SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3508 of 2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)(RECEIVERS APPOINTED) ACN 077 208 461

First Applicant:	**JOHN RICHARD PARK AND GINETTE DAWN MULLER AS LIQUIDATORS OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)(RECEIVERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**
	AND
Second Applicant:	**LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)(RECEIVERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 342 288**
	AND
Respondent:	**DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001**

SEAN CHARLES RUSSELL of Level 18, 300 Queen Street, Brisbane, Solicitor, states on oath:-

JUSTICE OF THE PEACE (QUALIFIED) QUEENSLAND GOVERNMENT Reg.No.: 93827 DEPARTMENT OF JUSTICE QUEENSLAND

Signed Solicitor/Barrister/Justice of the Peace

AFFIDAVIT OF SEAN CHARLES RUSSELL

Filed on behalf of the Applicants

Form 46 Rule 431

Russells
Level 18
300 Queen Street
BRISBANE **4000**
Phone: 07 3004 8888
Fax: 07 3004 8899

SCPR_20150297_035.docm

1. I am a solicitor in the employ of Russells, solicitors for the Applicants. I have the day to day carriage of this matter under the supervision of Mr Ashley Tiplady, a partner of Russells.

2. Now produced and shown to me and marked "**SCPR-2**" is an indexed, paginated bundle of documents to which I shall refer in this affidavit. References to numbers in **[ ]** are references to the page numbers of SCPR-2.

3. On 25 June, 2015, I accessed the website, www.lmfmif.com, which I believe to be a website maintained by the Respondent in relation to his appointment as the person appointed by this Honourable Court to ensure that the LM First Mortgage Income Fund ("**FMIF**") is wound in accordance with its constitution.

4. From that website, I obtained nine documents styled as "Reports to Investors." There were reports:-

(a) dated 27 August, 2013, which appears at **[1]** to **[38]**;

(b) dated 15 October, 2013, which appears at **[39]** to **[67]**;

(c) dated 4 December, 2013, which appears at **[68]** to **[81]**;

(d) dated 19 February, 2014, which appears at **[82]** to **[90]**;

(e) dated 2 May, 2014, which appears at **[91]** to **[99]**;

(f) dated 4 August, 2014, which appears at **[100]** to **[117]**;

(g) dated 16 October, 2014, which appears at **[118]** to **[132]**;

(h) dated 30 January, 2015, which appears at **[133]** to **[162]**; and

(i) dated 30 April, 2015, which appears at **[163]** to **[192]**.

5. The Respondent has made several applications to this Honourable Court for the approval of his remuneration. The Respondent has treated his remuneration

JUSTICE OF THE PEACE (QUALIFIED) QUEENSLAND GOVERNMENT Reg.No.: 93827 DEPARTMENT OF JUSTICE QUEENSLAND

Signed Solicitor/Barrister/Justice of the Peace

relating to this Honourable Court's appointment separately from his remuneration relating to his (and his colleague, Mr Fielding's) appointment as agents of the Trust Company (PTAL) Ltd in respect of various securities. Those separate roles are referred to by the Respondent as the "receivership" and the "controllership" respectively.

6. The table below summarises the Respondent's remuneration applications:-

Remuneration Period	Receivership Remuneration	Controllership Remuneration	Application Filed	Application Heard
8 August, 2013 to 31 March, 2014	$702,480.35	$0.00	2 May, 2014	28 August, 2014
1 April, 2014 to 30 September, 2014	$1,005,948.35	$7,000.95	7 November, 2014	27 November, 2014
1 October, 2014 to 30 April, 2015	$1,761,911.25	$442,214.30	29 May, 2015 Amended on 3 June, 2015	23 June, 2015
TOTAL	**$3,470,339.95**	**$449,215.25**		

7. In respect of each application:-

(a) at **[193]** to **[194]** is a copy of the order of McMurdo J dated 28 August, 2014;

(b) at **[195]** to **[196]** is a copy of the order of Mullins J dated 27 November, 2014; and

(c) at **[197]** is a copy of a notice published to the members of the FMIF by the Respondent regarding the application which was heard on 23 June, 2015,

each of which I obtained from the Respondent's website.

8. I do not know the outcome of the Respondent's application which was heard by this Honourable Court on 23 June, 2015.

JUSTICE OF THE PEACE (QUALIFIED) QUEENSLAND GOVERNMENT Reg.No.: 93827 DEPARTMENT OF JUSTICE QUEENSLAND

Signed Solicitor/Barrister/Justice of the Peace

9. All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by **SEAN CHARLES RUSSELL** on 26 June, 2015 at Brisbane in the presence of:

Deponent

Solicitor/~~Barrister~~/Justice of the Peace

JUSTICE OF THE PEACE (QUALIFIED)
QUEENSLAND GOVERNMENT
Reg.No.: 93827
DEPARTMENT OF JUSTICE QUEENSLAND

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Exhibit SCPR-2 to the Affidavit of **SEAN CHARLES RUSSELL** sworn 26 June, 2015:

Deponent

Solicitor/~~Barrister~~/Justice of the Peace

JUSTICE OF THE PEACE (QUALIFIED) QUEENSLAND GOVERNMENT Reg.No.: 93827 DEPARTMENT OF JUSTICE QUEENSLAND

CERTIFICATE OF EXHIBIT

Filed on behalf of the Applicants

Form 47 Rule 435

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SUPREME COURT OF QUEENSLAND

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INDEX TO EXHIBIT SCPR-2

BDO

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Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

27 August 2013

LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED)(RECEIVER APPOINTED)
ARSN 089 343 288
('the Fund' or 'MIF')

1. Appointment

I write to confirm that I was appointed as the Receiver of the Fund's assets and as the person responsible to wind up the Fund in accordance with its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I attach a copy of the judgement dated 8 August 2013 and the Court Order dated 21 August 2013 setting out the terms of my appointment.

In summary, the constitution provides that, inter alia, the procedure for the winding up of the Fund is that all assets are converted to money, all properly incurred costs are deducted and the balance of money is distributed to each unit holder in proportion to the unit holder's interests in the Fund.

2. Interaction with other Appointees

As you would be aware, John Park and Ginette Muller were appointed Voluntary Administrators of the responsible entity of the Fund, LM Investment Management Ltd (In Liquidation) ('LMIM'), on 19 March 2013 and subsequently appointed as Liquidators on 1 August 2013. The responsible entity of the Fund remains in place, however whilst I undertake my role as the Court Appointed Receiver to wind up the Fund in accordance with its constitution, the role of the Liquidators will be very limited.

As you would also be aware, Joseph Hayes and Anthony Connelly of McGrathNicol were appointed Receivers and Managers of the responsible entity of the Fund by Deutsche Bank AG on 11 July 2013. The Receivers and Manager's role is to realise sufficient assets of the Fund to repay the debt due to Deutsche Bank AG pursuant to their facility agreement.

BDO and McGrathNicol are working together to ensure the objectives of their respective appointments are achieved as efficiently as possible.

BDO

3. MIF Feeder Funds

The Feeder Funds to the MIF include the LM Wholesale First Mortgage Income Fund ('WFMIF'), the LM Currency Protected Australian Income Fund ('CPAIF) and the LM Institutional Currency Protected Australian Income Fund ('ICPAIF').

Trilogy Funds Management remain the responsible entity for the WFMIF and LMIM remains the responsible entity for CPAIF and ICPAIF.

Since my appointment, several investors of the feeder funds have queried with me if they will be subject to the additional fees and expenses of the feeder funds when compared to investors who have invested directly with MIF.

Unfortunately, as I am not in control of these funds and as certain tasks are required to be undertaken by the relevant responsible entities in administering the funds and distributing funds to investors, there will be additional costs deducted from amounts paid to investors of the feeder funds.

4. Reporting to Investors

I intend to provide update reports to investors with respect to the status of the winding up of the Fund initially on a monthly basis. The update reports will include an estimated return to investors along with the anticipated timing of future distributions.

At this stage, several valuations of the underlying assets of the Fund are yet to be received.

I have had meetings with FTI in relation to the assets of the Fund and the estimated return to investors. They have prepared a detailed file for each asset and associated cash flows and including their estimated timing of sale of each asset. This file has not yet been made available to me to assist in determining an estimated return to investors. This will be commented on further in my next report when I will provide an estimated return to investors.

The update reports along with other information (including frequently asked questions) with respect to the winding up of the Fund will be posted to the following website:

www.lmfmif.com

The update reports will also be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect.

5. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations

Phone:+61 7 5584 4500

Toll Free: 1800 062 919

Fax: +61 7 5592 2505

Email: mail@lmaustralia.com

BDO

GPO Box 457

Brisbane QLD 4001

Phone: +61 7 3237 5999

Fax: +61 7 3221 9227

Email: enquiries@lmfmif.com

Yours faithfully

David Whyte
Receiver

SUPREME COURT OF QUEENSLAND

CITATION:	*RE Bruce & Anor v LM Investment Management Limited & Ors* [2013] QSC 192
PARTIES:	**RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE** (Applicants) **v** **LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND** (First Respondent) **and** **THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288** (Second Respondent) **and** **ROGER SHOTTON** (Third Respondent) **and** **AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION** (Intervener)
FILE NO/S:	BS 3383 of 2013
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 August 2013
DELIVERED AT:	Brisbane
HEARING DATE:	15, 16, 17 and 30 July 2013
JUDGE:	Dalton J
ORDER:	**1. Application filed 15 April 2013 dismissed** **2. Order that the first respondent wind up the LM First Mortgage Income Fund.** **3. Order that Mr David Whyte, liquidator, is appointed to take responsibility for the winding-up of the LM First Mortgage Income Fund.**

4. **Order that Mr David Whyte, liquidator, be appointed receiver of the property of the LM First Mortgage Income Fund.**

5. **Consequential Orders and directions.**

CATCHWORDS:

Corporations Act 2001 (Cth)
Corporations Regulations 2001 (Cth)

ASIC v Pegasus Leveraged Options Group Pty Ltd & Anor [2002] NSWSC 310
ASIC v Wellington Investment Management Limited & Anor [2008] QSC 243
Capelli v Shephard (2010) 77 ACSR 35
Everest Capital Limited v Trust Company Ltd [2010] NSWSC 231
Handberg v Cant [2006] FCA 17
In Re Gordon [2005] FCA 950
Re Giant Resources Limited [1991] 1 Qd R 106, 117
Re Orchard Aginvest Ltd [2008] QSC 2
Re Stacks Managed Investments Ltd [2005] NSWSC 753
Re Stewden Nominees No 4 Pty Ltd [1975] 1 ACLR 185, 187
Shanahan v Scott (1957) 96 CLR 245, 250
Shephard v Downey [2009] VSC 33

CORPORATIONS – MANAGED INVESTMENT SCHEME – RESPONSIBLE ENTITY – where the applicants applied to have a temporary responsible entity appointed pursuant to ss 601FN and 601FP or reg 5C.2.02 – whether the application ought to be granted

CORPORATIONS – MANAGED INVESTMENT SCHEME – WINDING-UP – APPLICATIONS FOR WINDING-UP BY THE COURT – where a member of the fund and ASIC applied for orders pursuant to ss 601ND and 601NF – whether the first respondent should be directed to wind up the fund – whether it was necessary for an appointment pursuant to s 601FN(1) – appointment of receiver pursuant to s 601FN(2)

COUNSEL:

PH Morrison QC, with P Ahern, for the applicants
JC Sheahan QC, with S Cooper, for the first respondent
P Hastie for a member of the second respondent
DR Tucker (Solicitor) for the third respondent
RM Lilley QC, with SJ Forrest, for the intervener

SOLICITORS:

Piper Alderman for the applicants
Russells for the first respondent
Synkronos Legal for a member of the second respondent
Tucker & Cowen for the third respondent
Australian Securities and Investments Commission for the intervener

[1] This matter was commenced by originating application, adjourned twice, and came on in the civil list. By the time of the hearing two further applications had been made, one by ASIC, intervening, and one by a unit holder, Shotton. All applications were heard together over three days.

[2] The originating application was directed to the first respondent, a company in voluntary administration, which is the responsible entity of a managed investment scheme under the *Corporations Act* 2001 (Cth) (the Act), First Mortgage Income Fund, (FMIF or the fund). FMIF invested by lending on the security of mortgages to borrowers who developed real property. There are three associated feeder funds to FMIF, one is controlled by Trilogy Funds Management Limited (Trilogy) as responsible entity. Two are controlled by the first respondent as responsible entity, one of these is named Currency Protected Australian Income Fund (CPAIF). As well, there is a service company to the funds, LM Administration Pty Ltd (Administration). The same voluntary administrators were appointed to Administration as the first respondent. In a coda to the principal hearing the matter was mentioned again on 30 July 2013 and new material showed that at the second meeting of creditors of Administration, held on 26 July 2013, liquidators unconnected with the current administrators of the first respondent were appointed to Administration.

[3] The fund was established in 1999, it was successful in attracting investment – in February 2008 it was said to be worth over $700 million. It was adversely affected by the GFC. By June 2011 it had assets of $450 million; by June 2012 this had declined further to around $340 million, and again to $320 million by 31 December 2012. The only assets of the scheme are loans made to borrowers and all of those are in default. The net loss attributable to unit holders in 2011 was $77 million, and in 2012, $88 million.

[4] From 2009 the scheme had greatly reduced activities: in March it declined new applications to buy units; in October it suspended redemptions from the fund, the applicant concedes this was apparently on the basis that the fund was illiquid. Its unit value in November 2012 was said to be 59 cents; each unit had been worth one dollar on issue. In December 2012, before administrators were appointed, the responsible entity of the fund implemented a "go forward" strategy. The name was Orwellian in that this strategy involved an orderly sale of all remaining fund assets and a pro rata distribution of the proceeds (after repaying debt) to unit holders with the aim of returning investors' capital investment to them as quickly as commercially possible. In announcing this new strategy the responsible entity said that it had determined that the fund was not liquid for the purpose of the withdrawal provisions under the Act.

[5] Voluntary administrators were appointed to the first respondent, responsible entity of the fund, on 19 March 2013, on the basis of a board resolution that the company was insolvent or likely to become insolvent. I accept that the administrators are independent of the previous directors – Court Document 46, paragraphs 35-36.

[6] The administrators held a first meeting of creditors on 2 April 2013. No deed of company arrangement has been proposed and there is little likelihood of one being proposed. The second meeting has not yet been held. The likelihood appears that

the first respondent company will be put into liquidation within a month. It is expected that the current administrators will act as its liquidators.

[7] On 11 July 2013 Deutsche Bank AG appointed receivers over the assets and undertakings of the scheme. Deutsche Bank is owed around $30 million. There are sufficient assets in the scheme to found an expectation that Deutsche Bank will recover all amounts owing and depart, leaving significant assets still in the scheme. The current administrators of the first respondent have resolved to wind up FMIF, but are restrained from doing so until this proceeding is determined.

Trilogy Originating Application

[8] The originating application was filed on 15 April 2013. It sought, pursuant to ss 601FN and 601FP of the Act or alternatively reg 5C.2.02 of the *Corporations Regulations* 2001 (Cth), that Trilogy be appointed as temporary responsible entity of the FMIF.[1] It was common ground at the hearing of the application that Trilogy had indemnified the named applicants to this proceeding. The named applicants are small unit holders of the scheme (0.029 per cent of the issued units). Counsel appearing for the applicants expressly said that he was providing the view of Trilogy to the Court.[2] I will refer to the originating application as the Trilogy application.

Competence

[9] Section 601FN of the Act provides:

> "ASIC or a member of the registered scheme may apply to the Court for the appointment of a temporary responsible entity of the scheme under section 601FP if the scheme does not have a responsible entity that meets the requirements of section 601FA."

[10] Section 601FA of the Act provides:

> "The responsible entity of a registered scheme must be a public company that holds an Australian financial services licence authorising it to operate a managed investment scheme."

[11] The applicant said the first respondent no longer held an Australian financial services licence which authorised it to operate a managed investment scheme. This was said to be due to ASIC's having issued a notice to the first respondent:

> "TAKE NOTICE that under s 915B(3)(b) of the Corporations Act 2001 (**Act**), the Australian Securities and Investments Commission (**ASIC**) hereby suspends Australian financial services licence number 220281 held by LM Investment Management Limited ... (**Licensee**) until 9 April 2015.
>
> Under s 915H of the Act, ASIC specifies that the licence continues in effect as though the suspension had not happened for the purposes of the provisions of the Act specified in schedule B regarding the matters specified in Schedule A.
>
> **Schedule A**

---

1 The application sought alternative relief under the *Trusts Act* 1973 which was not pursued before me.
2 t 3-25.

> The provision by the Licensee of financial services which are reasonably necessary for, or incidental, to the transfer to a new responsible entity, investigating or preserving the assets and affairs of, or winding up of ... LM First Mortgage Income Fund ..."

[12] The word "operate" is not defined in the Act. It was considered by Davies AJ in *ASIC v Pegasus Leveraged Options Group Pty Ltd & Anor.*[3] In that case ASIC brought proceedings against the defendant which had duped investors into paying large amounts of money purportedly as investments in something which was held to be a managed investment scheme within the meaning of s 9 of the Act. An issue in the case was whether or not the sole director of Pegasus had contravened the Act by operating the unregistered managed investment scheme. Davies AJ noted that the word "operate" should be given its ordinary English meaning; referred to the Oxford English Dictionary, and remarked that, "The term is not used to refer to ownership or proprietorship but rather to the acts which constitute the management of or the carrying out of the activities which constitute the managed investment scheme."[4] The conclusion that the sole director and directing mind of Pegasus, the person who formulated and directed the scheme and the sole person involved in its day-to-day operations, was the person who operated it was unremarkable.

[13] The applicant relied upon the definition of "managed investment scheme" in s 9 of the Act; the constitution of the first respondent company, and various other provisions, including various of the s 601 provisions of the Act to show that a very wide range of matters could be comprehended by, or included in, the concept of operating a managed investment scheme. No doubt that is so. It does not follow that, because under the terms of ASIC's suspension of 9 April 2013, the first respondent was limited in the activities it could perform, that it did not operate the managed investment scheme after 9 April 2013. Its operation of the scheme after 9 April 2013 was limited, but continuing. The word "operate" is a word of wide import and it must take its meaning in any particular case from all the relevant circumstances, including the nature of the fund, and the financial position of the fund. From 2009 there had been significant limits on the operation of the fund as financial circumstances excluded more and more of the potential activities open to an operator of the fund. No doubt the ASIC notice of 9 April 2013 further limited what could be done by way of operation of the fund, but as a matter of ordinary English and practical reality that notice did not bring the first respondent's operation of the fund to an end. What it has done since then no doubt falls within the concept of operation of a managed investment scheme, and the first respondent no doubt continues to bear the obligations and duties associated with such operation. It follows that the applicant is not able to rely upon s 601FN to bring this application.

[14] The alternative basis relied upon by the applicant was reg 5C.2.02 of the *Corporations Regulations* which provides:

> "ASIC, or a member of a registered scheme, may apply to the Court for the appointment of a temporary responsible entity of the scheme if ASIC or member reasonably believes that the appointment is necessary to protect scheme property or the interests of members of the scheme."

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3 [2002] NSWSC 310.

4 Above, [55].

[15] The structure of the regulations is such that Part 5C.2, headed "The responsible entity" corresponds, on its face, with Part 5C.2, Division 2 of the Act headed "Changing the responsible entity", ss 601FJ-601FQ. The only provision of the Act allowing ASIC or a member to apply for the appointment of a temporary responsible entity is s 601FN, just discussed. It would seem therefore that reg 5C.2.02 goes beyond the Act in that it purports to give rights greater than, or inconsistent with, those provided for in s 601FN – see s 1364 of the Act, and *Shanahan v Scott*.[5] This point is reinforced by the fact that the regulation provides only that a member may apply to the Court, and s 601FP of the Act gives the Court power to appoint a temporary responsible entity only on application under s 601FL (not relevant to this part of the argument) or s 601FN.

[16] The position is somewhat complicated by the last section in Chapter 5C of the Act, s 601QB, which provides that:

> "The regulations may modify the operation of this Chapter or any other provisions of this Act relating to securities in relation to:
> (a) a managed investment scheme; or
> (b) all managed investment schemes of a specified class."

[17] Regulations 5C.1.03 and 5C.11.02 both expressly purport to modify the operation of Chapter 5C of the Act in accordance with s 601QB of the Act. However, there is no requirement in s 601QB that any regulation made pursuant to it expressly state that it is modifying the operation of the chapter pursuant to the section. Having regard to the plain terms of s 601QB, I do not think it is necessary that a regulation expressly do this before it can be valid.

[18] Nonetheless s 601QB is not a plenary power to modify, but only a power to modify provisions, "relating to securities". Securities is defined at s 92(1)(c) to include "interests in a managed investment scheme". Other securities, as defined by s 92 include debentures, stocks, bonds, shares or units. At s 9 a managed investment scheme is defined as having (inter alia) the feature that "people contribute money or money's worth as consideration to acquire rights (interests) to benefits produced by the scheme ...". While the word "interest" or "interests" is not strictly defined, this part of the definition of managed investment scheme, together with the other types of securities defined by s 92 of the Act, shed some light on how the word "interests" in s 92(1)(c) is to be understood. An interest in a managed investment scheme is something analogous to (if less defined than) a share in a company.

[19] Turning again to the terms of s 601QB, I cannot see that reg 5C.2.02 is a regulation which purports to modify a provision of the Act relating to securities. I do not think that s 601FN could be characterised as a provision of the Act relating to securities, notwithstanding it gives rights to members of managed schemes, who no doubt have interests in them, which would amount to securities within the meaning of s 92(1)(c) of the Act. Again by way of analogy, were the provisions dealing with companies, I would not characterise a provision along the lines of s 601FN as a provision relating to shares in a company merely because it gave a remedy to shareholders (along with ASIC). My view therefore is that reg 5C.2.02 does not authorise the application brought by the Bruces.[6] The applicant relied upon a short report, *In Re Gordon*.[7]

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5 (1957) 96 CLR 245, 250.

6 See the doubts expressed by Applegarth J in *Re Equititrust Ltd* [2011] QSC 353 [7], correctly in my view.

7 [2005] FCA 950.

The report does not contain any of the reasoning processes of the judge who made the order and does not reveal whether or not the validity of reg 5C.2.02 was in issue before him. For these reasons, I do not regard the report as helpful.

[20] Having regard to my conclusions in relation to s 601FN and reg 5C.2.02, the application brought by the Bruces ought to be dismissed as incompetent.

Discretion

[21] Even had I power to do so I would not appoint Trilogy as temporary responsible entity. Section 601FP(1) allows the Court to appoint a company as temporary responsible entity if the Court is satisfied that the appointment is in the interests of members. If reg 5C.2.02 were valid, it would additionally direct my attention to whether or not it was necessary to protect scheme property.

[22] Section 601FQ(1) provides that a temporary responsible entity is just that. It must call a members' meeting for the purpose of the members choosing a company to be a new responsible entity. This meeting must be held "as soon as practicable" and in any event within three months of it becoming the temporary responsible entity. This will inevitably involve cost for the fund. Section 601FQ(2) provides the opportunity for more than one meeting and for applications to be made to Court. Independently, s 601FQ(5) provides that if the temporary responsible entity forms the view that the scheme ought to be wound up, it must apply to Court for such an order. There is a likelihood that any person objectively looking at this scheme would need to make such an application. Further, having regard to the way this litigation has been conducted and the history of the 13 June 2013 meeting (see below for both topics), in my view there is a distinct possibility that there would be contention and indeed litigation about any meeting held to appoint a new responsible entity.

[23] Trilogy hoped that it would be appointed as a permanent responsible entity by the meeting required by s 601FQ(1). However, I cannot see it is in the interests of the members of the FMIF to become caught up in a process which provides an interim solution which will inevitably involve more expense by way of meeting (s 601FQ(1)), and may involve further expense by way of Court action, with the inevitable disclocation, uncertainty and expense which any interim solution must involve.

[24] There are other reasons why I do not regard the appointment of Trilogy as responsible entity as being in the interests of the members of this fund. One very practical one is that the current administrators swear that there is a considerable overlap between the staff of the first respondent and the company Administration which would make it difficult, and I infer, expensive, to hand over to a new responsible entity – Court Document 46, paragraph 63. It seems to me that prima facie those staff who have long knowledge of the business of the fund ought to be working for or with the responsible entity as much as possible in order to preserve corporate memory, competence and save cost.[8] Employees of the first respondent will have a good background knowledge of the loans which are its primary assets,

---

[8] I note that this is a different argument conceptually from that advanced by the administrators of the first respondent to the effect that if this fund is to be wound up, they ought wind it up because otherwise the time they have spent as administrators since March will, in some part, be lost to the first respondent and this will involve waste of costs. I deal with that argument below at [128].

the properties which provide the first respondent its mortgage securities, and the history of the first respondent's dealing with the borrowers who are currently in default. Further, these employees will have knowledge of the documents and systems of the first respondent. From a practical point of view, it seems to me that this is all very valuable. I accept that uncertainty as to the longevity of this arrangement results from the decision to place Administration into liquidation, and thus to some extent diminishes the weight of this consideration.

[25] Trilogy puts itself forward as having an advantage over other persons proposed to take control of the fund by reason of the fact that it is not staffed by insolvency practitioners, but is a fund manager, with particular experience of distressed funds. I deal with these matters in detail at [37] below. In the end I do not see that there is any great advantage provided by the slightly different perspective which Trilogy's control would provide to the responsible entity. In fact, given that my view is that this fund ought to be wound up – [34]-[43] – it seems to me there is probably a disadvantage in Trilogy not having as much insolvency experience as the other contenders for control, particularly when it seems that there may be contention and litigation involved in the winding-up.

[26] In this case there is no evidence before me that the assets of the FMIF are in danger and need particular protection, except, indirectly, because of conflicts of interests which it is said will become evident if either the first respondent or Trilogy winds up FMIF.

[27] To the extent that the Trilogy application to be appointed temporary responsible entity is based on the idea that someone independent of the first respondent and its administrators ought to be appointed to control the FMIF, that will be achieved by the orders which I propose to make, although they differ from those which the applicant and Trilogy seek. In that regard, I have dealt with the applicant's arguments as to conflicts of interest and the need for independence at [97]ff below.

[28] To some extent, Trilogy will have potential conflicts of interest if it is in charge of the fund because it is the responsible entity of a feeder fund to FMIF. Further, Trilogy has a view that there ought to be litigation by members of the FMIF against the first respondent or its directors. It has engaged Piper Alderman to investigate such claims (as far back as November 2012) and has touted the idea publicly of a class action. There may be claims to be made, and it may be that it is rational to make them, depending on their prospects of success, likely cost and the likely prospect of recovering anything at the end of the day. At present, however, Trilogy has not investigated the matters to any extent[9] and I must say I find its advocacy of such claims prior to any proper assessment rather disconcerting. The first respondent says that Trilogy as a member has a right to claim against the first respondent and its directors if it wishes, but says that it seeks to become responsible entity of the fund so that it does not have to bear the cost of doing this, but can use the fund essentially to bear the expense of such actions. There is I think potential conflict of interest in this.

[29] The applicant advanced a general argument that it was undesirable for the responsible entity of the FMIF to be a company under external administration. There may be arguments to be made in cases where the fund itself will continue to

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9 For example, Court Document 91, paragraph 31.

trade as a going concern (for want of better terms). However, where the fund itself is to be brought to an end and its assets realised for the benefit of members (which should happen even in Trilogy's view), I cannot see that it is particularly undesirable for a responsible entity under external administration to have charge of this fund. It certainly does not outweigh the other factors which I consider bear upon my decision in this regard.

[30] Further, it was argued in a general way that ASIC might in the future act to further limit or wholly cancel the first respondent's financial services licence: there is the potential for breaches of the licence conditions due to the insolvency of the first respondent – see e.g., s 915B(3) of the Act. I do not think there is any realistic basis for present concern about that in circumstances where ASIC is an intervener in this litigation and is content for orders to be made which leave the first respondent as responsible entity, subject to another body being given responsibility for ensuring oversight of the winding-up of the fund.

[31] For all these reasons, I do not think it is in the interest of the members that Trilogy be appointed as temporary responsible entity. Nor, to deal with a submission made by counsel for Trilogy outside its application, do I think Trilogy ought to be appointed to wind up the FMIF, be receiver of the property of the FMIF, or to take responsibility for seeing that the FMIF is wound up.

ASIC Application and Shotton Application

[32] On 29 April 2013 Mr Shotton, a member of the FMIF, filed an application seeking an order pursuant to s 601ND of the Act that the first respondent be directed to wind up the FMIF and that an independent liquidator be appointed to take responsibility for ensuring that the FMIF was wound up in accordance with its constitution – s 601NF(1) of the Act.

[33] The ASIC application is similar. On 3 May 2013 ASIC filed an application seeking orders that the administrators of the first respondent be directed to wind up the fund pursuant to s 601ND(1)(a); that independent liquidators be appointed to take responsibility for ensuring that the fund was wound up in accordance with its constitution pursuant to s 601NF(1); that those liquidators be appointed as receivers of the property of the fund, either pursuant to s 1101B(1) or s 601NF(2) of the Act, and that they have wide powers to exercise as receivers. By the end of the hearing Mr Shotton joined with ASIC in proposing that receivers be appointed as proposed by ASIC.

Winding-up

[34] On 6 May 2013 the administrators of the first respondent resolved to wind up the fund on the basis that it cannot accomplish its purpose – s 601NC of the Act. They have been restrained from commencing the winding-up until this proceeding is resolved. Their position in relation to the first order sought by Shotton and ASIC is that it was unnecessary on the basis that the fund will in any event be wound up.

[35] All parties before the Court except the applicant agreed that the FMIF ought to be wound up. The current administrators depose at some length to the process undertaken by them in making the decision that the fund ought to be wound up. There was no real challenge to the substance of this evidence. Counsel for the

applicant asserted from the bar table that the fund was not insolvent.[10] I cannot determine that on the material before me, and no party advanced a case based on insolvency.

[36] Pursuant to s 601ND(1)(a) I have power to direct a responsible entity to wind up a scheme if it is just and equitable to do so. In this case it seems to me just and equitable to do so. The case law is to the effect that the principles concerning winding-up of companies on the just and equitable ground inform the Court's thinking in applications pursuant to s 601ND.[11] The financial position of the fund has already been outlined. From the end of 2012, if not before, those in charge of the company have been liquidating its assets with a view to returning capital to members. The fund was originally established to provide an investment which would provide regular income to unit holders and a return of capital at maturity – cll 11 and 12 of the constitution. This purpose has failed: there is no income and members can no longer exercise their rights to withdraw their investments in accordance with the constitution.[12]

[37] Trilogy does not advance the case that the fund should continue in a plenary way as a going concern. The point of difference between it and the other parties to this proceeding is that Trilogy puts itself forward as a more suitable person to take charge of the FMIF. It is a fund manager, unlike all the other persons proposed to take charge of the fund, who are insolvency practitioners. Trilogy has put material before the Court which shows that it has experience in dealing with distressed funds, including selling distressed assets to best advantage and dealing with claims against former fund managers. Against this background it is sworn – Court Document 29, paragraph 17 – that Trilogy would seek to: (a) consider selling the assets of the FIMF as appropriate and (b) obtain finance (either by external borrowing or on the sale of assets) to enable the development of some real properties, of which FIMF is mortgagee, to be completed. It is hoped that this second approach might provide higher sale prices than an insolvency practitioner might provide on a liquidation of the fund. In this regard Trilogy has a joint venture with a company named CYRE Trilogy Investment Management Pty Limited which specialises in marketing distressed property assets and assessing whether or not to complete incomplete development projects with a view to obtaining the best purchase price. Trilogy says that it would be advantageous if it were appointed as responsible entity for it would have an untrammelled financial services licence and full powers to pursue development of appropriate assets before sale, including borrowing for this purpose. It says that under its limited licence, the first respondent does not have sufficient power to act in this regard. For the same reason it says that I should not order the FMIF to be wound up.

[38] On behalf of the first respondent, a Mr Corbett swears that he has already performed a great deal of work, as leader of a team which has prepared a detailed analysis of the 27 groups of property over which the FMIF is mortgagee. He says that as part of that exercise he has considered development proposals for the properties. Neither he, nor Mr Wood, on behalf of Trilogy, identifies any particular property which should be developed prior to sale, or gives any detail as to even a class of properties which might be so developed.

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10 See *Capelli v Shephard* (2010) 77 ACSR 35 at [89]ff as to the colloquial concept of insolvency of a managed investment scheme.

11 *Equititrust* (above) at [29] and the cases cited there.

12 cf [13] *Equititrust*, above.

[39] It seems common ground before me that the winding-up of FMIF will take place over years. I do not think that the words of the limited financial services licence granted to the first respondent prohibit it developing property of which the fund is mortgagee in order to obtain a better price for that property in the course of winding-up. ASIC does not agitate such a limitation on this application, and in fact expressly does not prefer Trilogy or the first respondent as responsible entity. If there were to be doubt as to the first respondent's power to borrow or develop a particular property in the course of a winding-up, and there were a plainly sensible proposal in the interests of the fund, I cannot see that ASIC could not either clarify or modify the extent of powers under the limited financial services licence it has granted the first respondent.

[40] Nor am I convinced that making an order that the FMIF be wound up would remove from the person charged with winding-up the power to develop a particular property with a view to sale in the course of winding-up if it were in the interests of the fund. The fund was set up to invest in "mortgage investments" – cl 13.2 of its constitution – and cl 13.6 of the constitution makes it clear that in the ordinary course of its business it could exercise all the powers of a mortgagee. Indeed one would have thought that was a necessary and incidental part of running a business which invested in mortgage investments. The liquidator of a company would normally have the right to carry on the business of a company "so far as is necessary for the beneficial disposal or winding-up of that business" – see s 477(1)(a) of the Act. Here the constitution gives the responsible entity power to "manage the scheme" during the time of a winding-up until such time as all winding-up procedures have been completed and cl 16.7(e) gives such a responsible entity power to postpone the realisation of scheme property "for as long as it thinks fit". Again, if doubt arose about a particular proposal in the future s 601NF(2) allows the Court to make an appropriate direction. At the moment, there are no specific proposals, just some conceptual thinking.

[41] The second activity which Trilogy is keen to pursue is investigation of claims on behalf of the FMIF against the first respondent and/or the previous directors of the first respondent for conduct which is more fully detailed below, but which claims concern changes made to the first respondent's constitution being beyond power; related party transactions between the first respondent and Administration, and claims, perhaps in negligence, for the financial losses which were suffered by the FMIF during 2008 and 2009. These are the type of claims which are normally investigated, and if necessary, pursued by insolvency practitioners during the course of a company winding-up – cf s 477(2)(a) – and I cannot see that the limited financial services licence granted to the first respondent would prevent it from doing this. Nor is the potential existence of such claims a reason why I should not direct that the FMIF be wound up now. Clause 16.7(a) of the constitution obliges a responsible entity winding-up the fund to realise its assets. If there are claims to be made on behalf of the fund (and Trilogy has not investigated the position) then those choses in action would constitute property which the responsible entity, winding-up the scheme, would have power to pursue.

[42] In my view, it is desirable that the FMIF be wound up and its assets realised for unit holders. Further, I think it is desirable that I make an order that this occur. If I do not, the administrators will either need to call a meeting pursuant to cl 16.2(d) of the constitution or give members an opportunity to meet pursuant to cl 16.3(a) of the constitution; see also ss 601NB and 601NC which have very similar requirements.

At a general level, I should not be taken as opposing consulting the members as to the fate of the fund. However, for reasons which will appear from the discussion below, I anticipate at least the possibility that any meeting held pursuant to cl 16 of the constitution would be subject to contention between rival factions within the fund and litigation to test those rival contentions. Further, as my discussion of the 13 June 2013 meeting shows, there is a real possibility that the members will be showered with a great deal of information about rival contentions and that some of it may be misleading. Those circumstances must reduce the quality of the "democracy" invoked, and in my view make it desirable that I ought make an order.

[43] For all the above reasons I will make an order pursuant to s 601ND(1)(a) of the Act.

Appointments under s 601NF(1) and (2)

[44] The real issue joined between ASIC and Shotton on the one hand, and the first respondent on the other, was who ought to wind up the company, or take responsibility for the winding-up, as s 601FN(1) has it.[13]

[45] The first respondent submits that the provisions of Part 5C.9 of the Act make it clear that it is generally to be the responsible entity which winds up a managed investment scheme – ss 601NB, 601NC, 601ND and 601NE. I think this is right.

[46] Sections 601NE and 601NF(1) provide that the scheme is to be wound up "in accordance with its constitution and any orders" which the Court makes under s 601NF(2). There has been some consideration in the cases as to the width of the Court's power under s 601NF(2) to make directions (by order) about how a registered scheme is to be wound up, and I am grateful to Applegarth J for the review which is found in *Equitrust* (above) at [42]-[49], and his own views expressed at [50]ff in that case. While the scope of the power may not yet be fully explored, it is clear that there is not a wholesale importation of the scheme of company liquidation into the area of managed investment schemes. This is consistent, in my view, with the idea that it is generally the responsible entity which winds up the scheme in accordance with its constitution. Certainly this contrasts with e.g., the public aspects of a liquidation.

[47] Section 601NF(1) confers a jurisdiction in the Court to appoint a person other than the responsible entity to take responsibility for the winding-up of a scheme, "if the Court thinks it is necessary to do so". The first respondent submitted that the power of the Court to appoint was more limited than if the section had provided for an appointment where the Court thought it was convenient or desirable to do so. Again I think this correct, as a matter of plain English, against the background that the statute establishes a general regime where it is the responsible entity which will wind up a scheme in accordance with the constitution. It was the view taken by Fryberg J in *Re Orchard Aginvest Ltd.*[14] It was also the view of White J in *Re Stacks Managed Investments Ltd.*[15] Both these judges refused orders which might have been convenient or desirable, but were not necessary. Applegarth J took the

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13 In fact to a large extent this was also the point of the litigation for Trilogy whose primary position was that it would (eventually) have the task of realising the assets of the fund and who the applicant submitted ought be the person who was responsible for liquidating the fund if (contrary to its primary submission) an order to wind up the fund was made.

14 [2008] QSC 2, pp 8 and 9.

15 [2005] NSWSC 753 [50].

same view as to necessity in *Equititrust* at [51], and so did Judd J in *Shephard v Downey*.[16] The circumstances in which it is necessary to appoint will include a case where the responsible entity no longer exists or is not properly discharging its obligations in relation to a winding-up – s 601NF(1).

[48] Both ASIC and Shotton say that it is necessary to appoint someone to oversee the winding-up of FMIF pursuant to s 601MF because the first respondent cannot be relied upon to act in a balanced and impartial way in winding-up a fund where there are potential conflicts of interests and complex questions associated with them. ASIC in particular is concerned about the attitude of the first respondent demonstrated in relation to its calling a meeting of members of the FMIF; its dealings with ASIC, and its conduct in this proceeding. On behalf of Shotton various potential conflicts of interest between the interests of the FMIF, on the one hand, and the first respondent company; and the administrators themselves, on the other hand, were relied upon.[17] Trilogy also made criticism of the meeting and advanced submissions based on potential conflicts for the present administrators, and I deal with these in this part of the judgment. I now deal with each of these factual matters in turn.

Meeting 13 June 2013

[49] In response to receipt of Trilogy's application, the administrators of the first respondent caused a meeting of members of the fund to take place.

[50] Section 252B of the Act provides that the responsible entity of a registered scheme must hold a meeting of the scheme's members to vote on a proposed special or extraordinary resolution, if (inter alia) members with at least five per cent of the votes "that may be cast on the resolution" request it. It might be recalled that, in addition to being the responsible entity of FMIF, the first respondent is the responsible entity of two feeder funds which hold units in FMIF, and that one of the feeder funds is CPAIF. In fact the assets of CPAIF are held by a custodian trustee, the Trust Company. The administrators of the first respondent (as responsible entity of CPAIF) directed the Trust Company to request a meeting of members of FMIF pursuant to s 252B of the Act on the basis that it held 24 per cent of the issued units in FMIF. The Trust Company complied with that request without question, almost immediately, by sending the administrators (in their capacity as responsible entity for FMIF) a request in terms provided to the Trust Company by the administrators. The meeting request proposed two extraordinary, and interdependent, resolutions: (1) to remove the first respondent as the responsible entity of FMIF and (2) to appoint Trilogy in its stead. On this basis the administrators of the first respondent sent a notice convening a meeting.

[51] The administrators' purpose in calling the meeting was made plain in the notice of meeting. They wished to use the meeting as a strategy to defeat or damage Trilogy's prospects on its originating application. The introductory words of the covering letter to the notice of meeting are:

> "A Meeting is being called for the Fund by LM, the current manager.
> LM decided to call the Meeting because a unitholder has made an

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16 [2009] VSC 33 [132]-[133].

17 After the hearing on 30 July 2013, dealing in part with the appointment of independent liquidators of Administration, the conflict points relating to Administration fell away.

application to the Supreme Court of Queensland for Trilogy to be appointed as the Manager of the Fund in place of LM.

LM does not believe that the power of the Court to appoint a temporary or replacement manager can or should be exercised in the circumstances relied upon by Trilogy in its Court application. However, LM is strongly of the view that it is in the best interests of Members that they have the opportunity to determine whether or not they wish to remove LM and appoint Trilogy. This is considered preferable to a court determined outcome where over 99% of investors, by value, will have no say in the outcome."

[52] The introduction to the notice of meeting is similar:

"The Meeting is being called by LM Investment Management Limited (Administrators Appointed), the current Manager of the Fund (LM). LM decided to call the Meeting because, following receipt from two unitholders of an application to the Supreme Court of Queensland for Trilogy Funds Management Limited (Trilogy) to be appointed as the Manager of the Fund in replacement of LM, and immediate consultations with ASIC, LM wished to consult Members in the proper forum, with adequate notice.

