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## Grim reapers who feast on the dead

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Tanya Hamilton-Smith owed \$28,000 to her boyfriend's company when it went belly-up. The liquidator to this Adelaide retailer then spent half a million dollars chasing the debt. Don't rub your eyes: that's correct, they forked out nearly \$500,000 to pursue a debt of just \$28,000.

An abuse of process case is now afoot from the company's founder, John Viscariello. That makes lawsuit number nine.

In an interim judgment a few weeks ago, South Australia's Chief Justice Chris Kourakis found the liquidator PPB and its lawyers, Minter Ellison, enjoyed a "loosely defined fee-sharing arrangement".

They carved this baby up good and proper. One decade of litigation, \$1 million in fees, one doughnut for creditors.

Welcome to the Dead Zone, the land of liquidations, administrations and receiverships, where bounty-hunters roam the apocalyptic landscape preying on the dying and the wounded. And the big banks are there, hulking leviathans lazing in the distance with intent, pulling the strings; deciding who lives and who dies, who does the undertaking and who reaps the spoils.

Increasingly, the banks are running both ends of the insolvency spectrum, the administrations as well as the receiverships.

The relationships between banks and liquidators are not disclosed, whether contractual

or just purely commercial. Those who get the lion's share of the work, lately PPB and KordaMentha, never claim against the banks. They never challenge the banks.

Take the case of SK Foods for mollycoddling. KordaMentha is the receiver, appointed by ANZ. The job is done. ANZ has been paid the \$21 million it was owed from the estate, in full.

There are other creditors and shareholders to pay, people who don't churn out a \$4 billion bottom-line profit each year but who are still owed for their work.

The liquidator, Sheahan Lock, has asked KordaMentha to release the \$18 million it still holds, and retire, but bizarrely KordaMentha has refused. It has told the Supreme Court of Victoria that it has to hang onto the money just in case it gets sued. Actually, it's worse than that. It has to hang onto the money in case ANZ gets sued.

Toeing the line with a bow, its solicitors, Ashurst, even swore an affidavit that it would cost \$10.2 million to defend proceedings that they thought might be brought against their client. These are proceedings, mind you, which don't exist. The liquidator hasn't decided whether to bring them.

Undaunted however, and as if aspiring to a *Dawn of the Dead* sequel to PPB's horror show with the Adelaide retailer John Viscariello, KordaMentha enlisted the service of a "costs consultant" to confirm the \$10.2 million estimate plucked out of the stratosphere by Ashurst.

*Dawn of the Dead* was fiction. But a costs consultant with a \$10.2 million price on an imaginary lawsuit? You couldn't make this stuff up.

So a directions hearing is set down for next month. More court costs on the taxpayers' account, less return for smaller creditors.

How many major claims have been brought by major liquidators against major banks? It doesn't happen, industry insiders say.

Opes Prime was a lay-down misere. There was a clear-cut case against ANZ for acting as a shadow director, among other things, but the liquidator didn't pursue it.

In Bankwest's fight against the property developer Luke Saraceni, the bank appointed KordaMentha as receivers. Then KordaMentha faithfully kicked up a huge stink at Saraceni's decision to appoint Bryan Hughes as administrator. Presumably Hughes was too independent for the bank's liking.

Why do the banks carry on interfering in the selection of liquidators?

They already have their interests attended by receivers, after all. It is simply that they don't want to be sued. And they are unlikely to be sued by a liquidator who is already on the gravy train.

There was recently one exception to this unspoken spoken rule. In the ABC Learning liquidation, Ferrier Hodgson has intrepidly backed a suit against CBA to try to knock out a charge granted to the bank, orally, and blatantly, a few months before Eddy Groves's childcare company collapsed.

Save on these rare occasions, though, the hard questions go unasked and unanswered, the hard deeds never get done, the prospective claims are left to wilt, and the merry-go-round of KordaMentha as receiver and PPB as liquidator - and vice versa - proceeds apace.

*This story was found at: <http://www.smh.com.au/business/grim-reapers-who-feast-on-the-dead-20121029-28dom.html>*