Subject: RE: [DMR000000] Request for Legal Advice – Potential Civil Action Regarding Ultra Super Fund
Date: Monday, 20 January 2025 at 10:52:26 AM Australian Eastern Standard Time
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CC: Honda.r@hotmail.com <Honda.r@hotmail.com>
Category: LAW FIRMS & LAWYERS - IN POSSESSION OF REPORTABLE TRIGGERS - AML
Attachments: image001.jpg

Dear Holly

You might be best served by a Queensland lawyer. You might consider Paul Radford (https://www.connollysuthers.com.au/paul-radford/).

Regards

Bryce Figot | Special Counsel

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From: Holly Osborne <hollyteganosborne@hotmail.com>
Sent: Monday, 20 January 2025 10:39 AM
To: DBA <dba@dbalawyers.com.au>
Cc: Honda.r@hotmail.com
Subject: Request for Legal Advice – Potential Civil Action Regarding Ultra Super Fund
Importance: High

Good morning

I write to you in my capacity as Enduring Power of Attorney (EPA) for Ms Rhonda Ann Knyvett, co-trustee of the Ultra Super Fund (ABN 41 873 921 089) alongside Mr Garth Wilfred Osborne. On behalf of Ms Knyvett, I seek urgent legal advice regarding potential civil action against Mr Osborne for alleged misconduct, gross mismanagement, and breaches of trustee duties, as well as against other parties for negligence.

Key Issues and Relief Sought
There is compelling evidence of significant mismanagement and misconduct, including:

Misappropriation of Funds
A substantial portion of the fund's assets has been allocated to Border & Pty Ltd, a financial services and wealth management company specialising in shares. Despite these transactions, the recovery of these funds may be impractical due to Mr Osborne's actions.

Fraudulent Asset Valuation
Properties held by the fund have been systematically undervalued in reports to the ATO, masking the true financial position of the fund. The fund remains asset-rich but faces liquidity challenges stemming from inaccurate valuations.

Unlawful Transactions
Bank statements reveal transactions resembling round-tripping and other irregularities, with millions of dollars flowing in and out of the fund since its establishment in 2001. Despite these transactions, the fund's assets do not reflect corresponding growth, pointing to potential fraud or tax evasion.

Ms Knyvett seeks to:

1. Dissolve the fund and roll over her entitlements into a government-managed superannuation fund.
2. Investigate and accurately value the fund's financial position, including correcting undervalued properties to increase recoverable assets.
3. Pursue compensation for damages resulting from Mr Osborne's misconduct.
4. Petition for Mr Osborne's disqualification as trustee and the imposition of civil penalties.

Additional Parties and Negligence Claims
Ms Knyvett is also considering legal action against:

1. Mr David Wrangell, Accountant, for failing to ensure proper oversight of the fund's accounts.
2. Mr Laurie Carwardine, Auditor for negligence in identifying and addressing financial irregularities within the fund.

Summary of Misconduct and Broader Implications
The undervaluation of fund assets, breaches of the sole purpose and arm's length rules, related-party transactions, and evidence of tax evasion are central to this dispute. Mr Osborne has withheld critical information, obstructing Ms Knyvett's ability to fulfil her trustee duties and benefit from her entitlements.

The systemic mismanagement, involving millions of dollars in questionable transactions and undervalued properties, has caused significant financial harm to Ms Knyvett. Furthermore, evidence suggests Mr Osborne's misconduct may extend to other SMSFs and numerous ABNs, raising broader implications for other affected parties and regulatory bodies.

Given the substantial financial harm, evidence of fraudulent or negligent conduct, and potential wider implications, this matter warrants immediate legal action. A full investigation into the Ultra Super Fund's financial position and Mr Osborne's actions is critical to achieving accountability and recovering losses for Ms Knyvett.

Additionally, I have enclosed:

- Enduring Power of Attorney for your reference. Mr Knyvett has been copied on this correspondence.

- Extracts with notable transactions from the Suncorp and Bendigo Ultra Super Fund's bank accounts for 1.08.2007 to 30.08.2007, 1.06.2009 to 30.06.2009

- Contract of Sale (Seller Contract) referenced below.

- Extracts of the concerning material provided by Mr David Wrangell, Accountant, Pine Rivers Consulting.

