in such Assets;

3.4 advise on the action to be taken to ensure that, so far as is possible, funds are available within the Company to meet redemptions of Participating Shares;

3.5 provide such advice to the Manager on matters related to Assets of the Company as the Manager may reasonably require;

3.6 advise whether and in what manner all rights conferred by or attached to the Assets of the Company shall be exercised;

3.7 prepare material for inclusion in annual or other reports of the Company, and assist the appointed administrator to the Company with the calculation of the Net Asset Value of the Company, the Subscription Price and the Redemption Price of Participating Shares therein."

62 MPL AM was at all material times under the direct or indirect control of the First Defendant.

63 The specific fees to be paid by TLPF to MPL AM were set out under the "Fee Schedule" which states as follows:

"1. In consideration for the provision by the Adviser to the Company of the Services detailed above, the Company shall pay to the Adviser a monthly fee as follows:

Services provided by the Adviser	Fee
Services	one twelfth of 0.15% of the Gross Asset Value of the Company per calendar month subject to a minimum fee of CHF 12,500 per calendar month (the "Fee")

...

3. In the event of the Adviser receiving instructions to provide to the Company additional services that are not defined within paragraph 3 of this Agreement, the Company agrees to pay the Adviser additional fees which shall be charged on a time spent basis at the hourly rate of CHF 150.00 per hour or such other fee that shall be agreed between the Manager and the Adviser from time to time. Any additional fees calculated pursuant to this clause shall be payable by the Company in arrears at the end of the month in which they were incurred."

- 64 The services which were in fact provided to TLPF during the period of MPL AM's appointment under IAA were in fact very limited and TLPF received little to no benefit for those fees. In particular:
- 64.1 No new subscriptions were accepted or sought during this period and the pool of investors was static. Therefore, TLPF had no real prospect of making new investments.
 - 64.2 TLPF's sole non-cash asset consisted of its portfolio of life policies and MPL's role consisted almost exclusively of instructing the custodian to hold and / or sell certain of TLPF's portfolio of life policies.
 - 64.3 Further and in any event MPL AM was simply the First Defendant (alternatively, MPL) in yet another guise, such that TLPF obtained no additional benefit through engaging this additional service provider.
- 65 Further, MPL AM received payment of investment advisory fees which were calculated by reference to an overinflated GAV, or estimate of the same. The Plaintiffs repeat paragraphs 19 to 26 above.

Overpayment of Admin Fees

- 66 Between 1 December 2015 (the date of appointment) and 24 May 2017, the First and Second Defendants caused TLPF to pay Taurus approximately US\$236,875 in respect of administration fees (the "**Admin Fees**").
- 67 The duties to be performed by Taurus are set out in Schedule 1 to the Admin Agreement entered into between MPL, Taurus and TLPF on 1 December 2015 (the "**Admin Agreement**") and include:
- 67.1 Certain investor services, including maintaining the register of shareholders; maintaining subscription documents, certification and registration of shares, preparation and dispatch of investor statements, and payment of invoices and expenses of TLPF.
 - 67.2 Anti-money laundering services.

- 67.3 Accounting and administration services, including maintaining TLPF's general ledger and original books of entry, reconciling cash and validation of positions, calculation of NAV, calculating and recording management and incentive fees and all fees due to third parties, price TLPF's portfolio and provide assistance for annual audits.
- 68 In consideration for the services provided under the Admin Agreement, Taurus was entitled to receive payment of fees set out under Schedule 2 "FEES AND EXPENSES" of the Admin Agreement. These Admin Fees were to be discharged by TLPF, which was also responsible for reimbursing the Administrator's out of pocket expenses.
- 69 In addition to specific service fees, Taurus' Admin Fees were to be calculated by reference to TLPF's NAV, with a minimum fee of "EUR48,000 per annum (EUR4,000 per month)".
- 70 The services which were in fact provided to TLPF during the period of Taurus' appointment were very limited and TLPF received little to no benefit from the engagement of Taurus. In particular:
- 70.1 No new subscriptions were accepted into TLPF during this period and the pool of investors was static. The investor services provided were therefore extremely limited.
- 70.2 As a result of the limited and static investor base, the anti-money laundering and FATCA services provided by Taurus were also limited.
- 70.3 Taurus failed to strike a single NAV during its appointment as TLPF's Administrator.
- 70.4 Taurus facilitated the miscalculation of Management Fees and other payments to service providers to TLPF, which were calculated by reference to an overinflated GAV / NAV.
- 71 Further, Taurus received payment of Admin Fees which were calculated by reference to an overinflated NAV, or estimate of the same. The Plaintiffs repeat paragraphs 19 to 26 above.

72 The Admin Agreement was terminable by TLPF on 90 days' written notice. However, the First and Second Directors failed at any stage to renegotiate the terms of the Admin Agreement or effect its termination.

Repayment of Loan to MPL

73 Between 16 March 2016 and 24 February 2017, the First and Second Defendant caused and / or facilitated TLPF to make three payments totalling approximately US\$494,048 to MPL purportedly in repayment of an outstanding loan (together the "**Loan Repayments**"). These payments were made as follows;

73.1 US\$204,300 paid on 16 March 2016;

73.2 US\$36,500 paid on 25 August 2016; and

73.3 US\$57,847.97 paid on 24 February 2017 (the "**February Loan Repayment**").

74 The Loan Repayments were paid when TLPF was both balance sheet and cash flow insolvent.

75 Those payments were made at a time when, as known to the First and Second Defendants, TLPF could not pay and was never going to be able to pay its debts in full.