LM is strongly of the view that it is in the best interests of Members that they have the opportunity to determine whether or not they wish to remove LM and appoint Trilogy. LM also wishes to avoid the costs and delay of multiple Court appearances, perhaps appeals, and multiple meetings which are the practically inevitable result of Trilogy's Court application. For example, it is doubtful that the Court has, or will exercise the power to appoint a temporary manager. Appeals are possible. This Meeting is considered preferable to a court determined outcome where there is no meeting, no vote and where, at present, over 99% of members, by value, will have no say in the outcome unless they wish to participate in legal proceedings." (my underlining)

[53] Neither the administrators of the first respondent, the Trust Company nor CPAIF wanted the meeting to pass the two resolutions proposed. The first respondent argued strenuously against the resolutions in material which it distributed to the members of the scheme. For example:

(a) "LM expects that if it remains as manager investors will recover distributions faster and in a greater amount."

(b) "LM also notes that Trilogy (unlike LM) does not hold the correct Corporations Act licence in order to be able to manage your Fund" and "LM has taken legal advice on the adequacy of Trilogy's AFSL. LM is confident that Trilogy's AFSL does not authorise it to operate the Fund."[18]

(c) "Further, in a recent court action involving another Fund managed by LM where there was a proposal to change the Trustee, the court ordered that the full legal costs of each party to the court proceedings should be met from the

[18] Trilogy (at that stage) had no licence to manage foreign currencies which was necessary for management of the FMIF. Trilogy now has an appropriate licence.

assets of the underlying Fund (even though the lawyers had promised they would not charge their clients).

Thus by calling a meeting to vote on the appointment of Trilogy as a replacement Responsible Entity LM is also cognisant that such a move is likely to save significant legal costs for the Fund."

(d) Under the heading "Does LM have the licence to manage the fund?":

"As you may be aware, on 9 April 2013 the Australian Securities & Investments Commission temporarily suspended LM's AFSL for a period of 2 years. However ASIC allowed LM's AFSL to continue in effect as though the suspension had not happened for all relevant provisions of the Corporations Act 2001 (Cth) so to permit LM, under the control of FTI as Administrators, to remain as the responsible entity of all LM's registered managed investment schemes for certain purposes which include investigating and preserving the assets and affairs of, or winding-up, LM's registered management investment schemes.

ASIC's decision to suspend the AFSL but allow LM and FTI to continue in this way, ensures that FTI as administrators may perform their statutory and other duties.

LM has, of course, taken legal advice on its position. LM is confident that its AFSL adequately authorises LM through FTI to continue to control the Fund."

(e) "Deutsche Bank has provided the fund with a secured loan facility since 2010. LM's obligations under the Deutsche Bank facility are secured in favour of Deutsche Bank under an ASIC registered charge over all the assets and undertaking of the Fund. The facility has been progressively reduced by approximately $0.5m per month and now has a loan balance of approximately $26.5m.

If the resolutions are approved in this Notice of Meeting, that will be an Event of Default under the facility agreement with Deutsche Bank, entitling it, for example, to appoint receivers to the Fund. The consequences upon the existing financial arrangements with Deutsche Bank are unknown at this stage.

FTI has the ongoing operational support of Deutsche Bank following the appointment as Voluntary Administrators (even though the appointment of administrators was an Event of Default)."

(f) "There are only three possible outcomes of the administration of LM – a Deed of Company Arrangement, a creditors' voluntary winding-up or (unlikely) LM is returned to the control of the directors. If LM is wound up, its liquidators will have access to the claw-back provisions of the Act – for example, recovery of unreasonable director-related transactions etc. There is room for debate as to whether these provisions could be invoked for the benefit of the Fund; and the administrators have not yet completed the investigation as to any transactions which might be available for the benefit of Members. On 12 April, 2013, the Chief Justice extended the time for the administrators to convene a second meeting of creditors until 25 July, 2013.

> While those matters are not clear, what is clear is that if Trilogy replaces LM as the Responsible Entity of the Fund, it will have no access at all to those provisions for the benefit of Members."

[54] Other less controversial arguments were made, for example, that LM had more familiarity with the assets of the fund than Trilogy, and that changing responsible entities might be expected to slow the process of recovery of assets in the fund. The administrators, using existing LM staff, it was said, were more familiar with the affairs of the fund and less likely to be taken advantage of by those owing money to the fund.

[55] The notice of meeting stated that Trilogy had been invited to participate in the process leading up to the meeting and provide information about itself to members.

[56] The above statements all come from the initial notice of meeting and covering letter dated 26 April 2013. That contemplated a meeting being held on 30 May 2013. However, there intervened correspondence between the first respondent and ASIC, and correspondence between the first respondent and Trilogy, regarding the information given to members, and the validity of the meeting. ASIC and Trilogy rely upon this as further showing that the first respondent, by its administrators, is unsuitable to wind up the FMIF. I deal with that correspondence now. As to the calling of the meeting, it is sufficient to note that the process was technical and somewhat artificial, and that the administrators (in effect) called a meeting to consider two resolutions they opposed.

Dealings with ASIC

[57] The ASIC correspondence needs to be read against a particular background. On 19 April 2013 ASIC became aware of the Trilogy application and was concerned as to the impact that might have on the "efficient resolution of the future of the various funds" of which the first respondent was responsible entity. On 23 April 2013 ASIC met with one of the administrators and the administrators' solicitors. At that meeting the administrators' solicitors suggested that the administrators could call a meeting of members to consider the appointment of a new responsible entity. He said that given a choice between the first respondent and Trilogy, "the first respondent would win".

[58] ASIC too said it preferred a solution not involving litigation and suggested the use of an enforceable undertaking issued by ASIC which obliged the administrators to call a meeting to vote on "resolutions for the appointment of a new responsible entity or that the funds be wound up". There was discussion as to how quickly the administrators could call a meeting and make a final decision as to winding-up. ASIC was concerned that if the enforceable undertaking solution was to be of utility to members it would need to occur sooner rather than later in order to save costs in the litigation, and associated with the appointment of a temporary responsible entity. As part of its discussions with the first respondent on 23 April, ASIC had informed the first respondent that it planned to intervene in the Court proceeding and that if ASIC and the first respondent could agree on the terms of an enforceable undertaking, ASIC would take the position in the litigation that it was preferable for the first respondent to remain as responsible entity.

[59] The next day, 24 April 2013, ASIC forwarded a draft enforceable undertaking to the administrators' solicitors, "for discussion purposes". The draft involved the administrators' undertaking to call meetings of the members of FMIF and:

> "At the meetings referred to in subparagraphs (a) and (b) above, the resolutions put to the unitholders for determination will include resolutions for:
>
> (i) the appointment of a responsible entity over each of the funds; and
>
> (ii) whether the fund should be wound-up and, if so, by whom."

ASIC asked, "Please let me know your clients' comments and proposed amendments. It may be that we think of some additional amendments from our end as well as we consider it further over the public holiday [25 April]."

[60] On 26 April 2013 the first respondent issued the notice of meeting and covering letter discussed above. It informed ASIC of this briefly. It did not give ASIC the material sent to members. The meeting actually convened would not, as ASIC had wanted, deal with the question of winding-up, and it dealt with the question of who would be the responsible entity in a much more specific way than ASIC had proposed. Plainly enough it contradicted ASIC's expectation that the administrators would work with ASIC as to what would be put at the meeting. It also contradicted their solicitor saying to an ASIC solicitor earlier on 26 April that he would send a re-drafted version of the enforceable undertaking – affidavit Gubbins filed 15 July 2013, paragraph 6. As well, when ASIC received the notice of meeting it had concerns it was misleading.

[61] On 29 April 2013 the first respondent informed ASIC that it was not willing to enter into an enforceable undertaking and not willing to seek a resolution as to wind up the FMIF – affidavit Hayden filed 15 July 2013, paragraph 31(a). When asked to explain, the administrators said there would be negative connotations for them in entering into an enforceable undertaking and that they did not think it appropriate to seek a resolution from the meeting as to winding-up of the FMIF before a vote on who the FMIF desired as responsible entity. They said that if the meeting rejected Trilogy they would convene another meeting "promptly" to consider and approve any decision they might make to wind up the fund. These decisions were said to have been taken by the administrators after "two days of intensive consultation" with two firms of solicitors and with "other expert advisors".

[62] In an affidavit filed 2 May 2013 the administrator, Ms Muller, swears to a desire to "ensure that our conduct of the [first respondent] was to the extent possible, satisfactory to ASIC ..." – Court Document 46, paragraph 12. And further, "... Mr Park and I have been discussing with ASIC a proposal for undertakings to meet any concerns of ASIC and any 'bona fide' (concerns) of members in relation to the conduct of the fund", paragraph 16. I find it difficult to see this as consistent with the reality of the first respondent's interactions with ASIC. On 21 May 2013, solicitors for the administrators sent an amended draft enforceable undertaking to ASIC. The time for a co-operative solution had well since passed.

Correspondence Prior to 13 June Meeting

[63] To return to correspondence dealing with the proposed meeting, on 8 May 2013 ASIC wrote to the administrators' solicitors calling for an explanation as to various matters raised in the notice of meeting including, as to those matters I have summarised above, how it was that the first respondent thought calling a meeting would save legal costs in relation to the Trilogy application and how the ability of the first respondent to use Part 5.7B of the Act (clawback provisions) was a genuine point of differentiation between the first respondent and Trilogy so far as the FMIF was concerned. The letter also objected to the first set of underlined words at [52] above, which it said implied that ASIC had approved the first respondent's calling the meeting.

[64] As to the saving of costs point, no convincing explanation was provided by the first respondent. It pointed out that at the time of publishing the notice of meeting the Trilogy application had been made but the ASIC and Shotton applications had not. It was said against that background that:

> "It was our client's view that the court would adjourn the Original Proceedings until after the Meeting (at this time we understand that no party to the proceedings suggested that the proceedings were urgent). It was expected that the results of the vote at the Meeting would strongly inform the court proceedings. In addition, it was also thought possible that by convening the Meeting the two unitholders who had commenced the Original Proceedings might discontinue those proceedings and certainly would have if the meeting resolved to appoint Trilogy." – Norton Rose letter 10 May 2013, Court Document 73, p 35 exhibits.

[65] The only realistic way that legal costs would have been saved by calling a meeting was if the meeting voted to appoint Trilogy as temporary responsible entity. The notice distinctly does not say this. Indeed, this is the very result which the first respondent strongly urged members to reject. I think the notice was misleading about cost savings initially and became more so as events unfolded – see the following discussion.

[66] The letter of 10 May 2013 provided no convincing explanation in relation to the concern expressed by ASIC as to the clawback point and rejected ASIC's concern as to the notice implying that the first respondent had ASIC's sanction for its calling the meeting.

[67] ASIC was unconvinced and called upon the first respondent to issue an amended notice addressing its concerns. The first respondent proposed to put further information about the meeting on its website. It provided a draft of the further information it proposed to use to ASIC. By that stage concerns had been raised as to the legal basis on which a meeting seeking to change the responsible entity could be convened. Solicitors acting for the first respondent relied upon ss 601FL and 601FM of the Act.

[68] On 21 May 2013 ASIC called on solicitors acting for the first respondent to either adjourn their meeting until after the date (then) allocated to hear both the Trilogy application and the ASIC and Shotton applications, or alternatively cancel the meeting altogether. ASIC made its request on the basis that the vote of the meeting

would not impact on the majority of competing claims to be determined in the litigation so that the stated reason for convening the meeting – avoiding costs, delay and uncertainty – were inapplicable. It questioned whether s 601FL was applicable to the meeting.

[69] On 27 May lawyers for the first respondent rejected the idea that they would adjourn or cancel the meeting saying:

> "The Meeting will provide an opportunity for members to democratically vote on the direction and future of their fund. There is no logical reason why that opportunity should be taken away from members. Members only other chance to let their views be known to the Court is to appear at the Court hearing which would be a significant financial burden on members, as well as being totally impractical considering the number of members holding units in the FMIF." (my underlining)

Later in the same communication, "Our client's objective in calling the Meeting has been to allow investors to democratically determine who they wish to manage their fund. Our client is committed to this." (my underlining). It was said that if the resolutions were passed that would be the end of the Trilogy application, and if they were not passed, the results would inform the Court on the Trilogy application. The solicitors reiterated reliance on ss 601FL and 601FM of the Act as a basis for the proposed meeting. The solicitors said that the meeting would be adjourned to allow the further explanatory material they proposed to be considered by members and provided further drafts (amended) of that material to ASIC.

[70] From 6 May 2013 solicitors for Trilogy raised matters which went to the validity of the proposed meeting organised by the first respondent – see exhibits 4ff to Court Document 91. Their letters set out clearly, succinctly, and in my view correctly, the reasons why ss 601FL and 601FM of the Act do not allow the proposed meeting (see below). Solicitors for the first respondent made little attempt to meet the legal substance of the points advanced against them, but would not concede the point.

[71] From 6 May 2013 Trilogy actively encouraged members of the feeder fund of which it was responsible entity (around 20 per cent of membership of FMIF) not to participate in the proposed meeting. Further, on 23 May 2013 Trilogy adopted the position that it did not consent to being appointed by any meeting held as a consequence of the first respondent's notice, and called on the administrators to abandon the meeting which it said was not validly called, inutile and an attempted circumvention of Trilogy's court proceedings.

[72] Supplementary information was posted by the first respondent on the FMIF website in the form of a question and answer document dated 27 May 2013. As to the costs and utility of the proposed meeting, the additional information, at question one, rather seems to concede the point that there was little chance that the meeting would, at that stage, save costs or avoid litigation, but a further justification – informing the Court as to the wishes of the members – was raised. For the first time it was stated that the main cost saving would result if the meeting appointed Trilogy as responsible entity. It was still not plainly acknowledged that this was the only realistic scenario in which cost savings could ever have been made. Although Trilogy's lack of consent to being appointed at the meeting was raised, nothing

express was said as to any remaining utility in the meeting given Trilogy's attitude. Instead it was said:

> "It seems that Trilogy prefers to put both you (should you elect to put your views to the Court) and your fund to the significant costs associated with the Court proceedings rather than allow the matter to be determined in the more usual and democratic manner in a meeting of members. This is particularly so given the Court adjourned the proceedings till 15 July in part to allow the meeting to run its course." – Court Document 73, exhibit bundle 15. (my underlining)

[73] While submissions were apparently made on behalf of the first respondent at an interlocutory stage, that the proceeding ought to be adjourned to allow the proposed meeting to occur, I have not seen anything to show that the Court granted an adjournment of the proceeding for this purpose. In fact, counsel for the first respondent conceded it did not.[19]

[74] For the first time, at question six of the 27 May 2013 document, the first respondent clearly stated the limited nature of the licence granted to it by ASIC – i.e., to investigate and preserve, in train of either winding-up the scheme or transferring to a new responsible entity. Until then the information given to members was, in my view, misleading because it implied that the first respondent had a licence which enabled it to continue to manage the FMIF short of a winding-up – see [53(d)] above – and nowhere stated that unless the first respondent wound up FMIF it was obliged to appoint another responsible entity. These were very relevant matters for members to know prior to a vote on the appointment of a new responsible entity.[20]

[75] I assume, in response to ASIC's complaint that the notice of meeting implied ASIC had approved the course, material at question nine of this document stated that the first respondent was "solely responsible for the Notice of Meeting and the decision to call the meeting. ASIC was not provided a copy of the Notice of Meeting to review prior to its dispatch and, as such, ASIC did not approve the Notice of Meeting. Prior approval of such Notices by ASIC is not required." That may (or may not) have been apt to dispel the implication of which ASIC originally complained. By the time this statement was published ASIC disapproved in the plainest terms of the meeting and had called upon the first respondent to cancel it. The new statement did not reveal the true position regarding ASIC's attitude to the meeting.

[76] No reference was made to either Trilogy or ASIC's questioning the statutory basis for the meeting. Earlier in the document (at question two) it was stated, "The reason that Trilogy has provided for not consenting is that they believe that the matter should be determined by the Court". In fact Trilogy relied upon its assertions of invalidity as well.

[77] Some information was provided as to the clawback provisions and moderated the statements made in the notice of meeting which claimed that members would be advantaged if the first respondent remained as responsible entity. I note however that the information was not as frank as the view provided to ASIC about this on 1 May 2003, "It is at least hypothetically possible ...". Why the members were being given information about a legally novel, hypothetical advantage is not clear. I

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19 t 1-25.

20 Ms Muller conceded this – tt 1-52-53.

think the clawback information was initially, and remained, misleading in that it implied some real point of distinction between the first respondent and Trilogy.

[78] On 28 May 2013 ASIC again called upon the first respondent to cancel the proposed meeting. It called for more information in train of enquiries as to whether or not the meeting could validly have been called having regard to ss 252B, 601FL and 601FM of the Act.

[79] The meeting was held on 13 June 2013.

Validity of Meeting

[80] The first respondent relied upon two sections of the Act as allowing the meeting of 13 June 2013. Section 601FL(1) provides:

> "If the responsible entity of a registered scheme wants to retire, it must call a members' meeting to explain its reason for wanting to retire and to enable the members to vote on a resolution to choose a company to be the new responsible entity. ..."

[81] Section 601FM provides:

> "If members of a registered scheme want to remove the responsible entity, they may take action under Division 1 of Part 2G.4 for the calling of a members' meeting to consider and vote on a resolution that the current responsible entity should be removed and a resolution choosing a company to be the new responsible entity."

[82] Neither s 601FL or 601FM allowed the meeting which took place on 13 June 2013. The opening words of each of those sections describe a circumstance which did not exist. Section 601FL allows a meeting, "if the responsible entity of a registered scheme wants to retire". The first respondent did not want to retire as responsible entity, it wanted to test, or defeat, Trilogy's application to the Court to be appointed as new responsible entity. Section 601FM allows a meeting "if members of a registered scheme want to remove the responsible entity". Here no members of the registered scheme who wished to remove the responsible entity called the meeting. Insofar as there was any relevant state of mind of any member of this scheme, it was the state of mind of the administrators of the first respondent in their capacity as responsible entity of the CPIAL feeder fund, expressed on their behalf by the Trust Company. The desire of the administrators was to remain as responsible entity.

[83] Counsel for the first respondent argued that these introductory words in ss 601FL(1) and 601FM(1) could not possibly be read as a real requirement that there be a subjective intention in terms of the literal meaning of the words. He asked rhetorically how the subjective intention of numerous members who purported to act pursuant to s 601FM(1) might be determined, and what might occur if the intention of some members was different from the intention of others. In terms of s 601FL(1), I think it is quite clear that a subjective intention on the part of the responsible entity is required, for the responsible entity must explain to the members' meeting the reason for its wanting to retire.[21] I do not see any reason for interpreting the introductory words at s 601FM(1) differently.

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21 See *ASIC v Wellington Investment Management Limited & Anor* [2008] QSC 243, per McMurdo J.

[84] In addition, as to s 601FM(1), ASIC says that the feeder fund CPIAL (whether through the Trust Company or otherwise) was not entitled to take action under Division 1 of Part 2G.4 for the calling of a members' meeting because, returning to the words of s 252B(1), above at [50], although CPIAL was a member with more than five per cent of the units in the scheme, it did not have "at least five per cent of the votes that may be cast on the resolution". ASIC says CPIAL was an "associate" of the first respondent within s 15(1)(a) of the Act: it was a person who was in concert with the first respondent in calling the meeting and voting at it. Thus CPIAL was precluded from voting because of the provisions of s 253E:

> "The responsible entity of a registered scheme and its associates are not entitled to vote their interest on a resolution at a meeting of the scheme's members if they have an interest in the resolution or matter other than as a member. ..."

[85] It may be accepted that the first respondent had an interest as, and in remaining as, responsible entity of the scheme, which is an interest "other than as a member" for s 253E of the Act.[22] Sections 12, 15 and 16 of the Act, set up a horribly complex scheme for deciding who is an "associate" within the meaning of s 253E. However, it seems to me that the decision of White J in *Everest Capital Limited v Trust Company Ltd*[23] is determinative of the position here. In my view, Trust Company was not entitled to vote at the 13 June 2013 meeting because in voting its interest it was acting as agent of the first respondent. Further, in any event, having regard to the provisions of ss 12, 15 and 16 of the Act, it seems to me that s 15(1)(a) of the Act applies and that the first respondent and Trust Company were relevantly acting in concert, and that, in accordance with the decision in *Everest*,[24] s 16(1)(a) would not apply.

Conclusions as to Meeting and Related Conduct

[86] In my view it is plain that calling the meeting was a tactic by the first respondent which had the aim of seeing off its rival for control of FMIF.[25] Real concerns are raised in my mind by the misleading statements given in the information to members. It is difficult to see any explanation for these matters other than that the first respondent was pursuing its continuing control of the FMIF in a manner which was at odds with the interests of the members. In the absence of any other convincing explanation, I see the choice not to work with ASIC and not to hold a meeting at a time which allowed resolutions as to winding-up at the same time as resolutions as to the responsible entity, in the same light. The initial failure to properly disclose to members the true nature of the limited financial securities licence bears on this last point.

[87] I think it is very significant that when Trilogy's lawyers made a reasoned attack on the statutory basis for the meeting, and when ASIC attacked both the material given to members and the statutory validity of the meeting, the first respondent refused to

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22 This is conceded by Ms Muller – Court Document 79, paragraph 66.

23 [2010] NSWSC 231 [77]ff.

24 [89]ff above.

25 I should be careful in interpreting this (in isolation) as a marker of self-interest in the first respondent's administrators, rather than action in the interests of the members of the fund, because ASIC certainly had a similar strategy in the interests of the members of the fund. Perhaps it is a hindsight view to say that had an applications judge been persuaded to hear the point dealt with at [9] to [20] of this judgment, a much simpler and cheaper solution was available.

moderate its position, except inadequately in the question and answer document. The law as to the validity of the meeting is complex, and misinterpretation of it could readily be forgiven. However, the first respondent made little substantial response to the matters raised by Trilogy and ASIC. I cannot understand why a responsible entity acting solely in the interests of members would not attempt to accommodate or moderate its position in light of those arguments and the objective facts. Certainly by the time Trilogy had refused to consent to any appointment via the meeting,[26] there was no utility in the meeting except perhaps as a poll to inform the Court of what the members wanted. However, given the information which had been provided to members, including the misleading information; the information that Trilogy was not licensed to perform as responsible entity, and the information that Trilogy would not consent to perform as responsible entity if appointed by the meeting, any objective observer must have doubted the meeting's use even as a poll.

[88] From the underlined passages in the extracts at [52], [69] and [72] above, it can be seen that the administrators insisted on the meeting as some sort of democratic right in the members which the Trilogy application was designed to subvert. The evidence of Ms Muller in cross-examination as to the justification for, utility of, and likely outcome of the meeting was similar. She swore, as she had in her affidavit, that she thought there was "an appreciable chance" that Trilogy would be elected as responsible entity by the meeting. In cross-examination she said that was her view at all times up until the vote closed.[27] Unless Ms Muller was using the word "appreciable" to mean "very slight", I have difficulty accepting that was her genuine belief by the time members had been informed that Trilogy (a) did not have a licence to operate as responsible entity; and (b) did not consent to do so. That the first respondent insisted as it did on its position in relation to the meeting when objectively it had become quite untenable to my mind demonstrates that the interests of the members of the scheme were not at the forefront of the thinking of those making the decisions.

Conduct of the Litigation

[89] ASIC made a separate but connected submission that the first respondent's conduct of this proceeding has been over-zealous. It pointed to the volume of material filed on behalf of the first respondent and the scope of issues sought to be agitated.[28] ASIC submitted that there was a disproportion evident when the interests of the unit holders were considered. It was said that a *Beddoe*[29] application ought to have been made. It is right that a responsible entity is a trustee under the Act. It is probably also right that this matter has more of an urgent and commercial flavour than the type of trust matter in which a *Beddoe* application is usually made. Nonetheless, in my view the conduct of the first respondent in this litigation was combative and partisan in a way which I see as reflective of the administrators acting in their own interests to keep control of the winding-up of the FMIF, rather than acting in the interests of the members.

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26 I accept there is no criticism of Trilogy to be made in relation to this stance, it was correct in saying that the meeting was invalidly called.

27 t 1-54.

28 The Court file in this matter to 12 July 2013 showed 102 documents filed. These included affidavits of expert accountants and affidavits of considerable (some unjustifiable) size. There were many more filed by leave at the hearing before me.

29 [1893] 1 Ch 547.

[90] The affidavit of Hellen (Court Document 40) was relied upon by ASIC as an illustration of the attitude it complains of. It was said that the affidavit was at no time likely to provide much assistance to the Court. Mr Hellen gives expert evidence as a forensic accounting specialist, with extensive experience as a liquidator. He was briefed to prepare a report regarding Trilogy's financial position. From Mr Hellen's recitation of his instructions, it appears that solicitors acting for the administrators of the first respondent were concerned about a contingent liability in the amount of $81 million in Trilogy's accounts, and were concerned otherwise to have Mr Hellen identify avenues of further investigation, either in relation to that matter or otherwise, as to whether Trilogy had a sound financial position. Mr Hellen was briefed "on the evening of 29 April 2013" and expresses reservation that he has had "very limited time" to undertake his assessment. His affidavit was filed on 2 May 2013. He heavily qualifies his report saying that it is based on interim and annual financial reports but he has seen few underlying documents.

[91] Mr Hellen comes to the unremarkable conclusion that if litigation against Trilogy, in which an amount of $81 million was claimed, were to go against Trilogy, Trilogy would be driven either to rely upon insurance or seek indemnity from a managed fund of which it was responsible entity. Mr Hellen could not assist with an opinion as to whether those sources would allow Trilogy to pay a judgment of $81 million. Nor could he give any further useful information about Trilogy's financial position: it had an excess of assets over liabilities and made a small operating profit.

[92] Before the conclusion of the hearing before me, judgment was given in Trilogy's favour in the litigation concerned and an appeal against that judgment was lodged and then withdrawn, so the substance of Trilogy's financial position did not concern me. Had it concerned me, Mr Hellen's report would not have been any more use to me than my own examination of the financial accounts with which he was briefed. Nor really could it have been expected to be. It seems an extravagant use of members' funds.

[93] An associated point is that in contrast to the highly qualified and inconclusive report by Mr Hellen, one of the administrators, Muller, swears at Court Document 46, paragraph 74, that Trilogy will not be able to pay the judgment debt if it loses the relevant litigation. It is hard to see this statement as anything other than unprofessionally robust and partisan when it is compared to Mr Hellen's conclusions. It is significant that it is a statement squarely within Ms Muller's area of professional expertise as a liquidator. Not only that, it is in a part of her affidavit where she swears that material published by Trilogy and its solicitors contains "numerous statements" that are "either false or misleading" – Court Document 46, paragraph 68. There was no argument before me that Trilogy and its solicitors have published false or misleading statements. These are serious allegations, especially when made against professional people. More material of similar flavour is found in the same affidavit at paragraph 77.

[94] Solicitors acting for the first respondent filed an affidavit of over 800 pages – Court Documents 16, 17 and 18 – which was of such marginal relevance that it was not referred to in either written or oral submissions by any party. Further, Court Document 52, which itself has over 100 pages of exhibits, is a solicitor's affidavit which was read on the hearing before me but was little more than combative and querulous commentary on the litigation. Separately, the description in this affidavit of the enormous amount of affidavit material exchanged and the late hours and

weekend work by solicitors, reveals a worrying scenario as to litigation costs in circumstances where the first respondent ought firmly to be keeping in mind the interests of members of an illiquid, and perhaps insolvent, fund.

[95] Ms Muller's affidavit, which is Court Document 79, is characterised by the sort of sniping and argumentative passages which one would hope not to find in any affidavit, let alone an affidavit of someone who is an officer of the Court and a trustee acting on behalf of others – see for example paragraphs 11, 14(c), 22, 66, 75 and 81. It is evident from that affidavit that she is acting very much in the legal arena – she swears responses to written submissions on interlocutory applications and swears to circumstances where she and her solicitor participate in telephone conversations with other solicitors, the content of which conversations was contentious before me.

[96] I will not go on to multiply examples. However, there are many, both in the affidavits filed on behalf of the first respondent, and in the correspondence it and its solicitors undertook.

Conflicts and Potential Conflicts of Interest

[97] In *Re Stewden Nominees No 4 Pty Ltd*[30] Bowen CJ in Eq rejected the appointment of a liquidator who was a member of a firm which had audited the company's accounts in the past. He said that there was the potential for conflict if, for example, the liquidator had to take action which called into question the prior accounts of the company. He said, "It is important that a liquidator should be independent, and should be seen to be independent (*Re Allebart Pty Ltd* [1971] 1 NSWLR 24, at p 30)."

[98] Similarly in *Re Giant Resources Limited*[31] Ryan J said:

> "... a liquidator should not be put in a position where his independence might be open to challenge. It is of the greatest importance that there should be no possibility of criticism attaching to one of the Court's own officers on the ground of a conflict of interest. The liquidator needs to be seen to be independent in any matter which his duties as liquidator may require him to investigate."

[99] Lastly, in *Handberg v Cant*[32] Finkelstein J said:

> "If there are, or are likely to be, disputes between companies in liquidation that are under the control of one liquidator then as a general rule different persons should be appointed as liquidator to each company [authorities omitted]. This is not to say that it is inappropriate to appoint one person as a liquidator of a group of companies or companies that are closely connected [authorities omitted]. But once the likelihood of conflict becomes apparent it is necessary to take action."

[100] Both Shotton and Trilogy advance a number of factual scenarios as illustrating that if the current administrators of the first respondent were to wind up FMIF they would face actual and potential conflicts of interest.

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30 [1975] 1 ACLR 185, 187.
31 [1991] 1 Qd R 107, 117.
32 [2006] FCA 17, [14].

[101] Under the constitution of FMIF the responsible entity is entitled to a management fee of up to 5.5 per cent per annum of the value of the assets of the fund. The administrators swear that they will not pay the first respondent this management fee from FMIF. There would no doubt be difficulties and expense involved in valuing, and throughout the course of a winding-up, revaluing, the assets of FMIF in order to calculate the management fee, but it would not be impossible. In circumstances where both the first respondent and FMIF are being wound up and there is doubt as to the solvency of both, there is at least a potential conflict to be resolved between the desire of the creditors of the first respondent and the interests of the FMIF.

[102] The evidence as to what the administrators will do as to this fee is rather vague and not adequately documented.[33] While the administrators say they have "agreed" not to charge a management fee, I do not know who that agreement was with. I am not convinced that any arrangement they have made in relation to management fees would be sustainable if there were real pressure exerted by creditors of the first respondent.

[103] It has been mentioned that there are three feeder funds to FMIF, two controlled by the first respondent as responsible entity, and one by Trilogy as responsible entity. FMIF categorises its feeder fund members as a separate class of investors (class B investors), as it is entitled to do under its constitution. While the first respondent (before administration) suspended distributions to unit holders from 1 January 2011, there were distributions of nearly $17 million to class B unit holders in the year ending 30 June 2012. From the evidence given before me,[34] it appears this was an accounting exercise, undertaken because the feeder funds accounts did not balance without such a distribution. This rather illustrates that the first respondent (before administrators were appointed) was facing a conflict between its duties as responsible entity of FMIF and as responsible entity of the feeder funds.

[104] It is no criticism of the current administrators that they have not, in the short time available to them, formulated their position in relation to this distribution. The administrators concede that it may need to be investigated and that it may give rise to a claim on behalf of some unit holders of FMIF. "Undoing" the transaction would be difficult because almost $16 million of the distribution has been reinvested into the FMIF on behalf of class B unit holders, diluting the interests of other members. This was conceded by Mr Park in cross-examination, though he swore to the contrary in his affidavit.[35]

[105] I think this issue of distribution to B class shareholders illustrates the potential for conflict between the interests of the feeder funds and the FMIF if one responsible entity has charge of all of them. There is potential for this type of conflict to arise again, including in attempts to undo the 2012 transaction should it be found necessary. In this respect, Trilogy is the responsible entity of one of the feeder funds owning 20 per cent or so of units in the FMIF and the potential for conflict would apply as much if Trilogy were the responsible entity of FMIF, or the liquidator of FMIF.

[106] There are further issues which may arise as between FMIF and the first respondent. In both 2011 and 2012 the fund paid around $5 million to the first respondent as

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33 tt 2-14 – 2-16.

34 See Note 3 to the accounts at p 173 of the exhibit bundle to Court Document 2 and t 2-18.

35 t 2-19.

"loan management fees". There may be a question as to the legitimacy of these payments under the constitution of FMIF, as they seem to be in addition to management fees, and on their face do not seem to have been expenses. Once again the administrators have not yet formed a concluded position as to this, but acknowledge the potential for an overpayment, and acknowledge that the process of reversing the entries may prove to be complex,[36] though again Mr Park originally swore to the contrary.

[107] Trilogy relies upon an affidavit read by the first respondent sworn by Mr Corbett. He swears that the first respondent had not obtained valuations for most of the properties over which FMIF had mortgage security "for at least two years preceding the appointment" of the current administrators. It may thus be that management fees have been based on valuations which are too high. Any claim to recover such overpayments may involve a conflict between duties to the creditors of the first respondent and duties to the members of FMIF if the person liquidating both the first respondent and FMIF is the same person.

[108] Further Trilogy says that from 2002 there were changes made to the constitution of the FMIF without meetings of members, which increased the maximum loan to value ratio for lending by FMIF. It increased from 66 per cent in 2002 to 85 per cent in 2006. The power of the responsible entity to make changes to the constitution without a meeting of members was a limited one – it could only make changes which would not adversely affect unit holders' rights. Trilogy points to this as a potential basis for a claim on behalf of members of the fund against the first respondent, or its directors.

[109] With a broad brush, Trilogy identifies around $168 million of related party transactions which it says, in a very general way, might give rise to the possibility of conflicts between the fund and the first respondent.

[110] Trilogy also says that because of the spectacular collapse of the value of assets under management during 2008-2009 there may be legal claims, for example in negligence, which the FMIF has against the first respondent as responsible entity. On the material before me this seems quite speculative. No proper investigations have been undertaken by any party at this stage. Obviously there is the potential for conflict if such a claim were to be made because it appears that the current administrators will be the liquidators of the first respondent and will have to adjudicate on any proof of debt lodged by or on behalf of investors in FMIF. Were there to be litigation, they would be on both sides of the record. In that regard I note that the Trilogy interests have been active in lodging proofs in the administration but cannot give any idea as to the quantum of the amounts claimed, or the basis upon which they are said to be owing.

[111] On behalf of Shotton it was said that the responsible entity may have engaged in joint lending between FMIF and other funds controlled by the first respondent as responsible entity before administrators were appointed. On the material before me, this seemed a rather academic proposition.

[112] Counsel for the first respondent emphasises the fact that in all the cases discussed above the conflict of interest identified is potential only, and in some of the cases very little material can be put before the Court. That may be accepted, but I am not

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36 t 2-21.

of the view that the matters raised by Trilogy or Shotton are academic or theoretical only.

[113] The administrators say that if it became necessary, because of a conflict, various measures could be put in place to deal with any conflict which actually arose. If a conflict were identified by the administrators, they swear that they would seek legal advice. They swear that an option would be to approach the Court. They swear that a special purpose liquidator could be appointed to the first respondent company if that became necessary. Counsel for the first respondent said that if there were to be litigation between the feeder funds and the first respondent, Trilogy could be appointed as a representative defendant for the feeder funds so that the litigation could continue with an independent contradictor. In any given scenario the administrators postulate solutions involving their preferring to continue as liquidators of the FMIF and jettisoning any other role.

[114] The solicitor appearing for Mr Shotton points out this is consistent with the administrators' desire to retain control of the FMIF. The endeavours of the first respondent do have this flavour about them. At the conclusion of the hearing one of the alternative draft orders they proposed was that the ASIC and Shotton applications be dismissed on the administrators' undertaking to do all things necessary to secure independent liquidators to the first respondent company and to Administration. No notice of any such thing had been given at any prior time during the proceeding, and I was not convinced that there had been any consideration of the separate interests of the first respondent company or Administration,[37] and the effect that such a proposed order would have on those companies in terms, for example, of wasted costs to date. It may be that those companies have less assets than the fund, but I was told that the first respondent company had assets of around $7 million. I had no basis to assess how much of the administrators' planned charges related to the first respondent company and to Administration; what proportion of that would be wasted if new administrators or liquidators were appointed to those companies, and what proportion that waste of cost would bear to the overall picture of those companies' liquidations. It seemed to me that the administrators were acting without regard to the interests of those companies in order to propose a situation where there could be no possibility of potential conflicts clouding their continuing control of FMIF.

[115] Counsel for the first respondent made a submission that it is a fundamental part of any liquidator's task to deal with conflicts of interest which may arise from time to time, including on the adjudication of claims, and in that respect, a liquidator's role can involve adjudication. That is right no doubt as a general proposition. I note that in *Shephard v Downey*[38] Judd J preferred to appoint an independent liquidator rather than a liquidator with similar potential conflicts as raised here. He made the point that, even though it might be possible to manage potential conflicts through undertakings and directions in the future should they arise, his preference was to forestall such a process by having the appointment of someone independent from the start.[39]

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37 See argument as to this at tt 3-40ff.

38 [2009] VSC 33 [134].

39 Note: This discussion of Judd J occurred in circumstances where he had determined (and it was uncontroversial in the case before him) that an appointment ought to be made under s 601NF(1), viz it was necessary that someone be appointed to take responsibility for the liquidation other than the responsible entity because the responsible entity itself conceded it was not capable of undertaking the

[116] The first respondent submitted that the administrators would have a statutory duty as liquidators of the fund to properly investigate and pursue claims against the first respondent and that there was no basis for thinking they would not pursue this duty "independently, professionally and with due care".[40] In my view, the material discussed as to the conduct of the members meeting on 13 June 2013; interaction with ASIC, and the conduct of this litigation do give a basis for thinking otherwise. At paragraph 33 of Court Document 79 Ms Muller swears that she is aware of the need to, "remain astute to ensure that, as the administration continues, no conflicts arise, whether potential or actual. We intend to seek advice from solicitors ..." She names the two firms of solicitors who had charge of the correspondence relating to the 13 June 2013 meeting. At paragraph 34 of that affidavit Ms Muller says, "As I have explained in paragraphs 12-30 above, my and Mr Park's current understanding is there are no such conflicts exist or are likely to arise". I do not think it can be said on any objective view of the evidence that conflicts are not likely to arise. I do not have confidence that the administrators would adequately identify and deal fairly with conflicts if they were to arise.

[117] Were it just that there was a real potential for conflicts of interest to arise in the future, I like Judd J in *Shephard v Downey* – see [115] above – would prefer an independent liquidator for the fund. Like Fryberg J in *Re Orchard Aginvest Ltd* (above), I would see this as desirable. But I would accept, as he did in that case, that that would not be enough to give me power to make an order pursuant to s 601NF(1). It would not be necessary. In this case there is more. The administrators of the first respondent have, in my view, demonstrated a preparedness to act in a way inconsistent with those owing duties as responsible entity and trustee under the *Corporations Act*. My view is that they have preferred their own commercial interests to the interests of the fund. This is demonstrated in the conduct I have outlined above in relation to the 13 June 2013 meeting; their dealings with ASIC, and their conduct with this litigation. It extends to the point where both administrators have sworn to matters which they either conceded were wrong in cross-examination – [104] and [106] above – or in my view are not consonant with reality – [62], [88], [93] and [116] above. In a winding-up where conflicts might well arise, and may involve questions of some complexity, I feel no assurance that the current administration would act properly in the interests of members of the fund in identifying those issues or in dealing with them. In my view, that makes it necessary that someone independent have charge of winding-up FMIF pursuant to s 601NF(1) of the Act.

[118] In a submission alternative to his main submission on the hearing, counsel for the first respondent advanced a draft order which would provide for an independent person to have some oversight of the first respondent during the time that the first respondent as responsible entity wound up the FMIF. The idea was that the first respondent would consult with, and report to, that independent person and that the first respondent would not, without the consent of that independent person, bring or defend legal proceedings or dispose of any secured property. The independent person was to be given, "on receipt" any written claim or demand against the fund and have full power to inspect the books and records of the fund. The first

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liquidation. Thus the discussion to which I refer by Judd J occurred in the context where he had found it was necessary to appoint someone, and in those circumstances preferred to appoint someone independent. He did not come to the conclusion that it was necessary to appoint somebody under s 601NF(1) because of potential conflicts of interest.

40 Written submissions, paragraph 60.

respondent offered to comply with any written directions of the independent person as to winding-up of the fund. The submission was that this was the minimum necessary direction to be given under s 601NF(2).

[119] The difficulty I have with the type of reporting envisaged by that order is that it depends, except in some few defined circumstances, on the administrators recognising that a matter is one worthy of report to the independent person, and making a full and fair report of the facts which the independent person would need to judge whether or not action should be taken on behalf of the fund, and whether or not there were conflicts arising which might necessitate action being taken. In addition, it is easier to compel the administrators in such a situation to report positive acts to the independent supervisor than to attempt to define circumstances in which they ought to discuss issues and concerns arising in the winding-up where they propose to take no action. For these reasons I am not convinced that such an order would allay the concerns which the administrators' conduct raises. I think that more is necessary to ensure that the winding-up of the first respondent proceeds regularly in accordance with the constitution of the fund and the law.

Who Ought to be Appointed

[120] There was some controversy as to who ought to be appointed. ASIC nominated liquidators who had the lowest schedule of rates of all those before me. That is certainly something in their favour. Although, when fees are charged on an hourly basis, efficiency and effectiveness in work practices will probably have more impact on the overall bill than rates alone. The costs of ASIC's nominee were not much less than the person put forward by Mr Shotton – David Whyte, liquidator. Trilogy, a major interested party, supported Mr Whyte in the event that it was not appointed, and I think that is of some significance. Mr Whyte, like all the proposed candidates, is well qualified for the job but I note that he has particular experience in a similar fund winding-up pursuant to s 601NF(1) – Equititrust. It was faintly suggested that he had a conflict which would prevent him acting but I do not accept that is so. In all the circumstances, I think he ought to be appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution pursuant to s 601NF(1).