Your expertise on the prospects of success and legal remedies in these matters would be greatly valued. Attached are comparable

Kind regards

Holly Dahm
Enduring Power of Attorney,

Ms Rhonda Ann Knyvett, trustee
Ultra Super Fund Trustee
0413 688 334
honda.r@hotmail.com

BACKGROUND

1. Ms. Knyvett and Mr. Osborne were in a long-term de facto relationship from 1979 to 2000.
1. Ms. Knyvett, born 18 October 1957, is in her late sixties, is not digitally literate, and primarily worked in the home.
2. Mr. Osborne, born 10 January 1956, has operated as a sole trader for over 40 years, specifically running Zillmere Spine & Sports Physio Clinic & Zillmere Sports Physio Clinic, located in Zillmere, 4034.
3. Ms. Knyvett only knew her superannuation was connected to apartments in Zillmere but was excluded from all decision-making.
4. The SMSF was established in 2001, with Mr. Osborne exercising sole control despite Ms. Knyvett's legal status as a co-trustee.
5. On 23 December 2024, Ms. Knyvett identified herself as a co-trustee of the Ultra Super Fund (ABN 41 873 921 089) alongside Mr. Osborne.
6. Mr. Osborne requested a meeting with Ms. Knyvett when she sought access to her superannuation.

7. On 23 December 2024, at the meeting, Mr. Osborne presented Ms. Knyvett with a form and a seller contract. The seller contract evidenced Mr. Osborne's attempt to sell a fund asset at a deflated value, significantly below market value, and indicated illegal or non-compliant property ownership structures (attached).
8. Mr. Osborne attempted to coerce Ms. Knyvett into signing, verbally berating her and her support person while standing over them.
9. The seller contract revealed Mr. Osborne's intention to sell the asset to his partner, Ms. Ann Anthonisz, at a price below market value.
10. A clause in the contract appeared designed to disadvantage Ms. Knyvett.
11. Ms. Knyvett refused to sign both the form and the seller contract.
12. She retained the seller contract despite Mr. Osborne's attempts to retrieve it.
13. She took a photograph of the Boardroom Pty Limited form before Mr. Osborne snatched it away.
14. Mr. Osborne withheld information about the management of the Ultra Super Fund.
15. Ms. Knyvett was unaware that her superannuation was managed in a Self-Managed Superannuation Fund (SMSF) or that she was a trustee.

SUMMARY OF CONCERNS REGARDING MR OSBORNE, TRUSTEE OF ULTRA SUPER FUND:

1. Failure to Respond and Obstruction of Trustee Duties:
   - Mr Osborne has ignored all verbal, text, and email communications from Mr Knyvett, hindering him from fulfilling his responsibilities as a trustee.
   - He has prevented Ms Knyvett from accessing fund information, performing her trustee duties, and protecting the fund's assets
2. Financial Misconduct:
   - Bank statements show concerning transactions similar to round-tripping of business income into the SMSF.
   - Significant fund transfers to a Bendigo and Adelaide Bank account linked to Mr Osborne, **sharing an identical account number** with the Bendigo Ultra Super Fund account.
   - **Millions** of funds transferred to CommSec, NAB, by cheque, and cash withdrawals, with suspicious transactions involving over 1,072 cheques.
   - Misrepresentation of fund transfers as belonging to the Ultra Super Fund to conceal improper movements.
3. Coercive Control and Manipulation:
   - Allegations of coercive control, including threats, blackmail, intimidation, and manipulation of Ms Knyvett to sign documents without understanding their implications.
   - False representation of Ms Knyvett's entitlements (claiming $10,000–$15,000), despite ATO confirming her share as **$711,000**.
4. Withholding Information and Misrepresentation:
   - Fund records, deeds, and key documentation have been withheld by Mr Osborne.
   - Allegations of false information provided to accountants, with deposits and withdrawals in Ms Knyvett's name to benefit Mr Osborne.

5. Improper Fund Management:
    - Mr Osborne rolled over his portion of the fund into a personal retirement fund, disadvantaging Ms Knyvett.
6. Taxation concerns
    - Despite both parties being over 65, the fund continues to pay tax. An actuarial certificate shows $1.7 million attributed to Mr Osborne and $0 to Ms Knyvett.
    - Discrepancies in tax liabilities: Ms Knyvett is responsible for 28.4% of a $5,000 tax bill, while Mr Osborne owes only 0.8%.
7. EPA and Binding Death Benefit Nomination (BDBN) Concerns:
    - Allegations of falsified and non-compliant EPA documents, potentially altered to benefit Mr Osborne.
    - Concerns over fraudulent BDBN forms that disadvantage Ms Knyvett and her beneficiaries, favouring Mr Osborne as sole beneficiary.
8. Deed Concerns:
    - Suspicions that Mr Osborne implemented a deed granting himself disproportionate control (greater than 50%), breaching the SIS Act.
9. Limited Access to Funds:
    - Since becoming eligible, Ms Knyvett has only received $25,000, paid via personal cheque by Mr Osborne, which Ms Knyvett deposited into her account.
10. Complete Obstruction of Trustee Responsibilities:
    - Mr Osborne has fully prevented Ms Knyvett from performing her obligations as a trustee by withholding information, funds, and management access.
11. Extensive ABN registration
    - Significant issues have been identified regarding Mr Osborne's involvement with multiple ABNs, SMSFs, discretionary trusts, and business entities. These raise concerns about potential regulatory breaches, conflicts of interest, and fiduciary misconduct.