76 The February Loan Repayment was made during the six month period immediately preceding the commencement TLPF's liquidation.

Payments made by TLPF for the benefit of TPF

77 Between 30 October 2015 and 22 October 2016, the First and Second Defendants caused TLPF to make payments totalling approximately US\$144,869 for, or on behalf of, TPF as follows:

77.1 Approximately US\$33,593 in respect of 52 invoices issued by MPL between 30 October 2015 and 31 July 2016 for charges incurred by TPF;

77.2 Approximately US\$39,488.56 in respect of three invoices issued by Taurus for administration services provided to TPF;

- 77.3 Approximately US\$1,919 in respect of two invoices issued by Stuarts Walker Hersant Humphries on 20 and 30 September 2016 for legal services provided to TPF;
- 77.4 Approximately US\$7,282 in respect of two invoices issued by Stuarts Corporate Services Limited on 1 October 2016 for registered office and corporate services provided to TPF;
- 77.5 Approximately US\$18,808 in respect of amounts charged by the First Defendant on 21 February 2016 and 25 May 2016 for director services provided to TPF;
- 77.6 Approximately US\$18,808 in respect of amounts charged by the Second Defendant on 21 February 2016 and 25 May 2016 for director services provided to TPF;
- 77.7 Approximately US\$17,850 in respect of an invoice issued by TPF's auditors on 22 October 2016 for the provision of audit services to TPF; and
- 77.8 Approximately US\$7,118 in respect of amounts charged on 15 September 2016 in connection with two life policies held by TPF.
- 78 In addition to the payments described in paragraph 77 above, the First and Second Defendants also caused TLPF to make further payments for the benefit of TPF as follows:
- 78.1 On 28 September 2016 the First and Second Defendants caused TLPF to pay US\$1,001,336 to the Ninth Defendant, TPF; and
- 78.2 On 24 May 2016 the First and Second Defendants caused TLPF to pay US\$4,372 to another third party to fund amounts owed to it as a result of the redemption of its shares in TPF,
- (together with the payments described in paragraph 77 the "**TPF Payments**").
- 79 TLPF was under no obligation, whether contractual or otherwise, to make the TPF Payments. TLPF received no value or benefit (and never stood to receive any value of benefit) from these payments and the amounts have not been repaid to TLPF.

Praesidium Investment Fund

80 On 16 March 2016, the First and Second Defendants caused TLPF to make a cash payment of US\$296,288 to the Sixth Defendant, PIF (the "**PIF Payment**").

81 TLPF was under no obligation, whether contractual or otherwise, to make the PIF Payment. TLPF received no value or benefit (and never stood to receive any value of benefit) from this payment and the amount has not be repaid to TLPF.

Improper Shareholder Redemptions and Creditor Payments

82 Under the Offering Document, redemption of shares in TLPF was subject to a lock-up period of 5 years. As set out in the section headed "*Issue and Redemption of Shares*":

*"The Fund shall not be required to redeem any Shares during the lock-up period being the period five (5) years from the date of the initial subscription of any such Participating Shares (the "**Lock-Up Period**") but may do so at the discretion of and on terms specified by the Manager.*

*After the Lock-Up Period (or during the Lock-Up Period at the discretion of and on terms specified by the Manager), Shares may be redeemed by the Fund, at the option of the relevant Shareholders, on a Dealing Day at a price equal to the Net Asset Value (or NRV Redemption Price Reduction, if applicable) per class of Share on the Valuation Day immediately preceding the relevant Dealing Day, less the Exit Charge (if any) and adjusted for fiscal and other charges, if any, in the Cayman Islands in accordance with the Articles and the relevant Supplements in respect of such class of Shares (the "**Redemption Price**")."*

83 During 2016, the First and Second Defendants caused TLPF to offer its bondholders and shareholders a so-called "redemption opportunity", whereby a redemption of bond or shares in TLPF was offered on a discounted basis of 50% of redemption values, in return for the redeeming investor subscribing for shares in High Protection Fund ("**HPF**") a related entity managed and controlled by the First Defendant.

84 As part of the redemption transactions, the redemption proceeds were to be paid in kind, and were made up of certain of TLPF's life policy assets.

85 Between 30 June 2016 and 13 February 2017, 25 investor accounts, four of which were parties controlled directly or indirectly by the First Defendant (representing 97% of the positions being redeemed by purported value), exercised the option to redeem their shares and / or Bonds. These redemptions resulted in the transfer of 22 of TLPF's policies with a total marked value US\$9,136,488 plus cash of US\$200,104. In particular:

85.1 On 30 June 2016, the First and Second Defendants purportedly resolved to redeem 68,473 Growth Shares (with a marked value of approximately US\$3,599,221.88) and 54,948 Series 1 Bonds (with a marked value of approximately US\$7,667,317.76) held by the Seventh Defendant, Sovereign. The Sovereign redemption resulted in the transfer of 13 of TLPF's policies with a total marked value of US\$7,867,475 to HPF, in exchange for which (it is to be inferred) Sovereign received shares in HPF.