[121] The provision at s 601ND(1) which allows a Court to direct that the responsible entity winds up a scheme, and the provision at s 601NF(1) which allows a Court to appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution do not, to my mind, sit happily together. In particular they give the distinct potential for two separate sets of insolvency practitioners to charge a distressed fund. My view in this case is that Mr Whyte should in substance and effect conduct the winding-up of the fund. In *Equititrust* that was the view of Applegarth J and he used a mechanism – constituting the person charged with winding the scheme up as receiver – to give that person the necessary powers. It was not contended by Shotton or Trilogy that I should make any different order in this case. Trilogy said I ought not appoint a receiver because to do so would damage the way the fund was perceived by creditors and by those who might potentially buy its assets. In circumstances where Deutsch Bank has already been appointed as receiver and where the responsible entity of the fund is itself in administration, and likely to be in liquidation, I am not deterred by this consideration. The fact of the matter is that the fund has reached a point where it

must be wound up. I will appoint Mr Whyte receiver of the property of the fund under s 601NF(2) of the Act.

[122] The first respondent argued that receivers ought not be appointed under s 1101B of the Act (on ASIC's application) because the breach which ASIC relied upon to give it power to ask for the appointment of receivers was one committed before administrators were appointed and one which itself did not justify this relief. For those reasons I do not rely upon s 1101B of the Act in appointing Mr Whyte as receiver.

[123] I now deal with two remaining matters raised in argument.

Wishes of the Members

[124] It is uncontroversial that the Court should have regard to the wishes of members of a scheme such as this when deciding its fate. In this regard the first respondent urged that I should interpret the results of the vote of the meeting of 13 June 2013 as indicating that the members did not want Trilogy as responsible entity. Only about 45 per cent of those eligible to vote at the meeting participated in it. Of that group 20 per cent abstained (almost entirely the feeder funds). Of the 25 per cent of members who voted, around 24 per cent voted against the motions. I find the result of the meeting of very limited assistance. Information given to the members by the first respondent before the meeting was misleading in several respects. As well, it was to the effect that Trilogy did not have the correct financial services licence required to run the fund. That was correct at the time but is no longer correct. The members voting at the meeting had been told that Trilogy did not consent to be appointed as responsible entity at the meeting. In those circumstances one wonders that any votes were cast in favour of Trilogy.

[125] Some members of the fund appeared on the hearing. The Bruces have an investment of around $144,000 in the fund. Mr Shotton also has a relatively small investment in the fund. Two additional members – Nunn and Byrne – have small investments in the fund. They supported the first respondent on the application. Mr Nunn apparently worked for the first respondent for eight or nine years.

[126] As responsible entity of the wholesale mortgage income fund Trilogy has around 20 per cent of the total units in the fund, equating to around $74 million worth of units. The balance of the fund (somewhat over 50 per cent) is held by individual investors with investments ranging between $1,000 and $8 million. Trilogy's views are therefore significant.[41]

[127] While I have been astute to recognise the interests of members of the fund, it must be acknowledged that my decision is grounded more on substantive matters than on attempting to implement the wishes of any particular member or group of members.

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41 Trilogy relies upon an affidavit of a solicitor which purposes to show that members support Trilogy as responsible entity. However, it is remarkable for what it does not say. There is no information as to how the members were prompted to express their views or what information they had about the issues in dispute before me. It is of little assistance.

Waste of Work

[128] On behalf of the first respondent it is said that to charge any person other than the current administrators with the winding-up of FMIF would be to waste the cost of the work which the administrators have performed to date. Quite clearly when the nature of the work performed to date is considered, not all of it would be wasted.[42] The current administrators say they would co-operate with anybody who is charged with responsibility of winding-up the fund, and indeed it would be absolutely extraordinary if they did not. The current administrators were appointed in March 2013. They have been restrained from commencing a winding-up pending the outcome of this proceeding. It appears that any winding-up will take some years,[43] so that while there may indeed be waste, the proportion is likely to be small in the overall cost of the winding-up. Fees to date have not been charged, but it is sworn that as at 27 June 2013 the administrators propose to charge the fund $960,756 and an unspecified part of $1,174,399 they have notionally charged to the first respondent company. There is nothing to show what has been achieved for those proposed charges. The administrators accept their charges must be approved by the company or the Court. I very much doubt that most of the costs of the 13 June 2013 meeting would be approved as necessary and appropriate and I have doubts as to some of the costs of this litigation.

[129] Bearing all these points in mind, I cannot see that the potential for some wasted fees would deter me from making an appointment under s 601NF(1).

[130] I will ask the parties to bring in minutes of order. I will hear submissions on costs.

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42 See cross-examination, tt 2-23ff.

43 Ms Muller swears an estimate of three years.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants:	RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE
	AND
First Respondent:	LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND
	AND
Second Respondent:	THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288
	AND
Third Respondent:	ROGER SHOTTON
	AND
Intervener:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

ORDER

Before:	Justice Dalton
Date:	21 August, 2013
Initiating document:	Application filed 29 April, 2013 by Roger Shotton and Application filed 3 May 2013 by Australian Securities and Investments Commission ("Applications").

THE ORDER OF THE COURT IS THAT:

1. Pursuant to section 601ND(1)(a) of the Corporations Act 2001 (Cth) ("the Act") LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 ("LMIM") in its capacity as Responsible Entity of the LM First Mortgage Income Fund is directed to wind up the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF") subject to the orders below.

ORDER
Form 59 R.661

Filed on behalf of the Third Respondent
\\Tcswexch\data\RadixDM\Documents\MatterDocs\1301759\00558945.doc

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Fax: (07) 300 300 33

2. Pursuant to section 601NF(1) of the Act, David Whyte ("Mr Whyte"), Partner of BDO Australia Limited ("BDO"), is appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution ("the Appointment").

3. Pursuant to section 601NF(2), that Mr Whyte:-

   (a) have access to the books and records of LMIM which concern the FMIF;

   (b) be indemnified out of the assets of the FMIF in respect of any proper expenses incurred in carrying out the Appointment;

   (c) be entitled to claim remuneration in respect of the time spent by him and by employees of BDO who perform work in carrying out the Appointment at rates and in the sums from time to time approved by the Court and indemnified out of the assets of the FMIF in respect of such remuneration.

4. Nothing in this Order prejudices the rights of:

   (a) Deutsche Bank AG pursuant to any securities it holds over LMIM or the FMIF; or

   (b) the receivers and managers appointed by Deutsche Bank AG, Joseph David Hayes and Anthony Norman Connelly.

5. Pursuant to sections 601NF (2) of the Act, Mr Whyte is appointed as the receiver of the property of the FMIF.

6. Pursuant to sections 601NF (2) of the Act, Mr Whyte have, in relation to the property for which he is appointed receiver pursuant to paragraph 5 above, the powers set out in section 420 of the Act.

7. Without derogating in any way from in any way from the Appointment or the Receiver's powers pursuant to these Orders, Mr Whyte is authorised to:

   (a) take all steps necessary to ensure the realisation of property of FMIF held by LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as Responsible Entity of the FMIF by exercising any legal right of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as Responsible Entity of the FMIF in relation to the property, including but not limited to:

      (i) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate and/or finalise the sale of the property;

      (ii) providing a response as appropriate to matters raised by receivers of property of LMIM as Responsible Entity of the FMIF to which receivers have been appointed;

      (iii) dealing with any creditors with security over the property of the FMIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of property;

      (iv) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and

(v) executing contracts, transfers, releases, or any such other documents as are required to carry out any of the above; and

(b) bring, defend or maintain any proceedings on behalf of FMIF in the name of LM Investment Management Limited (Administrators Appointed) ACN 077 208 461 as is necessary for the winding up of the FMIF in accordance with clause 16 of its constitution, including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions.

8. The First Respondent must, within 2 business days of the date of this Order:

(a) send an email to all known email addresses held by the First Respondent for Members of the FMIF notifying of Mr Whyte's appointment, and a copy of this Order; and

(b) make a copy of this order available, in PDF form, on:

(i) its website www.lmaustralia.com, together with a link to the www.bdo.com.au website;

(ii) its website www.lminvestmentadministration.com, together with a link to the www.bdo.com.au website.

9. The costs of the Third Respondent, Roger Shotton, of and incidental to the Applications, including reserved costs, shall be assessed on the indemnity basis, and shall be paid from the FMIF.

10. All other questions of costs of or incidental to the Applications and the Application filed 15 April 2013 by Raymond and Vicki Bruce are adjourned to a date to be fixed by the Court.

IT IS DIRECTED THAT:

11. Any party wishing to contend that the first respondent is not entitled to indemnity from the fund in relation to the Applications shall file ~~If any order such as that sought in paragraph 12 of the draft order annexed to the outline of submissions filed by the first respondent at the hearing on 21 August 2013, shall be brought by~~ an application to be heard and determined at the same time as the other issues as to costs.

12. Any application for the costs of complying with subpoenas issued in the proceedings are adjourned to a date to be fixed, and any time limitation imposed by rule 418 (5) of the UCPR is extended pursuant to rule 7 of the UCPR, to allow for the hearing of any such application at the date to be fixed.

Signed:

BDO

Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

15 October 2013

LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288
('the Fund' or 'MIF')

I refer to my report dated 27 August 2013 and now provide my second update to investors in relation to the winding of up of the Fund, as follows.

1. Refinance of Secured Creditor

Since my last report, I have been trying to secure a refinancing of the secured creditor in order to reduce the ongoing interest costs and avoid any duplication of fees between McGrathNicol and BDO.

I have received an offer from BOQ for a facility of up to $25M in this regard which would result in the interest rate and other costs of the facility reducing from 21% to 12% per annum.

This would result in the retirement of the Receivers and Managers appointed by the secured creditor which will save on any duplication of costs. That said, the Receivers and Managers from McGrathNicol and BDO have been working well together to ensure there was little overlap in this regard.

Based on the cashflows prepared by McGrathNicol from their knowledge of the assets and current status of disposal, and where the funding is forecast to be repaid in full by 31 January 2014, I have estimated that there will be a saving of approximately $300,000 plus any saving in duplication of Receivers costs.

It should be noted however that this is after having to pay a negotiated reduced settlement amount to the secured creditor in respect of a make whole interest payment that had been agreed to by the then Administrators of the responsible entity, John Park and Ginette Muller of FTI on 2 April 2014.

The refinancing however is conditional on KordaMentha, who are trustees of the LM Managed Performance Fund, acknowledging that they will not seek to impugn the BOQ securities and bearing in mind they have put me on notice of a potential claim for breach of duties. KordaMentha have so far refused to provide the requested letter (although are reconsidering their position) and therefore the refinance may not now be able to proceed. I will confirm the position in my next report to investors.

BDO

2. Realisation of Assets

In order to avoid duplication of costs and to ensure strategies could be developed for all assets, including those where realisations were unlikely to be achieved during McGrathNicol's appointment, it was agreed between us that BDO would concentrate on seven "longer term" assets in the retirement village and aged care sectors and which represent in excess of 50% of the value of the Fund.

BDO has particular expertise in this sector and I have been assisted by our in house professionals in this respect. To date this has included site visits to the facilities in Victoria, Tasmania, South East Qld and Northern NSW as well as meetings with the management teams at the sites.

Valuations are in course for some of the assets and a review of the historical financial information and forecasts is being undertaken.

McGrathNicol has been progressing with the realisation of the other assets and I have discussed their strategies in relation to each asset so that the management of these matters can be transitioned smoothly.

3. Estimated Return to Investors

Several valuations are awaited on some of the assets in order to better determine the likely return to investors.

Prior to my appointment on 8 August 2013, and as advised in my first report to investors dated 27 August 2013, FTI had prepared a detailed analysis of the estimated cashflows from each asset and the estimated return to investors.

The full file in this respect has not been made available to me however I have received a summary that shows total net cashflows of approximately $185M from the realisation of the assets.

After costs, FTI has estimated a return to investors of approximately 27 cents in the $.

As further valuations are received and assets sold, I will update the estimated return and advise investors as the position changes.

As outlined above, I have not reviewed all of the assumptions used as I have not been in control of the Fund, and the estimate may materially change once I have updated the position.

4. Funds Held in Trust

There is approximately $8M presently held in a solicitors trust account in relation to amounts paid by residents of the retirement villages/aged care facilities to enter into loan/lease arrangements at the centres.

These funds have not been able to be released because the Administrators and Receivers and Managers have been concerned about the ongoing potential personal liability to repay the loans when the resident leaves the centre.

With the agreement of McGrathNicol, I have therefore instructed my solicitors to take the appropriate steps so that I can execute the agreements without incurring personal liability and to allow the funds to be released.

I am hopeful that this may be able to occur within the next month.

5. Audited Accounts

I have been in discussions with FTI and ASIC in relation to whether or not there is a need to undertake an annual audit of the Fund during the course of the winding up.

FTI's initial view was that an audit was required.

There is case law however to support the proposition that an audit is only required upon completion of the winding up.

The cost of the audit for the 2012 financial year was approximately $500,000 and therefore I am keen to ensure unnecessary costs are not incurred to the detriment of investors especially when it could take three or four years to complete the winding up. The saving for investors therefore could be well in excess of $1M.

I am currently awaiting confirmation from the ASIC that they will take no action in relation to the non provision of the audited accounts.

During the course of the winding up I will report all receipts and payments to investors and regularly update the valuations of the assets and estimated return to investors.

6. Appeal Lodged by FTI

I attach correspondence received from Russells solicitors, acting on behalf of the Liquidators of LM Investment Management Ltd (In Liquidation) together with associated correspondence in respect of the Liquidators decision to appeal the court's decision that led to my appointment as Receiver of the fund's assets and person responsible to ensure it is wound up pursuant to its constitution. This also includes correspondence relating to the "make whole" provision agreed to by the Liquidators that was referred to in Russell's correspondence.

The Liquidators have sought for the appeal to be expedited and a hearing date of 28 November 2013 has been set down in this respect.

Investors will note that the notice of appeal at page 9, paragraph 7, has reference to me having a conflict in my duties as I was a liquidator of a debtor company at the time of my appointment.

Although I did not have a conflict of interest under the Corporations Act 2001, to remove any perception of a potential conflict I arranged, at BDO's cost, for a replacement liquidator to be appointed to two borrower entities in this respect.

The judge at paragraph 120 of her judgement dated 8 August 2013 (a copy is on the website www.lmfmif.com) noted that "It was faintly suggested that he had a conflict which would prevent him acting but I do not accept this is so".

BDO

7. Reporting to Investors

Reports will be distributed to investors, initially monthly, in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details below to advise us in this regard.

8. Receiver's Remuneration and Expenses

I attach a summary of my current remuneration and outlays for the period from my appointment to 4 October 2013. My remuneration incurred during this period totals $151,764.25 plus outlays of $24,753.43 plus GST.

The fees have been incurred in respect of general matters pertaining to our appointment and key areas of the Fund, these being the retirement villages and the refinance of the secured creditor. The work undertaken to date includes;

- Attending the retirement villages/aged care facilities to view the facilities and meet with onsite management;
- Undertake a financial review of the retirement villages to assist in determining the strategy for achieving the optimum return for investors;
- Meetings and correspondence with McGrathNicol and LM staff in relation to the strategies for the realisation of the loan book and in respect of legal actions on foot;
- Negotiations with the secured creditor in relation to the refinancing of the facility;
- Review of facility and security documentation and negotiations and meetings with BOQ, our solicitors and Korda Mentha and their advisors in respect of the refinancing;
- Liaising with the secured creditor to obtain a reduction in their "make whole" provision.

Approval of my fees will be the subject of an application to court in due course. A copy of my application in this respect will be posted to the website www.lmfmif.com and investors will be notified when the application has been lodged.

9. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations
Phone: +61 7 5584 4500
Fax: +61 7 5592 2505
Email: mail@lmaustralia.com

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours faithfully

David Whyte
Receiver

REMUNERATION REPORT
LM First Mortgage Income Fund (Receiver Appointed)
8 August 2013 to 4 October 2013

					Administration		Assets		Creditors		Investigation		Trade On	
Employee	Position	Rate	Total Units	Total $	Units	$	Units	$	Units	$	Units	$	Units	$
Fielding, Andrew	Partner	560.00	0.80	448.00	0.60	336.00	0.00	0.00	0.20	112.00	0.00	0.00	0.00	0.00
Whyte, David	Partner	560.00	122.30	68,488.00	13.80	7,728.00	62.70	35,112.00	1.00	560.00	0.10	56.00	44.70	25,032.00
Beauchamp, Margaux	Executive Director	460.00	85.20	39,192.00	2.30	1,058.00	79.90	36,754.00	0.00	0.00	3.00	1,380.00	0.00	0.00
Somerville, John	Senior Manager	425.00	14.00	5,950.00	8.00	3,400.00	3.70	1,572.50	2.30	977.50	0.00	0.00	0.00	0.00
Kedney, Joanne	Manager	390.00	49.30	19,227.00	3.20	1,248.00	41.50	16,185.00	4.10	1,599.00	0.00	0.00	0.50	195.00
Wilson, James	Manager	390.00	1.40	546.00	0.30	117.00	0.20	78.00	0.90	351.00	0.00	0.00	0.00	0.00
Dharmaratne, Michael	Senior Accountant I	310.00	10.60	3,286.00	4.20	1,302.00	2.00	620.00	4.40	1,364.00	0.00	0.00	0.00	0.00
Tipman, Daniel	Senior Accountant I	310.00	0.40	124.00	0.00	0.00	0.00	0.00	0.40	124.00	0.00	0.00	0.00	0.00
Kennedy, Nicola	Accountant II	190.00	3.60	684.00	3.60	684.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Hattingh, Moira	Administration Assistant	75.00	0.30	22.50	0.30	22.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		TOTAL	287.90	137,967.50	36.30	15,895.50	190.00	90,321.50	13.30	5,087.50	3.10	1,436.00	45.20	25,227.00
		GST		13,796.75		1,589.55		9,032.15		508.75		143.60		2,522.70
		TOTAL INC GST		151,764.25		17,485.05		99,353.65		5,596.25		1,579.60		27,749.70
		AVERAGE HOURLY RATE		479.22		437.89		475.38		382.52		463.23		558.12

REMUNERATION REPORT
LM First Mortgage Income Fund (Receiver Appointed)
8 August 2013 to 4 October 2013

Outlays	
Accommodation	339.56
Postage	6,077.68
Printing/Copying (includes printing charges for first report)	10,185.02
Mileage	113.40
Parking	132.11
Taxi Fares	15.64
Searches	2,616.71
Airfares	1,301.99
LM Website	1,567.27
General	153.73
SUB TOTAL	22,503.11
GST	2,250.32
TOTAL	**$ 24,753.43**
TOTAL INVOICE	**$ 176,517.68**

David Whyte

From: David Whyte
Sent: 14 October 2013 12:35 PM
To: 'Park, John'; Muller, Ginette
Cc: Joanne Kedney
Subject: RE: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)

John

I had delayed responding to you as I had wanted to confirm the refinancing had taken place. BOQ has approved the facility and the facility and security documentation was executed with settlement set for 4 October 2013. Unfortunately this has been delayed awaiting a requested letter from the trustees of the second mortgage fund, KordaMentha and we are awaiting confirmation as to whether or not this will be executed to allow the refinancing to proceed.

I (and my solicitors) disagree with your interpretation of the facility agreement and override deed which were disclosed in the proceedings leading to my appointment. I note however that the letter signed by you was not disclosed in the proceedings whereas it is this letter that gives rise to the additional $3M obligation to the make whole interest provision in the event of a refinancing, not the facility letter or override deed. That is the reason I asked why you considered it was in the best interests of investors to sign the letter.

Regards

David

From: Park, John [mailto:John.Park@fticonsulting.com]
Sent: 25 September 2013 1:50 PM
To: David Whyte; Muller, Ginette
Cc: Joanne Kedney
Subject: RE: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)

Dear David

Thank you for your email.

I am surprised by what you have written, given the very clear terms of the Deutsche Bank facility, and the circumstances in which it was entered into. I would have expected, given your deep interest in the proceedings pursuant to which you secured your appointment , and your retainer of the solicitor who acted for Mr Shotton (in whose name your solicitor sought your appointment), that you would be intimately familiar with the terms of the facility.

To summarise:-

1. The administrators did not sign the facility letter by which the facility was put in place. The relevant document – the Override Deed - is exhibited to Ms Muller's affidavit sworn 27 June, 2013, marked GDM-15, at page 139 and following. I would have expected your solicitor to have provided this to you or you would have obtained a copy and reviewed this pivotal document following your appointment.

2. The Override Deed is dated and, I understand, was executed on 21 December, 2012. I refer you to the provisions of the Override Deed.

3. We were appointed on 19 March, 2013. We did not execute the Override Deed, or any of the underlying facility agreements.

4. We took legal advice on the terms of the facility and the override deed – no doubt you will take your own advice on the meaning and effect of this deed.

5. We concluded that LMIM is, regrettably, bound by the terms of the facility.

6. The letter you have attached to your email merely acknowledged the terms of the existing facility. It created no new obligations; and it altered no existing obligations. It did limit the recourse of the financier, as per the handwritten note. I expect that you will have had experience of financiers seeking such assurances from external administrators newly appointed to their borrowers. I believe the letter avoided the appointment of receivers and the associated additional costs and asset impairment, which would have ensued had the letter not been signed given our appointment created an event of default. (This was the unfortunate effect of the proceedings in any event.) We note that the facilities deal with receiver realisations and it is a matter for you to structure any proposed refinancing in the interests of investors.

7. The terms of this Deed were the subject of submissions by your solicitor, when he first came into the matter. These submissions were erroneous. I refer you to paragraphs 161 to 163 of LMIM's written submissions at the trial in the proceedings pursuant to which you secured your appointment. I am surprised that your solicitor has not informed you of these matters.

8. We also thoroughly investigated the possibility of refinancing this facility. We were unsuccessful. We would not have expected that you would have been able to do any better, but we would have been pleased for the investors if our expectation had been misplaced.

9. Finally, and while neither defending nor impugning the board's decision to take this facility in the first place, it was plainly open to the board to make the business judgment in the interests of the investors to avoid an external administration, with the possibility of consequent diminution in asset values.

LMIM is the Responsible Entity of the LM First Mortgage Income Fund. It holds the scheme property on trust for the members. We are its liquidators. The above pre-existing issues with the DB facility have been fully ventilated in the court, are readily discernible through enquiry and we trust you have not incurred additional costs for the fund in pursuing the refinancing.

Regards - John

John Park
Leader Australia
Corporate Finance / Restructuring

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From: David Whyte [mailto:David.Whyte@bdo.com.au]
Sent: Wednesday, 25 September 2013 7:32 AM
To: Park, John; Muller, Ginette
Cc: Joanne Kedney
Subject: FW: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)

John/Ginette

I refer to the below correspondence from Clayton Utz in relation to my request for a payout figure for the Deutsche Bank ("DB") facility and where I have received an offer of finance from BOQ to refinance the facility (at a significantly less interest rate than being paid to DB).

You will see from the payout figure that DB is seeking to impose a "make-whole interest" payment of approximately $3M and is looking to rely on the attached letter executed by the Administrators in order to impose this amount under the facility terms. This is obviously giving us cause for concern and it would not be in the best interests of investors for me to payout the facility if this amount is indeed payable.

Could you please advise of the circumstances leading up to the signing of this letter and why you considered it in the best interests of investors to execute the letter? I am trying to negotiate a different arrangement with DB and therefore would appreciate your early comments in this respect. We are aiming to complete the refinancing on Monday, 30 September.

Regards

David

DAVID WHYTE
Partner
Direct: +61 7 3237 5887
Mobile: +61 413 491 490
David.Whyte@bdo.com.au

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AUSTRALIA
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Fax: +61 7 3221 9227
www.bdo.com.au

From: Bowden, Peter [mailto:PBowden@claytonutz.com]
Sent: 19 September 2013 12:56 PM
To: David Whyte
Cc: 'dtucker@tuckercowen.com.au'; Anthony Connelly (AConnelly@mcgrathnicol.com); jhayes@mcgrathnicol.com; Paul Sweeney (psweeney@mcgrathnicol.com); Ian Niccol (iniccol@mcgrathnicol.com); Poole, Nicholas; LM 1 (FMIF) Activity Report (lm.1@list.db.com); Martin Thomas; Matthew Fruin (matthew.fruin@db.com); Bowden, Peter; Poole, Nicholas
Subject: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)

Dear Sir

As you know, we act for Anthony Connelly and Joseph Hayes (the **Receivers**) in their capacity as receivers and managers of the property of LM Investment Management Limited ABN 68 077 208 461 (In Liquidation) (Receivers and Managers Appointed) (**LMIM**) in its capacity as responsibility entity of the LM First Mortgage Income Fund (**Fund**).

The Receivers were appointed by Deutsche Bank AG, Sydney Branch (**DB**).

We understand that you are seeking a payout figure from the Receivers so that DB's debt can be refinanced in full. On that basis, we have been instructed to provide you with a payout figure on the assumption that DB's debt is to be refinanced in full on 30 September 2013.

Accordingly, the relevant payout figure as at 30 September 2013 is **$26,786,835.00** (the **Total Payout Figure**).

The Total Payout Figure comprises the following amounts:

1. DB's debt of $26,096,493.15 (see below) (the **DB Amount**);

2. The Receivers costs of $523,028.00; and
3. Clayton Utz's costs of $167,313.85.

The DB Amount has been calculated as follows:

Start	30-Sep-13
End	30-Jun-14
Days	273
OPB	23,000,000.00
Interest rate	18%
Interest convention	365
make-whole interest	3,096,493.15
Total due to DB	$26,096,493.15

For the avoidance of doubt, we confirm that the DB Amount is inclusive of the 'make-whole'. Pursuant to the finance documents between, amongst others, DB and LMIM in its capacity as responsibility entity of the Fund, DB is entitled to the make-whole. In this respect, we refer to the letter dated 28 March 2013 between DB and the administrators of LMIM (as they then were) (the **Letter** - see the **attached)** where it was confirmed that the make-whole was to apply in circumstances where there was an Event of Default / Potential Event of Default provided that the repayment wasn't from a cash sweep undertaken by DB or from proceeds from realisations of security by a receiver appointed by DB.

Any refinancing of DB's debt does not fall into either of the categories referred to above and would therefore attract the make-whole as per the Letter.

Please let us know if you have any questions in relation to the above. Otherwise, please feel free to pass on our details to the incoming financier (who we understand to be Bank of Queensland) in order to facilitate the refinance.

Kind regards

Peter

Peter Bowden, Senior Associate
Clayton Utz
333 Collins Street, Melbourne VIC 3000 Australia | D +61 3 9286 6508 | F +61 3 9629 8488 | M +61 423 822 480
pbowden@claytonutz.com

www.claytonutz.com


Please consider the environment before printing this e-mail

Deutsche Bank

Deutsche Bank AG
Australia & New Zealand
ABN 13 064 165 162
Deutsche Bank Place
Level 16
Cnr of Hunter & Phillip Streets
Sydney NSW 2000 Australia
GPO Box 7033 Sydney NSW 2001
Tel +61 2 8258 1234

Confidential

John Park and Ginette Muller
Joint and several administrators
LM Investment Management Limited
(Administrations Appointed)
C/- Level 4
RSL Centre
9 Beach Road
SURFERS PARADISE QLD 7000

28 March 2013

Dear Sir / Madam

LM Investment Management Limited ABN 68 077 208 461 (Administrators Appointed) (the Company)

We refer to the facility agreement dated 1 July 2010 between LM Investment Management Limited in its capacity as responsible entity of the LM First Mortgage Income Fund (**LM**) (as "Borrower") and Deutsche Bank AG, Sydney Branch (**DB**) (as "Financier") as varied, amended and supplemented from time to time including by the override deed dated 21 December 2012 (**Override Deed**) between LM and DB (as amended, the **Facility Agreement**).

We also refer to our previous correspondence and your conversation with representatives of DB today in relation to the administration of the Company in general.

As discussed during today's telephone conference (between DB, the administrators of the Company and representatives from LM), please confirm that the intention and agreement of the parties in respect of clause 4.2(i) of the Override Deed was that other than in respect of any repayments from proceeds of cash sweeps undertaken by DB pursuant to clause 4.2(g) and any proceeds from the realisation of secured assets by a receiver appointed by DB over the assets of the Company, the 'make-whole' obligation continues to apply despite the fact that an Event of Default or Potential Event of Default has occurred and is subsisting.

The 'make-whole' obligation requires LM to pay interest on the outstanding balance of any or all of the Facility (as that term is defined in the Facility Agreement) that is repaid prior to 30 June 2014 or, if the Option Term (as that term is defined in the Override Deed) is exercised, 30 June 2015, on the basis that the Facility (or that component of the Facility that is repaid) was drawn and outstanding for the full term of the Facility (that is, until 30 June 2014 or 30 June 2015, as applicable).

As you are aware, interest is currently accruing on the Facility at the default interest rate of 18% per annum.

Please acknowledge the above by signing and returning to us the attached copy of this letter. By doing so, you agree to signing such further documents as may be deemed necessary to reflect the above agreed position.

As previously noted, we continue to expressly reserve all of our rights arising under, in relation to or in connection with the Facility Agreement and each Finance Document.

Yours faithfully

DEUTSCHE BANK AG, SYDNEY BRANCH

Attorney

Name: KEVIN KOSOVICH

Attorney

Name: David Maynard

We, John Richard Park and Ginette Muller, in our capacity as joint and several administrators of LM Investment Management Limited (Administrations Appointed) in its capacity as responsible entity of the LM First Mortgage Income Fund, acknowledge and agree to the above:

" on the basis that any liability is limited to the assets of the fund and no action will be taken against the administrators or LMIM in their personal capacities.

John Richard Park
Joint and several administrator
LM Investment Management Limited ABN 68 077 208 461 (Administrators Appointed)

Date: 2/9/13

David Whyte

From: David Whyte
Sent: 27 September 2013 1:58 PM
To: 'Stephen Russell'
Cc: Ilenna Copley
Subject: RE: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)

Steve

I note your comments.

Please note that the alleged conflict you refer to has been dealt with as Andrew Fielding and I have resigned as liquidators of two entities which had been all but wound up and a replacement liquidator appointed. There is nothing in the Act that says it was a conflict however to ensure no perceived conflict we have resigned with all costs associated with this being borne by BDO.

Regards

David

From: Stephen Russell [mailto:srussell@russellslaw.com.au]
Sent: 27 September 2013 1:44 PM
To: David Whyte
Cc: Ilenna Copley
Subject: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)
Importance: High

Dear David

Please see attached letter.

Sincerely

RUSSELLS

Stephen Russell
Managing Partner

Direct (07) 3004 8810
Mobile 0418 392 015
SRussell@RussellsLaw.com.au

From: David Whyte [mailto:David.Whyte@bdo.com.au]
Sent: Wednesday, 25 September 2013 7:32 AM
To: Park, John; Muller, Ginette

Cc: Joanne Kedney
Subject: FW: LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)

John/Ginette

I refer to the below correspondence from Clayton Utz in relation to my request for a payout figure for the Deutsche Bank ("DB") facility and where I have received an offer of finance from BOQ to refinance the facility (at a significantly less interest rate than being paid to DB).

You will see from the payout figure that DB is seeking to impose a "make-whole interest" payment of approximately $3M and is looking to rely on the attached letter executed by the Administrators in order to impose this amount under the facility terms. This is obviously giving us cause for concern and it would not be in the best interests of investors for me to payout the facility if this amount is indeed payable.

Could you please advise of the circumstances leading up to the signing of this letter and why you considered it in the best interests of investors to execute the letter? I am trying to negotiate a different arrangement with DB and therefore would appreciate your early comments in this respect. We are aiming to complete the refinancing on Monday, 30 September.

Regards

David

DAVID WHYTE
Partner
Direct: +61 7 3237 5887
Mobile: +61 413 491 490
David.Whyte@bdo.com.au

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Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

RUSSELLS

27 September, 2013

Our Ref: Mr Russell
Your Ref: Mr Whyte

EMAIL TRANSMISSION

Mr David Whyte
BDO (Qld)
BRISBANE

email: David.Whyte@bdo.com.au

Dear Mr Whyte

LM Investment Management Limited (in liquidation) (receivers and managers appointed) ("LMIM") as responsible entity of the LM First Mortgage Income Fund ("the Fund")

We act, as you know, for LMIM.

We hereby give you formal notice that on 23 September, 2013, our client instituted an appeal against the Orders pursuant to which you were appointed. A copy of the Notice of Appeal accompanies this letter.

We refer, in that context, to your email to the liquidators dated 25 September, 2013 (which also accompanies this letter).

In the event that you proceed with any re-financing of the Deutsche Bank facility, in the light of the subsistence of the appeal, LMIM suggests that you should do so only in its name.

Whilst you have power under paragraph 420(2)(d) of the Act (imported by paragraph 6 of the Orders made on 26 August, 2013), to borrow money and, therefore, to re-finance with you personally as the borrower, doing so would create practical difficulties (quite apart from the subsistence of the appeal).

No doubt any new financier will require first registered mortgage security over the properties currently held subject to Deutsche Bank's security. That will entail LMIM executing a guarantee and/or granting mortgages by way of guarantee (in the latter case, by a direction to the custodian in whose name the securities over the underlying assets are currently held).

Accordingly, if you can achieve a re-financing, the simplest way would be for LMIM to be the borrower and to grant direct to the new financier, first registered mortgage security, by direction to the custodian, as necessary.

The second reason why, in our respectful submission, any re-financing should not be in your name personally is that if the appeal succeeds, there may be practical problems in unwinding the transaction, should you be un-seated. One can readily imagine that such problems may be substantial, particularly since securities will be registered, and you will cease to have any interest.

Thirdly, you will, as an officer of the court, naturally be anxious not to do anything to embarrass any proceedings in the court (i.e. the appeal) by, for example, seeking to entrench yourself in office, in the face of the appeal.

We are, for these reasons, instructed to ask you to confirm that any re-financing will not be undertaken by you personally and that it will be done in the name of LMIM, as direct borrower, obligor and mortgagor.

Of course, LMIM and the liquidators will co-operate in executing all and any documents in relation to any such re-financing as may be necessary.

We have sent this letter directly to you, because we have not received any notice that you have retained any solicitors. If you have retained solicitors, you might let us know who you have retained.

Yours faithfully

Stephen Russell
Managing Partner

Direct (07) 3004 8810
Mobile 0418 392 015
SRussell@RussellsLaw.com.au

COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

CA NUMBER: 8895 of 2013

APPELLANT:	**LM INVESTMENTS MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND (FIRST RESPONDENT)**
	AND
FIRST RESPONDENTS	**RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE (APPLICANTS)**
	AND
SECOND RESPONDENT	**ROGER SHOTTON (THIRD RESPONDENT)**
	AND
THIRD RESPONDENTS	**DAVID NUNN AND ANITA JEAN BYRNES (FOURTH RESPONDENTS)**
	AND
FOURTH RESPONDENT	**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION (INTERVENER)**

NOTICE OF APPEAL

TO: The Respondents

AND TO: The Registrar, Supreme Court of Queensland

TAKE NOTICE that the Appellant appeals to the Court of Appeal against the whole of the Order of the Supreme Court of Queensland

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NOTICE OF APPEAL

Filed on behalf of the Appellant

Form 64 Rule 747(1)

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

scr_20130471_370.docx

1. THE DETAILS OF THE JUDGMENT APPEALED AGAINST ARE:-

Date of Judgment:	26 August, 2013
Description of Proceedings:	BS3383 of 2013
Description of parties involved in the proceedings:	Raymond Edward Bruce and Vicki Patricia Bruce (as Applicants) and LM Investments Management Limited (In Liquidation) (Receivers and Managers appointed) ACN 077 208 461, as responsible entity of the LM First Mortgage Income Fund (as First Respondent) and The Members Of The LM First Mortgage Income Fund ARSN 089 343 288 (as Second Respondents) and Roger Shotton (as Third Respondent) and David Nunn and Anita Jean Byrnes (as Fourth Respondents) and Australian Securities and Investments Commission (as Intervener)
Name of Primary Court Judge:	Dalton J
Location of Primary Court:	Brisbane

2. GROUNDS

1. The learned trial judge erred in finding at paragraph 117 of the judgment that:

(a) the administrators of the appellant had demonstrated a preparedness to act in a way inconsistent with those owing duties as responsible entity and trustee under the Corporations Act;

(b) the administrators had preferred their own commercial interests to the interests of the LM First Mortgage Income Fund;

(c) the court could not be assured that the administrators would act properly in the interests of members of the LM First Mortgage Income Fund in identifying conflicts during the course of the winding up or in dealing with those conflicts; and

(d) the conduct of the administrators of the appellant made it necessary that the court appoint someone independent to have charge of the winding up of the LM First Mortgage Income Fund pursuant to s.601NF(1) of the Act,

(together, ***the paragraph 117 findings***) because:

(e) The findings of misconduct in (a) and (b) were not put to either of the administrators in cross-examination;

(f) the paragraph 117 findings did not take account of:

(i) uncontradicted evidence that the administrators believed that it was in the best interests of the members of the LM First Mortgage Income Fund that the appellant remain the responsible entity;

(ii) uncontradicted evidence that the administrators believed that the appointment of Trilogy as responsible entity of the LM First Mortgage Income Fund was not in the best interests of members (a finding which was made by the learned trial judge in her judgment);

(iii) the existence of a reasonable basis for the beliefs in (i) and (ii) in that:

A. the trial judge found that it was not in the interests of the members of the Fund that Trilogy be appointed as temporary responsible entity (Paragraph [31]);

B. there was uncontradicted evidence of the time and costs incurred by staff of the appellant and the administrators in becoming familiar with the assets of the LM First Mortgage Income Fund and in developing strategies designed to sell those assets in the way which achieved the greatest return for members, over the shortest period of time, with periodic returns of capital;

C. there was uncontradicted evidence of a sound working relationship between the administrators and the secured creditor of the LM First Mortgage Income Fund, Deutsche Bank AG ("Deutsche"); and

D. re was uncontradicted evidence of a substantial risk that the proceedings would prompt Deutsche to appoint receivers, which it did shortly prior to the trial (Paragraph [7]);

(g) the paragraph 117 findings were not the proper inferences to be drawn from the evidence.

2. The learned trial judge erred in making the paragraph 117 findings on the basis of the "conduct ... in relation to the 13 June 2013 meeting" because:

(a) the learned trial judge's findings in relation to the 13 June 2013 meeting proceeded upon a basis, namely, as set out in paragraphs 51 and 86 of the judgment, that the administrators' purpose in calling a meeting of members of the LM First Mortgage Income Fund was to use the meeting as a strategy to defeat or damage Trilogy's prospects on its originating application, which was not the proper inference to be drawn from all of the evidence;

(b) the learned trial judge's finding at paragraph 86 of the judgment that the appellant was pursuing its continuing control of the LM First Mortgage Income Fund in a manner which was at odds with the interests of members was not put to either of the administrators or any other witness in

cross-examination and was not the proper inference to be drawn from all of the evidence;

(c) the learned trial judge's finding at paragraph 86 of the judgment that the appellant's choice not to work with ASIC and not to hold a meeting at a time which allowed resolutions as to winding-up at the same time as resolutions as to the responsible entity meant that the appellant was pursuing its continuing control of the LM First Mortgage Income Fund in a manner which was at odds with the interests of members was not put to either of the administrators or any other witness in cross-examination and was not the proper inference to be drawn from all of the evidence;

(d) the learned trial judge's finding at paragraph 88 of the judgment that evidence of Ms Muller, one of the administrators of the appellant, as to there being "an appreciable chance" that Trilogy might be elected responsible entity at the 13 June 2013 meeting did not reflect Ms Muller's genuine belief was not the proper inference to be drawn from all of the evidence in circumstances where:

(i) Ms Muller was not cross-examined on the facts about which she gave evidence as the basis for her belief; and

(ii) There was no evidence controverting those facts, which were not inherently unlikely;

(e) the learned trial judge's finding in paragraph 88 of the judgment that the appellant's position in relation to the meeting of members demonstrated that the interests of members were not at the forefront of the thinking of those making the decisions (the administrators of the appellant) was not put to either of the administrators in cross-examination and was not the proper inference to be drawn from all of the evidence;

(f) the learned trial judge's findings in relation to the 13 June 2013 meeting failed to have sufficient regard to the desirability of ascertaining the views

of the members of that LM First Mortgage Income Fund as to which entity they wished to act as responsible entity;

(g) the learned trial judge erred in failing to have regard to the consideration that once a meeting was called the responsible entity had no power to cancel a meeting of members;

(h) the learned trial judge failed to have regard to the active role of two firms of experienced solicitors in relation to issues concerning the 13 June meeting (compare paragraph [116]).

3. The learned trial judge erred in making the paragraph 117 findings on the basis of the appellant's (and its administrators') "dealings with ASIC" because:

(a) the learned trial judge's finding at paragraph 61 of the judgment that on 29 April 2013, the appellant informed ASIC that it was not willing to enter into an enforceable undertaking was contrary to the evidence;

(b) the learned trial judge's finding at paragraph 62 of the judgment that a statement in an affidavit of Ms Muller was not consonant with the reality of the appellant's interactions with ASIC was not put to Ms Muller in cross-examination, was not the proper inference to be drawn from of the evidence and was vitiated by the erroneous finding in paragraph [61];

(c) the learned trial judge's findings in relation to the appellant's dealings with ASIC were dependent upon the findings in relation to the 13 June 2013 meeting which were affected by the errors identified in paragraph 1 above.