The ABNs linked to Mr Osborne include:

- ABN 43 960 865 910 – Garth Wilfred Osborne
- ABN 14 946 035 004 – Garth W Osborne Physiotherapy
- ABN 66 010 316 551 – Degelyn Pty Ltd
- ABN 52 856 037 840 – Gregory R & Anna M Osborne
- ABN 14 946 035 004 – Garth A & Gail R Osborne

Key Concerns:

- Possible misuse or non-compliance with ATO regulations.
- Entity Name Changes, the frequent changes suggesting financial irregularities or intent to obscure activities.
- Conflicts of Interest, potential issues arising from Mr. Osborne's simultaneous roles in other SMSFs and trusts.
- Regulatory breaches; possible non-compliance with the SIS Act and trustee obligations.

CONCERNS REGARDING MR DAVID WRANGELL, ACCOUNTANT, PINE RIVERS CONSULTING:

1. Mr David Wrangell has provided financial services to Ultra Super Fund since its establishment.

2. M. Wrangell submitted the tax lodgements for the previous five years.
3. The submitted material is incomplete, containing missing, unsigned, and unfinished documents, with handwritten notes, raising doubts about the validity of the records. This is especially concerning given Mr. Osborne's sole control over the fund and its activities.
4. Some documents include handwritten notes listing my mother as "Rhonda Ann Osborne," a name under which no legal documentation exists, as my mother and Mr. Osborne were never married. It is worth noting that Mr. Osborne's current fiancée or wife shares the name "Ann" with the same spelling, which raises further concerns.
5. A $15,600 entry on May 2, 2023, under the shop rent account in the General Ledger is inconsistent with standard rental payment structures, suggesting the potential use of a bank account as a holding account. This entry will be cross-referenced with the bank statements for any discrepancies, with relevant bank statements attached for comparison.
6. Transactions involving the Ultra Super Fund Bendigo account with identical account numbers are under scrutiny.
7. Mr. Wrangell has withheld essential requested information.

CONCERNS REGARDING MR LAURIE CARWARDINE, AUDITOR, CARWARDINE & ASSOCIATES:

1. Essential information has been requested and is being withheld by Mr Carwardine.

EVIDENCE: ULTRA SUPER FUND

Suncorp Bank Statements

Account Details: BSB 484-799, Account 001422502 (joint account opened May 2007, still active).

Transaction Details:

- On 26 December 2024, two-person authentication was implemented by Ms Knyvett for fund withdrawals.
- Statements show 18 years of transactions by Mr Osborne, transferring millions of dollars into, out of, and between Bendigo and Suncorp Ultra Super Fund accounts, while maintaining low balances.

1. **Bendigo Bank Statements**

   Account Details: Ultra Super Fund BSB 633-000, Account 118052760 (joint account opened 1 December 2004, closed 30 March 2024 by Mr Osborne).

   Transaction Details:

   - Statements show 20 years of transactions by Mr Osborne, mirroring Suncorp account activity, including significant fund transfers between Bendigo and
   - Suncorp accounts and to other accounts linked to Mr Osborne. Funds were transferred to accounts such as CommSec and NAB, with suspicious cheque activity (1,072 cheques written with deposits and withdrawals of similar amounts on the same day or consecutively).

2. **Evidence of Misrepresentation and Fund Movement**

   Funds appear to have been cycled through multiple accounts to obscure origin and destination.

   - Substantial amounts, including over $1 million in rental payments, were disbursed from both Bendigo and Suncorp accounts, despite low account balances.

- Transfers were intentionally misrepresented as related to the Ultra Super Fund to conceal improper fund movements.

3. **Tax Returns and Financial Statements (2019–2023)**

Provided by Accountant Mr. David Wrangell, Pine Rivers Consultant:

- Included financial statements, actuarial certificates, general ledgers, tax returns, and trial balances.
- Documents were incomplete, unsigned, and contained inaccuracies, including handwritten notes identifying Ms Knyvett as "Rhonda Ann Osborne," a name with no legal basis.
- Entries in the general ledger, such as a lump sum rental payment of $15,600 (2 May 2023), suggest the use of a bank account as a holding account. These entries will be cross-referenced with bank statements.
- Financial statements undervalue fund assets reported to the ATO.

4. **Seller Contract (158 Church Road, Zillmere)**

SIS Act Breaches:

Breach of arm's length provisions, sole purpose test, and asset valuation requirements.