85.2 On 3 October 2016, the First and Second Defendants purportedly resolved to redeem 8,787 Series 2 Bonds held by the Eighth Defendant, Corinthian. The Corinthian redemption resulted in the transfer of five of TLPF's policies with a total marked value US\$963,596, plus cash of US\$162,367.

85.3 On 3 October 2016, the First and Second Defendants purportedly resolved to redeem:

- (a) 210 Series 1 Bonds held by Vita Nova Hedge Fund ("**Vita Nova**"); and
- (b) 30 Growth Shares, and 183 Series 2 Bonds held by Equity International Limited ("**Equity International**"). The Vita Nova and Equity International redemptions resulted in a transfer of US\$28,801 of TLPF's cash.

86 The marked value of the life policies received by Sovereign amounted to approximately 69% of the total marked value of the Growth Shares and Series 1 Bonds which it purportedly redeemed and thus exceeded the return of 50% of the marked value of its investments in TLPF to which it was purportedly entitled under the "redemption opportunity".

- 87 Further and in any event, the Growth Shares purportedly redeemed by Sovereign, and in respect of which it received life policies from TLPF, had no actual value as at the date of the purported redemption as TLPF was insolvent.
- 88 On 29 September 2016, the First and Second Defendant caused TLPF to pay US\$783,000 to Private Client Portfolio ("PCP") in respect of the purported redemption of its shareholding in TLPF. PCP had been issued its shares in TLPF upon the compulsory redemption in kind of its shares in TPF.
- 89 The shareholder and bond redemptions set out in paragraphs 82 to 88 were made when TLPF was insolvent and resulted in the redeeming investors receiving recoveries higher than those which would have been or will be received by TLPF's general creditor body.

Diversified Settlement Fund

- 90 Diversified Settlements Fund ("DSF") is an open ended investment company incorporated in the Cayman Islands. DSF's Offering Document dated September 2015 states that DSF's investment objective is to achieve long term capital growth by investing in a portfolio of traded life policies.
- 91 At all material times, DSF and TLPF shared common directors, in the First and Second Directors, and a common Investment Manager in MPL.
- 92 TPF transferred its holding of 59,003 shares in DSF to TLPF effective as of 6 June 2014 at a published NAV amount of \$17,347,798. As at 15 December 2014, TLPF held 100% of the Participating Shares in DSF.
- 93 At all material times, MPL has held (and continues to hold) all of the Management Shares in DSF. Accordingly, MPL is the only party able to exercise any shareholder rights under DSF's Articles of Association to vote on matters pertaining to the affairs of DSF, save for the appointment of directors.
- 94 DSF's Articles of Association were amended and restated by a written resolution of MPL on 17 September 2013, and contain a non-petition covenant (the "**Non Petition Covenant**") at Article 96 which states:

"Each Member irrevocably hereby agrees and undertakes not to present a Petition for the winding up of the Company (including a winding-up Petition seeking any relief pursuant to Section 95(3) of the Companies Law) and that in the event any Petition is purportedly presented contrary to this undertaking, such a Petition shall be void and of no effect and the Member irrevocably agrees and undertakes to not oppose any application for the dismissal of the Petition pursuant to Section 95(2) of the Companies Law (2012 Revision)."

- 95 Between 15 May 2014 and 17 November 2015, the First and Second Defendant caused TLPF to make a total of 11 cash "subscriptions" in DSF totalling US\$8,400,000.
- 96 On 30 May 2014, the First and Second Defendants caused TLPF to enter into a transaction under which 30 of TLPF's life policies with a marked value of US\$10,268,299 were transferred from TLPF to DSF (the "**Policy Transfer**").
- 97 By written resolution dated 19 April 2016, the directors of DSF purported to redeem TLPF's entire shareholding in DSF (the "**DSF Redemption Resolution**"). The DSF Redemption Resolution purported to affect the redemption of TLPF's shares on the basis that:
- 97.1 The redemption of shares would have an effective date of 15 October 2015; and
- 97.2 TLPF's entitlement to receive redemption proceeds was limited to a distribution in kind of DSF's non-cash assets only.
- 98 Upon the purported redemption of its shares in DSF, TLPF received a portfolio of 12 life policies from DSF with a value of approximately US\$3,400,000.
- 99 TLPF did not receive any cash, or any of the life policies, which it had transferred to DSF as part of the Policy Transfer.
- 100 The JOLs have made several information requests to MPL regarding a number of transactions between TLPF and DSF that took place both before and after the purported redemption of TLPF's shares in DSF. The responses received from MPL have been unsatisfactory.

101 The JOLs have requested that the sole remaining voting shareholder, MPL, agree to place DSF into voluntary liquidation. However, MPL has to date refused this request.