4. The learned trial judge erred in making the paragraph 117 findings on the basis of the appellant's "conduct of the litigation" because:

(a) the learned trial judge's finding at paragraph 89 of the judgment that the appellant's conduct of the litigation was combative and partisan in a way which was reflective of the administrators acting in their own interests to keep control of the winding up of the LM First Mortgage Income Fund rather than acting in the interests of members was not put to either of the

administrators or any other witness in cross-examination, did not have regard to the matters in 1(h) above, and was not the proper inference to be drawn from the evidence;

(b) the learned trial judge's finding at paragraph 93 of the judgment that there had been no argument that Trilogy had published false and misleading statements was incorrect in circumstances where:

(i) the appellant adduced evidence of such statements;

(ii) the appellant had made such submissions at trial;

(c) the learned trial judge's finding at paragraph 93 of the judgment that part of an affidavit of Ms Muller was unprofessionally robust and partisan was not put to Ms Muller in cross-examination and was not the proper characterisation of Ms Muller's evidence;

(d) the learned trial judge's finding at paragraph 94 of the judgment that an affidavit sworn by the solicitor for the appellant consisted of little more than combative and querulous commentary on the litigation was not put to the solicitor in cross-examination and was not the proper characterisation of the affidavit evidence in the light of the application in support of which it was sworn;

(e) the learned trial judge's finding at paragraph 95 of the judgment that an affidavit sworn by Ms Muller contained sniping and argumentative passages was not put to Ms Muller in cross-examination, was not the proper characterisation of Ms Muller's evidence and was in any event irrelevant;

(f) the learned trial judge's finding at paragraph 114 of the judgment that the appellant gave no notice of a proposal that the administrators would do all things necessary to secure the appointment of independent liquidators to the appellant and to LM Administration Pty Ltd was contrary to the

evidence and, in any event, the conclusion does not follow from the premise.

5. The learned trial judge erred in making the paragraph 117 findings on the basis that the administrators had sworn to matters which they conceded were wrong in cross-examination because:

(a) the learned trial judge's finding at paragraph 104 of the judgment concerning an apparent concession by Mr Park, one of the administrators of the appellant, was incorrect because the matter on which Mr Park was cross-examined did not properly reflect the content of his affidavit evidence, and it was not put to him that he had contradicted his affidavit evidence;

(b) the learned trial judge's finding at paragraph 106 of the judgment concerning an apparent concession by Mr Park was not the proper inference to be drawn from the evidence and the trial judge did not take into account his evidence in re-examination and the otherwise uncontradicted documentary evidence to which it referred.

6. The learned trial judge erred in making the paragraph 117 findings on the basis that the administrators had sworn to matters which they conceded were not consonant with reality because:

(a) the learned trial judge's finding at paragraph 62 of the judgment was affected by the errors identified in paragraph 3(a) above;

(b) the learned trial judge's finding at paragraph 88 of the judgment was affected by the errors identified in paragraph 2(c) and 2(d)(ii) above;

(c) the learned trial judge's finding at paragraph 93 of the judgment was affected by the errors identified in paragraph 4(a) and 4(b)(ii) above;

(d) the learned trial judge's finding at paragraph 116 of the judgment that a statement in an affidavit of Ms Muller about her current understanding as to the likelihood that conflicts existed or were likely to arise could not be

objectively held was not put to Ms Muller in cross-examination and ignored the balance of Ms Muller's evidence as to how the administrators intended to monitor the potential for conflicts (which they acknowledged) and to deal with conflicts in the event they arose;

(e) the learned trial judge's finding at paragraph 116 of the judgment that the conduct of the 13 June 2013 meeting, the appellant's interactions with ASIC and the appellant's conduct of the litigation gave a basis for thinking that the administrators of the appellant would pursue their duties otherwise than independently, professionally and with due care was not put to either of the administrators in cross-examination, was not the proper inference to be drawn from all of the evidence and, in any event, the conclusion does not follow from the premise;

(f) the learned trial judge's finding at paragraph 116 of the judgment that the court could not have confidence that the administrators would adequately identify and deal fairly with conflicts if they were to arise was not put to either of the administrators in cross-examination, was not the proper inference to be drawn from all of the evidence and, in any event, the conclusion does not follow from the premise.

7. The learned trial judge erred in appointing Mr Whyte to take control of the winding up of the LM First Mortgage Income Fund because the evidence established that Mr Whyte was a liquidator of a company which was a debtor of the Fund so that his appointment placed him immediately in a position where his duties were in conflict.

3. ORDERS SOUGHT

(a) That the appeal be allowed;

(b) That the orders made on 26 August, 2013 be set aside save for order 1, but deleting the words "subject to the orders below";

(c) That the Respondents pay the Appellant's costs of and incidental to this appeal and to the proceedings below.

4. RECORD PREPARATION

We undertake to cause a record to be prepared and lodged, and to include all material required to be included in the record under the rules and Practice Directions and any Order or Direction in the proceedings.

PARTICULARS OF THE APPELLANT

Name:	LM Investments Management Limited (In Liquidation) (Receivers and Managers appointed) ACN 077 208 461, as responsible entity of the LM First Mortgage Income Fund
Appellant's Address:	C/- FTI Consulting (Australia) Pty Ltd, 22 Market Street, Brisbane, Queensland,
Solicitor's Name	Stephen Charles Russell
and firm name:	Russells
Solicitor's business address:	GPO Box 1402, Brisbane, Queensland, 4001
Address for service:	Level 21, 300 Queen Street, Brisbane, Queensland, 4000
Telephone:	07 3004 8888
Fax:	07 3004 8899
Email:	srussell@russellslaw.com.au

PARTICULARS OF THE FIRST RESPONDENTS

Name:	Raymond Edward Bruce and Vicki Patricia Bruce as First Respondents
Residential Address	167 Foreshore Road RDI, Kaitaia New Zealand
Solicitor's name	Amanda Banton
and firm name:	Piper Alderman

Solicitor's business address:	Level 36 123 Eagle Street Brisbane, Queensland
Address for service:	Level 36 123 Eagle Street Brisbane, Queensland
Telephone:	07 3220 7777
Fax:	-
Email:	abanton@piperalderman.com.au

PARTICULARS OF THE SECOND RESPONDENT

Name:	Roger Shotton
Residential Address	Phirom Gardens – Flat 9A 11, Sukhumvit Road Wattana Bangkok 10110 Thailand
Solicitor's name and firm name:	David Robert Walter Tucker Tucker Cowen
Solicitor's business address:	Level 15 15 Adelaide Street Brisbane, Queensland
Address for service:	Level 15 15 Adelaide Street Brisbane, Queensland
Telephone:	07 3003 0000
Fax:	07 3003 0033
Email:	dtucker@tuckercowen.com.au

PARTICULARS OF THE THIRD RESPONDENTS

Name:	David Nunn and Anita Jean Byrnes
Residential Address	David Nunn: ~~29 Ocean Street~~ c/- his solicitors Synkronos Legal ~~Kogarah~~ 8 Masters Street ~~Sydney~~ Newstead ~~New South Wales~~ Brisbane, Queensland
Residential or Business Address	Anita Jean Byrnes c/- her solicitors Synkronos Legal 8 Masters Street Newstead Brisbane, Queensland

Solicitor's name	Gregory John Litster
and firm name:	Synkronos Legal
Solicitor's business address:	8 Masters Street Newstead Brisbane, Queensland
Address for service:	8 Masters Street Newstead Brisbane, Queensland
Telephone:	07 3251 7930
Fax:	07 3252 7147
Email:	GregLitster@synkronos.com

PARTICULARS OF THE FOURTH RESPONDENT

Name:	Australian Securities & Investments Commission as Fourth Respondent.
Business Address	Level 20, 240 Queen Street, Brisbane. Queensland
Solicitor's name	Hugh Copley
and firm name:	Australian Securities & Investments Commission
Solicitor's business address:	Level 20, 240 Queen Street, Brisbane, Queensland
Address for service:	Level 20, 240 Queen Street, Brisbane, Queensland
Telephone:	07 3867 4892
Fax:	07 3867 4790
Email:	hugh.copley@asic.gov.au

Signed:	Russells
Description:	Solicitors for the Appellant
Dated:	23 September, 2013

This Notice of Appeal is to be served on:-

The First Respondents,

Raymond Edward Bruce and Vicki Patricia Bruce

c/- Their Solicitors, Piper Alderman

And on:

The Second Respondent,

Roger Shotton

c/- his Solicitors, Tucker Cowen

And on:

The Third Respondents,

David Nunn and Anita Jean Byrnes

c/- their solicitors Synkronos Legal

And on:

The Fourth Respondent,

Australian Securities & Investments Commission

BDO

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www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
AUSTRALIA

TO THE INVESTOR AS ADDRESSED

4 December 2013

LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288
('the Fund' or 'FMIF')

I refer to my report dated 15 October 2013 and now provide my third update to investors in relation to the winding of up of the Fund, as follows.

1. Refinance of Secured Creditor

As advised in my second report to investors, the refinancing of the Deutsche Bank facility by BOQ was conditional on KordaMentha, who are trustees of the LM Managed Performance Fund ("MPF"), acknowledging that they would not seek to impugn the BOQ securities should it be found they have a constructive trust claim against the secured creditor.

KordaMentha have advised that they are not in a position to sign the requested letter of comfort and therefore the refinance has not been able to proceed.

2. Potential claim by KordaMentha, the trustee of the MPF

As previously advised, KordaMentha, acting as trustee of the MPF has put me on notice of a potential claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM") and/or the Fund in relation to potential breaches of trust. This has not been fully articulated by them and limited details specifying the transactions that may result in a claim have been provided.

3. Tax Statements

It is not our intention to issue taxation statements for the year ended 30 June 2013 to investors at this time. Please be advised that a nil income was declared for the 2012/2013 financial year. The distributions to investors in February and June of this year relate to payments of capital. In addition to these distributions, a further amount was paid in January this year to those investors who had elected to receive monthly income; this distribution related to July - October 2010 interest payments and was included in investors tax statements for the 2011 financial year.

Should investors wish to receive a transaction statement please contact the Investor Relations team on +61 7 55844500 or mail@lmaustralia.com.

BDO

4. Funds Held in Trust

As advised in my report dated 15 October 2013, there is approximately $8M held in a solicitors trust account in relation to amounts paid by residents of the retirement villages/aged care facilities to enter into loan/lease arrangements at the centres.

These funds had not been able to be released because the Administrators and Receivers and Managers were concerned about the ongoing potential personal liability to repay the loans when the resident leaves the centre.

As LM Investment Management Ltd (Receivers and Managers Appointed) (In Liquidation) ("LMIM") is now in liquidation and is presently acting as the agent for the mortgagee in possession, then the liquidators are able to execute the agreements without personal liability with a view to securing the release of the funds from trust and reducing the secured creditors debt. The relevant agreements have been forwarded to FTI for execution in this respect.

Since my last report the Deutche Bank facility has been reduced to $13m. Assuming the trust funds are released to pay down the debt then it is currently expected that the secured creditor will be paid in full by Christmas.

5. Appeal Lodged by FTI

As previously advised, the Liquidators of LMIM have appealed the court's decision that led to my appointment as Receiver of the Fund's assets and person responsible to ensure it is wound up pursuant to its constitution.

The appeal hearing was heard on 28 November 2013 with the decision being reserved. I don't know what the timing for the delivery of the judgement will be however it is not unusual for it to take two to three months to be handed down.

A copy of the court order setting out the decision will be placed on the website www.lmfmif.com when released.

6. Valuation of the Fund

Following their appointment as Administrators to the responsible entity of the Fund on 19 March 2013, FTI arranged for professional valuations of the properties held as security for the Fund. The Receivers and Managers of the Fund, McGrathNicol, have continued with this process with the final valuation for one of the aged care facilities expected to be received later this week.

Prior to the appointment of the Administrators and as previously advised in their report to investors dated 7 June 2013, the Responsible Entity had not instructed professional valuations for a number of properties for some time and had relied on their in-house assessment of the property values and feasibility studies to determine the valuation of the fund.

The last valuation of the fund reported to investors in December 2012 was $288,980,628 with a unit value of 59 cents based upon the June 2012 audited accounts. Since that time there have been asset disposals totalling $28,176,878.

Taking into account the most recent professional valuations and offers received for each of the properties provides a total value of the assets of between $80,663,805 and $109,308,582. The lower

range includes a valuation of the underlying asset in one line, at a discount to the valuation amount or offers received with the higher range allowing for disposal of the individual parts of the properties at valuation or based on the offers received.

I have used these professional valuations and offers received to assist in determining the current estimated return to investors as outlined and further commented on at Section 9 below.

7. Realisation of assets

Details of the assets to be realised are summarised in the table below and which includes details of those subject to contract, offers received and current strategy for disposal. The valuations of the individual assets are not included so as to not prejudice any negotiations in relation to the sale of the properties.

Location	Description of asset/Strategy	Status
ACT	Mixed use development site (7,056m2) with DA approval for 278 residential units and a child care centre. Under contract. Due to settle on 6 December 2013.	Under contract
QLD	90 strata titled hotel rooms. Sell down of units ongoing with 32 sold to date, 40 under contract and 18 remaining to be sold.	Under contract/ Offers received/ On the market
QLD	The development comprises of 5 separate multi-storey buildings with a total of 119 residential units. Sell down of units ongoing. Of the 119 units, 109 have been sold to date, 4 under contract, 1 under offer and 5 remaining to be sold.	Under contract/ Offers received/ On the market
WA	12 luxury residential units, 11 sold to date with 1 remaining to be sold.	On the market
NSW	The security comprised of 4 units within a larger purpose built commercial building. Two adjoining units are occupied by a dance and yoga studio with the other two units unoccupied. A sale of the occupied units was completed in June this year. The remaining vacant units are currently being marketed.	On the market
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the Fund. Of the 63 units, 59 units remain for sale/lease. A sale/lease marketing campaign is ongoing.	On the market
WA	The development has been subdivided into three super lots. The first lot consists of a residential subdivision with 9 created lots and	On the market

	an englobo parcel of land (7.7851 ha). The second lot comprises of an englobo parcel of land (1.6128ha) currently zoned as mixed use. A DA had previously been granted for 86 grouped dwellings. The third lot is currently zoned as mixed business (1.6291ha). In addition to the above security there is also a charge over the guarantor's home.	
NSW	Industrial development site with partly constructed (40-50%) strata titled development of warehouse/retail/office precinct. DA approval for a mixed use industrial estate of 56 units, comprising of 30 industrial units, 13 high tech units, 12 retail units and a child care facility.	Preparing to market
QLD	The development is an eight stage project to provide 116, 3 or 4 bedroom townhouses. There is 1 remaining lot from Stage 6, 14 completed lots from stage 7 with 12 lots from Stage 8 due for completion in December 2013.	Preparing to market
VIC	61 strata titled units within a larger purpose built self-storage facility.	Preparing to market
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units. Of the current 64 units, 22 are vacant.	Preparing to market
NSW	A supported living community, with 83 completed independent living units. 22 units are currently vacant.	Preparing to market
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Strategy being finalised
QLD	72 strata titled unit resort complex with management rights. 15 units have been sold to date with 57 units remaining.	Strategy being finalised
QLD	Two supported living communities. One currently has 62 completed units (14 vacant) with a further 106 proposed. The other has 110 completed units, with 26 currently vacant.	Strategy being finalised
QLD	Residential land subdivision. 3 constructed detached dwellings, 16 completed residential land lots, 80 lots with operational works	Current lots on the market with a strategy

	approval and additional land (approx. 57ha) with or pending development approval.	being finalised for the balance land.
VIC	A supported living community, with 60 completed independent living units (5 vacant) with a further 132 units proposed.	Strategy being finalised
TAS	A supported living community, with 25 completed independent living units (4 vacant) and a further 18 proposed.	Strategy being finalised

8. Other Potential Recoveries/Legal Actions

In addition to the realisation of the property assets of the Fund, there are legal proceedings on foot or currently being contemplated/investigated, as follows;

8.1 Bellpac Proceedings

8.1.1 Settlement of previous proceedings

In November 2010, proceedings against Gujarat NRE Minerals Limited were settled for a total amount of approximately $45.6M.

Both FMIF and MPF made loans to Bellpac Pty Ltd (In Liquidation) with approximately $48.8M and $24.0M outstanding to the FMIF and MPF at the time of settlement.

FMIF held a first mortgage over the property and MPF a second mortgage over the property that was the subject of the proceedings.

Notwithstanding the FMIF priority position, the settlement proceeds were split between the funds on the basis of a 65%/35% split with FMIF receiving $32.9M and MPF $12.7M.

LMIM was the Responsible Entity of the FMIF and the trustee of the MPF at the time this decision was made.

LMIM appears to have arrived at this decision after taking legal and accounting advice and after determining it was appropriate to split the proceeds based on the MPF funding the majority of the costs of the litigation and what terms a litigation funder would likely offer in relation to funding such an action.

No written agreement had been entered into between the funds and it appears that the majority of the funding had been provided by the MPF because the financier of the FMIF at the time had restricted access to funds.

LMIM appears to have preferred the interests of the MPF over the FMIF in splitting the proceeds of sale of the property/settlement of the litigation and therefore there may be a claim against the Responsible Entity and/or the MPF in relation to this transaction.

I am currently making further enquiries in this respect to determine if legal action should be commenced against any of the above parties.

8.1.2 Other Litigation

There are currently three other proceedings on foot in relation to Bellpac, as follows;

- Judgement has been awarded in favour of Bellpac in relation to $2M of bonds held in Gujaret NRE Coking Coal Ltd ("Gujaret"). The bonds are convertible into shares of Gujaret which are currently traded on the Australian Stock Exchange;
- There is a claim against several parties in relation to a further $8M of bonds in Gujaret where it is alleged these remain the property of Bellpac; and
- The second mortgagee of Bellpac has commenced proceedings against LMIM and the Receivers and Managers of Bellpac in relation to the alleged sale of the property at an undervalue and where this was part of the settled proceedings outlined at Section 8.1.1 above.

8.2 Other Potential Claims Against the Responsible Entity and Related Parties

8.2.1 Management Services Agreements with LM Administration Pty Ltd (in Liquidation) ("LMA")

The audited accounts for the FMIF for the year ended 30 June 2012 show that approximately $10.2M was paid to a related entity, LMA for "loan management fees paid to the responsible entity for loan management and receivership services provided by the responsible entity on behalf of the scheme in replacement of appointing external receivers".

I understand further amounts totalling approximately $2M were paid to LMA for the period from the 1 July 2012 to 19 March 2013 although I am awaiting further details to confirm the position in this respect.

Legal and accounting advice was received by the responsible entity in relation to the charging of these fees.

I am currently undertaking investigations in relation to this matter, and as to whether there has been any breach of the Corporations Act.

8.2.2 Distribution to Class B Unit Holders

During the financial year ended 30 June 2012 distributions of approximately $16.9M were made to Class B unit holders at a time when class A and C unit holders did not receive any distributions.

Class B unit holders, relate to the three feeder funds of FMIF. These feeder funds, together with their respective Responsible Entities, are summarised below:

Feeder Fund	Responsible Entity
LM Currency Protected Australian Income Fund	LMIM
LM Insitutional Currency Protected Australian Income Fund	LMIM
LM Wholesale First Mortgage Income Fund	Trilogy Funds Management Limited

Clause 3.1 of the constitution states that *"unless the terms of issue of a Unit or a Class otherwise provide, all units will carry all rights and be subject to all the obligations of Members under this Constitution"*.

Section 601FC(1)(d) of *the Corporations Act 2001* places a duty on the Responsible Entity to *"treat the members who hold interests in the same class equally and members who hold interests in different classes fairly"*.

I am unaware of any rights of Class B unit holders which would entitle them to a priority distribution over other classes of unit holders in the Fund.

Both the fund's financial statements and compliance plan were audited by Ernst & Young.

The auditor's report for the financial year ended 30 June 2012 noted a matter of material uncertainty surrounding the distribution, which states:

"During the period, the Scheme declared distributions of $16,904,211 to Class B unitholders (the Feeder Funds), as described in Note 3. These distributions have been fully reinvested back into the Scheme by the Feeder Funds during the period. Compliance with the Trust Deed and the Corporations Act in relation to these distributions is a matter of legal interpretation and the Responsible Entity believes it has an arguable position to support the declaration of these distributions as being fair and reasonable to all classes of unitholders. This is an area of significant judgement and accordingly, we bring it to your attention."

The auditor's report of the compliance plan for the financial year ended 30 June 2012 recorded an 'Emphasis of Matter' regarding the material uncertainty of the declared distributions, which states:

"During the period, the LM First Mortgage Income Fund ("the Scheme") declared distributions of $16,904,211 to Class B unit holders, of which $11,787,910 relates to the LM Currency Protected Australia Income Fund and the LM Institutional Currency Protected Australian Income Fund (schemes referred to as the "Feeder Funds"). These distributions were declared to enable the Feeder Funds to recognise distribution income to match expenses incurred. All Feeder Funds distributions have been reinvested into the Scheme during the period. Compliance with the Trust Deed and Corporations Act in relation to these distributions is a matter for legal interpretation and the Responsible Entity believes it has an arguable position to support the declaration of these distributions as being fair and reasonable to all classes of unit holders. This is an area of significant judgement and accordingly, I bring it to your attention."

Copies of the audit reports are available on the website www.lmfmif.com, which has been set up to assist with investor communication.

A breakdown of the Fund's different classes of unit holders together with the effect the distribution had on the unit holders are summarised below:

Descrirption	Class A	Class B	Class C	Total
Opening Balance of Units (1 July 2011)	254,832,731	210,391,005	9,635,388	474,859,124
% units start of year	53.67%	44.30%	2.03%	100%
Units issued during the year	0	3,004,385	0	3,004,385
Units redeemed during the year	(2,072,000)	(4,497,306)	(47,739)	(6,617,045)
Total excluding any distribution/reinvestment	252,760,731	208,898,084	9,587,649	471,246,464
% Units excluding any distribution/reinvestment	53.64%	44.33%	2.03%	100.00%
Units reinvested following distribution	0	15,964,355	0	15,964,355
Closing balance of units (30 June 2012)	252,760,731	224,862,439	9,675,527	487,298,697
% units end of year	51.87%	46.14%	1.99%	100%

As shown above the effect of the distribution/reinvestment is that Class B unit holders have increased their units in the fund from 44.33% to 46.14% at the expense of the Class A & C unit holders.

This will result in the Class B unit holders receiving a greater amount in the winding up of the Fund as they will receive 46.14% of the assets available for distribution to investors rather than 44.3% of the total.

The above table also highlights the following discrepancy in the amount distributed to Class B Unit Holders and the amount reinvested in the fund:

Descritption	Amount ($)
Distribution to Class B Unit Holders	16,904,211
Reinvestment after distribution	(15,964,355)
Variance in reimbursement	939,856

This analysis is in conflict with the auditor's comments which note that *"distributions have been fully reinvested back into the Scheme"*. Further investigation into the discrepancy of $939,856 will be undertaken and the results of my findings reported to investors in due course.

My solicitors are currently considering whether or not it is possible to reverse these transactions and if there are potential legal claims in respect of same.

8.2.3 Changes in Constitution

The fund's constitution was amended several times since its initial execution on 24 August 1999. The terms of the constitution stipulate that it may be modified or repealed or replaced with a new constitution, by:

a) Special resolution of the members of the scheme; or
b) The Responsible Entity, if the Responsible Entity reasonably considers the change will not affect Members' rights.

I am not currently aware of any special resolutions passed by members resolving to amend the terms of the constitution.

From my review of the constitution amendments, I am aware of several changes to the permitted loan to valuation ratio ('LVR') of the fund. LVR is defined in the Fund's constitution as "*the ratio of the amount of a loan to the valuation of the Borrower's property offered as security for a loan in the Scheme*". These changes were as follows:

- The original constitution dated 24 August 1999 provided for a LVR of no more than 66.66%;
- On 19 July 2002 the permitted LVR for the security property was amended to 75.00%;
- On 6 June 2005 the constitution was amended (Clause 13.3) so that the Responsible Entity may approve a LVR greater than clause 13.2(a) (i.e. 75%) after a loan has settled and where the Responsible Entity considers it is in the best interests of the members of the scheme; and
- On 21 April 2006 Clause 13.3 was amended to "after a loan has settled and where the RE considers it is in the best interests of the members, the RE may approve an LVR not to exceed 85% of the value of the security property".

Further investigation is required to determine the effect of these amendments and whether or not there may be potential legal claims arising from that.

8.2.4 Fund Valuation Policy

A review of the fund's compliance plan dated 16 March 2011 details the following regarding the fund's valuation policy:

- Valuations may only be carried out by panel valuers; and
- An updated valuation will generally be required for commercial loans at 24 month intervals and construction loans at 12 month intervals.

From my preliminary enquiries, it appears that the Responsible Entity did not generally obtain updated professional valuations after the initial advance was made. Instead, in the majority of cases, they relied upon discounted cash flows prepared by management on the feasibility of a project.

Further enquiries will be undertaken to determine if this was a breach of the policy and if there is a potential legal claim.

BDO

8.2.5 Potential Claim against the Auditor

One of BDO's auditors is currently reviewing the audits of the financial statements and the compliance plans for the last six years with a view to determining if there is a potential claim for damages against the auditors of the Fund.

9. Estimated Return to Investors

Based on the professional valuations and offers received for the properties charged to the Fund, I provide below an estimated return to investors of between 13 and 19 cents in the dollar as at 30 November 2013 as follows:

	Low $000's	High $000's
Cash at Bank	5,720	5,720
Funds held in trust	8,936	8,936
Estimated selling prices	80,664	109,309
Less:		
Deutsche Bank facility	(13,000)	(13,000)
Selling costs (3.5% of sale price)	(2,823)	(3,826)
Land tax & rates	(563)	(563)
Other unsecured creditors	(10,127)	(9,830)
Estimated FTI Fees & legal costs (subject to approval)	(3,069)	(3,069)
Receivers and Managers' Fees (McGrath Nicol)	(647)	(647)
Receiver's fees & outlays (BDO)	(394)	(394)
Estimated net amount available to investors as at 30 November 2013	**64,696**	**92,635**
Total investor units	488,787,330	488,787,330
Estimated return in the dollar	**0.13**	**0.19**

The above table does not take into account future operating costs, future interest on the Deutsche Bank facility, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

10. Updated Unit Price

I have received numerous requests to provide an updated unit price. In this regard, I provide below an updated unit price as at 30 November 2013 of 17 cents, which is based on the mid-point of the high and low estimated selling prices of the secured assets as at 30 November 2013.

	$000's
Total Value of Fund Assets as at 30 November 2013 (net of land tax and rates)	94,986
Less Deutsche Bank facility	(13,000)
Less Creditors and Other Payables	(17,413)
Total Net Value of Fund Assets	**80,674**
Total Number of Units as at 30 November 2013	**488,787**
Unit Price	**0.17**

I *attach* a copy of a letter that may be forwarded to Centrelink confirming the unit price as at 30 November 2013, and which may be used by investors to assist with the review of their pensions.

11. Distributions to Investors

Distributions to investors will recommence as soon as possible and after Deutsche Bank has been paid out in full.

Deutsche Bank is expected to be paid out in December 2013 or January 2014, subject to receipt of the trust monies of approximately $8m referred to at Section 4 of this report.

As mentioned earlier in my report, I am on notice from KordaMentha that the MPF potentially have a constructive trust or breach of trust claim against the secured creditor and/or the Fund.

The realisation of the Fund's assets is expected to take up to two or three years dependent on the time taken to improve or develop certain assets and proceed to sell the properties.

The Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned at Section 8.1.2 are resolved.

I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

12. Audited Accounts

As previously advised, I have been in discussions with FTI and ASIC in relation to whether or not there is a need to undertake an annual audit of the Fund during the course of the winding up.

I am presently awaiting confirmation from the Australian Securities and Investments Commission that they will take no action in relation to the non-provision of the audited accounts.

BDO

13. Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details below to advise us in this regard.

Due to the upcoming Christmas break and bearing in mind there will be reduced activity in the realisation of the assets in the holiday period, I will provide my next report to investors at the end of January 2014.

14. Receiver's Remuneration and Expenses

I attach a summary of my remuneration and outlays for the period from my appointment on 8 August 2013 to 30 November 2013.

My remuneration incurred during this period totals $352,144 plus outlays of $41,628 plus GST.

Approval of my fees will be the subject of an application to court in due course. A copy of my application in this respect will be posted to the website www.lmfmif.com and investors will be notified when the application has been lodged.

15. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations
Phone: +61 7 5584 4500
Fax: +61 7 5592 2505
Email: mail@lmaustralia.com

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours faithfully

David Whyte
Receiver

REMUNERATION REPORT

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

8 August 2013 to 30 November 2013

Employee	Position	Rate	Total Units	Total $	Units	$	Units	$	Units	$	Units	$	Units	$	Units	$	Units	$
Whyte, David	Partner	560.00	235.70	131,992.00	34.00	19,040.00	134.80	75,488.00	1.20	672.00	4.30	2,408.00	61.40	34,384.00	0.00	0.00	0.00	0.00
Fielding, Andrew	Partner	560.00	1.20	672.00	1.00	560.00	0.00	0.00	0.20	112.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Beauchamp, Margaux	Executive Director	460.00	190.10	87,446.00	2.30	1,058.00	184.80	85,008.00	0.00	0.00	3.00	1,380.00	0.00	0.00	0.00	0.00	0.00	0.00
Somerville, John	Senior Manager	425.00	14.00	5,950.00	8.00	3,400.00	3.70	1,572.50	2.30	977.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Haines, Charles	Senior Manager	425.00	81.30	34,552.50	0.10	42.50	22.20	9,435.00	2.90	1,232.50	56.10	23,842.50	0.00	0.00	0.00	0.00	0.00	0.00
Garcia, Joanne	Manager	390.00	171.90	67,041.00	8.50	3,315.00	86.70	33,813.00	26.70	10,413.00	0.00	0.00	0.50	195.00	6.40	2,496.00	43.10	16,809.00
Wilson, James	Manager	390.00	1.40	546.00	0.30	117.00	0.20	78.00	0.90	351.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dharmaratne, Michael	Senior Accountant I	310.00	16.10	4,991.00	6.10	1,891.00	2.30	713.00	7.70	2,387.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tipman, Daniel	Senior Accountant I	310.00	0.60	186.00	0.10	31.00	0.00	0.00	0.50	155.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Kennedy, Nicola	Accountant II	190.00	8.30	1,577.00	5.00	950.00	3.30	627.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Taniran, Rycko	Accountant II	175.00	85.50	14,962.50	0.00	0.00	85.50	14,962.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jackson, Nicole	Practice Assistant	150.00	5.10	765.00	5.10	765.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Richardson, Ashley	Administration Assistant	75.00	6.40	480.00	6.40	480.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Hattingh, Moira	Administration Assistant	75.00	13.00	982.50	0.50	37.50	0.00	0.00	12.60	945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	TOTAL		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	GST		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	TOTAL INCL GST		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	AVERAGE HOURLY RATE		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]		[illegible]	

REMUNERATION REPORT

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

8 August 2013 to 30 November 2013

Outlays	
General	17,130.88
Postage	10,507.99
Printing/Copying	8,470.50
Searches	3,191.64
Airfares	1,301.99
Accommodation	339.56
Parking	217.56
Car Hire	297.96
Mileage	113.40
Taxi Fares	56.36
SUB TOTAL	**41,627.84**
GST	**4,162.78**
TOTAL	**45,790.62**
TOTAL INVOICE	**433,148.47**

BDO

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Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO WHOM IT MAY CONCERN

4 December 2013

LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288
('the Fund' or 'FMIF')

I refer to my appointment as the Receiver of the Fund's assets and as the person responsible to wind up the Fund in accordance with its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I provide an update on the estimated unit price of the fund as at 30 November 2013, calculated as follows:

	$000's
Total Value of Fund Assets as at 30 November 2013 (net of land tax and rates)	94,986
Less Deutsche Bank facility	(13,000)
	81,986
Less Creditors and Other Payables	(17,413)
Total Net Value of Fund Assets	**80,674**
Total Number of Units as at 30 November 2013	**488,787**
Unit Price	**0.17**

Should you have any queries in respect of the above, please contact Michael Dharmaratne of my office on (07) 3237 5768.

Yours faithfully

David Whyte
Receiver

BDO

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Fax: +61 7 3221 9227
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GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

19 February 2014

LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288
('the Fund' or 'FMIF')

I refer to my report dated 4 December 2013 and now provide my fourth update to investors in relation to the winding of up of the Fund, as follows.

1. Repayment of indebtedness to the Secured Creditor

At the time of my previous report to investors dated 4 December 2013, the secured creditor was owed $13m. Following the release of trust monies totalling approximately $8m (referred to in my previous report) and other property realisations the secured creditor has been repaid in full.

Nothwithstanding this, the Receivers and Managers appointed by the secured creditor have advised that they are not yet in a position to retire until the potential claim by KordaMentha as the new trustee of the LM Managed Performance Fund is resolved.

2. Potential claim by KordaMentha, the trustee of the MPF

As previously advised, KordaMentha, acting as trustee of the MPF has put me (and the Receivers and Managers appointed by the secured creditor) on notice of a potential claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM") and/or the Fund in relation to potential breaches of trust.

This correspondence did not include any notice of a potential claim against the secured creditor. The claims are vague and unparticularised.

In late November 2013, KordaMentha brought an application to court against the previous trustee, LMIM to obtain access to certain books and records of the Managed Performance Fund and a court order was granted governing the process that would be adopted to allow access to same.

KordaMentha have advised me that they have completed a substantial amount of their investigations however they still require further time before deciding whether or not a claim will be brought against the previous trustee and/or the Fund.

Until this position becomes clearer, the secured creditor releases its security and the Receivers and Managers retire, I will not be in a position to recommence distributions to investors.

3. Appeal Lodged by FTI

As previously advised, the Liquidators of LMIM have appealed the court's decision that led to my appointment as Receiver of the Fund's assets and person responsible to ensure it is wound up pursuant to its constitution.

The appeal hearing was heard on 28 November 2013 however the decision has been reserved and is still awaited.

A copy of the court order setting out the decision will be placed on the website www.lmfmif.com when released.

4. Valuation of the Fund

Following my last report, a number of investors have queried why there has been such a significant downturn in the valuation of the fund and bearing in mind that the GFC occurred more than five years ago (and when the investors units were still valued at 100 cents in the dollar).

There are a number of factors that have contributed to the loss in value, including the following:

- the methodology used in the valuation of the Fund;
- interest on loans granted to borrowers not being paid and being capitalised into the loan amount resulting in an increase in the loan to value ratio;
- substantial fees being paid to the Responsible Entity of the Fund;
- the Fund borrowing money from banks to increase funding available to borrowers;
- borrowers not paying interest and defaulting on loans with interest still having to be paid to the external financier; and
- the Fund having to meet costs not paid by the defaulting borrowers in respect of operating costs of the assets and statutory obligations including rates and land tax. Some of these costs have been substantial. For example three operating businesses have had trading shortfalls of up to approximately $5m per annum funded so that these businesses can be sold as going concerns.

Some of these issues are commented on in more detail below:

BDO

Method of valuation

As advised in my report dated 4 December 2013, the Responsible Entity has not obtained independent professional valuations of the charged properties for several years (which is a breach of the Constitution and Compliance Plan of the Fund) and instead has relied on internally produced feasibility studies of the properties.

The feasibility studies take into account the forecast development costs and sales for each property with the net cashflows derived being discounted back to a net present value.

A number of the feasibility studies are not viable with the properties having to be disposed of on an "as is" basis.

As previously advised, professional valuations were instructed by FTI and McGrathNicol after the Responsible Entity was placed into administration and it is these independent values on an "as is" basis or offers received that have been used to value the Fund.

This resulted in a downward revision in value of an unit from 59 cents as at 31 December 2012 to 17 cents as at 30 November 2013.

By way of example, one asset has reduced from approximately $50m as at 31 December 2012 to $13.5m as at 30 November 2013. This is because the existing planning permission is not viable for in excess of 450 units to be built on the site. Further the Fund should not be taking the risk of developing out the 400+ units to be built.

Development applications are being prepared to amend the existing approvals with a view to making the position viable and developing part of the site only with the balance of land to be sold.

A further example is where the Responsible Entity valued a property at approximately $26m as at 31 December 2012 that only has a current market value of $4.9m.

Again, the Responsible Entity's valuation was based on a feasibility study that is not workable because of the risks associated with developing out the product with it being far from certain that it would produce a better outcome taking into account the current rate of sale for the product and the number of units available before any further construction could be contemplated.

Defaulting loans

A summary of the balances of defaulting loans recorded in the Fund's audited accounts for the 2008 to 2012 financial years is provided in the table below:

	2008 $	2009 $	2010 $	2011 $	2012 $
Gross default loans opening balance	83,826,384	101,159,653	331,473,714	332,894,902	481,037,628
New and increase default loans	59,907,804	268,567,327	39,849,820	170,613,998	67,271,669
Balances written off	-754,152	-15,307	-1,333,416	-13,248,250	-29,304,112
Returned to performing or repaid	-41,820,383	-38,237,959	-37,095,216	-60,827,696	-61,394,886
Total default loans	***101,159,653***	***331,473,714***	***332,894,902***	***429,432,954***	***457,610,299***

It can clearly be seen from the above summary, the significant increases that have taken place over this period with almost all loans in default by 2012.

The balances of a number of these loans include the capitalisation of interest.

Fees paid to the Responsible Entity

There have been fees totalling in excess of $77m paid to the Responsible Entity from 1 July 2007 to 30 June 2013, as summarised in the table below:

	2008 $	2009 $	2010 $	2011 $	2012 $	2013 (unaudited) $	Total $
Management fees	5,801,477	15,410,762	9,131,818	10,997,188	9,103,864	4,519,156*	54,964,265
Custodian fees	157,876	123,356	88,163	112,324	29,983	49,107	560,809
Loan management/ recovery fees	nil	nil	nil	5,381,516	4,817,414	nil	10,198,930
Loan origination fees	9,410,607	2,194,460	nil	nil	nil	nil	11,605,067
Total	***15,369,960***	***17,618,578***	***9,219,981***	***16,491,028***	***13,951,261***	***4,568,263***	***77,329,071***

* LMIM ceased to charge management fees in June 2013.

Interest and facility fees paid to external financiers

The Fund has borrowed up to $150m from external financiers since 2008 with the latest facility now repaid in full.

The total interest and facility fees paid to external financiers of $64.3m for the 2008 to 2013 financial years is detailed in the table below:

	2008 $	2009 $	2010 $	2011 $	2012 $	2013 (unaudited) $	Total $
Interest paid	10,021,448	12,218,376	9,965,991	13,519,294	8,143,798	4,719,566	58,588,473
Facility fees	358,949	1,863,982	2,286,887	553,495	450,000	294,095	5,807,408
Total	***10,380,397***	***14,082,356***	***12,252,878***	***14,072,789***	***8,593,798***	***5,013,660***	***64,395,878***

It is clear from our review of the assets remaining to be sold that it would have been in investors interests for the Responsible Entity to have realised some of these assets much earlier so that management fees (which are based on a % of funds under management), bank interest (of up to 20% per annum) and holding costs would have been much reduced.

5. Other Potential Recoveries/Legal Actions

My report of 4 December 2013 identified various matters which required additional investigation to determine whether there were any potential legal actions for dealings which occurred prior to my appointment as Receiver.

These investigations are continuing and I am in the process of obtaining further documentation and legal advices in relation to several potential claims.

Once proceedings are commenced or my investigations are complete in relation to each of the matters, I will update investors accordingly.

6. Estimated Return to Investors

Based on the professional valuations and offers received for the properties charged to the Fund, I provide an estimated return to investors of between 13 and 18 cents in the dollar as at 31 January 2014, calculated as follows:

	Low $000's	High $000's
Cash at Bank	11,204	11,204
Funds held in trust	1,198	1,198
Estimated selling prices of properties to be sold	65,644	92,625
Less:		
Selling costs (3.5% of sale price)	(2,298)	(3,242)
Land tax & rates	(695)	(695)
Other unsecured creditors	(7,936)	(8,076)
Estimated FTI Fees & legal costs (subject to approval)	(3,069)	(3,069)
Receivers and Managers' Fees (McGrathNicol)	(129)	(129)
Receiver's fees & outlays (BDO)	(595)	(595)
Estimated net amount available to investors as at 31 January 2014	**63,324**	**89,221**
Total investor units	488,787,330	488,787,330
Estimated return in the dollar	**0.13**	**0.18**

The above table does not take into account future operating costs, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

7. Distributions to Investors

As mentioned earlier in my report, I am on notice from KordaMentha that the MPF potentially have a breach of trust claim against the Fund. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned in my last report dated 4 December 2013 are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

BDO

8. Audited Accounts

As previously advised, I have been in discussions with FTI and ASIC in relation to whether or not there is a need to undertake an annual audit of the Fund during the course of the winding up.

I am presently awaiting confirmation from the Australian Securities and Investments Commission that they will take no action in relation to the non-provision of the audited accounts.

In the meantime, I have met with representatives of the responsible entities of the feeder funds and confirmed to them that I will provide them with unaudited management accounts for the year ended 30 June 2013 prepared in accordance with the relevant accounting standards to assist them in their valuation of the feeder funds at that date. I will post these accounts on the website www.lmfmif.com as soon as they are finalised.

9. Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details in section 11 below to advise us in this regard.

My next report to investors will be issued by 30 April 2014.

10. Receiver's Remuneration and Expenses

I attach a summary of my remuneration and outlays for the period from my appointment on 8 August 2013 to 7 February 2014.

My remuneration incurred during this period totals $487,936 plus outlays of $52,544 plus GST.

Approval of my fees will be subject to court approval from time to time. An application to court will be prepared for the period ending 28 February 2014 and a copy of my application in this respect will be posted on the website www.lmfmif.com and investors will be notified when the application has been lodged.

11. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations
Phone: +61 7 5584 4500
Fax: +61 7 5592 2505
Email: mail@lmaustralia.com

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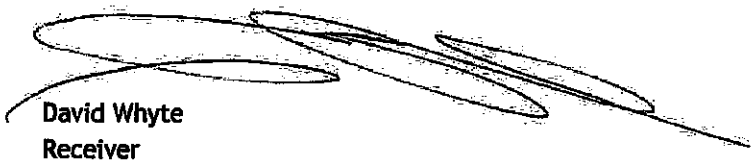
Yours faithfully



David Whyte
Receiver

REMUNERATION REPORT

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

8 August 2013 to 7 February 2014

Employee	Position	Rate	Total Units	Total $	Administration		Assets		Creditors		Investigation		Trading		Recoveries/Tax Collection		Analysis	
					Units	$	Units	$	Units	$	Units	$	Units	$	Units	$	Units	$
Whyte, David	Partner	560.00	302.70	169,512.00	43.00	24,080.00	171.50	96,040.00	2.30	1,288.00	5.50	3,080.00	80.40	45,024.00	0.00	0.00	0.00	0.00
Fielding, Andrew	Partner	560.00	1.20	672.00	1.00	560.00	0.00	0.00	0.20	112.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Beauchamp, Margaux	Executive Director	460.00	218.60	100,556.00	2.30	1,058.00	213.30	98,118.00	0.00	0.00	3.00	1,380.00	0.00	0.00	0.00	0.00	0.00	0.00
Somerville, John	Senior Manager	425.00	15.40	6,545.00	8.80	3,740.00	3.80	1,615.00	2.30	977.50	0.00	0.00	0.50	212.50	0.00	0.00	0.00	0.00
Haines, Charles	Senior Manager	425.00	154.80	65,790.00	3.20	1,360.00	27.20	11,560.00	2.90	1,232.50	118.00	50,150.00	3.50	1,487.50	0.00	0.00	0.00	0.00
Garcia, Joanne	Manager	390.00	275.10	107,289.00	25.20	9,828.00	114.00	44,460.00	55.80	21,762.00	0.30	117.00	24.30	9,477.00	7.00	2,730.00	48.50	18,915.00
Wilson, James	Manager	390.00	1.80	702.00	0.60	234.00	0.20	78.00	1.00	390.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dhanmaratne, Michael	Senior Accountant I	310.00	22.70	7,037.00	8.10	2,511.00	2.90	899.00	11.70	3,627.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tipman, Daniel	Senior Accountant I	310.00	0.70	217.00	0.20	62.00	0.00	0.00	0.50	155.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Kennedy, Nicola	Accountant II	190.00	10.90	2,071.00	7.60	1,444.00	3.30	627.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Taniran, Rycko	Accountant II	175.00	144.20	25,235.00	0.00	0.00	85.50	14,962.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	58.70	10,272.50
Jackson, Nicole	Practice Assistant	150.00	5.10	765.00	5.10	765.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Richardson, Ashley	Administration Assistant	75.00	7.40	555.00	7.40	555.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Hattingh, Moira	Administration Assistant	75.00	13.20	990.00	0.60	45.00	0.00	0.00	12.60	945.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
			TOTAL	517,120	111.10	45,622.00	652.70	269,959.50	89.30	30,489.00	126.80	54,727.00	108.70	56,201.00	7.00	2,730.00	107.20	29,187.50
			GST	48,779.10		4,562.20		26,995.95		3,048.90		5,472.70		5,620.10		273.00		2,918.75
			TOTAL INCGST	565,729.60		50,184.20		296,955.45		33,537.90		60,199.70		61,821.10		3,003.00		32,106.25
			AVERAGE HOURLY RATE	465.49		410.86		413.65		341.42		431.49		517.03		390.00		272.27

REMUNERATION REPORT

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

8 August 2013 to 7 February 2014

Outlays

Accommodation	339.56
Airfares	2,152.90
Car Hire	305.69
General	22,011.62
Mileage	113.40
Parking	422.11
Photocopy	7,371.90
Postage	14,954.59
Printing	1,470.30
Search Fee	3,337.44
Taxi fares	64.84
SUB TOTAL	52,544.35
GST	5,254.44
TOTAL	57,798.79

TOTAL INVOICE	$	594,528.39

BDO

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TO THE INVESTOR AS ADDRESSED

2 May 2014

LM FIRST MORTGAGE INCOME FUND
(RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288
('the Fund' or 'FMIF')

I refer to my report on 19 February 2014 and now provide my fifth update to investors in relation to the winding of up of the Fund, as follows.

1. Position of the Secured Creditor and the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ("MPF")

At the time of my previous report to investors on 19 February 2014, the secured creditor had been repaid in full, however, the Receivers and Managers appointed by the secured creditor had advised that they are not in a position to retire until the potential claim by KordaMentha as the new trustee of the MPF is resolved.

As fairly limited information supporting the claim has been presented by the MPF and bearing in mind the secured creditor has not formally been put on notice of any claims, I contend that the Receivers and Managers should retire and have been liaising with them to determine when this may occur.

In this respect, I met with McGrathNicol and KordaMentha on 23 April 2014 to discuss the position further.

At that meeting, KordaMentha advised that they would prioritise their investigations with a view to determining if they have a claim against the secured creditor or if they can confirm that no claim will be brought by them. They did not however commit to any timeframe to complete their investigations.

Subsequent to that meeting with KordaMentha, I advised McGrathNicol that if KordaMentha does not provide an appropriate release to the secured creditor within one month (ie by 23 May 2014) then I will make an application to court for directions and seek an order that the Receivers and Managers retire.

As previously advised, until the KordaMentha position becomes clearer, the secured creditor releases its security and the Receivers and Managers retire, I will not be in a position to recommence distributions to investors.

2. Appeal Lodged by FTI

As previously advised, the Liquidators of LMIM have appealed the court's decision that led to my appointment as Receiver of the Fund's assets and person responsible to ensure it is wound up pursuant to its constitution.

The appeal hearing was heard on 28 November 2013 however the decision has been reserved and is still awaited.

A copy of the court order setting out the decision will be placed on the website www.lmfmif.com when released.

3. Realisation of Assets

In my report dated 4 December 2013, I provided a summary of the assets to be realised. In the tables below, I summarise the assets realised since then and those remaining to be realised.

The assets to be realised show those that are subject to contract, offers received and current strategy for disposal. With the exception of one loan, FMIF holds the first registered mortgage. The valuations of the individual assets are not included so as to not prejudice any negotiations in relation to the sale of the properties.

Assets realised in full

Location	Description of asset	Status
ACT	Mixed use development site (7,056m2) with DA approval for 278 residential units and a child care centre.	Settled on 6 December 2013.
QLD	The development comprises of 5 separate multi-storey buildings with a total of 119 residential units with 109 sold as at 30 November 2013.	The last of the ten remaining units settled on 17 March 2014.
WA	12 luxury residential units with 11 sold as at 30 November 2013.	The remaining unit settled on 28 February 2014.

BDO

Assets with partial realisations

Location	Description of asset	Status
QLD	90 strata titled hotel rooms. As at 30 November 2013 58 units remained, with 40 under contract at that time. Since then, a further 42 units have settled. Of the remaining 16 units, 1 is currently under contract.	Under contract/ Offers received/ On the market
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the Fund. Of the 63 units, 59 remained as at 30 November 2013. Since that time, a further two units have been sold.	On the market
WA	The development has been subdivided into three super lots. The first lot consists of a residential subdivision with 9 created lots and an englobo parcel of land (7.7851 ha), this was sold in January 2014. The second lot comprises of an englobo parcel of land (1.6128 ha) currently zoned as mixed use. A DA had previously been granted for 86 grouped dwellings, this is subject to a conditional offer. The third lot is currently zoned as mixed business (1.6291 ha). In addition to the above security there is also a charge over the guarantor's home.	On the market/ Offer received
QLD	The development is an eight stage project to provide 116, 3 or 4 bedroom townhouses. There is 1 remaining lot from Stage 6 which is under contract, 10 of the 14 completed lots from stage 7 are under contract with 12 lots from Stage 8 completed in April 2014.	On the market/ Under contract
VIC	61 strata titled units within a larger purpose built self-storage facility.	Under contract
QLD	Residential land subdivision. 3 constructed detached dwellings (1 sold, 1 under offer), 16 completed residential land lots (under offer for purchase in one line), 80 lots with operational works approval and additional land (approx. 57ha) with or pending development approval.	Completed lots under contract or on the market/balance land preparing to market
NSW	Industrial development site with partly constructed (40-50%) strata titled development of warehouse/retail/office precinct. DA approval for a mixed use industrial estate of 56 units, comprising of 30 industrial units, 13 high tech units, 12 retail units and a child care facility.	Under contract

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Assets to be realised

Location	Description of asset	Status
NSW	The security is comprised of 4 units within a larger purpose built commercial building. Two adjoining units are occupied by a dance and yoga studio with the other two units unoccupied. A sale of the occupied units was completed in June last year. The remaining vacant units are currently being marketed.	On the market
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units. Of the current 64 units, 20 are vacant.	Agent about to be appointed
NSW	A supported living community, with 83 completed independent living units. 28 units are currently vacant.	Agent about to be appointed
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Agent about to be appointed
QLD	72 strata titled unit resort complex with management rights. 15 units have been sold to date with 57 units remaining.	Legal action in course/Preparing to market
QLD	Two supported living communities. One currently has 62 completed units (20 vacant) with a further 106 proposed. The other has 110 completed units, with 21 units currently vacant.	Borrower in control of asset
VIC	A supported living community, with 60 completed independent living units (no vacancies) with a further 132 units proposed.	Individual units for sale/ Agent about to be appointed
TAS	A supported living community, with 26 completed independent living units (3 vacant) and a further 18 proposed.	Agent about to be appointed

BDO

4. Other Potential Recoveries/Legal Actions

My report of 4 December 2013 identified various matters which required additional investigation to determine whether there were any potential legal actions for dealings which occurred prior to my appointment as Receiver.

These investigations are ongoing with solicitors having provided advice and briefed counsel in relation to one substantial claim with a view to preparing a statement of claim and commencing proceedings.

Once proceedings are commenced or my investigations are complete in relation to each of the matters, I will update investors accordingly.

5. Estimated Return to Investors

Based on the professional valuations and offers received for the properties charged to the Fund, I provide an estimated return to Investors of between 12 and 18 cents in the dollar as at 31 March 2014, calculated as follows:

	Low $	High $
Cash at Bank	11,392,371	11,392,371
Funds held in trust	1,198,328	1,198,328
Estimated selling prices of properties to be sold	63,067,392	88,931,541
Less:		
Selling costs (3.5% of sale price)	(2,207,359)	(3,112,604)
Land tax & rates	(193,858)	(193,858)
Other unsecured creditors	(8,263,954)	(8,213,954)
FTI Fees & legal costs claimed (subject to approval)	(3,069,000)	(3,069,000)
Receivers and Managers' Fees (McGrathNicol)	(82,000)	(82,000)
Receiver's fees & outlays (BDO)	(775,305)	(775,305)
Estimated net amount available to investors as at 31 March 2014	**61,066,616**	**86,075,520**
Total investor units	488,787,330	488,787,330
Estimated return in the dollar	**0.12**	**0.18**

The above table does not take into account future operating costs, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

BDO

Please note that the distribution to investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of investors' interests.

6. Distributions to Investors

As previously advised, I am on notice from KordaMentha that the MPF potentially have a breach of trust claim against the Fund. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned in my last report dated 4 December 2013 are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

7. Previous requests for redemption of units

A number of investors have raised queries regarding redemption requests previously submitted to the responsible entity of the Fund.

I understand that prior to my appointment over 85% of investors had made redemption requests. Redemption requests had been placed in a queue system and were processed as and when funds allowed.

Any redemption requests outstanding at the time of my appointment as the person responsible to wind up the Fund in accordance with its constitution will not now be processed.

In accordance with the terms of the Constitution of the Fund all assets will be realised and all liabilities of the Fund will be paid with investors receiving the balance monies on a pro rata basis based on their individual investments.

For investors of the feeder funds, it will be the responsible entities of the feeder funds that receive the pro rata distribution. The responsible entities of the feeder funds will distribute funds to investors of these funds based on the terms of the constitutions of those funds.

8. Management Accounts

I am currently liaising with the BDO auditors and LM staff with a view to providing the management accounts for the year ended 30 June 2013 and the half year ended 31 December 2013. These accounts will be prepared in accordance with the relevant accounting standards and will be posted on the website www.lmfmif.com as soon as they are finalised.

9. Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details in section 11 below to advise us in this regard.

My next report to investors will be issued in July 2014.

10. Receiver's Remuneration and Expenses

I attach a summary of my remuneration and outlays for the period from my appointment on 8 August 2013 to 31 March 2014. My remuneration incurred during this period totals $638,618.50 plus outlays of $52,511.95 plus GST, giving a total of $760,243.50 including GST.

Approval of my fees will be subject to court approval on an ongoing basis. An application to court for the period ending 31 March 2014 will be lodged today and investors will be notified after the initial application has been heard to confirm the process of service for the main application and when the main application will be heard by the Supreme Court of Queensland. A copy of my application and supporting affidavits will be posted on the website www.lmfmif.com.

In addition to the remuneration forming part of the court application, I also attach a summary of my remuneration and outlays for the period from 1 April 2014 to 28 April 2014.

My remuneration incurred during this period totals $83,856.50 plus outlays of $317.70 plus GST.

11. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations
Phone: +61 7 5584 4500
Fax: +61 7 5592 2505
Email: mail@lmaustralia.com

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours faithfully

David Whyte
Receiver

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

8 AUGUST 2013 to 31 MARCH 2014

Employee	Position	Rate	Total Units	Total $	Assets		Administration		Creditors		Investigations		Trade-on	
					Units	$	Units	$	Units	$	Units	$	Units	$
Whyte, David	Partner	560.00	366.70	205,352.00	205.10	114,856.00	58.00	32,480.00	3.80	2,128.00	6.80	3,808.00	93.00	52,080.00
Newman, Helen	Partner	560.00	0.20	112.00	0.00	0.00	0.10	56.00	0.00	0.00	0.10	56.00	0.00	0.00
Jenkins, Craig	Audit - Partner	485.00	2.90	1,406.50	0.00	0.00	0.00	0.00	0.00	0.00	2.90	1,406.50	0.00	0.00
Jenkins, Craig	Audit - Partner	475.00	3.00	1,425.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	1,425.00	0.00	0.00
Beauchamp, Margaux	Corporate Finance - Director	460.00	244.70	112,562.00	242.40	111,504.00	2.30	1,058.00	0.00	0.00	0.00	0.00	0.00	0.00
Somerville, John	Senior Manager	425.00	19.40	8,245.00	3.80	1,615.00	11.10	4,717.50	2.30	977.50	0.00	0.00	2.20	935.00
Haines, Charles	Senior Manager	425.00	238.20	101,235.00	15.30	6,502.50	6.50	2,762.50	15.80	6,715.00	198.10	84,192.50	2.50	1,062.50
Garcia, Joanne	Manager	390.00	422.10	164,619.00	183.60	71,604.00	103.10	40,209.00	86.70	33,813.00	3.90	1,521.00	44.80	17,472.00
Wilson, James	Manager	390.00	1.40	546.00	0.20	78.00	0.20	78.00	1.00	390.00	0.00	0.00	0.00	0.00
Albert, Anthony	Tax - Manager	390.00	0.30	117.00	0.00	0.00	0.30	117.00	0.00	0.00	0.00	0.00	0.00	0.00
Pagcu, Julie	Audit - Senior Manager	350.00	15.00	5,250.00	0.00	0.00	0.00	0.00	0.00	0.00	15.00	5,250.00	0.00	0.00
Simpson-Wade, Ashleigh	Supervisor	350.00	0.10	35.00	0.00	0.00	0.10	35.00	0.00	0.00	0.00	0.00	0.00	0.00
Dharmaratne, Michael	Senior Accountant I	310.00	29.80	9,238.00	2.90	899.00	10.00	3,100.00	16.90	5,239.00	0.00	0.00	0.00	0.00
Tipman, Daniel	Senior Accountant I	310.00	0.80	248.00	0.00	0.00	0.20	62.00	0.60	186.00	0.00	0.00	0.00	0.00
Kennedy, Nicola	Accountant II	190.00	14.30	2,717.00	3.30	627.00	11.00	2,090.00	0.00	0.00	0.00	0.00	0.00	0.00
Taniran, Rycko	Corporate Finance - Accountant II	175.00	145.20	25,410.00	144.20	25,235.00	1.00	175.00	0.00	0.00	0.00	0.00	0.00	0.00
Ritchie, Sara	Tax - Practice Assistant	130.00	0.20	26.00	0.00	0.00	0.20	26.00	0.00	0.00	0.00	0.00	0.00	0.00
Richardson, Ashley	Team Assistant	75.00	1.00	75.00	0.00	0.00	1.00	75.00	0.00	0.00	0.00	0.00	0.00	0.00
		TOTAL	1,505.30	638,618.50	800.80	332,920.50	205.10	87,041.00	127.10	49,448.50	229.80	97,659.00	142.50	71,549.50
		GST		63,861.85										
		TOTAL INC GST		702,480.35										
		AVERAGE HOURLY RATE		424.25	415.73		424.38		389.05		424.97		502.10	

DISBURSEMENT REPORT
LM First Mortgage Income Fund (Receiver Appointed)
8 August 2013 to 31 March 2014

Item	
Accommodation	339.56
Airfares	2,152.90
Car Hire	305.69
Meeting Expenses	520.65
Mileage	113.40
Parking	422.11
Photocopy	17,227.22
Postage	14,954.59
Printing	11,189.56
Search Fee	3,337.44
Taxi fares	64.84
Website Maintenance	1,883.99
Sub Total	**52,511.95**
GST	**5,251.20**
Total	**57,763.15**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 April 2014 to 28 April 2014
LM First Mortgage Income Fund (Receiver Appointed)

			Totals		Task Area															
					Assets		Creditors		Employees		Trade On		Investigations		Dividends		Administration		Other	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	54.5	30,520.00	11.1	6,216.00	2.7	1,512.00	0.0	0.00	7.6	4,256.00	2.1	1,176.00	0.0	0.00	31.0	17,360.00	0.0	0.00
Margaux Beauchamp	Associate	460	8.7	4,002.00	8.7	4,002.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00
Charles Haines	Senior Manager	425	36.7	15,597.50	3.5	1,487.50	0.0	0.00	0.0	0.00	0.0	0.00	10.8	4,590.00	0.0	0.00	22.4	9,520.00	0.0	0.00
John Somerville	Senior Manager	425	2.2	935.00	0.0	0.00	0.0	0.00	0.0	0.00	1.1	467.50	0.0	0.00	0.0	0.00	1.1	467.50	0.0	0.00
Joanne Garcia	Manager	390	76.3	29,757.00	0.0	0.00	5.2	2,028.00	0.0	0.00	15.8	6,162.00	0.0	0.00	0.0	0.00	55.3	21,567.00	0.0	0.00
Michael Dharmaratne	Senior Accountant I	310	0.8	248.00	0.0	0.00	0.4	124.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.4	124.00	0.0	0.00
Daniel Tipman	Senior Accountant I	310	2.1	651.00	0.0	0.00	1.4	434.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.7	217.00	0.0	0.00
Dean Michalk	Senior Accountant II	270	0.1	27.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.1	27.00	0.0	0.00
Nicola Kennedy	Accountant II	190	7.3	1,387.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	7.3	1,387.00	0.0	0.00
Rycko Taniran	Accountant II	175	2.5	437.50	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	2.5	437.50	0.0	0.00
Dermot O'Brien	Undergraduate	155	1.9	294.50	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	1.9	294.50	0.0	0.00
		TOTALS	193.1	83,856.50	23.3	11,705.50	9.7	4,098.00	0.0	0.00	24.5	10,885.50	12.9	5,766.00	0.0	0.00	122.7	51,101.50	0.0	0.00
		GST		8,385.65																
		TOTAL INC GST		92,242.15																
		AVERAGE HOURLY RATE		434		502		422				444		447				419		

Note: All amounts exclude GST unless otherwise noted

DISBURSEMENT REPORT
LM First Mortgage Income Fund (Receiver Appointed)
01 August 2014 to 28 April 2014

Item	
Printing	317.70
Sub Total	**317.70**
GST	**31.77**
Total	**349.47**

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TO THE INVESTOR AS ADDRESSED

4 August 2014

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my previous reports and now provide my sixth update to investors in relation to the winding up of the Fund, as follows.

1. Position of the Secured Creditor and the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ("MPF")

As previously advised, despite the secured creditor having been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not in a position to retire until the potential claim by KordaMentha as the new trustee of the MPF is resolved.

At a meeting on 23 April 2014, KordaMentha advised that they would prioritise their investigations to determine if they have a claim against the secured creditor. To date, they have not provided an appropriate release to the secured creditor and therefore my solicitors wrote to their solicitors on 28 July 2014 requesting an update on what stage their investigations are at and if a claim will be made against Deutsche Bank.

In order to avoid the costs of making an application to the court for directions and to seek an order that the Receivers and Managers retire, I wrote to the Receivers and Managers on 4 July 2014 with a proposal to resolve the situation without the intervention of the court.

I have proposed that I takeover the realisation of assets and other matters being dealt with by the Receivers and Managers. This also includes an undertaking to not distribute any Fund monies except to meet the remuneration, costs and expenses in connection with my receivership to be paid from Fund assets pursuant to the order of Dalton J of 21 August 2013; or with the prior consent of Deutsche Bank AG.

The undertaking would remain in force until the earliest to occur of the following events:

a. the release of Deutsche Bank AG's charge over the assets of the Fund;

b. the determination or resolution of claims asserted by the trustees of the LM Managed Performance Fund; and

c. the making of a court order releasing me from the undertaking

The Receivers and Managers have responded reiterating the secured creditor's rights under its securities and that they intend to continue the realisation of assets (excluding the retirement villages which they are content are sold under my instructions) and retaining control over the bank accounts and funds realised from asset realisations.

We maintain a good working relationship with the Receivers and Managers and will continue to work with them to achieve an appropriate outcome, so that investors are not disadvantaged and any duplication of costs are kept to a minimum.

2. Appeal Lodged by FTI

As previously advised, the Liquidators of LMIM appealed the court's decision that led to my appointment as Receiver of the Fund's assets and person responsible to ensure it is wound up pursuant to its constitution.

The appeal hearing was heard on 28 November 2013 and the Court's decision to dismiss the appeal was handed down on 6 June 2014. A copy of the court order setting out the decision has been placed on the website www.lmfmif.com.

3. Realisation of Assets

In my report dated 2 May 2014, I provided a summary of the assets to be realised. In the tables below, I summarise the assets realised since then and those remaining to be realised.

Assets realised in full

Location	Description of asset	Status
VIC	61 strata titled units within a larger purpose built self-storage facility.	Settled on 6 June 2014
NSW	Industrial development site with partly constructed (40-50%) strata titled development of warehouse/retail/office precinct. DA approval for a mixed use industrial estate of 56 units, comprising of 30 industrial units, 13 high tech units, 12 retail units and a child care facility.	Settled on 31 May 2014

Assets with partial realisations

Location	Description of asset	
QLD	90 strata titled hotel rooms. Since my last report which included the position as at 31 March 2014, when 29 units remained, with 11 under contract at that time. Since then, a further 15 units have settled. Of the remaining 14 units, 6 are currently under contract.	Under contract/ Offers received/ On the market
WA	The development has been subdivided into three super lots.	On the market

Location	Description of asset	
	The first lot was sold in January 2014. Since my last report the second lot settled in July 2014. The remaining lot is currently on the market.	
QLD	The development is an eight stage project to provide 116, 3 or 4 bedroom townhouses. Of the 14 completed lots from stage 7, 4 have been sold since the date of my last report and a further 7 are under contract. Of the 12 lots from Stage 8 (the final stage), 5 are under contract.	On the market/under contract
QLD	Residential land subdivision. Since, my last report, the final constructed detached dwelling has settled together with 16 completed residential land lots. The remaining 80 lots with operational works approval and balance land are currently on the market.	On the market
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the Fund. Of the 63 units, 59 remained as at 30 November 2013. Since that time, a further two units have been sold.	On the market

Assets to be realised

Location	Description of asset	Status
NSW	The security is comprised of 4 units within a larger purpose built commercial building. Two adjoining units are occupied by a dance and yoga studio with the other two units unoccupied. A sale of the occupied units was completed in June last year. The remaining vacant units are currently being marketed.	On the market
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units. Of the current 64 units, 22 are vacant.	Agent appointed
NSW	A supported living community, with 83 completed independent living units. 28 units are currently vacant.	Agent appointed
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Agent appointed

Location	Description of asset	Status
QLD	72 strata titled unit resort complex with management rights. 15 units have been sold to date with 57 units remaining.	Legal action in course/Preparing to market
QLD	Two supported living communities. One currently has 62 completed units (20 vacant) with a further 106 proposed. The other has 110 completed units, with 21 units currently vacant.	Borrower in control of asset
VIC	A supported living community, with 60 completed independent living units (no vacancies) with a further 132 units proposed.	Individual units for sale/ Agent appointed
TAS	A supported living community, with 26 completed independent living units (3 vacant) and a further 18 proposed.	Agent appointed

4. Other Potential Recoveries/Legal Actions

My report of 4 December 2013 identified various matters which required additional investigation to determine whether there were any potential legal actions for dealings which occurred prior to my appointment as Receiver. I provide an update in relation to investigations undertaken to date and further work to be done, as follows:

4.1 Public Examination

I have recently been successful in obtaining the approval from ASIC as an eligible applicant under the Corporations Act 2001 (the Act) to enable me to make application for a public examination (PE) of directors and other relevant parties to assist with my investigations into potential legal actions against several parties.

A PE is undertaken in the Magistrates Court and is a forum whereby I can ask the Court to summons the directors and other relevant parties to produce documents and to appear in Court and answer questions about the affairs of the FMIF. The answers given at the examination are under oath. Matters identified from the PE may be brought to the attention of ASIC as appropriate.

As I have to date experienced delay in gaining access to certain books and records that concern the FMIF, I anticipate that summonsing certain parties to produce the documents needed for my investigations as part of a PE, will expedite my access to these records.

I have instructed my solicitors to commence preparation of an application for a PE.

4.2 Bellpac Proceedings

4.2.1 Settlement of Gujarat proceedings

For background, I summarise my December 2013 update to investors on this matter as follows:

- In November 2010, proceedings against Gujarat NRE Minerals Limited (Gujarat) were settled for a total amount of approximately $45.6M;

- As MPF funded the majority of the costs of the litigation, the settlement proceeds received in 2011, were shared between the funds on the basis of a 65%/35% split with FMIF receiving $32.9M and MPF $12.7M. LMIM as responsible entity (RE) of the FMIF and as trustee of the MPF arrived at the decision to split the proceeds in this way after taking advice about splitting the proceeds under a litigation funding arrangement typically offered in the open market;
- According to the security held by FMIF and MPF over the property the subject of the litigation, FMIF held first priority to all of the proceeds of the settlement;
- LMIM appears to have preferred the interests of the MPF over the FMIF in splitting the proceeds of sale. Therefore there may be a claim against LMIM and/or the MPF in relation to this transaction.

I have undertaken extensive investigations in relation to this potential claim and I am taking legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

4.2.2 Other Bellpac litigation

a. $2 million of Gujarat Convertible Bonds

A summary of the background is as follows:

- FMIF has first ranking security over the assets of Bellpac;
- In August 2008 these Bonds (that had been issued by Gujarat to Bellpac also in August 2008), were issued by Bellpac to another party and then further transferred to other parties;
- The proceedings by Bellpac and its Liquidators commenced in January 2010. In 2012 Bellpac was successful in obtaining Orders that Bellpac is the true owner of the Bonds;
- The decision was appealed by the defendants in the Full Federal Court in 2013 which was unsuccessful. An application by the defendants for special leave to appeal the decision in the High Court was heard in November 2013 and was also unsuccessful.

A summary of developments is as follows:

i. Gujarat, is a publicly listed company and changed its name to Wollongong Coal Limited (WCL) in April 2014;

ii. The Bellpac Liquidators made application to WCL to convert $1.5 million of the Bonds into shares, however WCL did not respond. In accordance with the terms of the Bonds, WLC is now obliged to redeem the nominal face value of these Bonds (plus interest) into cash and pay the funds to Bellpac;

iii. A demand has now been made against WCL for $2.44 million representing the face value of these Bonds of $1.5 million plus interest;

iv. As WCL has not responded, proceedings will need to be commenced by Bellpac and the Liquidators to seek to recover the redemption cash value of the Bonds plus interest.

v. The remaining Bonds with a face value of $500,000 could not be converted into shares until 1 July 2014. The Liquidators have now made application for conversion and if the bonds are not

converted to shares by 7 August 2014, a demand for the nominal value of the Bonds can also be pursued.

If the Liquidators are successful in realising the Bonds or any shares issued, FMIF will be the beneficiary of the funds recovered, after costs. I have been liaising with the solicitors for the Liquidators in relation to the ongoing matters as raised above.

FMIF is funding the litigation for the benefit of investors.

b. $8 million of Gujarat Convertible Bonds

A summary of the background is as follows:

- The background is the same as the first two dot points of the $2 million Bonds raised above;
- The proceedings by Bellpac and its Liquidators commenced in July 2012 seeking orders that Bellpac is the true owner of the Bonds and the recovery of $4.7 million transferred by Bellpac (pre Liquidation) to two of the defendants.

A summary of developments is as follows:

i. The Liquidators were required to and filed further Affidavit evidence on 1 April 2014;

ii. A directions hearing was held on 30 July 2014, a timetable was set by the Court requiring the filing of certain documentation by a number of the defendants and a further directions hearing was set down for 7 October 2014.

If the Liquidators are successful in obtaining a declaration from the Court that Bellpac is the true owner of the Bonds, FMIF will be the beneficiary of the funds recovered from realising the Bonds, after costs. I have been liaising with the solicitors for the Liquidators in relation to the ongoing litigation as mentioned above.

In order to protect the interest of FMIF in Bellpac's claim to title to the Bonds, FMIF ought to continue to fund the Liquidators' in the proceedings. However, as a first priority, I propose to rigorously pursue the recovery of the cash and shares redemption of the $2 million Bonds claim from WCL to determine WCL's financial capacity.

c. Proceedings against Bellpac Receivers and LMIM

A summary of the background is as follows:

- In February 2013, parties including the second mortgagee of Bellpac (plaintiffs) commenced proceedings against LMIM and the Receivers and Managers of Bellpac in relation to the alleged sale of the Bellpac property at an undervalue. The property that was sold formed part of the settled proceedings outlined at Section 4.2.1 above.

A summary of developments is as follows:

i. In late 2013 the plaintiffs were successful in joining LM's insurers to the proceedings however the insurers appealed. The appeal decision was handed down on 30 June 2014 and was not successful;

ii. LMIM as RE for FMIF and the other respondents are proposing to seek security for costs from the applicants;

iii. Our solicitors have requested that all FMIF records in relation to the sale to Gujarat in preparation for the trial now be collated;

iv. A directions hearing was held on 31 July 2014, a timetable was set down to address the intended security for costs applications by LMIM and other defendants with documentation to be filed by all parties by early October 2014.

4.3 Other Potential Claims against LMIM and related Parties

4.3.1 Management Service Agreements with LM Administration Pty Ltd (in Liquidation) (LMA)

For background, I summarise my December 2013 update to investors on this matter as follows:

- The audited accounts for the FMIF show that a total of approximately $10.2M was paid to LMA (for the years ended 30 June 2011 and 30 June 2012) for loan management fees in replacement of appointing external receivers;
- Amounts totalling approximately $2M were paid to LMA for the period from the 1 July 2012 to 19 March 2013;
- Legal and accounting advice was received by LMIM in relation to the charging of these fees.

I continue to undertake investigations in relation to these matters and I am taking legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

4.3.2 Distribution to Class B Unit Holders

For background, I summarise my December 2013 update to investors on this matter as follows:

- During the financial year ended 30 June 2012 distributions of approximately $16.9M were made to Class B unit holders at a time when class A and C unit holders did not receive any distributions;
- Class B unit holders, relate to the three feeder funds of FMIF;
- I am unaware of any rights of Class B unit holders which would entitle them to a priority distribution over other classes of unit holders in the Fund;
- The auditors qualified the financial statements in regard to this transaction;
- As a result of the distribution and reinvestment of a major portion of that distribution into units in FMIF, Class B unit holders increased their units in the fund from 44.33% to 46.14% at the expense of the Class A & C unit holders. This will result in the Class B unit holders receiving a greater amount in the winding up of the Fund.

A summary of developments is as follows:

i. Further documentation has been provided to assist with my investigations however this is incomplete. Further investigations are required. I continue to undertake investigations in relation to these matters and I am taking legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

BDO

4.3.3 Changes to Constitution

For background, I summarise my December 2013 update to investors on this matter as follows:

- The fund's constitution was amended several times since its initial execution on 24 August 1999;
- The terms of the constitution stipulate that it may be modified or repealed or replaced with a new constitution, by:
    - Special resolution of the members of the scheme; or
    - The Responsible Entity, if the Responsible Entity reasonably considers the change will not affect Members' rights.
- I am not currently aware of any special resolutions passed by members resolving to amend the terms of the constitution;
- I am aware of several changes to the permitted loan to valuation ratio ('LVR') of the fund commencing with an LVR of no more than 66.66% (Constitution dated 24 August 1999) to an LVR permitted not to exceed 85% of the value of the security property (after a loan has settled and where the RE considers it is in the best interests of the members)
- Further investigation is required to determine the effect of these amendments and whether or not there may be potential legal claims arising from that.

A summary of developments is as follows:

i. I have gathered documentation to assist with my investigations, however further information is required to finalise my investigations. I continue to undertake investigations in relation to these matters and I am taking legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

4.3.4 Fund Valuation Policy

For background, I summarise my December 2013 update to investors on this matter as follows:

- A review of the fund's compliance plan dated 16 March 2011 details the following regarding the fund's valuation policy:
    - Valuations may only be carried out by panel valuers; and
    - An updated valuation will generally be required for commercial loans at 24 month intervals and construction loans at 12 month intervals.
- From my preliminary enquiries, it appears that the Responsible Entity did not generally obtain updated professional valuations after the initial advance was made. Instead, in the majority of cases, they relied upon discounted cash flows prepared by management on the feasibility of a project.

A summary of developments is as follows:

i. I have gathered documentation to assist with my investigations, however further information is required to finalise my investigations. I continue to undertake investigations in relation to these matters and I am taking legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

4.3.5 External Valuations

I have commenced a review of the loans where material losses have occurred to ascertain whether the valuations relied on were too high and if there was negligence by the valuer which contributed to the losses.

My investigations are at an early stage and details of developments will be provided in my next update to investors.

4.4 Auditors

I have not at this stage been able to progress my investigations due to an inability to gain access to the auditor's working papers and all relevant FMIF records. I requested the relevant records from the auditors however I have been advised that they will not provide them without being issued with a subpoena. Accordingly, these matters will be considered as part of the upcoming PE process.

Once my investigations are complete in relation to each of the above matters, I will update investors accordingly.

5. Estimated Return to Investors

Based on the professional valuations and offers received for the properties charged to the Fund, I provide an estimated return to investors of between 12 and 18 cents in the dollar as at 30 June 2014, calculated as follows:

	Low $	High $
Cash at Bank	21,016,590	21,016,590
Funds held in trust	1,061,000	1,061,000
Estimated selling prices of properties to be sold	53,838,118	74,132,013
Less:		
Selling costs (2.5% of sale price)	(1,345,953)	(1,853,300)
Land tax & rates	(1,019,566)	(1,019,566)
Other unsecured creditors	(8,535,648)	(3,806,583)
FTI Fees & legal costs claimed (subject to approval)	(4,034,375)	(4,034,375)
Receivers and Managers' Fees (McGrathNicol)	(118,000)	(118,000)

Receiver's fees & outlays (BDO)	(1,165,645)	(1,165,645)
Estimated net amount available to investors as at 30 June 2014	**59,696,522**	**84,212,135**
Total investor units	478,478,997	478,478,997
Estimated return in the dollar	**0.12**	**0.18**

The above table does not take into account future operating costs, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

6. Updated Unit Price

I have received numerous requests to provide an updated unit price. In this regard, I provide below an updated unit price as at 30 June 2014 of 15 cents, which is based on the mid-point of the high and low estimated selling prices of the secured assets as at 30 June 2014.

	$000's
Total Value of Fund Assets as at 30 June 2014 (net of land tax and rates)	86,063
Less Creditors and Other Payables	(14,748)
Total Net Value of Fund Assets	**71,314**
Total Number of Units as at 30 November 2013	**478,479**
Unit Price	**0.15**

I *attach* a copy of a letter that may be forwarded to Centrelink confirming the unit price as at 30 June 2014, and which may be used by investors to assist with the review of their pensions.

7. Distributions to Investors

As previously advised, I am on notice from KordaMentha that the MPF potentially have a breach of trust claim against the Fund. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned at section 4.2.2 above are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities (which totals approximately $10 million) and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

8. Hardship payment requests

A number of investors have raised queries regarding hardship payment requests.

In October 2008, ASIC introduced a scheme whereby the Responsible Entity could apply for relief from their constitutional obligation to treat investors equally. Once the relief was granted, it was for the Responsible Entity to implement a process that was deemed appropriate for the particular fund and it's circumstances. Payments under the hardship provisions were subject to the liquidity constraints of the fund.

Prior to the appointment of administrators to LM Investment Management Ltd (In Liquidation), hardship payments were made on a regular basis. However, the Fund is now in the process of being wound up and as such, payments under the hardship provisions can no longer be made.

9. Fees claimed by LM Investment Management Ltd (In Liquidation) ("LMIM") (by its liquidators, FTI Consulting)

The liquidators of LMIM, Mr Park and Ms Muller, have submitted invoices from LMIM, made out to the Fund, totalling $2,602,040 excluding GST to McGrathNicol for payment in relation to their remuneration and out of pocket expenses for the period from 19 March 2013 to 31 December 2013.

The claim can be broken down into the following three categories:

- Category 1 relates to time spent working on specific fund matters;
- Category 2 is in respect of LMIM's role as the Responsible Entity of the Fund with the time spent by the liquidators and their staff being allocated across all Funds under their control based on a percentage of funds under management;
- Category 3 in relation to the appointments of LMIM as Controllers of a number of assets and where they are acting as agent for the mortgagee in possession.

	Paid to date (GST exclusive) $	Outstanding (GST exclusive) $
Direct time charged to work undertaken for the Fund - including outlays (category 1)		1,551,745
Allocation of Responsible Entity time (category 2)		1,014,826
Time charged in respect of the Controllerships (category 3)	145,643	35,469
	145,643	***2,602,040***

While the claims were submitted to McGrathNicol as the receivers and managers of the Fund assets appointed by Deutsche Bank, McGrathNicol have properly consulted me and are working with me to review and determine the claims.

Both McGrathNicol and I have raised legal questions as whether certain work done by the liquidators of LMIM can properly be charged to the Fund, as well as questions as to the quantum claimed. Although it is only a 'high level' comparison, on the basis of the limited detail provided with their claim, these fees appear high when compared with those of McGrathNicol and BDO, as follows:

	FTI (category 1) $	FTI (category 2) $	McGrathNicol $	BDO $	Total $
19 March to 30 June 2013	657,581.36	656,166.86	n/a	n/a	
July 2013	546,132.50	123,496.08		n/a	
August 2013	142,979.00	98,022.91	293,830.00	33,563.50	
September 2013	55,452.50	62,837.13		84,460.50	
October 2013	38,807.00	38,239.55		111,262.00	
November 2013	55,543.00	24,749.86		116,373.00	
December 2013	21,359.00	11,313.73	412,658.00	45,895.00	
January 2014	Details not yet submitted			77,988.50	
February 2014			152,825.00	94,079.00	
March 2014				74,997.00	
April 2014			195,000.00	83,856.50	
May 2014				98,851.50	
June 2014			118,000.00	111,345.50	
	1,517,854.36	***1,014,826.12***	***1,172,313.00***	***932,672.00***	
Average per month from FTI appointment to 31 July 2013	*273,261.01*	*176,995.12*			***450,256.14***
Average per month from McGrathNicol's appointment to 30 June 2014			*100,739.44*	*87,030.31*	***187,769.75***

Figures are GST exclusive

Note: the amounts specified for BDO to 31 March 2014 are amounts claimed by me for remuneration which are the subject of my application to the Supreme Court filed on 2 May 2014 for approval of remuneration, which is yet to be determined by the Court. The amounts from 1 April 2014 to 30 June 2014 will be subject to approval of the court in due course.

McGrathNicol wrote to FTI on 5 June 2014 requesting further information to support their claim and have approved $145,643.50 (excluding GST) of a total of $181,112 (excluding GST) in respect of category 3 invoices.

Subsequently, I put a proposal to FTI on 10 July 2014 to try and deal with their claim in the most cost effective way for investors and asked them to address a number of shortcomings in the information provided so that it can be properly assessed.

At the time of issuing this report, I am yet to receive a response to this proposal.

The above amounts claimed by the various insolvency practitioners should be put into context by comparing the costs incurred by the Responsible Entity ("RE") prior to the appointment of Administrators on 19 March 2013.

The RE's previous costs, and as set out in my report dated 19 February 2014, averaged $14M for the five years ended 30 June 2012. The costs of managing the Fund since the Administrators appointment include the premises, equipment, staff and consulting costs of approximately $5M per annum (now reduced to less than $3M) plus the insolvency practitioners costs. The costs will continue to reduce as the winding up progresses.

10. Management Accounts

I am currently finalising the management accounts for the year ended 30 June 2013 and the half year ended 31 December 2013. These accounts have been prepared in accordance with the relevant accounting standards and will shortly be posted on the website www.lmfmif.com.

Delays have been encountered in the preparation of the accounts due to poor record keeping, changes in LM accounting staff and no one person having sufficient knowledge to assist with queries on the previous audited accounts. For example, there are a lack of working papers to support the finalised figures and which has a knock on effect to the subsequent periods.

11. Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details in section 14 below to advise us in this regard.

My next report to investors will be issued by 15 October 2014.

12. Receiver's Remuneration and Expenses

As previously advised, an application was made to court on 2 May 2014 for approval of my remuneration for the period from 8 August 2013 to 31 March 2014 in the amount of $702,480.35 inclusive of GST.

This application and supporting documentation has been served on all members and the relevant documents can be found on the website www.lmfmif.com.