Transaction Details:

- The contract sought to sell a 50% stake in the property for $330,000 (below market value) to Mr Osborne's partner, Ms Ann Anthonisz.
- A clause in the contract was included to disadvantage Mr Knyvett. The contract suggests non-compliant property ownership structures.

5. **Boardroom Pty Limited Form**

Information:

- Linked to the sale of 158 Church Road, form to request for direct crediting of payments, referencing Ultra Super Fund ABN 41 873 921 089.
- Contains information about the Ultra Super Fund Suncorp account (BSB 484-799, Account 001422502).

Boardroom email correspondence:

- Boardroom Pty Limited have withheld requested involvement in central information.
- Ms Maxine Williams, Investor Service Officer confirmed an existing EPA is file, but it does not match the surname of the current EPA holder.
- is believed that the surname referenced is Osborne, based on a 2005 EPA containing only the name of the drafting lawyer, Lawrence John Watling, formerly based in Caboolture, without contact details. Concerns exist regarding the contents of this EPA.
- Rhonda has notified Mr Osborne Trustee, Mr Wrangell, Accountant (SMSF Administrator), Mr Carwardine, Auditor, and Boardroom Pty Limited of the existence of a new EPA.
- Ms Williams confirmed a new EPA will require Mr Osborne's signature approval and must be submitted directly to them, likely in accordance with the conditions of the Deed of Establishment, which appears to Favor Mr. Osborne and disadvantage Ms Knyvett.

6. **Actuarial Certificates and Data Provided by Ms Melanie Dunn (Accurium)**

- Ms Melanie Dunn, FIAA SSA, Principal at Accurium, issued an email providing the actuarial certificates for the Ultra Super Fund for the financial years 2018–2023.
- The email confirmed that the actuarial services were provided to the Fund, and Mr Wrangell, the accountant, obtained the annual actuarial certificate for the Fund. Mr Wrangell has ordered these certificates from Accurium directly for several years.
- Ms Dunn noted that an online form is completed by the accountant to provide Accurium with the data necessary for actuarial calculations, which Accurium relies on to issue the required certificates.

Actuarial Services and Fund Records

Concerns:

- Accurium confirmed they do not receive the financial statements, valuation reports, or income and expense records of the Fund.
- This raises concerns about the accuracy and completeness of the data used for the actuarial calculations, as these documents are critical for proper actuarial assessments.

FUND ASSETS

PROPERTIES OWNED BY THE FUND

Properties assets of the Fund have been undervalued since 2001.

Residential:

1. 364 Zillmere Road, Unit 1
2. 364 Zillmere Road, Unit 2
3. 364 Zillmere Road, Unit 3
4. 364 Zillmere Road, Unit 4
5. 364 Zillmere Road, Unit 5
6. 364 Zillmere Road, Unit 6

Commercial:

7. Shop 1 and Shop 2 158 Church Road, Zillmere / 2 Hinchliffe Street, Zillmere

RENTALS

Commenced as fund asset upon established in 2001

Residential:

8. 364 Zillmere Road, Unit 1
9. 364 Zillmere Road, Unit 2
10. 364 Zillmere Road, Unit 3
11. 364 Zillmere Road, Unit 4
12. 364 Zillmere Road, Unit 5
13. 364 Zillmere Road, Unit 6

Commercial:

14. Shop 1 and Shop 2 158 Church Road, Zillmere / 2 Hinchliffe Street, Zillmere

DIVIDENDS

- QANTAS dividends
- David Jones dividends
- Coles/ Myer dividends
- CENTRO PROP DIS DIVIDENT
- CENTRO RET DIS DIVIDENT

- SANTOS
- TELSTRA DIVIDEND
- AMP LIMITED DIVIDEND
- BHP BILLITON DIVIDEND
- CNP SPECIAL DIST DIVIDEND
- SANTOS DIVIDEND
- BXB FNL DIVIDEND
- BXB ITM DIVIDEND
- BRAMBLES dividend
- DIVIDEND ANZ replacement
- direct credit AAI limited t/as 3,724
- SANTOS

Notable precedent decisions

- ATO v. Cook (2017)
- ATO v. Garvey [2019]
- ATO v. Langan [2018]
- ATO v. Robinson [2017] FCA 23
- Australian Taxation Office v. D'Souza [2021]
- Australian Taxation Office v. Hurley [2020] FCAFC 179
- Australian Taxation Office v. M & S Ventures Pty Ltd (2018)
- Cam & Bear Pty Ltd v McGoldrick [2018] NSWCA 110
- Fowles v. ATO [2022] FCAC 16
- Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502
- Smith v. Anderson [2020]
- Smith v. Jenkins [2019] FCA 573
- Taylor v. Simmons [2015]