BREACH OF DUTY BY THE FIRST AND SECOND DEFENDANTS

102 At all material times each of the First and Second Defendants owed the following fiduciary duties to TLPF:

102.1 to act honestly and *bona fide* in the best interests of TLPF, including ensuring that:

(a) TLPF did not make payments: (i) it was not contractually required to make; (ii) at a higher rate or amount than required; (iii) for which TLPF did not obtain proper and adequate benefit; and / or (iv) which were not in its best interests;

(b) TLPF's unsecured creditors who ranked *pari passu* were treated fairly as between themselves (and that one was not preferred over others, save to the extent to do so was in the best interests of the creditors as a whole);

(c) assets of TLPF were not distributed to TLPF's shareholders, in circumstances where TLPF was insolvent;

102.2 to ensure that the business of TLPF was materially carried on in accordance and compliance with the terms of the Articles of Association and the Offering Memorandum;

102.3 to exercise the powers vested in them for a proper purpose and not for a collateral purpose;

102.4 to exercise independent judgment; and

102.5 not to place themselves in a position in which there was a conflict between their duty to TLPF and their personal interests or the interests of other companies in which they were interested; alternatively, if and to the extent that this duty as modified by Article 155 and / or 156 of the Articles of Association, to make a full and frank disclosure of any and all such conflicts before TLPF transacted any

business with either the First or Second Defendant personally or with an entity in which they had a (conflicting) interest.

- 103 Further or alternatively, at all material times each of the First and Second Defendants owed TLPF a duty to act with reasonable skill, care and diligence in and about the performance of their duties and functions as directors. As is set out below, the First and Second Defendants acted in breach of this duty and such breaches were intentional and / or deliberate. Further or alternatively, the First and Second Defendants acted in wilful default of their obligation to discharge this duty. For the avoidance of any doubt, it is not alleged that the First and Second Defendants acted merely negligently.

PARTICULARS OF BREACH

Management Fees

- 104 In breach of their fiduciary duties to TLPF, the First and Second Defendants permitted and / or caused payment of Management Fees to MPL from TLPF based on overinflated, unreasonable and unsupported asset values.
- 105 The First and Second Defendants knew based on the facts set out in paragraphs 19 to 26 above that the GAV's used to calculate the payment of Management Fees to MPL were inaccurate and grossly inflated.
- 106 Moreover, based on the facts set out in paragraph 37 above, the First and Second Defendants failed to ensure that management fees were paid in respect of a GAV that had actually been struck, as opposed to invoices based on management estimates.
- 107 The First and Second Defendant permitted TLPF to continue to make payments to MPL in circumstances where TLPF was in wind down, the services being provided by MPL were significantly less than envisaged under the Offering Document and IMA, and TLPF had the right to terminate the IMA.
- 108 As a result of the First and Second Defendants' breaches of duty in relation to the overpayment payment of Management Fees to MPL, TLPF suffered loss of US\$3,068,781.

109 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

MPL Recharges

110 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to pay MPL significant sums in respect of the MPL Recharges in circumstances where:

110.1 The MPL Recharges were purportedly paid in respect of unspecified and unparticularised expenses;

110.2 The MPL Recharges are not supported by any underlying documents;

110.3 As a result of the foregoing:

- (a) there was no evidence (or no satisfactory evidence) that the MPL Recharges were payable pursuant to clause 13 of the IMA, or at all; and,
- (b) moreover, the First and Second Defendants could not have been reasonably satisfied that the MPL Recharges were payable pursuant to clause 13 of the IMA or at all.

110.4 MPL is a related entity and was a general unsecured creditor;

110.5 TLPF was clearly insolvent when payment of the MPL Recharges were made;

110.6 MPL made a greater recovery as a result of the payments than TLPF's other general unsecured creditors; and

110.7 The MPL Recharges were paid to MPL in addition to the Management Fees referred to in paragraph 33 above.

111 As a result of the First and Second Defendants' breaches of duty in relation to the payment of the MPL Recharges to MPL, TLPF suffered estimated loss of US\$86,149.

112 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Policy Movement Fees

113 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to pay MPL significant sums in respect of Policy Movement Fees in circumstances where:

113.1 TLPF was under no contractual obligation to pay any such fee;

113.2 The fee, which was paid by TLPF at a rate of 5% of the marked value of the policies (which were themselves grossly inflated) was not in the interests of TLPF;

113.3 TLPF received no value for the fee (and certainly no benefit equating to 5% of the value of the assets, even on a proper valuation); and

113.4 The fee was charged on transfers of policies to and from related parties in respect of which no substantive "operations" would have been carried out by MPL.

114 As a result of the First and Second Defendants' breaches of duty in relation to the payment of Policy Movement Fees to MPL, TLPF suffered estimated loss of US\$1,675,961.

115 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Directors Fees

116 In breach of their fiduciary duties TLPF, the First and Second Defendants caused / and or permitted TLPF to pay Directors Fees as set out above in circumstances where the First and Second Defendants were not providing the services that were envisaged under the Offering documents, in particular:

- 116.1 there was no substantive investment policy to consider as the investment activities of TLPF were limited to holding and selling certain life policies; and
- 116.2 the First and Second Defendants failed to accurately calculate the NAV / GAV of TLPF in accordance with generally accepted accounting methodologies and in fact ignored advice obtained from TLPF's independent auditors and actuary.
- 117 As a result of the First and Second Defendants' breaches of duty in relation to the payment of Directors Fees, TLPF suffered estimated loss of US\$301,170.
- 118 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First and Second Defendants. In the premises, these breaches were also dishonest.