The matter was originally set down for a hearing on 26 May 2014. No members chose to be represented at the hearing however LMIM (by its liquidators, Mr Park and Ms Muller) as Responsible Entity for the Fund (referred to in this section simply as "FTI" for ease of reference) was represented, raised

objections to the remuneration and obtained an order from the court to have the matter adjourned with a two day hearing set down for 28 and 29 August 2014.

The court order made on 26 May 2014 included a requirement for FTI to file and serve any Affidavit, including expert evidence, upon which they intend to rely by 7 July 2014 identifying any costs subject to any objection and the basis of each objection.

In order to save costs in this respect, I put a proposal, via my solicitors, to FTI on 17 June 2014 asking them to review the material and set out any objections for my response. FTI did not agree to my proposal. FTI also failed to file and serve any further material by 7 July 2014.

Accordingly, in accordance with the terms of the court order, I instructed my solicitors to bring the matter before the court for directions on 31 July 2014. The court order from the directions hearing is currently being finalised however essentially covers the following:

- Costs were awarded against LMIM in respect of the application for directions;
- No expert evidence can now be submitted;
- The hearing has been set down on 28 August 2014 for two hours only;
- Any further material to be relied upon by FTI must be lodged by Monday 4 August 2014. FTI will need to seek leave from the judge at the hearing on 28 August 2014 if this material is to be relied on.

In addition to the remuneration for the above court application, I have incurred remuneration of $463,296.50 plus outlays of $11,217.63 plus GST for the period from 1 April 2014 to 31 July 2014 as detailed in the attached summary. I will apply to the Court for approval of that remuneration in due course and will advise investors accordingly.

13. LM Investor Victim Centre

One of the investors has brought to my attention that a website, https://sites.google.com/site/lminvestorvictimcentre/home, has been set up for LM investors with one goal "A Fair and Just Resolution for LM Investors".

I have no involvement in the website content and do not accept any responsibility for any of the views expressed therein. I simply bring it to your attention and you should take appropriate legal and/or financial advice before proceeding with any legal or other actions.

14. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations
Phone: +61 7 5584 4500
Fax: +61 7 5592 2505
Email: mail@lmaustralia.com

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours faithfully

David Whyte
Receiver

Summary of professional fees by category of work for the period 1 April 2014 to 31 July 2014
LM First Mortgage Income Fund

			Totals		Task Area									
					Assets		Creditors		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Andrew Fielding	Partner	560	1.9	1,064.00									1.9	1,064.00
David Whyte	Partner	560	221.2	123,872.00	81.4	45,584.00	3.9	2,184.00	57.8	32,368.00	21.4	11,984.00	56.7	31,752.00
Eric Leeuwendal	Director	495	111.4	55,143.00			10.4	5,148.00			100.5	49,747.50	0.5	247.50
Eric Leeuwendal	Director	480	127.6	61,248.00	0.4	192.00	0.1	48.00	0.1	48.00	123.3	59,184.00	3.7	1,776.00
Margaux Beauchamp	Associate	470	4.2	1,974.00	4.2	1,974.00								
Margaux Beauchamp	Associate	460	26.0	11,960.00	26.0	11,960.00								
Eric Leeuwendal	Director	460	0.3	138.00	0.3	138.00								
John Somerville	Senior Manager	440	0.2	88.00			0.2	88.00						
John Somerville	Senior Manager	425	2.4	1,020.00			0.2	85.00	1.1	467.50			1.1	467.50
Charles Haines	Senior Manager	425	65.3	27,752.50	8.6	3,655.00	0.1	42.50			31.9	13,557.50	24.7	10,497.50
Joanne Garcia	Manager	400	145.2	58,080.00	9.1	3,640.00	14.3	5,720.00	109.5	43,800.00			12.3	4,920.00
Joanne Garcia	Manager	390	286.2	111,618.00	5.7	2,223.00	12.7	4,953.00	135.9	53,001.00	0.7	273.00	131.2	51,168.00
Michelle Matchett	Associate	370	5.0	1,850.00	5.0	1,850.00								
Ashleigh Simpson-Wade	Supervisor	360	0.2	72.00			0.2	72.00						
Michael Dharmaratne	Senior Accountant I	320	1.6	512.00			1.2	384.00			0.2	64.00	0.2	64.00
Michael Dharmaratne	Senior Accountant I	310	9.9	3,069.00	1.2	372.00	7.6	2,356.00			0.2	62.00	0.9	279.00
Daniel Tipman	Senior Accountant I	310	2.5	775.00			1.8	558.00					0.7	217.00
Dean Michalk	Senior Accountant II	270	0.1	27.00									0.1	27.00
Nicola Kennedy	Accountant I	225	0.2	45.00	0.2	45.00								
Nicola Kennedy	Accountant I	190	7.5	1,425.00									7.5	1,425.00
Rycko Taniran	Accountant I	175	2.5	437.50									2.5	437.50
Dermot O'Brien	Undergraduate	160	0.5	80.00	0.2	32.00							0.3	48.00
Nicole Jackson	Team Assistant	155	3.4	527.00									3.4	527.00
Dermot O'Brien	Undergraduate	155	3.2	496.00									3.2	496.00
Moira Hattingh	Team Assistant	80	0.2	16.00									0.2	16.00
Moira Hattingh	Team Assistant	75	0.1	7.50									0.1	7.50
	TOTALS		1,028.8	463,296.50	142.3	71,665.00	52.7	21,638.50	304.4	129,684.50	278.2	134,872.00	251.2	105,436.50
	GST			46,329.65										
	TOTAL INC GST			509,626.15										
	AVERAGE HOURLY RATE			450		504		411		426		485		420

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 April 2014 to 31 July 2014 LM First Mortgage Income Fund		
Expense Type		Amount ($ ex GST)
Printing		384.90
Mileage		1,094.65
Postage		3,771.56
General		5,227.25
Search Fee		739.27
TOTAL		11,217.63
GST		1,121.76
TOTAL INC GST		12,339.39

BDO

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Fax: +61 7 3221 9227
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Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
AUSTRALIA

TO WHOM IT MAY CONCERN

4 August 2014

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I provide an update on the estimated unit price of the fund as at 30 June 2014, calculated as follows:

	$000's
Total Value of Fund Assets as at 30 June 2014 (net of land tax and rates)	86,063
Less Creditors and Other Payables	(14,748)
Total Net Value of Fund Assets	**71,314**
Total Number of Units as at 30 November 2013	**478,479**
Unit Price	**0.15**

Should you have any queries in respect of the above, please contact Michael Dharmaratne of my office on (07) 3237 5768.

Yours faithfully,

David Whyte
Receiver

BDO

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Fax: +61 7 3221 9227
www.bdo.com.au

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Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

16 October 2014

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my previous reports and now provide my seventh update to investors in relation to the winding up of the Fund, as follows.

1. Position of the Secured Creditor and the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ("MPF")

As previously advised, despite the secured creditor having been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not in a position to retire until the potential claim by KordaMentha as the new trustee of the MPF is resolved.

Since issuing my last report, the solicitors acting for KordaMentha have responded to my letter of 28 July 2014. They have advised me that:

i. KordaMentha are still in the process of obtaining all of the MPF's books and records which are being transferred pursuant to an agreement with the Liquidators of LM Investment Management Ltd (In Liquidation) (Receivers and Managers Appointed) ("LMIM) and other parties.
ii. 38,000 records have been transferred and reviewed. These records do not disclose any actions that affect Deutsche Bank.
iii. LMIM have objected to releasing a further 227,000 documents; 36,000 because they also contain information confidential to other LM funds and 191,000 documents they identify as "unknown" where they are unsure if they relate to the MPF. KordaMentha are trying to resolve the situation, however, it may be necessary for the Trustees to make a further application to the Court.

KordaMentha's solicitors have further advised that they have instructed Queen's Counsel in respect of two matters that involve potential claims against the assets of FMIF and that they are investigating further potential claims. The amount of the potential claims has not been disclosed to me.

I will continue to liaise with both KordaMentha and the Receivers and Managers in order to facilitate a resolution of this position.

In the meantime, I will also continue to work with the Receivers and Managers to achieve an appropriate outcome, so that investors are not disadvantaged and any duplication of costs are kept to a minimum.

BDO

2. Realisation of Assets

In my report dated 4 August 2014, I provided a summary of the assets to be realised. In the tables below, I summarise the assets realised since then and those remaining to be realised.

Assets with partial realisations

Location	Description of asset	
QLD	90 strata titled hotel rooms. Since my last report which included the position as at 30 June 2014, when 14 units remained, with 6 under contract at that time, a further 7 units have settled with 7 remaining.	On the market
WA	The development has been subdivided into three super lots. The first lot was sold in January 2014. A second lot was under contract however the conditions of the contract were not met and therefore it was terminated. The two remaining lots are currently on the market.	On the market
QLD	The development is an eight stage project to provide 116, 3 or 4 bedroom townhouses. Of the 14 completed lots from stage 7, a further 8 have been sold since the date of my last report with 2 remaining to be sold. All 12 lots in the final stage 8 are under contract with settlements to take place in October & November 2014.	On the market/under contract
QLD	Residential land subdivision. 80 lots with operational works approval and additional land (approx. 57ha) with or pending development approval together with one residential property are currently on the market.	On the market
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the Fund. Of the 63 units, 59 remained as at 30 November 2013. Since that time, a further three units have been sold. Following an extensive marketing campaign in June/July this year, an offer was received to purchase the remaining units in one line. This is due to settle in late November 2014.	Under contract
NSW	The security is comprised of 4 units within a larger purpose built commercial building. Two adjoining units are occupied by a dance and yoga studio with the other two units unoccupied. A sale of the occupied units was completed in June 2013. Since my last report, an offer has been accepted for one of the remaining units, this is due to settle on 27 October 2014. The remaining vacant unit is currently being marketed.	On the market/under contract
QLD	72 strata titled unit resort complex with management rights. At the time of my appointment, 57 units remained. Following a marketing campaign in June/July this year, a further 8 units have settled since my last report and 3 are due to settle in late October 2014.	Legal action in course/under contract/on the market

Assets to be realised

Location	Description of asset	Status
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units. Of the current 64 units, 21 are vacant.	Expression of interest close on 18 November 2014
NSW	A supported living community, with 83 completed independent living units. 27 units are currently vacant.	Expression of interest close on 18 November 2014
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. 3 units are currently vacant. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Expression of interest close on 18 November 2014
QLD	Two supported living communities. One currently has 62 completed units (12 vacant) with a further 106 proposed. The other has 110 completed units, with 16 units currently vacant.	Borrower in control of assets
VIC	A supported living community, with 66 completed independent living units (7 vacant) with a further 3 units under construction and a further 129 proposed.	Expression of interest close on 18 November 2014
TAS	A supported living community, with 29 completed independent living units (3 vacant) and a further 15 proposed.	Expression of interest close on 18 November 2014

3. Other Potential Recoveries/Legal Actions

My previous report identified various matters which required additional investigation to determine whether there were any potential legal actions for dealings which occurred prior to my appointment as Receiver. I provide an update in relation to investigations undertaken to date and further work to be done, as follows:

3.1 Public Examination

I confirm that:

- I have been successful in obtaining the approval from ASIC as an eligible applicant under the Corporations Act 2001 (the Act) to conduct a Public Examination (PE) pursuant to section 597 of the Act. As an eligible applicant, I may now make application for a PE of directors and other relevant parties and subpoena the production of documents to assist with my investigations into potential legal actions against several parties;
- Matters identified from the PE may be brought to the attention of ASIC as appropriate;

- I have instructed my solicitors to commence preparation of an application for a PE.

My solicitors have commenced preparation for a PE. I expect that an application for the PE will be filed shortly.

3.2 Bellpac Proceedings

3.2.1 Settlement of Gujarat proceedings

I confirm that:

- In November 2010, proceedings against Gujarat NRE Minerals Limited (Gujarat) were settled for a total amount of approximately $45.6M;
- As MPF funded the majority of the costs of the litigation, the settlement proceeds received in 2011, were shared between the funds on the basis of a 65%/35% split with FMIF receiving $32.9M and MPF $12.7M;
- According to the security held by FMIF and MPF over the property the subject of the litigation, FMIF held first priority to all of the proceeds of the settlement;
- LMIM appears to have preferred the interests of the MPF over the FMIF in splitting the proceeds of sale. Therefore there may be a claim against LMIM and/or the MPF in relation to this transaction.

Further developments are as follows:

i. I obtained a significant quantity of paper and electronic Bellpac legal files from FMIF's former solicitors on certain agreed terms with MPF and reviewed those files to facilitate my investigations;
ii. These documents have been forwarded to my solicitors for review.

I have undertaken extensive investigations in relation to this potential claim and I continue to take legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

3.2.2 Other Bellpac litigation

a. <u>$2 million of Wollongong Coal Ltd (WCL) - Convertible Bonds</u>

I confirm that:

- FMIF has first ranking security over the assets of Bellpac which is now in liquidation;
- In August 2008 $10 million of Bonds were issued by WCL to Bellpac however, Bellpac then issued these Bonds to another party and then they were further transferred to other parties;
- The proceedings by Bellpac and its Liquidators in regard to $2 million Bonds (still in the name of Bellpac) commenced in January 2010. In 2012 Bellpac was successful in obtaining Orders that Bellpac is the true owner of the Bonds;
- The decision was appealed by the defendants in the Full Federal Court and the High Court which were unsuccessful;
- Wollongong Coal Limited is a publicly listed company and was formerly called Gujarat NRE Minerals Ltd;
- A demand was made by the Liquidators against WCL for $2.44 million representing the face value of Bonds with a nominal value of $1.5 million plus interest. The Liquidators applied for

conversion of the balance of the Bonds with a face value of $500,000 into shares which was due to occur by 7 August 2014;

- If the Liquidators are successful in realising the Bonds, FMIF will be the beneficiary of the funds recovered, after costs. FMIF is funding the Liquidators' care and preservation costs of realising the Bonds for the benefit of investors.

Further developments are as follows:

i. WCL failed to convert the remaining Bonds into shares by the due date. The Bellpac Liquidators have made a demand against WCL for the face value of the $500,000 Bonds plus interest totalling $817,685 which remains unpaid;

ii. The Bellpac Liquidators and I met with representatives of WCL in Sydney in late August 2014 to discuss the payment of Bellpac's claims against WCL totalling $3.25 million. At the meeting, WCL agreed to make a formal proposal to the Liquidators in regard to the payment of the claims;

iii. An offer was received from WCL in September 2014 however, it has been rejected as it was too low;

iv. The remaining Liquidator (one of the joint Liquidators has resigned) is in the process of commencing legal proceedings for the recovery of the outstanding sum;

b. $8 million of WCL Convertible Bonds

I confirm that:

- The proceedings by Bellpac and its Liquidators commenced in July 2012 seeking orders that Bellpac is the true owner of the $8 million Bonds and the recovery of $4.7 million transferred by Bellpac (pre Liquidation) to two of the defendants;
- If the Liquidators are successful in obtaining a declaration from the Court that Bellpac is the true owner of the Bonds, FMIF will be the beneficiary of the funds recovered from realising the Bonds, after costs. In order to protect the interest of FMIF in Bellpac's claim to title to the Bonds, FMIF is continuing to fund the Liquidators' in the proceedings.
- A directions hearing was held on 30 July 2014, a timetable was set by the Court requiring the filing of certain documentation by a number of the defendants and a further directions hearing was set down for 7 October 2014.

Further developments are as follows:

i. Certain of the defendants filed an amended defence and further affidavit evidence prior to the Directions Hearing on 7 October 2014;

ii. At the Directions Hearing on 7 October 2014, the Court allocated a date for a five day trial to commence in March 2015.

c. Proceedings against Bellpac Receivers, LMIM and The Trust Company Ltd ("the Parties")

I confirm that:

- In February 2013, parties including the second mortgagee of Bellpac (plaintiffs) commenced proceedings against the Parties in relation to the alleged sale of the Bellpac property at an

undervalue. The property that was sold formed part of the settled proceedings outlined at Section 3.2.1 above;

- A directions hearing was held on 31 July 2014 at which a timetable was set down to address the intended security for costs applications by LMIM and other defendants with documentation to be filed by all parties by early October 2014

Further developments are as follows:

i. LMIM as RE for FMIF and the other respondents have filed applications seeking security for costs from the applicants;

ii. The applicants have filed (late) an affidavit in reply; and

iii. The hearing of the security for costs applications is set down for 23 October 2014.

3.3 Other Potential Claims against LMIM and related Parties

3.3.1 Management Service Agreements with LM Administration Pty Ltd (in Liquidation) (LMA)

I confirm the following:

- The audited accounts for the FMIF show that a total of approximately $10.2M was paid to LMA (for the years ended 30 June 2011 and 30 June 2012) for loan management fees in replacement of appointing external receivers;
- Amounts totalling approximately $2M were paid to LMA for the period from 1 July 2012 to 19 March 2013;
- Legal and accounting advice was received by LMIM in relation to the charging of these fees

I have continued to undertake investigations in relation to these matters and am taking legal advice in relation to the outcome of these further investigations. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

3.3.2 Distribution to Class B Unit Holders

I confirm the following:

- During the financial year ended 30 June 2012 distributions of approximately $16.9M were made to Class B unit holders at a time when class A and C unit holders did not receive any distributions, apart from hardship distributions;
- Class B unit holders, relate to the three feeder funds of FMIF;
- I am unaware of any rights of Class B unit holders which would entitle them to a priority distribution over other classes of unit holders in the Fund;
- The auditors qualified the financial statements in regard to this transaction;
- As a result of the distribution and reinvestment of a major portion of that distribution into units in FMIF, Class B unit holders increased their units in the fund from 44.33% to 46.14% at the expense of the Class A & C unit holders. This will result in the Class B unit holders receiving a greater amount in the winding up of the Fund

Further developments are as follows:

i. Based on my further investigations, I have ascertained that during the financial year ended 30 June 2013 (prior to the capital distributions in February and June 2013), the Feeder funds received further distributions of approximately $2.6 million;

ii. The calculation of the percentage interest of the feeder funds in FMIF as stated in the 30 June 2012 audited financial statements has to date not been reconciled however, we expect this to be clarified once the auditors working papers and or LM's records are obtained in due course via the proposed public examination or otherwise.

I continue to undertake investigations in relation to the above matters and I am taking legal advice in relation to same. As my investigations are on-going, I am not presently in a position to disclose the nature of those investigations any further at this time.

3.3.3 Changes to Constitution

I confirm the following:

- The fund's constitution was amended several times since its initial execution on 24 August 1999;
- The terms of the constitution stipulate that it may be modified or repealed or replaced with a new constitution, by:
  - Special resolution of the members of the scheme; or
  - The Responsible Entity, if the Responsible Entity reasonably considers the change will not affect Members' rights.
- I am not currently aware of any special resolutions passed by members resolving to amend the terms of the constitution;
- I am aware of several changes to the permitted loan to valuation ratio ('LVR') of the fund commencing with an LVR of no more than 66.66% (Constitution dated 24 August 1999) to an LVR permitted not to exceed 85% of the value of the security property (after a loan has settled and where the RE considers it is in the best interests of the members)
- Further investigation is required to determine the effect of these amendments and whether or not there may be potential legal claims arising from that;

I continue to undertake investigations in relation to these matters and I am taking legal advice in relation to same. As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

3.3.4 Fund Valuation Policy

I confirm the following:

- A review of the fund's compliance plan dated 16 March 2011 details the following regarding the fund's valuation policy:
  - Valuations may only be carried out by panel valuers; and
  - An updated valuation will generally be required for commercial loans at 24 month intervals and construction loans at 12 month intervals.

- From my preliminary enquiries, it appears that the Responsible Entity did not generally obtain updated professional valuations after the initial advance was made. Instead, in the majority of cases, they relied upon discounted cash flows prepared by management on the feasibility of a project.

As my investigations are on-going I am not presently in a position to disclose the nature of those investigations any further at this time.

3.3.5 External Valuations

I have commenced a review of the loans where material losses have occurred to ascertain whether the valuations relied on were too high and if there was negligence by the valuer which contributed to the losses.

My investigations are continuing and there are no material developments to report at this stage.

3.4 Auditors

I confirm that I have not at this stage been able to progress my investigations due to an inability to gain access to the auditor's working papers and all relevant FMIF records. My investigations will be facilitated by undertaking the proposed public examination.

Once my investigations are complete in relation to each of the above matters, I will update investors accordingly.

4. Estimated Return to Investors

Based on the professional valuations and offers received since March 2013 for the properties charged to the Fund, I provide an estimated return to Investors of between 12 and 17 cents in the dollar as at 30 September 2014, calculated as follows:

	Low $	High $
Cash at Bank	21,085,294	21,085,294
Funds held in trust	1,528,587	1,528,527
Estimated selling prices of properties to be sold	51,731,682	67,941,511
Less:		
Selling costs (2.5% of sale price)	(1,293,292)	(1,698,538)
Land tax & rates	(334,664)	(334,664)
Other unsecured creditors	(8,791,228)	(3,854,363)
FTI Fees & legal costs claimed (subject to approval)	(3,269,013)	(3,269,013)
Receivers and Managers' Fees (McGrathNicol)	(63,769)	(63,769)
Receiver's fees & outlays (BDO)	(979,025)	(979,025)

Estimated net amount available to investors as at 30 September 2014	**59,614,571**	**80,356,020**
Total investor units	478,478,997	478,478,997
Estimated return in the dollar	**0.12**	**0.17**

The above table does not take into account future operating costs, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

Reduction in unit Price

I continue to receive queries from investors in relation to the fall in the unit price and the reasons why this occurred. I have addressed this in previous reports however summarise below the main reasons for the drop in value:

- Prior to the appointment of FTI as Administrators on 19 March 2013 and contrary to the Compliance Plan in place for the Fund, the responsible entity (RE) changed the methodology in valuing the Fund. The Compliance Plan states that generally independent professional valuations on development projects should be obtained every 12 months and on other properties no more than every 24 months. The RE ceased obtaining valuations and instead relied on internally prepared feasibility studies to determine the Net Present Value of development projects. In my view, this grossly overvalued the Fund with a number of the feasibility studies assumptions being seriously flawed and not capable of being realised.
- Following the appointment of FTI and McGrathNicol they obtained independent valuations of the property assets on an "as is" basis. These valuations and offers received for the assets were then used as the basis of valuing the Fund resulting in a significant drop in value from 59 cents as at 31 December 2012 to between 13 and 19 cents as at 30 November 2013. I refer to section 6 of my report dated 4 December 2013 in this respect. A copy of all investor reports are available on the website www.lmfmif.com.
- Section 4 of my report dated 19 February 2014 provided investors with a detailed explanation of how the unit price had fallen from 59 cents to 17 cents. The factors which have contributed to the loss in value, include:
    - the methodology used in the valuation of the Fund;
    - interest on loans granted to borrowers not being paid and being capitalised into the loan amount resulting in an increase in the loan to value ratio;
    - substantial fees being paid to the Responsible Entity of the Fund;
    - the Fund borrowing money from banks to increase funding available to borrowers;
    - borrowers not paying interest and defaulting on loans with interest still having to be paid to the external financier; and

- the Fund having to meet costs not paid by the defaulting borrowers in respect of operating costs of the assets and statutory obligations including rates and land tax. Some of these costs have been substantial. For example three operating businesses have had trading shortfalls of up to approximately $5m per annum funded so that these businesses can be sold as going concerns.

I trust this sufficiently clarifies the position however if investors have any further queries, please contact my office as detailed at section 12 of this report.

5. Reduction in Operating Costs

As part of the winding up process, and in conjunction with McGrathNicol, we are reducing the costs of managing the fund. Prior to the appointment of FTI as Administrators in March 2013, the management fees charged by the Responsible Entity (LMIM) averaged $14M per annum for the five years ended 30 June 2012.

The current costs of managing the fund are the costs of the Receivers and Managers (McGrathNicol), the Court Appointed Receiver (BDO), the costs of employing staff and consultants to assist in managing down the loan book, plus premises and equipment costs.

The staff and consultants costs have been reduced from in excess of $5M per annum at the time of FTI's appointment as Administrators in March 2013 to around $1.3M per annum with the combined cost of McGrathNicol and BDO being approximately $200,000 per month ($2.4M per annum) and premises and equipment costs of $500,000 per annum.

The current overall position is that costs are running at about $4.2M per annum compared to the $14M previously. These costs will continue to reduce as the loan book reduces.

6. Distributions to Investors

As previously advised, I am on notice from KordaMentha that the MPF potentially have a breach of trust claim against the Fund. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned at section 3.2.2 above are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities (which totals approximately $10 million) and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the Court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

7. Fees claimed by LM Investment Management Ltd (In Liquidation) ("LMIM") (by its liquidators, FTI Consulting)

The liquidators of LMIM, Mr Park and Ms Muller, have submitted invoices from LMIM, made out to the Fund, totalling $3,301,603 excluding GST for payment in relation to their remuneration and out of pocket expenses for the period from 19 March 2013 to 30 June 2014.

The claim can be broken down into the following three categories:

- Category 1 relates to time spent working on specific fund matters;
- Category 2 is in respect of LMIM's role as the Responsible Entity of the Fund with the time spent by the liquidators and their staff being allocated across all Funds under their control based on a percentage of funds under management;
- Category 3 in relation to the appointments of LMIM as Controllers of a number of assets and where they are acting as agent for the mortgagee in possession.

	Paid to date (GST exclusive) $	Outstanding (GST exclusive) $
Direct time charged to work undertaken for the Fund - including outlays (category 1)		1,590,887
Allocation of Responsible Entity time (category 2)		1,649,647
Time charged in respect of the Controllerships (category 3)	242,181	
	242,181	***3,240,534***

As previously advised, both McGrathNicol and I have raised legal questions as to whether certain work done by the liquidators of LMIM can properly be charged to the Fund, as well as questions as to the quantum claimed.

Since my last report to investors, I have met with FTI to discuss certain aspects of their claim and we are currently in the process of agreeing a framework for determining their claim. It is proposed that directions are sought from the Court as to their entitlement to claim under various categories and that their claim be reviewed and adjudicated on by an independent expert.

8. Management Accounts

I am currently preparing the management accounts for the year ended 30 June 2014. These accounts have been prepared in accordance with the relevant accounting standards and will be posted on the website www.lmfmif.com when finalised.

9. Tax Statements

It is not our intention to issue taxation statements for the year ended 30 June 2014 to investors. However, I enclose a letter confirming the unit price as at 30 June 2014 and that no distributions were paid to investors during the 2013/2014 financial year.

Should investors wish to receive a transaction statement please contact the Investor Relations team on +61 7 55844500 or mail@lmaustralia.com.

BDO

10. Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details in section 12 below to advise us in this regard.

My next report to investors will be issued by 31 January 2014.

11. Receiver's Remuneration and Expenses

As previously advised, an application was made to Court on 2 May 2014 for approval of my remuneration for the period from 8 August 2013 to 31 March 2014 in the amount of $702,480.35 inclusive of GST.

The hearing for the above application took place on 28 August 2014. The Court approved the remuneration sought of $702,480.35 (inclusive of GST).

I am currently in the process of preparing my next court application for remuneration approval for the period from 1 April 2014 to 30 September 2014. During this period I have incurred remuneration of $923,522.50 plus outlays of $55,502.05 plus GST as detailed in the attached summary.

My application will include an affidavit summarising the tasks undertaken in the relevant period together with detailed narrations of all work done by task and employee. This will be placed on the website www.lmfmif.com and investors will be advised accordingly when the application has been lodged and the hearing date of same.

12. Queries

Should unit holders require further information, please contact either Investor Relations or BDO on the details provided below.

Investor Relations
Phone: +61 7 5584 4500
Fax: +61 7 5592 2505
Email: mail@lmaustralia.com

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours faithfully

David Whyte
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 April 2014 to 30 September 2014

LM First Mortgage Income Fund

			Totals		Task Area											
					Assets		Creditors		Employees		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	406.3	227,528.00	197.2	110,432.00	7.8	4,368.00			81.7	45,752.00	31.4	17,584.00	88.2	49,392.00
Matthew Joiner	Partner	560	0.2	112.00			0.2	112.00								
Andrew Fielding	Partner	560	1.9	1,064.00											1.9	1,064.00
Eric Leeuwendal	Director	495	286.2	141,669.00	22.2	10,989.00	11.7	5,791.50					226.8	112,266.00	25.5	12,622.50
Craig Jenkins	Partner	485	25.3	12,270.50							25.3	12,270.50				
Clark Jarrold	Partner	485	0.2	97.00							0.2	97.00				
Eric Leeuwendal	Director	480	127.6	61,248.00	0.4	192.00	0.1	48.00			0.1	48.00	123.3	59,184.00	3.7	1,776.00
John Keating	Partner	475	2.3	1,092.50							2.3	1,092.50				
Margaux Beauchamp	Associate	470	133.2	62,604.00	133.2	62,604.00										
Margaux Beauchamp	Associate	460	40.3	18,538.00	40.3	18,538.00										
Eric Leeuwendal	Director	460	0.3	138.00	0.3	138.00										
John Somerville	Senior Manager	440	19.2	8,448.00	0.2	88.00	0.3	132.00			17.0	7,480.00			1.7	748.00
John Somerville	Senior Manager	425	2.4	1,020.00			0.2	85.00			1.1	467.50			1.1	467.50
Charles Haines	Senior Manager	425	65.3	27,752.50	8.6	3,655.00	0.1	42.50					31.9	13,557.50	24.7	10,497.50
Joanne Garcia	Manager	400	349.7	139,880.00	27.7	11,080.00	34.4	13,760.00	0.4	160.00	259.4	103,760.00	2.9	1,160.00	24.9	9,960.00
Michelle Matchett	Associate	390	48.8	19,032.00							46.0	17,940.00			2.8	1,092.00
Joanne Garcia	Manager	390	286.2	111,618.00	5.7	2,223.00	12.7	4,953.00			135.9	53,001.00	0.7	273.00	131.2	51,168.00
Michelle Matchett	Associate	370	5.0	1,850.00	5.0	1,850.00										
Ashleigh Simpson-Wade	Supervisor	360	0.2	72.00			0.2	72.00								
Gita Kumar	Senior Manager	360	22.0	7,920.00							22.0	7,920.00				
Michael Dhanraliing	Senior Accountant I	320	17.2	5,504.00	1.2	384.00	12.5	4,000.00					0.2	64.00	3.3	1,056.00
Daniel Tipman	Senior Accountant I	320	2.7	864.00	0.8	256.00	0.5	160.00			1.0	320.00			0.4	128.00
Michael Dhanraliing	Senior Accountant I	310	9.9	3,069.00	1.2	372.00	7.6	2,356.00					0.2	62.00	0.9	279.00
Daniel Tipman	Senior Accountant I	310	2.5	775.00			1.8	558.00							0.7	217.00
Gita Kumar	Senior Manager	305	21.0	6,405.00							21.0	6,405.00				
Dean Michalik	Senior Accountant II	270	0.1	27.00											0.1	27.00
Nicola Kennedy	Accountant I	225	11.6	2,610.00	7.1	1,597.50	0.3	67.50					1.2	270.00	3.0	675.00
Margot Charlton	Senior Accountant II	215	7.2	1,548.00							7.2	1,548.00				
Rycko Tanfran	Accountant I	200	54.0	10,800.00	54.0	10,800.00										
Sarah Cunningham	Team Assistant	195	5.5	1,072.50							5.0	975.00			0.5	97.50
Dermot O'Brien	Undergraduate	195	22.6	4,407.00											22.6	4,407.00
Luke O'Connor	Accountant II	195	0.7	136.50											0.7	136.50
Ainsley Watt	Accountant II	195	3.3	643.50			3.3	643.50								
Nicola Kennedy	Accountant II	190	7.5	1,425.00											7.5	1,425.00
Pei Wun Han	Accountant II	185	66.9	12,376.50	66.9	12,376.50										
Dale Ludwig	Accountant I	185	117.1	21,663.50							117.1	21,663.50				
Rycko Tanfran	Accountant II	175	7.5	1,312.50	5.0	875.00									2.5	437.50
Pei Wun Han	Accountant II	175	9.0	1,575.00	9.0	1,575.00										
Dermot O'Brien	Undergraduate	160	1.0	160.00	0.2	32.00									0.8	128.00
Nicole Jackson	Team Assistant	155	12.3	1,906.50			8.9	1,379.50							3.4	527.00
Dermot O'Brien	Undergraduate	155	3.2	496.00											3.2	496.00
Sharon Aranha	Secretary	130	0.5	65.00	0.5	65.00										
Moira Hattingh	Team Assistant	80	7.0	560.00											7.0	560.00
Ashley Richardson	Junior Practice Assistan	80	2.0	160.00											2.0	160.00
Moira Hattingh	Team Assistant	75	0.1	7.50											0.1	7.50
	TOTALS		2,215.0	933,522.50	586.7	250,122.00	101.6	38,828.50	0.4	160.00	742.3	280,740.00	418.6	204,420.50	364.4	149,551.50
	GST			92,352.25												
	TOTAL INC GST			1,025,874.75												
	AVERAGE HOURLY RATE		417		426		376		400		378		488		410	

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 April 2014 to 30 September 2014
LM First Mortgage Income Fund

Expense Type	Amount ($ ex GST)
Postage	7,227.58
Printing	5739.62
Parking	144.31
Travel/Taxi	116.28
Searches	887.63
Photocopying	6,511.51
Mileage	1,237.56
Courier	47.74
Copying	138.00
Accommodation	10.45
Airfares	893.67
Advertising	26,491.00
General	6,056.70
TOTAL	**55,502.05**
GST	**5,550.21**
TOTAL INC GST	**61,052.26**

BDO

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Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
AUSTRALIA

TO WHOM IT MAY CONCERN

15 October 2014

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I provide an update on the estimated unit price of the fund as at 30 June 2014, calculated as follows:

	$000's
Total Value of Fund Assets as at 30 June 2014 (net of land tax and rates)	86,063
Less Creditors and Other Payables	(14,748)
Total Net Value of Fund Assets	**71,314**
Total Number of Units as at 30 June 2014	**478,479**
Unit Price	**0.15**

I confirm that no distributions were paid to investors during the 2014 financial year. This letter should be retained by investors for income tax purposes if required.

Should you have any queries in respect of the above, please contact Nicola Kennedy of my office on (07) 3237 5785.

Yours faithfully

David Whyte
Receiver

BDO

Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
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Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

TO THE INVESTOR AS ADDRESSED

30 January 2015

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my previous reports and now provide my eighth update to investors in relation to the winding up of the Fund, as follows.

1. Position of the Secured Creditor and the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ("MPF")

As previously advised, even though the secured creditor has been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not in a position to retire until the potential claim by KordaMentha as the new trustee of the MPF is resolved.

I refer to my previous report which discussed the issues that KordaMentha were experiencing in obtaining some 227,000 documents from the Liquidators of LM Investment Management Ltd (In Liquidation) (Receivers and Managers Appointed) ("LMIM"), due to these either containing information confidential to other funds or that LMIM identified as "unknown" and where they are unsure if they relate to the MPF.

Since issuing my last report dated 16 October 2014 and in response to the closure of the LM office, I made an application to the Supreme Court of Queensland to enter into an agreement with LMA's Liquidator for direct access to the records held by LMA in so far as they relate to FMIF. This is discussed in more detail at section 3.5 below. In response to my application, KordaMentha made an application to the court for similar access in an attempt to resolve the issues with obtaining the remaining records.

Following a court hearing on 29 January 2015, KordaMentha will be granted access to all books and records subject to the execution of an undertaking to the court that they will not interrogate the records for anything other than for the MPF and will not use anything that does not relate to the MPF.

In my previous report, I notified investors that KordaMentha's solicitors have advised they have instructed Queen's Counsel in respect of two matters that involve potential claims against the assets of FMIF and that they are investigating further potential claims or if these will be pursued.

Since my last report, I have not received any further communications from KordaMentha in respect of the amount of the potential claims or if these will be pursued.

No specific claims have been made by KordaMentha against Deutsche Bank.

As discussed at section 3.2.1 below, on 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland, against a number of parties including the MPF, in respect of the loss suffered by FMIF as a result of the amount paid to MPF in the Bellpac litigation matter. This claim is for in excess of $20M.

2. Realisation of Assets

In my report dated 16 October 2014, I provided a summary of the assets to be realised. In the tables below, I summarise the assets realised since then and those remaining to be realised.

You will note from the summary below that meaningful progress has been made in the realisation of the assets including four of the retirement village assets being under contract. An offer had been accepted for a fifth retirement village however this has recently fallen through with the agent continuing negotiations with three other parties. Three sales are subject to unconditional contracts due to settle on 23 April 2015. The other sale is subject to one condition which is to be satisfied within 90 days with settlement 7 days thereafter.

Assets realised since 30 September 2014

Location	Description of asset
QLD	The development is an eight stage project to provide 116, 3 or 4 bedroom townhouses. Since my last report the remaining 2 units of stage 7 have settled along with all 12 of stage 8.
NSW	The security is comprised of 4 units within a larger purpose built commercial building. Two adjoining units are occupied by a dance and yoga studio with the other two units unoccupied. A sale of the occupied units was completed in June 2013. Since my last report the remaining two units have settled.

Assets with partial realisations

Location	Description of asset	
QLD	90 strata titled hotel rooms. Since my last report which included the position as at 30 September 2014, when 7 units remained, a further 3 units have settled with 4 remaining.	On the market
WA	The development has been subdivided into three super lots. The first lot was sold in January 2014. A second lot was under contract however the conditions of the contract were not met and therefore it was terminated. The two remaining lots are currently on the market.	On the market
QLD	Residential land subdivision. 80 lots with operational works approval and additional land (approx. 57ha) with or pending development approval together with one residential property are currently on the market.	On the market
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the Fund. Of the 63 units, 59 remained as at 30 November 2013. Since that time, a further three units have been sold.	Under contract

Location	Description of asset	
	Following an extensive marketing campaign in June/July last year, an offer was received to purchase the remaining units in one line. This was originally due to settle in late November 2014, however an extension was granted to the purchaser until 22 December 2014 for the unleased units (monies received on 19 December 2014) and until 30 January 2015 for the leased assets.	
QLD	72 strata titled unit resort complex with management rights. At the time of my appointment, 57 units remained. Following a marketing campaign in June/July last year, 19 units have settled with 5 due to settle in late January/early February. Proceedings commenced by the body corporate against the builder were settled late last year.	Under contract/on the market
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units. Of the current 64 units, 15 are vacant.	Under contract
NSW	A supported living community, with 83 completed independent living units. 22 units are currently vacant.	Under contract
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. 4 units are currently vacant. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Under contract
VIC	A supported living community, with 69 completed independent living units (5 vacant) and a further 129 proposed.	On the market
TAS	A supported living community, with 29 completed independent living units (no vacancies) and a further 15 proposed.	Under contract

Assets to be realised

Location	Description of asset	Status
QLD	Two supported living communities. One currently has 62 completed units (12 vacant) with a further 106 proposed. The other has 110 completed units, with 16 units currently vacant.	Borrower in control of assets

3. Other Potential Recoveries/Legal Actions

My previous report identified various matters which required additional investigation to determine whether there were any potential legal actions for dealings which occurred prior to my appointment as

Receiver. I provide an update in relation to investigations undertaken to date, legal proceedings on foot and further work to be done, as follows:

3.1 Public Examination

In my report dated 16 October 2014, I confirmed that I had been successful in obtaining the approval from ASIC as an eligible applicant under the Corporations Act 2001 (the Act) to conduct a Public Examination (PE) and I had instructed my solicitors to commence preparation for a PE.

On 17 November 2014, I filed in the Supreme Court my application to conduct a PE in relation to the financial audits undertaken of the FMIF. The persons to be examined are the auditors and certain directors of LMIM.

The application was to be heard on 21 November 2014 however, the Liquidators' of LMIM sought an adjournment of the hearing of the application on the basis that they needed more time to consider the application and advised me that it may be more appropriate for the Liquidators to bring the application to conduct the PE and not me. The hearing was adjourned for one week and after correspondence with the Liquidators' solicitors, the application was not opposed by the Liquidators and the application was granted on 27 November 2014.

Following the issue of the court order, my solicitors have been liaising with the Magistrate's Court and senior counsel who is to conduct the examinations to determine a suitable date for the parties to be examined and to produce documents in their possession. This will be on 16 March 2015 with the examination of the parties under oath likely to follow four to six weeks thereafter.

3.2 Bellpac Proceedings

3.2.1 Settlement of Gujarat proceedings

I refer to my previous reports to investors. I summarise the matter as follows:

- In November 2010, proceedings against Gujarat NRE Minerals Limited (Gujarat) were settled for a total amount of approximately $45.6M;
- As MPF funded the majority of the costs of the litigation, the settlement proceeds received in 2011, were shared between the funds on the basis of a 65%/35% split;
- According to the security held by FMIF and MPF over the property the subject of the litigation, FMIF held first priority to all of the proceeds of the settlement and was entitled to all of the settlement proceeds;

On 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland claiming $15,546,147.85 plus interest (calculated from mid/late 2011 with the claim in excess of $20M) being the loss suffered by FMIF as a result of the amount paid to MPF, against the following parties:

- Peter Drake;
- Lisa Darcy;
- Eghard Van Der Hoven;
- Francene Mulder;
- John O'Sullivan;
- Simon Tickner;
- LMIM; and

- The trustees of MPF

The date the defendants must file a defence is 28 days after deemed service on the relevant party. Since lodging the claim, Peter Drake has presented a debtors petition and is now an undischarged bankrupt. Two other directors are yet to be served as their whereabouts is not known and an application is currently being prepared for leave to proceed against LMIM as the company is in liquidation.

In November 2014 ASIC commenced civil penalty proceedings in the Federal Court of Australia against Peter Drake, Francene Mulder, Eghard Van Der Hoven, Simon Tickner and Lisa Darcy. ASIC alleges Mr Drake used his position to gain an advantage for himself and the former directors breached their director's duties for failing to act with the proper degree of care and diligence regarding transactions involving the MPF. The ASIC proceedings have been adjourned to February 2015.