Administrator Fees

- 119 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to pay Taurus significant sums in respect of administration fees in circumstances which:
- 119.1 Taurus failed to provide the level of services envisaged under the Admin Agreement, including failing to strike a single NAV, being a key function of an Administrator, during its engagement;
- 119.2 TLPF received no discernible value for the fee, which was in any event calculated on the basis of grossly overstated GAVs; and
- 119.3 TLPF had the right to terminate the Admin Agreement on 90 days' notice.
- 120 As a result of the First and Second Defendants' breaches of duty in relation to the payment of Admin Fees to Taurus, TLPF suffered estimated loss of US\$236,875.
- 121 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Adviser Fees

- 122 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to pay MPL AM significant sums in respect of Adviser Fees at a rate that was not reflective of the work actually being undertaken by MPL AM as Adviser, or the value being delivered by MPL AM. In particular:
- 122.1 There was no investment policy on which the Adviser was providing advice to the Directors or the Manager, as the Manager's role consisted solely of holding and / or selling certain of TLPF's portfolio of life policies being its sole non cash asset; and
- 122.2 the First and Second Defendants failed to assess the appropriateness of the level of the Adviser Fee allowing fees to be paid on a GAV which they knew to be grossly inflated.
- 123 As a result of the First and Second Defendants' breaches of duty in relation to the payment of Adviser Fees to MPL AM, TLPF suffered estimated loss of US\$595,300.
- 124 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Loan Repayments to MPL

- 125 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to make the Loan Repayments to MPL in circumstances where:
- 125.1 MPL is a related entity and was a general unsecured creditor;
- 125.2 TLPF was clearly insolvent when payment of the Loan Repayments were made; and
- 125.3 MPL made a greater recovery as a result of the payments than TLPF's other general unsecured creditors.

126 As a result of the First and Second Defendants' breaches of duty in relation to the Loan Repayments to MPL, TLPF suffered estimated loss of US\$298,648.

127 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Payments for benefit of TPF

128 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to make the TPF Payments in circumstances where:

128.1 TPF is a related entity;

128.2 TLPF was clearly insolvent when the TPF Payments were made;

128.3 TLPF was under no obligation to make the TPF Payments; and

128.4 TLPF received no benefit (and never stood to receive any value of benefit) from the TPF Payments.

129 As a result of the First and Second Defendants' breaches of duty in relation to the TPF Payments, TLPF suffered estimated loss of US\$1,150,577.

130 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Payment made to PIF

131 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to make the PIF Payment in circumstances where:

131.1 PIF is a related entity;

131.2 TLPF was clearly insolvent when the PIF Payment was made;

131.3 TLPF was under no obligation to make the PIF Payment;

131.4 TLPF received no benefit and never stood to receive any value of benefit) from the PIF Payment.

132 As a result of the First and Second Defendants' breaches of duty in relation to the PIF Payment, TLPF suffered estimated loss of US\$296,288.61.

133 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Shareholder Redemptions and Creditor Payments

134 In breach of their fiduciary duties, the First and Second Defendants caused and / or permitted TLPF to effect the redemption of its issued bonds and shares as set out at paragraphs 82 to 88 above in circumstances where:

134.1 TLPF was clearly insolvent when the redemptions were effected and distributions made to redeeming investors;

134.2 The redeeming bondholder accounts, four of which were related parties, were general unsecured creditors;

134.3 The redeeming bond holders received recoveries higher than have been, or will be, received by all other members of TLPF's general unsecured creditor body.

134.4 The return of 69% of the marked value of Sovereign's redeemed bonds and shares was greater than the 50% return offered to all other redeeming investors, resulting in Sovereign, a related party, receiving a higher rate of return than all of TLPF's other redeeming investors;

134.5 Distributions of TLPF's cash and non-cash assets were made to shareholders when:

(a) TLPF was insolvent, and the First and Second Defendants knew based on the facts set out at paragraphs 19 to 26 above, that TLPF was unable to pay its debts in full as they fell due; and

(b) TLPF's non-voting participating shares accordingly had no value.

- 135 The redemptions occurred within the five year Lock-Up Period prescribed under the Offering Document under which TLPF was not required to permit any redemptions of its shares.
- 136 As a result of the First and Second Defendants' breaches of duty in relation to the shareholder redemptions and creditor payments, TLPF suffered estimated loss of life policies with a marked value of US\$9,136,488 and cash of US\$186,071.
- 137 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

Investment in DSF

- 138 In breach of their fiduciary duties to TLPF, the First and Second Defendants caused / and or permitted TLPF to transfer assets by way of cash subscriptions and policy transfers to DSF as set out above in circumstances where:
- 138.1 TLPF held no management shares in DSF and had no ability to vote on matters other than the appointment of directors, who were at all material times common to both DSF and TLPF;
- 138.2 All of the voting shares in DSF were held by MPL, which was all material times owned and controlled by the First Defendant;
- 138.3 The investment in DSF was not in the best interests of TLP including, in particular, by reason of the failure to obtain value or sufficient value in consideration of the transfer of assets from TLPF to DSF; and
- 138.4 DSF's Articles of Association (as amended) contain the Non Petition Covenant which renders it more difficult and costly for TLPF to seek to wind up DSF; alternatively (and contrary to TLPF's primary position) which has the effect that TLPF has no right to file a winding up petition in its capacity as a shareholder of DSF.

- 139 As a result of these breaches TLPF has suffered loss and damage. TLPF will give credit (as appropriate) in respect of any recoveries made from DSF which recoveries TLPF has pursued and intends to pursue (without accepting any duty to do so) in mitigation of the losses caused to it by the First and / or Second Defendant's breaches of fiduciary duty.
- 140 Further or alternatively, TLPF has suffered loss and damage in that its rights as a shareholder were not as extensive or valuable as would and should have been the case but for the breaches of fiduciary duty on the part of the First and / or Second Defendants including by reason of the fact that it is now exposed to the risk (to which it should not otherwise have been exposed) that its right to seek an appropriate remedy in respect of the losses arising from its shareholding in DSF by way of winding up petition does not exist or has been waived.
- 141 These breaches of duty were wilful and were designed to enrich (and in fact had the effect of enriching) the First Defendant. In the premises, these breaches were also dishonest.

KNOWING RECEIPT – MPL, TAURUS, MPL AM, TPF, PIF, CORINTHIAN AND SOVEREIGN

- 142 The payments made to MPL, Taurus, MPL AM, TPF, PIF, Corinthian and Sovereign set out in paragraphs 33 to 89 above, were made as a result of breaches of the First and Second Defendants duties (including fiduciary duties) as directors of TLPF set out in paragraphs 102 to 137 above.
- 143 The First Defendant was at all material times the guiding mind of MPL, Taurus, MPL AM, TPF, PIF, Corinthian and Sovereign.
- 144 The First Defendant knew of the breaches of fiduciary duties and / or had knowledge of the facts giving rise to the breaches of fiduciary duty to TLPF, which knowledge is to be imputed and / or attributed to the companies for which he acted as director and / or which he otherwise controlled.
- 145 Accordingly, MPL, Taurus, MPL AM, TPF, PIF, Corinthian and Sovereign knew of the First and Second Defendant's breaches of fiduciary duty and / or had knowledge of the facts giving rise to their breaches of fiduciary duty to TLPF.

- 146 MPL is liable to account to TLPF for, as appropriate, US\$5,129,539 on the ground of knowing receipt.
- 147 Taurus is liable to account to TLPF for, as appropriate, US\$236,875 on the ground of knowing receipt.
- 148 MPL AM is liable to account to TLPF for, as appropriate, US\$595,300 on the ground of knowing receipt.
- 149 TPF is liable to account to TLPF for, as appropriate, US\$1,150,577 on the ground of knowing receipt.
- 150 PIF is liable to account to TLPF for, as appropriate, US\$296,288.61 on the ground of knowing receipt.
- 151 Corinthian is liable to account to TLPF for, as appropriate, US\$963,596, or for the five policies distributed in kind upon its redemption from TLPF plus US\$162,367, on the ground of knowing receipt.
- 152 Sovereign is liable to account to TLPF for, as appropriate, US\$7,867,475, or for the 13 policies distributed in kind upon its redemption from TLPF, on the ground of knowing receipt.
- 153 Further or alternatively, TLPF is entitled to follow and / or trace in equity and accordingly claims equitable title to:
- 153.1 US\$5,129,539 in cash currently held by MPL;
 - 153.2 US\$236,875 in cash currently held by Taurus;
 - 153.3 US\$595,300 in cash currently held by MPL AM;
 - 153.4 US\$1,150,577 in cash currently held by TPF;
 - 153.5 US\$296,288.61 in cash currently held by PIF;
 - 153.6 US\$7,867,475 in cash currently held by Sovereign, alternatively the HPF shares received and / or held by Sovereign; and

153.7 US\$1,125,962.55 in cash currently held by Corinthian, alternatively the HPF shares received and / or held by Corinthian.

VOIDABLE PREFERENCE – MPL

154 The February Loan Repayment and 2017 Recharges paid to MPL, as set out in paragraphs 73 to 76 and 40 to 45 above, resulted in a transfer of TLPF's property in favour of MPL, in its capacity as a creditor, at a time when TLPF was unable to pay its debts and constitutes a voidable preference under s. 145 of the Companies Law (2018). In particular:

154.1 the February Loan Repayment and 2017 Recharges were made within the six months immediately preceding the commencement of the liquidation of TLPF;

154.2 MPL is a related party of TLPF, such that TLPF is deemed to have made the payments to MPL with a view to giving it a preference;

154.3 further and alternatively, the First and Second Defendants in fact caused TLPF to make the payment to MPL with a view to preferring MPL over TLPF's other creditors.

155 MPL is liable to return to TLPF US\$65,080.97 on the grounds of a voidable preference pursuant to s. 145 of the Companies Law (2018 Revision).

DISHONEST ASSISTANCE - MPL

156 The payments made to MPL set out in paragraphs 33 to 49 and 73 to 76 above, were made as a result of breaches of the First and Second Defendants duties (including fiduciary duties) as directors of TLPF set out in paragraphs 102 to 115 and 125 to 127 above.

157 The First Defendant was at all material times the guiding mind of MPL.

158 The First and Second Defendants knew of their breaches of their fiduciary duties and / or had knowledge of the facts giving rise to the breaches of fiduciary duty to TLPF, which knowledge is to be imputed and / or attributed to the companies for which they acted as directors and / or which they otherwise controlled.