3.2.2 Other Bellpac litigation

a. $2 million of Wollongong Coal Ltd (WCL) - Convertible Bonds

I refer to my previous reports to investors. I summarise the matter as follows:

- FMIF has first ranking security over the assets of a borrower, Bellpac Pty Ltd (Bellpac) which is now in liquidation;
- In August 2008 $10 million of Bonds were issued by WCL to Bellpac however, Bellpac transferred these Bonds to another party who further transferred to other parties;
- The proceedings by Bellpac and its Liquidators in regard to $2 million Bonds (still in the name of Bellpac) commenced in January 2010. In 2012 Bellpac was successful in obtaining Orders that Bellpac is the true owner of the Bonds;
- The decision was appealed by the defendants in the Full Federal Court and the High Court which were unsuccessful;
- WCL is a publicly listed company and was formerly called Gujarat NRE Minerals Ltd;
- The Liquidators applied for conversion of the Bonds with a face value of $2,000,000 into shares however, WCL failed to issue the shares as required and did not otherwise respond. The terms of the Bonds provide that the Bonds can be redeemed for their face value if WCL is unable to issue the shares. The Liquidators then applied to enforce the terms of the bonds and demanded that WCL redeem the bonds for their face value being $2 million plus interest. Again there was no response.
- On 12 September 2014, WCL made an offer to settle the redemption claim which was rejected as it was too low;

Further developments are as follows:

- On 23 October 2014, the Liquidators served a creditor's statutory demand (CSD) on WCL for $2.9 million being the face value of the bonds plus interest;
- On 28 October 2014, an offer was received from WCL to settle the CSD claim payable in 12 monthly instalments commencing in mid March 2015. This offer was rejected as there was no security for the payment of the settlement sum and the total amount was too low;
- On 7 November 2014, the Liquidator made a counter offer to settle the CSD claim, if paid by the expiry date of the CSD in late November 2014;

- On 11 November 2014, WCL filed an application to set aside the CSD with a hearing date of 13 February 2015. WCL argue that it was always able to issue the shares and remains able to do so. On the same day, WCL made an increased offer to settle the CSD claim payable in 12 monthly instalments commencing in mid March 2015. That offer was rejected as it did not provide any security for the payments;
- A counter offer to settle the claim was made by the Liquidators to settle the CSD claim which lapsed on 23 December 2014 without a response from WCL;

I am continuing to liaise with the Liquidators who are attempting to negotiate a commercial outcome to this claim.

As FMIF will be the beneficiary of the funds recovered from the $2 million bonds claim after costs, FMIF is funding the Liquidator's care and preservation costs of realising the Bonds for the benefit of investors.

Further developments in relation to this claim will be provided in my next report to investors.

b. $8 million of WCL Convertible Bonds

I refer to my previous reports to investors. I summarise the matter as follows:

- The proceedings by Bellpac and its Liquidators commenced in July 2012 seeking orders that Bellpac is the true owner of the $8 million Bonds and the recovery of $4.7 million transferred by Bellpac (pre Liquidation) to two of the defendants;
- If the Liquidators are successful in obtaining a declaration from the Court that Bellpac is the true owner of the Bonds, FMIF will be the beneficiary of the funds recovered by the Liquidator from realising the Bonds, after costs. In order to protect the interest of FMIF in Bellpac's claim to title to the Bonds, FMIF is continuing to fund the Liquidators' in the proceedings.
- At the Directions Hearing on 7 October 2014, the Court allocated a date for a five day trial to commence in March 2015. The Liquidators, their solicitors and counsel are currently preparing for the trial.

Further developments in relation to this claim will be provided in my next report to investors.

c. Proceedings against Bellpac Receivers, LMIM , The Trust Company Ltd ("the Parties")

I refer to my previous reports to investors. I summarise the matter as follows:

- In February 2013, parties including the second mortgagee over Bellpac commenced proceedings against the Parties in relation to the alleged sale of the Bellpac property at an undervalue. The property that was sold formed part of the settled proceedings outlined at Section 3.2.1 above;
- LMIM as RE for FMIF and the other respondents filed applications seeking security for costs from the applicants which was heard on 23 October 2014;

Further developments are as follows:

- On 15 December 2014, the decision in relation to the security for costs applications was handed down in favour of the applicants. The plaintiffs are required to pay $550,000 into Court before the proceedings can continue;

- The plaintiffs were also ordered to pay the costs of the applicants;
- A Directions hearing is set down for early February 2015 however, will be vacated if the plaintiffs do not pay the security for costs.

3.3 Other Potential Claims against LMIM and related Parties

3.3.1 Management Service Agreements with LM Administration Pty Ltd (in Liquidation) (LMA)

I refer to my previous reports to investors. I summarise the matter as follows:

- The audited accounts for the FMIF show that a total of approximately $10.2M was paid to LMA (for the years ended 30 June 2011 and 30 June 2012) for loan management fees in replacement of appointing external receivers;
- Amounts totalling approximately $2M were paid to LMA for the period from 1 July 2012 to 19 March 2013.
- Legal and accounting advice was received by LMIM in relation to the charging of these fees;
- Loan management fees were also paid for the period 19 March 2013 to up to June 2013

Whilst I consider the directors of LMIM may have breached their duties in entering into these arrangements and that there may be a claim against them and/or LMA, I do not currently consider it commercially worthwhile to pursue these claims bearing in mind:

- I have commenced proceedings against the directors for an amount in excess of $20m (including interest) in respect of the claim discussed at section 3.2.1 above;
- LMA is in liquidation with no dividend expected to creditors at this stage.

3.3.2 Distribution to Class B Unit Holders

I refer to my previous reports to investors. I summarise the matter as follows:

- During the financial year ended 30 June 2012 distributions of approximately $16.9M were made to Class B unit holders at a time when class A and C unit holders did not receive any distributions, apart from hardship distributions;
- Class B unit holders, relate to the three feeder funds of FMIF;
- I am unaware of any rights of Class B unit holders which would entitle them to a priority distribution over other classes of unit holders in the Fund;
- The auditors qualified the financial statements in regard to this transaction;
- As a result of the distribution and reinvestment of a major portion of that distribution into units in FMIF, Class B unit holders increased their units in the fund from 44.33% to 46.14% at the expense of the Class A & C unit holders. This will result in the Class B unit holders receiving a greater amount in the winding up of the Fund;
- During the financial year ended 30 June 2013 (prior to the capital distributions in February and June 2013), the Feeder funds received further distributions of approximately $2.6 million;
- The calculation of the percentage interest of the feeder funds in FMIF as stated in the 30 June 2012 audited financial statements has to date not been reconciled however, we expect this to be clarified once the auditors working papers and or LM's records are obtained in due course via the public examination.

Further developments are as follows:

- As advised in Section 3.1 above, a public examination will be undertaken in March/April 2015 and part of the investigations being undertaken will include the above mentioned transactions in 2012.

I continue to undertake investigations in relation to the above matters and these will be progressed through the conduct of the PE.

3.3.3 Changes to Constitution

I refer to my previous reports to investors. I summarise the matter as follows:

- The fund's constitution was amended several times since its initial execution on 24 August 1999;
- The terms of the constitution stipulate that it may be modified or repealed or replaced with a new constitution, by:
    - Special resolution of the members of the scheme; or
    - The Responsible Entity, if the Responsible Entity reasonably considers the change will not affect Members' rights.
- I am not currently aware of any special resolutions passed by members resolving to amend the terms of the constitution;
- I am aware of several changes to the permitted loan to valuation ratio ('LVR') of the fund commencing with an LVR of no more than 66.66% (Constitution dated 24 August 1999) to an LVR permitted not to exceed 85% of the value of the security property (after a loan has settled and where the RE considers it is in the best interests of the members)
- Further investigation is required to determine the effect of these amendments and whether or not there may be potential legal claims arising from that;

My investigations in relation to the above matters have not been concluded. I have yet to gain access to certain records and this has been made more difficult due to the comingled nature of the records. I refer to my application to Court to gain unfettered access to records which concern FMIF in Section 3.5 below.

I am mindful however, of the commerciality of conducting further extensive investigations given that any benefit to investors of potential legal claims arising from the above matters may only be recovered if an insurance policy responds to same and which may be entirely diminished if I am successful in the Bellpac/MPF claim (see Section 3.2.1 above) or from claims made against the policies following legal actions by other LM Funds. Accordingly, I will not carry out any further investigations in relation to this matter at this stage while the Bellpac/MPF claim proceedings are on foot.

3.3.4 Fund Valuation Policy

I refer to my previous reports to investors. I summarise the matter as follows:

- A review of the fund's compliance plan dated 16 March 2011 details the following regarding the fund's valuation policy:
    - Valuations may only be carried out by panel valuers; and

- An updated valuation will generally be required for commercial loans at 24 month intervals and construction loans at 12 month intervals.

- From my preliminary enquiries, it appears that the Responsible Entity did not generally obtain updated professional valuations after the initial advance was made. Instead, in the majority of cases, they relied upon discounted cash flows prepared by management on the feasibility of a project.

I refer to my comments in Section 3.3.3 above about the commerciality of incurring further costs when there may be no further return to investors. I therefore will not undertake any further investigations in relation to this matter at this stage while the Bellpac/MPF claim proceedings are on foot.

3.3.5 External Valuations

I have continued a review of the loans where material losses have occurred to ascertain whether the valuations relied on were too high and if there was negligence by the valuer which contributed to the losses.

My investigations are ongoing in this respect.

3.4 Auditors

I confirm that I have not at this stage been able to progress my investigations due to an inability to gain access to the auditor's working papers and all relevant FMIF records. My investigations will be facilitated by undertaking the public examinations due to take place in March/April 2015.

Once my investigations are complete in relation to each of the above matters, I will update investors accordingly.

3.5 Application to Court for Access to FMIF records

I have previously raised the difficulties faced with the intermingled LM records held by LMA and gaining access to the records that concern the FMIF to enable me to undertake my obligations to wind up the fund.

Until now, access to records requested by me have been via a screening process conducted by LM staff under the direction of LMA's Liquidator and in some cases, a requested document would need to be redacted before it was made available to me which can be a time consuming process.

In November 2014, in order to save costs, and with the agreement of the Liquidator of LMA who employed LM staff and consultants, McGrathNicol and I decided to close the LM office at Surfers Paradise on 23 December 2014 and terminate the employment/engagement of the LM staff.

On 2 December 2014, I made application to the Supreme Court of Queensland to enter into an agreement with LMA's Liquidator for direct access to the records held by LMA so that I could obtain records that concern the FMIF. That proposed arrangement involves certain of my nominated staff (and certain ex LM staff engaged by me) having direct access to the LM databases pursuant to strict undertakings by them to the Court not to deal with any non FMIF records.

Following court hearings on 12 December 2014, 15 December 2014 and 18 December 2014, a temporary access regime was agreed until 29 January 2015 with the hearing adjourned until that date.

At the hearing on 29 January 2015, full access to the records was approved by the court subject to undertakings being provided to the court not to interrogate the records for anything other than the FMIF and not to use anything that does not relate to the FMIF.

4. Closure of LM Office/Reduction in costs

As discussed above, following consultation with the relevant parties, a decision was made to close the LM office on 23 December 2014.

Prior to the office closure, the Fund had been incurring operating costs of approximately $1.8m per annum in respect of the costs of employing staff and consultants to assist in managing down the loan book, plus premises and equipment costs.

Three members of the former LMA staff have been retained on a short term basis in order to assist McGrathNicol and ourselves with the realisation of the remaining assets.

5. Estimated Return to Investors

Based on the professional valuations, offers received and unconditional contracts entered into for the properties charged to the Fund, I provide an estimated return to investors of between 15 and 17 cents in the dollar as at 31 December 2014, calculated as follows:

	Low $	High $
Cash at Bank	32,711,799	32,711,799
Funds held in trust	1,716,388	1,716,388
Estimated selling prices of properties to be sold	50,774,673	59,920,385
Less:		
Selling costs (2.5% of sale price)	(1,333,312)	(1,569,055)
Land tax & rates	(250,000)	(250,000)
Other unsecured creditors	(9,380,753)	(4,451,688)
FTI Fees & legal costs claimed (subject to approval)	(3,394,747)	(3,394,747)
Receivers and Managers' Fees (McGrathNicol)	(253,965)	(253,965)
Receiver's fees & outlays (BDO)	(937,768)	(937,768)
Estimated net amount available to investors as at 31 December 2014	**69,716,262**	**83,562,396**
Total investor units	478,273,531	478,273,531
Estimated return in the dollar	**0.15**	**0.17**

The low range has increased from 12 cents at the date of my last report primarily due to ongoing realisations being higher than the low value and unconditional contracts having been entered into for three retirement villages with the relevant amount being used to calculate the low value.

The above table does not take into account future operating costs, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

6. Updated Unit Price

The unit price will be updated twice per year as at 30 June and 31 December. In this regard, I provide below an updated unit price as at 31 December 2014 of 16 cents, which is based on the mid-point of the high and low estimated selling prices of the secured assets as at 31 December 2014.

	$000's
Total Value of Fund Assets as at 31 December 2014 (net of land tax and rates)	89,776
Less Creditors and Other Payables	(13,690)
Total Net Value of Fund Assets	**76,086**
Total Number of Units as at 31 December 2014	**478,274**
Unit Price	**0.16**

I *attach* a copy of a letter that may be forwarded to Centrelink confirming the unit price as at 31 December 2014, and which may be used by investors to assist with the review of their pensions.

7. Distributions to Investors

As previously advised, I am on notice from KordaMentha that the MPF potentially have a breach of trust claim against the Fund. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned at section 3.2.2 above are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities (which totals approximately $12 million) and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the Court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

8. Fees claimed by LM Investment Management Ltd (In Liquidation) ("LMIM") (by its liquidators, FTI Consulting)

The liquidators of LMIM, Mr Park and Ms Muller, have submitted invoices from LMIM, made out to the Fund, totalling $3,265,742 excluding GST for payment in relation to their remuneration and out of pocket expenses for the period from 19 March 2013 to 30 June 2014.

The claim can be broken down into the following three categories:

- Category 1 relates to time spent working on specific fund matters;
- Category 2 is in respect of LMIM's role as the Responsible Entity of the Fund with the time spent by the liquidators and their staff being allocated across all Funds under their control based on a percentage of funds under management;
- Category 3 in relation to the appointments of LMIM as Controllers of a number of assets and where they are acting as agent for the mortgagee in possession.

	Paid to date (GST exclusive) $	Outstanding (GST exclusive) $
Direct time charged to work undertaken for the Fund - including outlays (category 1)		1,742,674
Allocation of Responsible Entity time (category 2)		1,174,678
Time charged in respect of the Controllerships (category 3) (19 March 2013 to 31 December 2013)	181,112	
Time charged in respect of the Controllerships (category 3) (1 January 2014 to 24 September 2014)		62,505
Operational and loan recovery costs		285,885
	181,112	***3,265,742***

As previously advised, both McGrathNicol and I have raised legal questions as to whether certain work done by the liquidators of LMIM can properly be charged to the Fund, as well as questions as to the quantum claimed. As a result of these issues, I have met with FTI to discuss certain aspects of their claim and we are currently in the process of agreeing a framework for determining their claim. It is proposed that directions are sought from the Court as to their entitlement to claim under various categories and that their claim be reviewed and adjudicated on by an independent expert.

Prior to the application being made to the court for directions, FTI have advised that they would wish the court to clarify any ongoing role the responsible entity may have and the residual powers they may have as a result of my appointment. This application is presently being prepared by FTI's solicitors.

9. Management Accounts

The management accounts for the year ending 30 June 2014 are now available on the website www.lmfmif.com.

I am currently preparing the management accounts for the half year ending 31 December 2014. These accounts will be prepared in accordance with the relevant accounting standards and will be posted on the website www.lmfmif.com when finalised.

10. Western Union

It has been brought to my attention that a number of the payments in respect of capital distributions to overseas investors in March 2013 were retained by Western Union and not forwarded to the intended recipients.

I am currently in discussions with Western Union regarding the release of these monies.

11. Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details in section 12 below to advise us in this regard.

My next report to investors will be issued by 30 April 2015.

12. Receiver's Remuneration and Expenses

As previously advised, an application was made to Court on 7 November 2014 for approval of my remuneration for the period from 1 April 2014 to 30 September 2014. The hearing in this respect took place on 27 November 2014. The court approved the remuneration sought of $1,005,948.35 (inclusive of GST) in respect of work undertaken in dealing with FMIF during the period from 1 April 2014 to 30 September 2014. In addition, the court approved the remuneration sought of $7,000.95 in respect of the work undertaken on the six controllerships relating to the retirement villages during the period from 25 September 2014 to 30 September 2014.

In addition to the remuneration for the above court application, I have incurred further remuneration of $926,767.50 plus outlays of $11,001.23 plus GST for the period from 1 October 2014 to 23 January 2015 including work undertaken in respect of the controllerships for the retirement village assets of $157,212.50 as detailed in the table below and attached summaries.

BDO

	Remuneration (GST exclusive) $	Outlays (GST exclusive) $
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed)	769,555.00	7,231.97
OVST Pty Ltd (In Liquidation) (Controllers Appointed)	35,495.50	827.63
Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	35,069.50	1,467.93
Bridgewater Lake Estate Ltd (In Liquidation) (Controllers Appointed)	26,039.00	22.84
Redland Bay Leisure Life Ltd (In Liquidation) (Controllers Appointed)	31,981.50	1,428.02
Redland Bay Leisure Life Development Ltd (In Liquidation) (Controllers Appointed)	3,698.50	0.56
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers & Managers Appointed) (Controllers Appointed)	24,928.50	22.28
	926,767.50	***11,001.23***

I will apply to the Court for approval of this remuneration in due course and will advise investors accordingly.

13. Queries

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:

BDO, GPO Box 457, Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely

David Whyte
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 23 January 2015

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Angie Hicks	Partner	600	1.0	600.00	1.0	600.00										
David Whyte	Partner	560	214.6	120,176.00	77.4	43,344.00	6.4	3,584.00	0.2	112.00	80.2	44,912.00	13.3	7,448.00	37.1	20,776.00
Andrew Fielding	Partner	560	1.3	728.00											1.3	728.00
Steven Sorbello	Partner	545	0.8	436.00	0.8	436.00										
Eric Leeuwendal	Director	495	314.1	155,479.50	64.9	32,125.50	10.7	5,296.50			2.6	1,287.00	148.5	73,507.50	87.4	43,263.00
Craig Jenkins	Partner	485	4.0	1,940.00	4.0	1,940.00										
Sharnie Mitchell	Senior Manager	475	0.7	332.50	0.7	332.50										
Margaux Beauchamp	Associate	470	207.8	97,290.00	207.0	97,290.00										
John Somerville	Senior Manager	440	146.7	64,548.00	91.0	40,040.00	0.7	308.00			37.7	16,588.00			17.3	7,612.00
Charles Haines	Senior Manager	440	1.8	792.00											1.8	792.00
Joanne Garcia	Manager	400	382.6	153,040.00	26.9	10,760.00	35.3	14,120.00	0.1	40.00	246.3	98,520.00	3.6	1,440.00	70.4	28,160.00
Michelle Matchett	Associate	390	20.7	8,073.00	20.7	8,073.00										
Julie Pagcu	Senior Manager	365	3.0	1,095.00	3.0	1,095.00										
Ashleigh Simpson-Wade	Supervisor	360	0.4	144.00					0.2	72.00					0.2	72.00
Daniel Tipman	Supervisor	360	30.2	10,872.00	0.6	216.00	14.5	5,220.00			15.1	5,436.00				
Julie Pagcu	Senior Manager	360	46.5	16,740.00	46.5	16,740.00										
Michael Dharmaratne	Supervisor	360	0.1	36.00			0.1	36.00								
Michael Dharmaratne	Supervisor	320	9.0	2,880.00	0.3	96.00	6.5	2,080.00							2.2	704.00
Daniel Tipman	Supervisor	320	54.5	17,440.00	1.5	480.00	32.2	10,304.00			10.1	3,232.00	0.3	96.00	10.4	3,328.00

			Totals		Task Area											
					Assets		Creditors		Employees		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Naomi Rowsome	Supervisor	310	2.5	775.00	2.5	775.00										
Mia Russo	Supervisor	280	0.8	224.00	0.8	224.00										
Nicola Kennedy	Accountant I	225	52.9	11,902.50	1.6	360.00	12.8	2,880.00	2.0	450.00	6.8	1,530.00	0.8	180.00	28.9	6,502.50
Rycko Taniran	Senior Accountant II	200	46.1	9,220.00	46.1	9,220.00										
Pei Wun Han	Accountant I	200	1.1	220.00	1.1	220.00										
Dermot O'Brien	Account II	195	112.0	21,840.00	0.8	156.00	1.4	273.00			2.0	390.00			107.8	21,021.00
Sarah Cunningham	Team Assistant	195	3.0	585.00	0.4	78.00					2.6	507.00				
Pei Wun Han	Accountant I	185	156.4	28,934.00	156.4	28,934.00										
Dale Ludwig	Accountant I	185	227.5	42,087.50	227.5	42,087.50										
Owen Lonergan	Accountant I	185	0.8	148.00	0.8	148.00										
Nicole Jackson	Team Assistant	155	1.2	186.00			1.2	186.00								
Bodie Smith	Accountant II	145	1.6	232.00	1.6	232.00										
Sharon Aranha	Secretary	130	1.9	247.00	1.9	247.00										
Moira Hattingh	Team Assistant	80	3.9	312.00											3.9	312.00
		TOTALS	2,051.5	769,555.00	987.8	336,249.50	121.8	44,287.50	2.5	674.00	403.4	172,402.00	166.5	82,671.50	368.7	133,270.50
		GST		76,955.50												
		TOTAL INC GST		846,510.50												
		AVERAGE HOURLY RATE		375		340		364		270		427		497		361

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 23 January 2015

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

Expense Type	Amount ($ ex GST)
Photocopy	105.60
Parking	358.64
Search Fee	176.10
Mileage	866.80
Postage	5,724.83
TOTAL	7,231.97
GST	723.20
TOTAL INC GST	7,955.17

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 23 January 2015

OVST Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area											
					Assets		Creditors		Employees		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	12.1	6,776.00	8.0	4,480.00			0.2	112.00	3.8	2,128.00	0.1	56.00		
John Somerville	Senior Manager	440	28.2	12,408.00	24.0	10,560.00	0.3	132.00			3.3	1,452.00			0.6	264.00
Joanne Garcia	Manager	400	10.2	4,080.00	0.8	320.00					8.6	3,440.00			0.8	320.00
Ashleigh Simpson-Wade	Supervisor	360	0.2	72.00									0.1	36.00	0.1	36.00
Daniel Tipman	Supervisor	360	0.4	144.00							0.3	108.00			0.1	36.00
Daniel Tipman	Supervisor	320	6.3	2,016.00	2.8	896.00	0.7	224.00	0.4	128.00	2.1	672.00			0.3	96.00
Nicola Kennedy	Accountant I	225	20.3	4,567.50	2.5	562.50	0.2	45.00	2.5	562.50	6.7	1,507.50			8.4	1,890.00
Sarah Cunningham	Team Assistant	195	16.6	3,237.00							16.0	3,120.00			0.6	117.00
Dermot O'Brien	Undergraduate	195	10.6	2,067.00											10.6	2,067.00
Moira Hattingh	Team Assistant	80	1.6	128.00											1.6	128.00
	TOTALS		106.5	35,495.50	38.1	16,818.50	1.2	401.00	3.1	802.50	40.8	12,427.50	0.2	92.00	23.1	4,954.00
	GST			3,549.55												
	TOTAL INC GST			39,045.05												
	AVERAGE HOURLY RATE			333		441		334		259		305		460		214

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 23 January 2015 OVST Pty Ltd (In Liquidation) (Controllers Appointed)	
Expense Type	Amount ($ ex GST)
Search Fee	**825.95**
Postage	**1.68**
TOTAL	**827.63**
GST	**82.76**
TOTAL INC GST	**910.39**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 22 January 2015

Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	0.2	112.00	0.1	56.00					0.1	56.00		
Joanne Garcia	Manager	400	0.8	320.00									0.8	320.00
Ashleigh Simpson-Wade	Supervisor	360	0.1	36.00									0.1	36.00
Daniel Tipman	Supervisor	320	3.8	1,216.00	1.0	320.00	0.5	160.00			0.6	192.00	1.7	544.00
Nicola Kennedy	Accountant I	225	3.8	855.00							0.6	135.00	3.2	720.00
Dermot O'Brien	Undergraduate	195	5.4	1,053.00					0.8	156.00			4.6	897.00
Sarah Cunningham	Team Assistant	195	0.3	58.50							0.2	39.00	0.1	19.50
Moira Hattingh	Team Assistant	80	0.6	48.00									0.6	48.00
	TOTALS		15.0	3,698.50	1.1	376.00	0.5	160.00	0.8	156.00	1.5	422.00	11.1	2,584.50
	GST			369.85										
	TOTAL INC GST			4,068.35										
	AVERAGE HOURLY RATE			247		342		320		195		281		233

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 22 January 2015 Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed)	
Expense Type	Amount ($ ex GST)
Postage	**0.56**
TOTAL	**0.56**
GST	**0.06**
TOTAL INC GST	**0.62**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 23 January 2015

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed)

			Totals		Task Area							
					Assets		Creditors		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	8.7	4,872.00	6.7	3,752.00			1.6	896.00	0.4	224.00
John Somerville	Senior Manager	440	20.0	8,800.00	16.8	7,392.00			3.0	1,320.00	0.2	88.00
Joanne Garcia	Manager	400	4.9	1,960.00	0.5	200.00			3.5	1,400.00	0.9	360.00
Daniel Tipman	Supervisor	360	1.1	396.00	0.5	180.00	0.4	144.00			0.2	72.00
Daniel Tipman	Supervisor	320	9.9	3,168.00	3.5	1,120.00	1.0	320.00	2.4	768.00	3.0	960.00
Nicola Kennedy	Accountant I	225	12.0	2,700.00	1.1	247.50			2.1	472.50	8.8	1,980.00
Sarah Cunningham	Team Assistant	195	13.7	2,671.50					13.0	2,535.00	0.7	136.50
Dermot O'Brien	Undergraduate	195	1.4	273.00							1.4	273.00
Moira Hattingh	Team Assistant	80	1.1	88.00	0.2	16.00					0.9	72.00
	TOTALS		72.8	24,928.50	29.3	12,907.50	1.4	464.00	25.6	7,391.50	16.5	4,165.50
	GST			2,492.85								
	TOTAL INC GST			27,421.35								
	AVERAGE HOURLY RATE			342		441		331		289		252

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 23 January 2015 Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed)	
Expense Type	Amount ($ ex GST)
Search Fee	**20.60**
Postage	**1.68**
TOTAL	**22.28**
GST	**2.23**
TOTAL INC GST	**24.51**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 23 January 2015
Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	11.1	6,216.00	8.6	4,816.00	0.6	336.00			1.9	1,064.00		
John Somerville	Senior Manager	440	17.4	7,656.00	15.2	6,688.00	0.3	132.00			1.6	704.00	0.3	132.00
Joanne Garcia	Manager	400	9.0	3,600.00	0.2	80.00					7.7	3,080.00	1.1	440.00
Chris Demeyere	Supervisor	360	0.3	108.00							0.3	108.00		
Daniel Tipman	Supervisor	360	0.3	108.00							0.3	108.00		
Daniel Tipman	Supervisor	320	5.5	1,760.00	0.6	192.00	1.6	512.00			3.3	1,056.00		
Nicola Kennedy	Accountant I	225	9.8	2,205.00	1.8	405.00			0.1	22.50	3.2	720.00	4.7	1,057.50
Sarah Cunningham	Team Assistant	195	19.0	3,705.00							17.7	3,451.50	1.3	253.50
Dermot O'Brien	Undergraduate	195	3.0	585.00									3.0	585.00
Moira Hattingh	Team Assistant	80	1.2	96.00									1.2	96.00
	TOTALS		76.6	26,039.00	26.4	12,181.00	2.5	980.00	0.1	22.50	36.0	10,291.50	11.6	2,564.00
	GST			2,603.90										
	TOTAL INC GST			28,642.90										
	AVERAGE HOURLY RATE			340		461		392		225		286		221

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 23 January 2015 Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed)	
Expense Type	Amount ($ ex GST)
Postage	2.24
Search Fee	20.60
TOTAL	**22.84**
GST	**2.28**
TOTAL INC GST	**25.12**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 23 January 2015

Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	14.1	7,896.00	8.5	4,760.00	0.2	112.00	0.1	56.00	5.3	2,968.00		
John Somerville	Senior Manager	440	26.7	11,748.00	23.6	10,384.00	0.4	176.00			2.7	1,188.00		
Joanne Garcia	Manager	400	11.4	4,560.00	0.8	320.00					9.5	3,800.00	1.1	440.00
Ashleigh Simpson-Wade	Supervisor	360	0.1	36.00									0.1	36.00
Daniel Tipman	Supervisor	360	0.1	36.00			0.1	36.00						
Daniel Tipman	Supervisor	320	6.1	1,952.00	4.8	1,536.00					0.2	64.00	1.1	352.00
Nicola Kennedy	Accountant I	225	20.2	4,545.00	2.4	540.00			0.9	202.50	7.0	1,575.00	9.9	2,227.50
Sarah Cunningham	Team Assistant	195	16.2	3,159.00							15.3	2,983.50	0.9	175.50
Dermot O'Brien	Undergraduate	195	5.3	1,033.50									5.3	1,033.50
Moira Hattingh	Team Assistant	80	1.3	104.00									1.3	104.00
	TOTALS		101.5	35,069.50	40.1	17,540.00	0.7	324.00	1.0	258.50	40.0	12,578.50	19.7	4,368.50
	GST			3,506.95										
	TOTAL INC GST			38,576.45										
	AVERAGE HOURLY RATE			346		437		463		259		314		222

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 23 January 2015 Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	
Expense Type	Amount ($ ex GST)
Search Fee	1,466.25
Postage	1.68
TOTAL	**1,467.93**
GST	**146.79**
TOTAL INC GST	**1,614.72**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 23 January 2015
Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	20.2	11,312.00	16.0	8,960.00					3.9	2,184.00	0.3	168.00
Andrew Fielding	Partner	560	0.1	56.00									0.1	56.00
John Somerville	Senior Manager	440	22.5	9,900.00	19.7	8,668.00	0.4	176.00			2.4	1,056.00		
Joanne Garcia	Manager	400	9.1	3,640.00	1.3	520.00					7.0	2,800.00	0.8	320.00
Ashleigh Simpson-Wade	Supervisor	360	0.1	36.00									0.1	36.00
Nicola Kennedy	Accountant I	225	15.7	3,532.50	3.3	742.50			0.8	180.00	5.7	1,282.50	5.9	1,327.50
Sarah Cunningham	Team Assistant	195	15.8	3,081.00							15.2	2,964.00	0.6	117.00
Dermot O'Brien	Undergraduate	195	1.6	312.00									1.6	312.00
Moira Hattingh	Team Assistant	80	1.4	112.00									1.4	112.00
	TOTALS		86.5	31,981.50	40.3	18,890.50	0.4	176.00	0.8	180.00	34.2	10,286.50	10.8	2,448.50
	GST			3,198.15										
	TOTAL INC GST			35,179.65										
	AVERAGE HOURLY RATE			370		469		440		225		301		227

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 23 January 2015 Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed)	
Expense Type	Amount ($ ex GST)
Search Fee	**1,426.90**
Postage	**1.12**
TOTAL	**1,428.02**
GST	**142.80**
TOTAL INC GST	**1,570.82**

BDO

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TO WHOM IT MAY CONCERN

30 January 2015

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my appointment as the Receiver of the Fund's assets and the person responsible for ensuring the winding up of the Fund in accordance with the terms of its constitution by Order of the Supreme Court of Queensland on 8 August 2013.

I provide an update on the estimated unit price of the fund as at 31 December 2014, calculated as follows:

	$000's
Total Value of Fund Assets as at 31 December 2014 (net of land tax and rates)	89,776
Less Creditors and Other Payables	(13,690)
Total Net Value of Fund Assets	**76,086**
Total Number of Units as at 31 December 2014	**478,274**
Unit Price	**0.16**

Should you have any queries in respect of the above, please contact Nicola Kennedy of my office on (07) 3237 5785.

Yours faithfully,

David Whyte
Receiver

BDO

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TO THE INVESTOR AS ADDRESSED

30 April 2015

LM FIRST MORTGAGE INCOME FUND (RECEIVERS AND MANAGERS APPOINTED) (RECEIVER APPOINTED) ARSN 089 343 288 ('the Fund' or 'FMIF')

I refer to my previous reports and now provide my ninth update to investors in relation to the winding up of the Fund, as follows.

1. Position of the Secured Creditor, the potential claim by KordaMentha, the trustee of the LM Managed Performance Fund ('MPF') and claims filed against the Fund

As previously advised, even though the secured creditor has been repaid in full, the Receivers and Managers appointed by the secured creditor have advised that they are not in a position to retire until the potential claim by KordaMentha as the new trustee of the MPF is resolved.

I have previously advised that KordaMentha's investigations have been partially hampered by not having access to all records of the MPF however this was resolved following the court hearing on 29 January 2015 and which was referred to in my report of 30 January 2015.

Subsequent to this, my solicitors wrote to KordaMentha's solicitors on 4 March 2015 requesting an update on their investigations and bearing in mind KordaMentha advised me in April 2014 that they would make the assessment of potential claims against the secured creditor a priority.

KordaMentha's solicitors responded on 1 April 2015 advising that KordaMentha had only recently obtained full access to all records and that they have investigated and continue to investigate claims against the responsible entity and the FMIF.

They also advised that their client has commenced two proceedings although had not yet served them against the FMIF with one further possible claim still being considered.

In relation to the two proceedings commenced, they advised that they were as a consequence of potential issues concerning limitation periods and that they will make a decision in due course as to whether (or not) they will be served.

Subsequently, I received a copy of the two proceedings although they have not yet been formally served.

The two proceedings relate to claims in respect of two loans that were allegedly assigned from the FMIF to the MPF on 28 August 2008 in the sums of $9.7M and $19.5M respectively.

These claims must be served within 12 months of filing otherwise the claims will lapse unless the court extends this period. If the two filed claims are served on me, it may have implications in relation to the timing and potentially the return to investors however, I am unable to comment further at this stage.

As discussed at section 3.2.1 below, on 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland, against a number of parties including the MPF trustees, in respect of the loss suffered by FMIF as a result of the amount paid to MPF in the Bellpac litigation matter. This claim is for in excess of $20M.

2. Realisation of Assets

In my report dated 30 January 2015, I provided a summary of the assets to be realised. In the tables below, I summarise the assets realised since then and those remaining to be realised.

2.1 Assets realised since 31 December 2014

Location	Description of Asset
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units.
NSW	A supported living community, with 83 completed independent living units.
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.
TAS	A supported living community, with 29 completed independent living units and a further 15 proposed.
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the Fund. Of the 63 units, seven had been sold and 56 remained as at 31 July 2014. Following an extensive marketing campaign in June/July last year, an offer was received to purchase the remaining units in one line. This was originally due to settle in late November 2014, however an extension was granted to the purchaser until 22 December 2014 for the unleased units (monies received on 19 December 2014) and until 30 January 2015 for the leased assets. The sale of the leased assets was delayed further with settlement effected on 25 March 2015.

The four retirement villages mentioned above settled on 23 April 2015 for a total contract price of $32M (plus adjustments) with 50% of the sale price being secured by bank guarantees and payable in 12 months' time. It was structured this way to enable a higher price to be paid and noting that presently no distributions are able to be made to investors.

Documentation is in the course of being finalised for two other assets for a total consideration of $15.5M with settlement likely to be around 30 June 2015. Substantial progress has therefore been made in the disposal of assets.

2.2 Assets with partial realisations

Location	Description of asset	
QLD	90 strata titled hotel rooms. Since my last report which included the position as at 31 December 2014, when 4 units remained, a further unit has settled with 3 remaining.	On the market
WA	The development has been subdivided into three super lots. The first lot was sold in January 2014. A second lot was under contract however the conditions of the contract were not met and therefore it was terminated. The two remaining lots are currently on the market.	On the market
QLD	Residential land subdivision. 80 lots with operational works approval and additional land (approx. 57ha) with or pending development approval together with one residential property are currently on the market.	On the market
QLD	72 strata titled unit resort complex with management rights. At the time of my appointment, 57 units remained. Following a marketing campaign in June/July last year, 22 units have settled with 4 under contract. Proceedings commenced by the body corporate against the builder were settled late last year.	Under contract/on the market
VIC	A supported living community, with 69 completed independent living units and a further 129 proposed.	Offer accepted with unconditional contract of sale expected to be executed shortly with 60 days settlement

2.3 Assets to be realised

Location	Description of asset	Status
QLD	Two supported living communities. One currently has 62 completed units with a further 106 proposed. The other has 110 completed units, with 16 units currently vacant.	Borrower in control of the assets

3. Other Potential Recoveries/Legal Actions

I provide an update in relation to investigations undertaken to date, legal proceedings on foot and further work to be done, as follows:

3.1 Public Examination (PE)

On 17 November 2014, I filed in the Supreme Court my application to conduct a PE in relation to the audits undertaken of the FMIF. The application was granted on 27 November 2014 and the summonses were issued on 30 January 2015. The persons to be examined are the auditors and certain directors of LM Investment Management Ltd (In Liquidation) (Receivers and Managers Appointed) (LMIM).

On 6 March 2015, the auditors filed an application in Court to discharge the summonses against them and to defer the production of the documents to a date following the hearing. The auditors argue that I do not have the power to conduct the PE as:

- the Court order under which I am appointed, does not give me the power to conduct the PE; and
- I was only ever appointed as the Receiver of the property of the Fund to wind up the Fund in accordance with its constitution and the public examination power only applies in relation to the affairs of a 'Corporation' (not a fund).

I opposed the auditors application on the grounds that I do have the power to conduct a PE and on the basis ASIC has granted me Eligible Applicant status to do so. The hearing of the court application was on 13 March 2015 with the decision being reserved.

The first day of the PE was on 16 March 2015 when the examinees (directors and auditors) produced a small quantity of documents. Consent orders were also made that day allowing the auditors more time to produce the remaining documents in three tranches on 2, 16 and 30 April 2015. To date, I have only received 4 boxes of files in this respect with the balance due today.

As a consequence of the delay in the auditors producing all of the documents pursuant to their summonses, the directors and auditors will now be examined under oath between 15 and 25 June 2015.

3.2 Bellpac Proceedings

3.2.1 Settlement of Gujarat proceedings

I refer to my previous reports to investors. I summarise the matter as follows:

- In November 2010, proceedings against Gujarat NRE Minerals Limited (Gujarat) were settled for a total amount of approximately $45.6M;
- As MPF funded the majority of the costs of the litigation, the settlement proceeds received in 2011, were shared between the funds on the basis of a 65%/35% split;
- According to the security held by FMIF and MPF over the property the subject of the litigation, FMIF held first priority to all of the proceeds of the settlement and was entitled to all of the settlement proceeds;
- On 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland claiming $15,546,147.85 plus interest (calculated from mid/late 2011 with the claim in excess of $20M) being the loss suffered by FMIF as a result of the amount paid to MPF, against LMIM, MPF and 6 directors/former directors (Director Defendants).

An update on developments is summarised below:

- Leave to proceed against LMIM (as the company is in Liquidation) and Peter Drake (as he is a bankrupt) has been granted:
- All parties, excluding one director who is believed to be overseas and cannot be located, have been served with the statement of claim;
- Only the Trustee for the MPF has filed a defence;
- A number of the Director Defendants advised that:
  - they are unable to file a defence until they have full access to the relevant books and records;
  - they should be entitled to lodge a limited defence due to legal privilege (against self-incrimination and exposure to a civil penalty);
  - a sum sufficient for security for costs (in the event I am unsuccessful in the proceedings) should be paid by me into Court.
- I have arranged for funds to be set aside for security for costs and informed the defendants of same;
- In order to progress the claim, have it actively managed by the court, and to minimise delays, I applied to have the proceedings placed on the Commercial List;
- I was successful in having the proceedings placed on the Commercial List on 8 April 2015 and orders were made for directions requiring the Director Defendants to file any interlocutory application in relation to their claim to be entitled to privilege and the timing of delivery of their intention to defend and filing of defences. The matter was heard earlier today in this respect with the defendants being allowed to claim privilege in certain respects with all defences to be lodged by 25 June 2015. The matter is listed for further directions on 29 June 2015;
- Arrangements are being put in place for the director defendants to have full access to the relevant books and records.

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3.2.2 Other Bellpac litigation

a. $2 million of Wollongong Coal Ltd (WCL) - Convertible Bonds

I refer to my previous reports to investors. I summarise the matter as follows:

- FMIF has first ranking security over the assets of a borrower, Bellpac Pty Ltd (Bellpac) which is now in liquidation;
- In August 2008 $10 million of Bonds were issued by WCL to Bellpac however, Bellpac allegedly transferred these Bonds to another party who further transferred the bonds to other parties;
- The proceedings by Bellpac and its Liquidators in regard to $2 million Bonds (still in the name of Bellpac) commenced in January 2010. In 2012 Bellpac was successful in obtaining Orders that Bellpac is the true owner of the Bonds;
- The decision was appealed by the defendants in the Full Federal Court and the High Court which were unsuccessful;
- WCL is a publicly listed company and was formerly called Gujarat NRE Minerals Ltd;
- The Liquidator applied for conversion of the Bonds with a face value of $2,000,000 into shares however, WCL failed to issue the shares as required and did not otherwise respond. The terms of the Bonds provide that the Bonds can be redeemed for their face value if WCL is unable to issue the shares. The Liquidator applied to enforce the terms of the bonds and demanded that WCL redeem the bonds for their face value being $2 million plus interest.
- On 23 October 2014, the Liquidators served a creditor's statutory demand (CSD) on WCL for $2.9 million being the face value of the bonds plus interest;
- On 11 November 2014, WCL filed an application to set aside the CSD.

Further developments are as follows:

- At the Directions hearing on 13 February 2015, it was ordered that the hearing of the application to set aside the CSD would be on 15 May 2015.
- The Liquidator is continuing to try to negotiate a settlement with WCL prior to the hearing.