- 159 Accordingly, MPL knew of the First and Second Defendants' breaches of fiduciary duty and / or had knowledge of the facts giving rise to their breaches of fiduciary duty to TLPF.
- 160 Further, MPL acted dishonestly and provided material assistance to the First and Second Defendants by:
- 160.1 procuring and taking Management Fees based on GAVs which it knew were inflated;
 - 160.2 procuring and taking payment of the MPL Recharges to which it was not in fact entitled and in circumstances in which it knew TLPF was insolvent;
 - 160.3 procuring and taking Policy Movement Fees to which it was not in fact entitled; and
 - 160.4 procuring and taking payment of the Loan Repayments in circumstances which it knew TLPF was insolvent.
- 161 MPL was complicit in the commission of the relevant breaches, and without its participation, invoices for the inflated Management Fees, Policy Movement Fees and other fees charged to TLPF would not have been raised and payments processed.
- 162 MPL is liable to TLPF for US\$5,129,539 on the ground of dishonest assistance.

FRAUDULENT TRADING

- 163 Based on the facts set out above, the First, Second and Third Defendants carried on TLPF's business with the intent to defraud the creditors of TLPF (or alternatively, each of the First, Second and Third Defendants were knowingly parties to the carrying on of the business of TLPF in that way). In particular:
- 163.1 TLPF was insolvent on a balance sheet and cash flow basis from at least 15 December 2014;
 - 163.2 The First, Second and Third Defendants knew that TLPF was insolvent;
 - 163.3 The Plaintiffs repeat paragraphs 19 to 26 above.

163.4 As a result of the First, Second and Third Defendants causing TLPF to continue trading, TLPF's liabilities increased and TLPF's creditors have suffered significant financial losses whilst related parties in which the First Defendant has a financial interest received illegitimate gains. The Plaintiff's will provide further particulars in this regard in due course.

UNLAWFUL MEANS CONSPIRACY

164 Based on the facts set out above, the Defendants, with intent to defraud and injure TLPF, conspired and combined together to defraud TLPF by unlawful means. In particular:

164.1 Each of the First and Second Defendant wilfully and dishonestly breached their duties to TLPF with the sole, or dominant, intention to cause damage and / or injury to TLPF.

164.2 The Third to Ninth Defendants were at all material times controlled by the First Defendant, or alternatively by the First and Second Defendants. Knowledge of the First and Second Defendants' breaches of duties and their intention to cause TLPF harm are, or are deemed to be, within the knowledge of each of the Third to Ninth Defendants.

164.3 Pursuant to and in furtherance of the conspiracy, the Defendants carried out and otherwise participated in a series of transactions set out in paragraphs 33 to 99 above that had the foreseeable result of defrauding or otherwise harming TLPF.

165 In the premises, TLPF suffered loss and damage.

AND THE FIRST PLAINTIFF CLAIMS

(1) Against the First and Second Defendant:

(i) Damages and / or equitable compensation.

(ii) A declaration that each of the First and Second Defendants is jointly and severally liable to account to TLPF for US\$17,801,276 or such other amount as the Court thinks fit on the grounds of breach of fiduciary duties.

- (iii) An order that the First and Second Defendant pay to TLPF US\$17,801,276 or such other amount as the Court thinks fit.
- (2) Against MPL:
- (i) Damages and / or equitable compensation.
 - (ii) A declaration that MPL is liable to account to TLPF for US\$5,129,539 or such other amount as the Court thinks fit on the ground of knowing receipt.
 - (iii) A declaration that TLPF is entitled to follow the US\$5,129,539 paid over to MPL and holds equitable title to the US\$5,129,539 held in cash by MPL (or the remaining balance of such fund).
 - (iv) An order that MPL deliver up such fund to TLPF.
- (3) Against Taurus:
- (i) Damages and / or equitable compensation.
 - (ii) A Declaration that Taurus is liable to account to TLPF for US\$236,875 or such other amount as the Court thinks fit on the ground of knowing receipt.
 - (iii) A declaration that TLPF is entitled to follow the US\$236,875 paid over to Taurus and holds equitable title to the US\$236,875 held in cash by Taurus (or the remaining balance of such fund).
 - (iv) An order that Taurus deliver up such fund to TLPF.
- (4) Against MPL AM:
- (i) Damages and / or equitable compensation.
 - (ii) A Declaration that MPL AM is liable to account to TLPF for US\$595,300 or such other amount as the Court thinks fit on the ground of knowing receipt.

- (iii) A declaration that TLPF is entitled to follow the US\$595,300 paid over to MPL AM and holds equitable title to the US\$595,300 held in cash by MPL AM (or the remaining balance of such fund).
 - (iv) An order that MPL AM deliver up such fund to TLPF.
- (5) Against TPF:
- (i) Damages and / or equitable compensation.
 - (ii) A Declaration that TPF is liable to account to TLPF for US\$1,150,577 or such other amount as the Court thinks fit on the ground of knowing receipt.
 - (iii) A declaration that TLPF is entitled to follow the US\$1,150,577 paid over to TPF and holds equitable title to the US\$1,150,577 held in cash by TPF (or the remaining balance of such fund).
 - (iv) An order that TPF deliver up such fund to TLPF.
- (6) Against PIF:
- (i) Damages and / or equitable compensation.
 - (ii) A Declaration that PIF is liable to account to TLPF for US\$296,288.61 or such other amount as the Court thinks fit on the ground of knowing receipt.
 - (iii) A declaration that TLPF is entitled to follow the US\$296,288.61 paid over to PIF and holds equitable title to the US\$296,288.61 held in cash by PIF (or the remaining balance of such fund).
 - (iv) An order that PIF deliver up such fund to TLPF.
- (7) Against Sovereign:
- (i) Damages and / or equitable compensation.
 - (ii) A Declaration that Sovereign is liable to account to TLPF for US\$7,867,475 or such other amount as the Court thinks fit on the ground of knowing receipt.