I continue to liaise with the Liquidator in relation to their negotiations with WCL for a commercial outcome to this claim.

As FMIF will be the beneficiary of the funds recovered from the $2 million bonds claim after costs, FMIF is funding the Liquidator's care and preservation costs of realising the Bonds for the benefit of investors.

b. **$8 million of WCL Convertible Bonds**

I refer to my previous reports to investors. I summarise the matter as follows:

- The proceedings by Bellpac and its Liquidators commenced in July 2012 seeking orders that Bellpac is the true owner of the $8 million Bonds and the recovery of $4.7 million transferred by Bellpac (pre Liquidation) to two of the defendants;
- If the Liquidators are successful in obtaining a declaration from the Court that Bellpac is the true owner of the Bonds, FMIF will be the beneficiary of the funds recovered by the Liquidator from realising the Bonds, after costs. In order to protect the interest of FMIF in Bellpac's claim to title to the Bonds, FMIF is continuing to fund the Liquidator's costs in the proceedings.

Further developments in relation to this matter are as follows:

- The trial was heard over four days and ended on 12 March 2015 with the decision reserved.

c. **Proceedings against Bellpac Receivers, LMIM , The Trust Company Ltd ("the Parties")**

- I refer to my previous reports to investors. I summarise the matter as follows:
- In February 2013, parties including the second mortgagee over Bellpac commenced proceedings against the Parties in relation to the alleged sale of the Bellpac property at an undervalue. The property that was sold formed part of the settled proceedings outlined at Section 3.2.1 above;
- LMIM as RE for FMIF and the other respondents filed applications seeking security for costs from the applicants which was heard on 23 October 2014;
- On 15 December 2014, the decision in relation to the security for costs applications was handed down in favour of the applicants. The plaintiffs are required to pay $550,000 into Court before the proceedings can continue;

Further developments are as follows:

- The Directions hearing in February 2015 was vacated as the plaintiffs did not pay the security for costs of $550,000 into Court;
- The Directions hearing has been adjourned to 4 May 2015. If the security for costs are not paid into court by that date it is likely the proceedings will be discontinued.

3.3 Other Potential Claims against LMIM and related Parties

3.3.1 LM Administration Pty Ltd (In Liquidation)/Director related claims

I refer to my previous reports to investors in which I summarised the status of my investigations in relation to the following matters:

- Management Service Agreements with LM Administration Pty Ltd (in Liquidation) (LMA);
- Changes to Constitution;
- Fund Valuation Policy;

For details about my investigations in respect of the above matters, I refer you to my previous reports to investors.

Whilst I consider the directors of LMIM may have breached their duties in regard to these matters and that there may be a claim against them and/or LMA (Management Service Agreements), I do not currently consider it commercially worthwhile to pursue these claims bearing in mind:

- I have commenced proceedings against the directors for an amount in excess of $20m (including interest) in respect of the claim discussed at section 3.2.1 above;
- LMA is in liquidation with no dividend expected to creditors at this stage.

3.3.2 Distribution to Class B Unit Holders

I refer to my previous reports to investors for further details. I summarise the matter as follows:

- During the financial year ended 30 June 2012 distributions of approximately $16.9M were made to Class B unit holders at a time when class A and C unit holders did not receive any distributions, apart from hardship distributions;
- Class B unit holders, relate to the three feeder funds of FMIF;
- The auditors qualified the financial statements in regard to this transaction;
- As a result of the distribution and reinvestment of a major portion of that distribution into units in FMIF, Class B unit holders increased their units in the fund from 44.33% to 46.14% at the expense of the Class A & C unit holders. This will result in the Class B unit holders (the feeder funds) receiving a greater amount in the winding up of the Fund;

Further investigation of this matter will be undertaken at the public examination in June 2015 and part of the investigations being undertaken will include additional transactions in 2012.

3.3.3 External Valuations

I have continued to review the loans where material losses have occurred to ascertain whether the valuations relied on were too high and if there was negligence by the valuer which contributed to the losses.

I have engaged a valuer to review two professional valuations relied on in one substantial matter and am awaiting his report to determine if there may be a claim against the valuer for negligence.

3.3.4 Claim by ASIC against the directors

I confirm that in November 2014 ASIC commenced civil penalty proceedings in the Federal Court of Australia against Peter Drake, Francene Mulder, Eghard Van Der Hoven, Simon Tickner and Lisa Darcy. ASIC alleges Mr Drake used his position to gain an advantage for himself and the former directors breached their director's duties for failing to act with the proper degree of care and diligence regarding transactions involving the MPF.

In January 2015 Mr Drake became a bankrupt. Under the law, ASIC may make a banning order against a person if the person becomes bankrupt.

On 24 March 2015 ASIC banned Mr Drake from providing any financial services until 11 January 2018, being the remaining period of his bankruptcy.

On 15 April 2015, the proceedings were listed for the hearing of an interlocutory applicantion on 22 May 2015.

Further details can be found on the ASIC website www.asic.gov.au under media releases.

3.4 Auditors

I confirm that I have only recently obtained copies of some of the auditors working papers as part of the public examination which commenced on 16 March 2015. Auditors at BDO are assisting me in my investigations. Further investigations will be facilitated by undertaking the public examinations due to take place on 15 June 2015.

Once my investigations are complete in relation to each of the above matters, I will update investors accordingly.

3.5 Application to Court for Access to FMIF records

I confirm that following my application to Court in November 2014, on 29 January 2015, full access to the records was approved by the court subject to undertakings being provided to the court not to interrogate the records for anything other than the FMIF and not to use anything that does not relate to the FMIF. A copy of the LM servers has been obtained by me and in mid March 2015 I was able to commence investigations of the LM data that related to the FMIF.

3.6 Other actions against Borrowers and guarantors

In late February 2015, by agreement with McGrathNicol, the Receivers and Managers of the Fund, I now have the conduct of the following matters:

3.6.1 Claim against a quantity surveyor in the amount of $2.4 million plus interest

Expert evidence has been submitted by both parties and a mediation is being arranged for June 2015 in Sydney.

3.6.2 Various claims against guarantors

These claims are being reviewed and will only be pursued if it is in the interests of investors to do so.

4. Estimated Return to Investors

Based on the professional valuations, offers received and unconditional contracts entered into for the properties charged to the Fund, I provide an estimated return to Investors of between 14.3 and 17 cents in the dollar as at 31 March 2015, calculated as follows:

	Low $	High $
Cash at Bank	35,100,676	35,100,676
Funds held in trust	1,016,755	1,016,755
Estimated selling prices of properties to be sold (including properties which settled between 1 April 2015 and the date of this report)	47,411,893	55,521,457
Less:		
Selling costs (2.5% of sale price)	(1,185,297)	(1,388,036)
Land tax & rates	(250,000)	(250,000)
Other unsecured creditors	(7,976,698)	(3,247,633)
FTI Fees & legal costs claimed (subject to approval)	(3,270,079)	(3,270,079)
Receivers and Managers' Fees (McGrathNicol)	(391,000)	(391,000)
Receiver's fees & outlays (BDO) (including controllerships)	(1,889,075)	(1,889,075)
Estimated net amount available to investors as at 31 March 2015	**68,567,176**	**81,203,065**
Total investor units	478,537,325	478,537,325
Estimated return in the dollar	**14.3cents**	**17cents**

In my previous report to investors, I calculated that the estimated return to investors would be between 15 and 17 cents in the dollar. The lower end has marginally reduced from 14.5 cents (rounded up to 15 in the previous report) to 14.3 cents in the dollar.

The above table does not take into account future operating costs, future Receivers fees and future rates and land tax. It also excludes any legal recoveries against borrowers, valuers or other third parties.

Following the closure of the LM office, my staff have undertaken a review of the investor units and have identified a discrepancy between the investor register and the amount recorded in the audited and management accounts. This is currently being reconciled.

Please note that the distribution to Investors will take place after paying secured creditors, land tax, rates, Receivers fees and the unsecured creditors who rank ahead of Investors' interests.

5. Distributions to Investors

As previously advised, I am on notice from KordaMentha that the MPF potentially have a breach of trust claim against the Fund. Indeed they have now lodged but not served two claims as outlined at Section 1 of this report. In addition, the Receivers and Managers who were appointed to Bellpac have put me on notice not to distribute funds until the proceedings mentioned at section 3.2.2 above are resolved and also due to the MPF position, the secured creditor has not yet released its charge or retired its Receivers.

Once the Receivers and Managers have retired and funds released to me, I will be required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the Bellpac litigation, the funds received for the loan/lease agreements of the aged care facilities (which totals approximately $12 million) and potentially in relation to the KordaMentha claims.

I may have to seek the directions of the Court before proceeding with the next distribution.

I will update investors as to the expected timing of a distribution as these matters become clearer.

6. Fees claimed by LM Investment Management Ltd (In Liquidation) ("LMIM") (by its liquidators, FTI Consulting)

The liquidators of LMIM, Mr Park and Ms Muller, have submitted claims from LMIM, made out to the Fund, totalling $3,203,237 excluding GST for payment in relation to their remuneration and out of pocket expenses for the period from 19 March 2013 to 31 December 2014. I have requested details of FTI's remuneration for the period from 1 January 2015 to 31 March 2015, however I am advised by FTI that these figures will not be made available to us until early May.

The claim can be broken down into the following three categories:

- Category 1 relates to time spent working on specific fund matters;
- Category 2 is in respect of LMIM's role as the Responsible Entity of the Fund with the time spent by the liquidators and their staff being allocated across all Funds under their control based on a percentage of funds under management;
- Category 3 in relation to the appointments of LMIM as Controllers of a number of assets and where they are acting as agent for the mortgagee in possession.

	Paid to date (GST exclusive) $	Outstanding (GST exclusive) $
Direct time charged to work undertaken for the Fund - including outlays (category 1)		1,742,674
Allocation of Responsible Entity time (category 2)		1,174,678
Time charged in respect of the Controllerships (category 3) (19 March 2013 to 31 December 2013)	181,112	
Time charged in respect of the Controllerships (category 3) (1 January 2014 to 24 September 2014)	62,505	
Operational and loan recovery costs		285,885
	243,617	**3,203,237**

As previously advised, both McGrathNicol and I have raised legal questions as to whether certain work done by the liquidators of LMIM can properly be charged to the Fund, as well as questions as to the quantum claimed. As a result of those issues, I met with FTI and their solicitors to discuss certain aspects of their claim with a view to agreeing a framework for determining their claim. There has been no resolution of these issues yet.

FTI has advised that they wish the court to clarify any ongoing role the responsible entity may have and the residual powers they may have as a result of my appointment.

My solicitors have recently been served with an application in this respect together with a commercial list statement with a view to placing the matter on the Commercial List.

Given that this may have an effect on the court order in respect of my appointment and could potentially affect the secured creditors and its Receivers and Managers, my solicitors asked FTI's solicitors to include, Deutsche Bank, McGrathNicol and ASIC as respondents to the application and to notify investors.

FTI's solicitors have advised that they have given copies of their application and other court papers to ASIC, but that they do not intend to join ASIC or Deutsche Bank or McGrathNicol as parties to the application. A judge will be asked to determine shortly whether these parties should be respondents and the manner in which investors should be notified of, or served with, the application.

Copies of the court documents will shortly be uploaded to the website www.lmfmif.com.

7. Management Accounts

The management accounts for the half year ending 31 December 2014 are available on the website www.lmfmif.com.

8. Western Union

It has been brought to my attention that a number of the payments in respect of capital distributions to overseas investors in March 2013 were retained by Western Union and not forwarded to the intended recipients.

I have been advised by Western Union's solicitors that they had a right to set off these funds against the liabilities of other LM entities and I have requested an explanation as to their legal right to do so.

9. Ongoing Reporting to Investors

Reports will be distributed to investors in accordance with the preferred method of correspondence recorded for each investor on the Fund's database. In order to assist in reducing distribution costs, it would be appreciated if as many investors as possible could provide an email address in this respect. Please use the details in section 13 below to advise us in this regard.

My next report to investors will be issued by 31 July 2015.

10. Receiver's Remuneration and Expenses

There have been two applications to court to date to approve my remuneration from the date of my appointment on 8 August 2013 until 30 September 2014.

I calculate that, on a time basis, I have incurred further remuneration for work performed of $1,831,963.50 plus outlays of $57,111.63 plus GST for the period from 1 October 2014 to 17 April 2015 including work undertaken in respect of the controllerships for the retirement village assets of $352,548.50 as detailed in the table below and attached summaries.

	Remuneration (GST exclusive) $	Outlays (GST exclusive) $
LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed)	1,479,415.00	46,923.20
OVST Pty Ltd (In Liquidation) (Controllers Appointed)	84,444.50	831.55
Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)	73,834.00	7,660.91
Bridgewater Lake Estate Ltd (In Liquidation) (Controllers Appointed)	62,956.00	236.53
Redland Bay Leisure Life Ltd (In Liquidation) (Controllers Appointed)	73,593.50	1,432.12
Redland Bay Leisure Life Development Ltd (In Liquidation) (Controllers Appointed)	5,418.50	0.56
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers & Managers Appointed) (Controllers Appointed)	52,302.00	26.76
	1,831,963.50	**57,111.63**

The work undertaken during this period has been more significant than prior periods primarily due to:

- Preparing the retirement village assets for sale, assisting with the sale process and including meetings and negotiations with interested parties;
- The commencement of the controllerships on 25 September 2014 with $352,548 incurred during the above period;
- Dealing with the investigation and litigation matters mentioned at Section 3 of this report;
- The LM office being closed just prior to Christmas and taking on some of the responsibilities performed by the staff and consultants made redundant at the time by the service provider, LMA. The costs of engaging these staff and consultants and premises costs were $1.8M for the half year to 31 December 2014.

I have commenced preparation of my next remuneration application which will cover the seven months to 30 April 2015.

Investors will be notified when the application has been lodged with the court and the hearing date in respect of same.

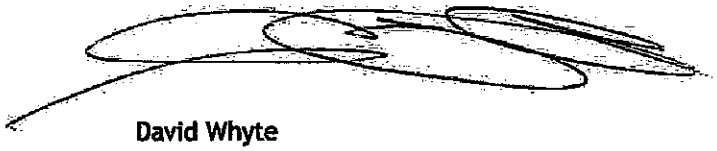
A copy of the application and supporting material will be posted to the website www.lmfmif.com when finalised.

11. Queries

Should unit holders wish to advise of any changes in details or require further information, please contact BDO as follows:

BDO
GPO Box 457
Brisbane QLD 4001
Phone: +61 7 3237 5999
Fax: +61 7 3221 9227
Email: enquiries@lmfmif.com

Yours sincerely



David Whyte
Receiver

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015
LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

			Totals		Task Area											
					Assets		Creditors		Employees		Trade On		Investigations		Dividends		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Angie Hicks	Partner	600	1.0	600.00	0.0	0.00	0.0	0.00	0.0	0.00	1.0	600.00	0.0	0.00	0.0	0.00	0.0	0.00
Mark Molesworth	Partner	600	0.3	180.00	0.0	0.00	0.0	0.00	0.0	0.00	0.3	180.00	0.0	0.00	0.0	0.00	0.0	0.00
Andrew Fielding	Partner	560	1.3	728.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	1.3	728.00
David Whyte	Partner	560	380.7	213,192.00	147.3	82,488.00	19.5	10,920.00	0.2	112.00	126.8	71,008.00	46.5	26,040.00	0.0	0.00	40.4	22,624.00
Steven Sorbello	Partner	545	0.8	436.00	0.0	0.00	0.0	0.00	0.0	0.00	0.8	436.00	0.0	0.00	0.0	0.00	0.0	0.00
Eric Leeuwendal	Director	495	647.6	320,562.00	203.3	100,633.50	14.3	7,078.50	0.0	0.00	29.4	14,553.00	303.8	150,381.00	0.0	0.00	96.8	47,916.00
Clark Jarrold	Partner	485	48.9	23,716.50	0.0	0.00	0.0	0.00	0.0	0.00	48.9	23,716.50	0.0	0.00	0.0	0.00	0.0	0.00
Craig Jenkins	Partner	485	23.4	11,349.00	0.0	0.00	0.0	0.00	0.0	0.00	23.4	11,349.00	0.0	0.00	0.0	0.00	0.0	0.00
Sharnie Mitchell	Senior Manager	475	0.7	332.50	0.0	0.00	0.0	0.00	0.0	0.00	0.7	332.50	0.0	0.00	0.0	0.00	0.0	0.00
Paul Rafton	Partner	475	0.2	95.00	0.0	0.00	0.0	0.00	0.0	0.00	0.2	95.00	0.0	0.00	0.0	0.00	0.0	0.00
Margaux Beauchamp	Associate	470	233.6	109,792.00	54.0	25,380.00	0.0	0.00	0.0	0.00	171.7	80,699.00	0.0	0.00	0.0	0.00	7.9	3,713.00
Charles Haines	Senior Manager	440	1.8	792.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	1.8	792.00
John Somerville	Senior Manager	440	262.5	115,500.00	179.6	79,024.00	10.1	4,444.00	0.0	0.00	53.7	23,628.00	0.0	0.00	0.0	0.00	19.1	8,404.00
Joanne Garcia	Manager	400	602.4	240,960.00	30.7	12,280.00	47.9	19,160.00	0.1	40.00	447.5	179,000.00	5.4	2,160.00	0.0	0.00	70.8	28,320.00
Michelle Matchett	Associate	390	42.7	16,653.00	0.0	0.00	0.0	0.00	0.0	0.00	42.7	16,653.00	0.0	0.00	0.0	0.00	0.0	0.00
Sharyn Richardson	Associate	390	4.8	1,872.00	0.0	0.00	0.0	0.00	0.0	0.00	4.8	1,872.00	0.0	0.00	0.0	0.00	0.0	0.00
Julie Pagcu	Senior Manager	365	28.0	10,220.00	0.0	0.00	0.0	0.00	0.0	0.00	28.0	10,220.00	0.0	0.00	0.0	0.00	0.0	0.00
Michael Dharmaratne	Supervisor	360	1.1	396.00	0.0	0.00	0.2	72.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.9	324.00
Julie Pagcu	Senior Manager	360	46.5	16,740.00	0.0	0.00	0.0	0.00	0.0	0.00	46.5	16,740.00	0.0	0.00	0.0	0.00	0.0	0.00
Ashleigh Simpson-Wade	Supervisor	360	123.6	44,496.00	1.6	576.00	0.3	108.00	0.2	72.00	0.0	0.00	121.2	43,632.00	0.0	0.00	0.3	108.00
Daniel Tipman	Supervisor	360	249.3	89,748.00	7.1	2,556.00	108.1	38,916.00	0.0	0.00	90.3	32,508.00	41.4	14,904.00	0.2	72.00	2.2	792.00
Michael Dharmaratne	Supervisor	320	9.0	2,880.00	0.3	96.00	6.5	2,080.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	2.2	704.00
Daniel Tipman	Supervisor	320	54.5	17,440.00	1.5	480.00	32.2	10,304.00	0.0	0.00	10.1	3,232.00	0.3	96.00	0.0	0.00	10.4	3,328.00
Naomi Rowsome	Supervisor	310	2.5	775.00	0.0	0.00	0.0	0.00	0.0	0.00	2.5	775.00	0.0	0.00	0.0	0.00	0.0	0.00
Mia Russo	Supervisor	280	1.1	308.00	0.0	0.00	0.0	0.00	0.0	0.00	1.1	308.00	0.0	0.00	0.0	0.00	0.0	0.00

			Totals		Task Area													
					Assets		Creditors		Employees		Trade On		Investigations		Dividends		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Nicola Kennedy	Accountant I	225	107.1	24,097.50	1.7	382.50	19.9	4,477.50	2.0	450.00	51.9	11,677.50	0.8	180.00	0.0	0.00	30.8	6,930.00
Kirsty Bauer	Senior Accountant II	215	28.5	6,127.50	0.0	0.00	0.0	0.00	0.0	0.00	28.5	6,127.50	0.0	0.00	0.0	0.00	0.0	0.00
Caitlin Gough	Senior Accountant II	215	2.3	494.50	0.0	0.00	0.0	0.00	0.0	0.00	2.3	494.50	0.0	0.00	0.0	0.00	0.0	0.00
Thomas Hayler	Senior Accountant II	215	22.4	4,816.00	0.0	0.00	0.0	0.00	0.0	0.00	22.4	4,816.00	0.0	0.00	0.0	0.00	0.0	0.00
Ben Smith	Senior Accountant II	215	3.6	774.00	0.0	0.00	0.0	0.00	0.0	0.00	3.6	774.00	0.0	0.00	0.0	0.00	0.0	0.00
Pei Wun Han	Analyst I	200	5.9	1,180.00	0.0	0.00	0.0	0.00	0.0	0.00	5.9	1,180.00	0.0	0.00	0.0	0.00	0.0	0.00
Rycko Taniran	Senior Analyst II	200	46.1	9,220.00	0.0	0.00	0.0	0.00	0.0	0.00	46.1	9,220.00	0.0	0.00	0.0	0.00	0.0	0.00
Sarah Cunningham	Team Assistant	195	13.9	2,710.50	0.4	78.00	0.0	0.00	0.0	0.00	13.4	2,613.00	0.0	0.00	0.0	0.00	0.1	19.50
Julia Mayne	Accountant II	195	39.0	7,605.00	0.2	39.00	0.0	0.00	0.0	0.00	35.0	6,825.00	0.0	0.00	0.0	0.00	3.8	741.00
Dermot O'Brien	Undergraduate	195	306.7	59,806.50	2.2	429.00	5.7	1,111.50	0.0	0.00	3.5	682.50	2.1	409.50	0.0	0.00	293.2	57,174.00
Sophie Gahan	Accountant I	185	6.0	1,110.00	0.0	0.00	0.0	0.00	0.0	0.00	6.0	1,110.00	0.0	0.00	0.0	0.00	0.0	0.00
Pei Wun Han	Analyst I	185	156.4	28,934.00	0.0	0.00	0.0	0.00	0.0	0.00	156.4	28,934.00	0.0	0.00	0.0	0.00	0.0	0.00
Owen Lonergan	Accountant I	185	9.8	1,813.00	0.0	0.00	0.0	0.00	0.0	0.00	9.8	1,813.00	0.0	0.00	0.0	0.00	0.0	0.00
Dale Ludwig	Accountant I	185	473.9	87,671.50	0.0	0.00	0.0	0.00	0.0	0.00	473.9	87,671.50	0.0	0.00	0.0	0.00	0.0	0.00
Monil Patel	Accountant I	185	0.1	18.50	0.0	0.00	0.0	0.00	0.0	0.00	0.1	18.50	0.0	0.00	0.0	0.00	0.0	0.00
Nicole Jackson	Team Assistant	155	1.6	248.00	0.0	0.00	1.6	248.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00
Chris Barbey	Accountant II	145	0.1	14.50	0.0	0.00	0.0	0.00	0.0	0.00	0.1	14.50	0.0	0.00	0.0	0.00	0.0	0.00
Megan Lay	Accountant II	145	0.5	72.50	0.0	0.00	0.0	0.00	0.0	0.00	0.5	72.50	0.0	0.00	0.0	0.00	0.0	0.00
Philippa Redman	Accountant II	145	4.3	623.50	0.0	0.00	0.0	0.00	0.0	0.00	4.3	623.50	0.0	0.00	0.0	0.00	0.0	0.00
Bodie Smith	Accountant II	145	7.6	1,102.00	0.0	0.00	0.0	0.00	0.0	0.00	7.6	1,102.00	0.0	0.00	0.0	0.00	0.0	0.00
Sharon Aranha	Secretary	130	1.9	247.00	0.0	0.00	0.0	0.00	0.0	0.00	1.9	247.00	0.0	0.00	0.0	0.00	0.0	0.00
Ingrid Blum	Secretary	125	0.3	37.50	0.0	0.00	0.0	0.00	0.0	0.00	0.3	37.50	0.0	0.00	0.0	0.00	0.0	0.00
Rowena Gilliard	Secretary	125	0.2	25.00	0.0	0.00	0.0	0.00	0.0	0.00	0.2	25.00	0.0	0.00	0.0	0.00	0.0	0.00
Rebecca Woodward	Team Assistant	120	0.1	12.00	0.0	0.00	0.0	0.00	0.0	0.00	0.1	12.00	0.0	0.00	0.0	0.00	0.0	0.00
Kayla Ball	Team Assistant	115	0.1	11.50	0.0	0.00	0.0	0.00	0.0	0.00	0.1	11.50	0.0	0.00	0.0	0.00	0.0	0.00
Moira Hattingh	Team Assistant	80	11.0	880.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00	11.0	880.00
	TOTALS		4,017.7	1,479,415.00	629.9	304,442.00	266.3	98,919.50	2.5	674.00	2,004.3	654,007.50	521.5	237,802.50	0.2	72.00	593.0	183,497.50
	GST			147,941.50														
	TOTAL INC GST			1,627,356.50														
	AVERAGE HOURLY RATE			368		483		371		270		326		456		360		309

Disbursements for the period 1 October 2014 to 17 April 2015

LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed)

Expense Type	Amount ($ ex GST)
Taxi fares	24.42
Supermate	50.60
SUPER File Tran:	8.40
Search Fee	275.60
Printing	152.10
Postage	12,118.31
Photocopy	105.60
Parking	360.00
Mileage	2,366.20
General	30,306.87
Courier	218.36
Car Hire	53.66
Airfares	865.90
Accommodation	17.18
TOTAL	**46,923.20**
GST	**4,692.32**
TOTAL INC GST	**51,615.52**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015

OVST Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area											
					Assets		Creditors		Employees		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Leisa Rafter	Partner	600	3.1	1,860.00							3.1	1,860.00				
David Whyte	Partner	560	26.7	14,952.00	12.6	7,056.00			0.2	112.00	13.8	7,728.00	0.1	56.00		
Matthew Joiner	Partner	560	0.2	112.00							0.2	112.00				
John Garrard	Associate	520	0.6	312.00							0.6	312.00				
John Somerville	Senior Manager	440	50.7	22,308.00	37.2	16,368.00	0.4	176.00			12.4	5,456.00			0.7	308.00
Joanne Garcia	Manager	400	26.0	10,400.00	0.8	320.00					24.4	9,760.00			0.8	320.00
Ashleigh Simpson-Wade	Supervisor	360	0.2	72.00									0.1	36.00	0.1	36.00
Daniel Tipman	Supervisor	360	2.5	900.00	1.2	432.00	0.5	180.00			0.7	252.00			0.1	36.00
Samuel Alexander	Senior Consultant	320	14.9	4,768.00							14.9	4,768.00				
Daniel Tipman	Supervisor	320	6.3	2,016.00	2.8	896.00	0.7	224.00	0.4	128.00	2.1	672.00			0.3	96.00
Nicola Kennedy	Accountant I	225	65.3	14,692.50	3.6	810.00	0.2	45.00	2.5	562.50	49.4	11,115.00			9.6	2,160.00
Sarah Cunningham	Team Assistant	195	36.0	7,020.00							32.8	6,396.00			3.2	624.00
Julia Mayne	Accountant II	195	44.6	8,697.00							42.7	8,326.50			1.9	370.50
Dermot O'Brien	Undergraduate	195	15.4	3,003.00											15.4	3,003.00
Leisa Muller	Team Manager	135	2.8	378.00							2.8	378.00				
Moira Hattingh	Team Assistant	80	3.4	272.00											3.4	272.00
		TOTALS	298.7	91,762.50	58.2	25,882.00	1.8	625.00	3.1	802.50	199.9	57,135.50	0.2	92.00	35.5	7,225.50
		GST		9,176.25												
		TOTAL INC GST		100,938.75												
		AVERAGE HOURLY RATE		307		445		347		259		286		460		204

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 17 April 2015

OVST Pty Ltd (In Liquidation) (Controllers Appointed)

Expense Type	Amount ($ ex GST)
Search Fee	825.95
Postage	5.60
TOTAL	**831.55**
GST	**83.16**
TOTAL INC GST	**914.71**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015

Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	26.9	15,064.00	12.6	7,056.00	0.4	224.00	0.1	56.00	13.8	7,728.00		
John Somerville	Senior Manager	440	41.8	18,392.00	34.4	15,136.00	0.5	220.00			6.9	3,036.00		
Joanne Garcia	Manager	400	26.7	10,680.00	0.8	320.00					24.8	9,920.00	1.1	440.00
Daniel Tipman	Supervisor	360	2.1	756.00	0.5	180.00	0.1	36.00			0.8	288.00	0.7	252.00
Ashleigh Simpson-Wade	Supervisor	360	0.1	36.00									0.1	36.00
Daniel Tipman	Supervisor	320	6.1	1,952.00	4.8	1,536.00					0.2	64.00	1.1	352.00
Nicola Kennedy	Accountant I	225	52.5	11,812.50	2.5	562.50			0.9	202.50	38.3	8,617.50	10.8	2,430.00
Dermot O'Brien	Undergraduate	195	8.3	1,618.50									8.3	1,618.50
Julia Mayne	Accountant II	195	36.5	7,117.50							35.3	6,883.50	1.2	234.00
Sarah Cunningham	Team Assistant	195	31.7	6,181.50							29.7	5,791.50	2.0	390.00
Moira Hattingh	Team Assistant	80	2.8	224.00	0.5	40.00							2.3	184.00
	TOTALS		235.5	73,834.00	56.1	24,830.50	1.0	480.00	1.0	258.50	149.8	42,328.50	27.6	5,936.50
	GST			7,383.40										
	TOTAL INC GST			81,217.40										
	AVERAGE HOURLY RATE			314		443		480		259		283		215

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 17 April 2015

Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed)

Expense Type	Amount ($ ex GST)
Search Fee	1,466.25
Postage	3.36
Utilities	6,191.30
TOTAL	**7,660.91**
GST	**766.09**
TOTAL INC GST	**8,427.00**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015

Bridgewater Lake Estate Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area											
					Assets		Creditors		Employees		Trade On		Investigations		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	23.6	13,216.00	18.6	10,416.00	0.6	336.00			4.4	2,464.00				
John Somerville	Senior Manager	440	47.9	21,076.00	42.8	18,832.00	0.6	264.00			4.1	1,804.00			0.4	176.00
Joanne Garcia	Manager	400	20.4	8,160.00	0.2	80.00					19.1	7,640.00			1.1	440.00
Daniel Tipman	Supervisor	360	0.5	180.00							0.5	180.00				
Chris Demeyere	Supervisor	360	0.3	108.00							0.3	108.00				
Daniel Tipman	Supervisor	320	5.5	1,760.00	0.6	192.00	1.6	512.00			3.3	1,056.00				
Nicola Kennedy	Accountant I	225	34.7	7,807.50	2.9	652.50			0.1	22.50	26.0	5,850.00			5.7	1,282.50
Julia Mayne	Accountant II	195	10.6	2,067.00							9.8	1,911.00	0.4	78.00	0.4	78.00
Sarah Cunningham	Team Assistant	195	37.7	7,351.50							34.4	6,708.00			3.3	643.50
Dermot O'Brien	Undergraduate	195	5.2	1,014.00											5.2	1,014.00
Moira Hattingh	Team Assistant	80	2.7	216.00											2.7	216.00
		TOTALS	189.1	62,956.00	65.1	30,172.50	2.8	1,112.00	0.1	22.50	101.9	27,721.00	0.4	78.00	18.8	3,850.00
		GST		6,295.60												
		TOTAL INC GST		69,251.60												
		AVERAGE HOURLY RATE		333		463		397		225		272		195		205

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 17 April 2015

Bridgewater Lake Estate Pty Ltd (In Liquidation) (Controllers Appointed)

Expense Type	Amount ($ ex GST)
Postage	8.58
Search Fee	20.60
Utilities	207.35
TOTAL	**236.53**
GST	**23.65**
TOTAL INC GST	**260.18**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015

Redland Bay Leisure Life Pty Ltd (In Liquidation)(Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
Andrew Fielding	Partner	560	0.1	56.00									0.1	56.00
David Whyte	Partner	560	33.0	18,480.00	22.5	12,600.00					10.2	5,712.00	0.3	168.00
John Somerville	Senior Manager	440	43.2	19,008.00	35.6	15,664.00	0.6	264.00			6.9	3,036.00	0.1	44.00
Joanne Garcia	Manager	400	23.0	9,200.00	1.5	600.00					20.7	8,280.00	0.8	320.00
Daniel Tipman	Supervisor	360	1.6	576.00	0.3	108.00	0.2	72.00			0.3	108.00	0.8	288.00
Ashleigh Simpson-Wade	Supervisor	360	0.1	36.00									0.1	36.00
Nicola Kennedy	Accountant I	225	56.8	12,780.00	4.2	945.00			0.8	180.00	44.7	10,057.50	7.1	1,597.50
Dermot O'Brien	Undergraduate	195	3.9	760.50									3.9	760.50
Julia Mayne	Accountant II	195	29.4	5,733.00							28.9	5,635.50	0.5	97.50
Sarah Cunningham	Team Assistant	195	34.4	6,708.00							32.5	6,337.50	1.9	370.50
Moira Hattingh	Team Assistant	80	3.2	256.00									3.2	256.00
	TOTALS		228.7	73,593.50	64.1	29,917.00	0.8	336.00	0.8	180.00	144.2	39,166.50	18.8	3,994.00
	GST			7,359.35										
	TOTAL INC GST			80,952.85										
	AVERAGE HOURLY RATE			322		467		420		225		272		212

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 17 April 2015

Redland Bay Leisure Life Pty Ltd (In Liquidation)(Controllers Appointed)

Expense Type	Amount ($ ex GST)
Postage	5.22
Search Fee	1,426.90
TOTAL	**1,432.12**
GST	**143.21**
TOTAL INC GST	**1,575.33**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015

Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed)

			Totals		Task Area									
					Assets		Creditors		Employees		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	0.2	112.00	0.1	56.00					0.1	56.00		
John Somerville	Senior Manager	440	0.1	44.00							0.1	44.00		
Joanne Garcia	Manager	400	1.2	480.00							0.4	160.00	0.8	320.00
Ashleigh Simpson-Wade	Supervisor	360	0.1	36.00									0.1	36.00
Daniel Tipman	Supervisor	360	0.4	144.00	0.4	144.00								
Daniel Tipman	Supervisor	320	3.8	1,216.00	1.0	320.00	0.5	160.00			0.6	192.00	1.7	544.00
Nicola Kennedy	Accountant I	225	6.6	1,485.00							3.2	720.00	3.4	765.00
Dermot O'Brien	Undergraduate	195	7.5	1,462.50					0.8	156.00			6.7	1,306.50
Sarah Cunningham	Team Assistant	195	1.0	195.00							0.5	97.50	0.5	97.50
Julia Mayne	Accountant II	195	0.8	156.00							0.8	156.00		
Moira Hattingh	Team Assistant	80	1.1	88.00									1.1	88.00
		TOTALS	22.8	5,418.50	1.5	520.00	0.5	160.00	0.8	156.00	5.7	1,425.50	14.3	3,157.00
		GST		541.85										
		TOTAL INC GST		5,960.35										
		AVERAGE HOURLY RATE		238		347		320		195		250		221

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 17 April 2015

Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed)

Expense Type	Amount ($ ex GST)
Postage	0.56
TOTAL	**0.56**
GST	**0.06**
TOTAL INC GST	**0.62**

REMUNERATION REPORT - Summary of professional fees by category of work for the period 1 October 2014 to 17 April 2015

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed)

			Totals		Task Area							
					Assets		Creditors		Trade On		Administration	
Employee	Position	Rate	hrs	$	hrs	$	hrs	$	hrs	$	hrs	$
David Whyte	Partner	560	15.5	8,680.00	11.7	6,552.00			3.4	1,904.00	0.4	224.00
John Somerville	Senior Manager	440	42.8	18,832.00	30.6	13,464.00			11.6	5,104.00	0.6	264.00
Joanne Garcia	Manager	400	13.1	5,240.00	0.5	200.00			11.7	4,680.00	0.9	360.00
Daniel Tipman	Supervisor	360	4.8	1,728.00	3.0	1,080.00	0.6	216.00	0.1	36.00	1.1	396.00
Daniel Tipman	Supervisor	320	9.9	3,168.00	3.5	1,120.00	1.0	320.00	2.4	768.00	3.0	960.00
Nicola Kennedy	Accountant I	225	30.7	6,907.50	2.0	450.00			19.1	4,297.50	9.6	2,160.00
Sarah Cunningham	Team Assistant	195	25.5	4,972.50					23.7	4,621.50	1.8	351.00
Dermot O'Brien	Undergraduate	195	2.4	468.00							2.4	468.00
Julia Mayne	Accountant II	195	10.8	2,106.00					10.5	2,047.50	0.3	58.50
Moira Hattingh	Team Assistant	80	2.5	200.00	0.3	24.00					2.2	176.00
		TOTALS	158.0	52,302.00	51.6	22,890.00	1.6	536.00	82.5	23,458.50	22.3	5,417.50
		GST		5,230.20								
		TOTAL INC GST		57,532.20								
		AVERAGE HOURLY RATE		331		444		335		284		243

Note: All amounts exclude GST unless otherwise noted

Disbursements for the period 1 October 2014 to 17 April 2015

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed)

Expense Type	Amount ($ ex GST)
Search Fee	20.60
Postage	6.16
TOTAL	**26.76**
GST	**2.68**
TOTAL INC GST	**29.44**

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: **Brisbane**
NUMBER: **3383 of 2013**

Applicants:	**RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**
	AND
First Respondent:	**LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND**
	AND
Second Respondent:	**THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ABN 089 343 288**
	AND
Third Respondent:	**ROGER SHOTTON**
	AND
Intervener:	**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

ORDER

Before:	P McMurdo J
Date:	28 August, 2014
Initiating document:	Application filed 2 May, 2014

THE ORDER OF THE COURT IS THAT:-

1. The remuneration of Mr David Whyte for the period 8 August, 2013 to 31 March, 2014 be fixed in the amount of $702,480.35 (inclusive of GST);

SUPREME COURT OFFICE BRISBANE

ORDER

Filed on behalf of the Applicant, Mr David Whyte

Form 59 Rule 661

Tucker and Cowen
Solicitors
Level 15
15 Adelaide Street
BRISBANE **4000**
Phone: 07 3003 0000
Fax: 07 3003 0033

2. The applicant's costs of and incidental to this application be costs in the winding up of the LM First Mortgage Income Fund ARSN 089 343 288;

3. The costs of the First Respondent, LM Investment Management Limited (in Liquidation) as responsible entity of the LM First Mortgage Income Fund, in responding to the application filed 2 May, 2014, save for costs of and incidental to the application filed on 24 July, 2014, be paid out of the corpus of the LM First Mortgage Income Fund.

Signed: _____ Deputy Registrar

SUPREME COURT OFFICE BRISBANE

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants:	**RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**
	AND
First Respondent:	**LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND**
	AND
Second Respondent:	**THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**
	AND
Third Respondent:	**ROGER SHOTTON**
	AND
Intervener:	**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

ORDER

Before: Justice Mullins

Date: 27 November 2014

Initiating document: Application filed 7 November 2014

THE ORDER OF THE COURT IS THAT:-

1. The remuneration of David Whyte, as the person responsible for ensuring the LM First Mortgage Income Fund ARSN 089 343 288 (**"FMIF"**), is wound up in accordance with its Constitution for the period 1 April 2014 to 30 September 2014 be fixed in the amount of $1,005,948.35 (inclusive of GST).

SUPREME COURT OF QUEENSLAND BRISBANE

ORDER
Form 59 R.661

Filed on behalf of the Applicant,
Mr David Whyte

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
Fax: (07) 300 300 33

2. The remuneration of David Whyte and Andrew Fielding, the persons appointed as agents of The Trust Company (PTAL) Ltd ACN 008 412 913, in lieu of LM Investment Management Ltd (receivers and managers appointed) (in liquidation) ACN 077 208 461, in respect of the securities held by:-

   (i) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296;

   (ii) Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786;

   (iii) OVST Pty Ltd (In Liquidation) (Controllers Appointed) ACN 103 216 771;

   (iv) Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916;

   (v) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383; and

   (vi) Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780

   for the period 25 September 2014 to 30 September 2014, be approved in the amount of $7,000.95 (inclusive of GST).

3. That David Whyte's costs of and incidental to this application, be costs in the winding up of the FMIF, to be paid out of the assets of the FMIF.

SUPREME COURT OFFICE BRISBANE

Signed: _____

Registrar

BDO

Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
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Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
AUSTRALIA

TO THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVERS AND MANAGERS APPOINTED)(RECEIVER APPOINTED) ("FMIF")

TAKE NOTICE that David Whyte, the person appointed:-

a) pursuant to section 601NF(1) of the *Corporations Act* 2001 (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution; and

b) pursuant to clause 2.1, 2.2 and 3 of Deeds of Appointment signed 24 September 2014, together with Mr Andrew Fielding, as agent of The Trust Company (PTAL) Ltd in respect of the securities it holds from Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296, Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 787, OVST Pty Ltd (In Liquidation) (Controllers Appointed) ACN 103 216 771, Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916, Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383, and Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780,

has applied to the Supreme Court of Queensland for orders that:-

1. the amount that Mr Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the FMIF for the period 1 October 2014 to 30 April 2015, be fixed in the amount of $1,761,911.25 (inclusive of GST); and

2. the amount that Mr Whyte and Mr Andrew Fielding, as agents of The Trust Company (PTAL) Ltd in respect of the securities held from the companies named at paragraph b) above, are entitled to claim as remuneration in respect of time spent by them and by any servants or agents of BDO who have performed work in connection with the appointment as agents for the period 1 October 2014 to 30 April 2015, be approved in the amount of $442,214.30 (inclusive of GST).

This application is set down to be heard by the Supreme Court of Queensland at Brisbane on 23 June 2015 at 10.00am.

Copies of the court documents in respect of the application will be available on the website www.lmfmif.com.

Any member who reasonably requires a hard copy of the application and supporting material should call BDO on +61 7 3237 5999.

Dated: 2 June 2015

David Whyte

Court Appointed Receiver