- (iii) A declaration that TLPF is entitled to follow the 13 life policies distributed in kind upon Sovereign's redemption and holds equitable title to the HPF shares held by Sovereign (or the remaining balance of such shares).
 - (iv) An order that Sovereign deliver up such shares to TLPF.
- (8) Against Corinthian:
- (i) Damages and / or equitable compensation.
 - (ii) A Declaration that Corinthian is liable to account to TLPF for US\$1,125,963 or such other amount as the Court thinks fit on the ground of knowing receipt.
 - (iii) A declaration that TLPF is entitled to follow the five life policies distributed in kind upon Corinthian's redemption and holds equitable title to the HPF share held by Corinthian (or the remaining balance of such shares).
 - (iv) A declaration that TLPF is entitled to follow the US\$162,367 paid over to Corinthian and holds equitable title to the US\$162,367 held in cash by Corinthian (or the remaining balance of such fund).
 - (v) An order that Corinthian deliver up such fund to TLPF.
- (9) Against the First to Ninth Defendants:
- (i) Damages for the tort of unlawful means conspiracy.
 - (ii) A Declaration that the First to Ninth Defendants are liable to TLPF for US\$17,801,276 or such other amount as the Court thinks fit on the ground of unlawful means conspiracy
- (10) Interest, whether or not compounded, on all sums found to be due to TLPF at such rates as the Court thinks fit pursuant to the Court's equitable jurisdiction and / or section 34 of the Judicature Law (2017 Revision).
- (11) Such further or other relief as may be just.
- (12) Costs.

AND THE SECOND PLAINTIFF CLAIMS

- (1) Against the First Defendant:
 - (i) A declaration that the First Defendant is liable to contribute such amount as the Court, following assessment, thinks fit to TLPF on the ground of fraudulent trading;
 - (ii) An order that the First Defendant pay to TLPF such amount as the Court, following assessment, thinks fit by reason of the aforesaid fraudulent trading.
- (2) Against the Second Defendant:
 - (i) A declaration that the Second Defendant is liable to contribute such amount as the Court, following assessment, thinks fit to TLPF on the ground of fraudulent trading;
 - (ii) An order that the Second Defendant pay to TLPF such amount as the Court, following assessment, thinks fit by reason of the aforesaid fraudulent trading.
- (3) Against MPL:
 - (i) A declaration that MPL is liable to account to pay US\$65,080.97 or such other amount as the Court thinks fit, on the ground of voidable preference.
 - (ii) An order that MPL pay to TLPF US\$65,080.97 or such other amount as the Court thinks fit.
- (4) Interest, whether or not compounded, on all sums found to be due to TLPF at such rates as the Court thinks fit pursuant to the Court's equitable jurisdiction and / or section 34 of the Judicature Law (2017 Revision).
- (5) Such further or other relief as may be just.
- (6) Costs.

DATED this 25 day of July 2019

Maples and Calder

Graham Chapman QC

Maples and Calder

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

- 1 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

 After completion it must be delivered or sent by post to the Law Courts, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

- 2 A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

 If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

 If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

 If the Defendant fails to serve his Defence within the appropriate time, the Plaintiffs may enter judgment against him without further notice.

- 3 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See overleaf for Notes for Guidance

Notes for Guidance

- 1 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
- 2 For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
- 3 Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
- 4 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
- 5 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
- 6 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
- 7 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
- 8 A Defendant acting in person may obtain help in completing the form at the Courts Office.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD

OF 2019

BETWEEN:

- (1) TRADED LIFE POLICIES FUND (IN OFFICIAL LIQUIDATION)**
- (2) MICHAEL PENNER (IN HIS CAPACITY AS A JOINT OFFICIAL LIQUIDATOR OF TRADED LIFE POLICIES FUND)**

Plaintiffs

AND

- (1) JEREMY LEACH**
- (2) WILLIAM MCCLINTOCK**
- (3) MANAGING PARTNERS LIMITED**
- (4) TAURUS ADMINISTRATION SERVICES S.L.**
- (5) MPL ASSET MANAGEMENT SA**
- (6) PRAESIDIUM INVESTMENT FUND**
- (7) SOVEREIGN HIGH SECURITY FUND SPC**
- (8) CORINTHIAN GROWTH FUND**
- (9) TRADED POLICIES FUND**

Defendants

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

-
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

yes no

Service of the Writ is acknowledged accordingly.

Dated this day of 2019.

(Signed).....

Attorney for

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Maples and Calder
Ugland House
Po Box 309
George Tow
Grand Cayman
KY1-1104
Cayman Islands

Ref: JSE/MCL/731670.02

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.