

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 Applicants: **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 089 343 288**

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**

JOHN RICHARD PARK of 22 Market Street, Brisbane, Queensland, Official Liquidator and Chartered Accountant states on oath:-

1. I am an official liquidator and chartered accountant. I have been practising in the business of restructuring, corporate recovery and insolvency for approximately 23 years.

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STEPHANIE WILLIAMSON
Solicitor/Barrister/Justice of the Peace
SOLICITOR

AFFIDAVIT OF JOHN RICHARD PARK

Filed on behalf of the Applicants

Form 46 Rule 431

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Level 18
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-
2. The Second Applicant, being Ms Ginette Dawn Muller ("**Ms Muller**") and I:-
- (a) are a Consultant and a Senior Managing Director of the firm FTI Consulting respectively.
- (b) were the administrators of the First Applicant ("**LMIM**"), following our appointment by a resolution of the directors of LMIM on 19 March, 2013;
- (c) became the liquidators of LMIM by resolution of creditors passed on 1 August, 2013.
3. Ms Muller has authorised me to make this affidavit on both our behalves in our capacity as liquidators and former administrators of LMIM.
4. In the performance of my duties as former administrator and as liquidator of LMIM, I have had and continue to have access to books and records of LMIM and the Respondents.
5. Now produced and shown to me and marked "**JRP-1**" is an indexed, paginated bundle of documents to which I shall refer in this affidavit. References to page numbers in [] are references to the page numbers of JRP-1.

Background

LMIM

6. A copy of a current and historical extract of the records of the Australian Securities and Investment Commission ("**ASIC**") in respect of LMIM appears at [1] to [32].

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7. LMIM was the trustee of the trust known as the LM Managed Performance Fund ("**MPF**").

8. By order of this Honourable Court made on 12 April, 2013, LMIM was removed as trustee of the MPF and KordaMentha Pty Ltd ACN 100 169 391 and Calibre Capital Ltd ACN 108 318 985 ("**Trustees of MPF**") were appointed as joint and several trustees of the MPF. A copy of the order dated 12 April, 2013 appears at [33] to [34].

9. LMIM was, and remains, the responsible entity of the following registered managed investment schemes:-

- (a) LM Australian Income Fund ARSN 133 497 917 ("**AIF**");
- (b) LM Australian Structured Products Fund ARSN 149 875 669 ("**ASPF**");
- (c) LM Cash Performance Fund ARSN 087 304 032 ("**CPF**");
- (d) LM First Mortgage Income Fund ARSN 089 343 288 ("**FMIF**");
- (e) LM Currency Protected Australian Income Fund ARSN 110 247 875 ("**CP-AIF**"); and
- (f) LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("**ICP-AIF**"),
(collectively with the MPF, referred to herein as "**Funds**").

Relevant appointments

10. Prior to entering into voluntary administration, LMIM engaged the services of a service company, LM Administration Pty Ltd ACN 055 691 426 ("**LMA**"), of which Ms Muller and I were also appointed the voluntary administrators on 19 March, 2013.

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11. On 11 July, 2013, Deutsche Bank AG ("**DB**"), a secured creditor of FMIF, appointed Joseph Hayes and Anthony Connelly of McGrathNicol as receivers and managers of the assets and undertakings of FMIF ("**McGrath Nicol**").

12. On 26 July, 2013, Mr David Clout and Ms Lorraine Smith of David Clout & Associates were appointed as liquidators of LMA by a resolution of a meeting of that company's creditors.

13. On 26 August, 2013, the Honourable Justice Dalton made orders in Supreme Court of Queensland proceeding 3383/13 ("**the Order**"), *inter alia*:

- (a) directing that LMIM wind up the FMIF;
- (b) that David Whyte of BDO Australia Ltd, ("**the Receiver**") be appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution; and
- (c) that the Receiver be appointed as receiver of the property of the FMIF.

14. In terms of both number of members and funds under management (the particulars to which I shall depose below), the FMIF, the MPF and the AIF were the largest Funds at the time of my and Ms Muller's appointment, accounting for more than 95% of funds under management between them.

15. The only assets of the CP-AIF and the ICP-AIF are units in the FMIF. According to the records of LMIM at the time of my appointment, of the 488,000,226 total units on issue for the FMIF, the CP-AIF holds 120,702,629 units (approximately 24.7%) and the ICP-AIF holds 9,350,801 (approximately 1.9%). Accordingly, they have been referred to throughout the windings up of LMIM and the Funds as "**Feeder Funds**".

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16. Prior to the appointment of Ms Muller and I as voluntary administrators of LMIM and LMA, LMIM had a service agreement in place with LMA. A copy of that agreement dated 1 July, 2010, along with a letter dated 24 September, 2012, which appears to vary the terms of that agreement appears at [35] to [53].

17. LMA's role was to employ employees, lease premises, provide the equipment necessary to operate the funds management business conducted by LMIM, prepare financial statements and to provide other funds management services of an administrative nature.

18. Clause 16.6 of that agreement provided that the agreement "*...shall be deemed to be terminated forthwith upon...*" the appointment of an administrator to either LMIM or LMA.

19. Following the advice of our then solicitors, King & Wood Mallesons, Ms Muller and I caused LMIM to enter into a new services agreement with LMA on 21 March, 2013 ("**the LMA Service Agreement**"), a copy of which appears at [54] to [70], because:-

- (a) the earlier agreement had come to an end;
- (b) LMA was the entity which employed the staff members and leased the premises which were both necessary elements to operate LMIM's business;
- (c) Ms Muller and I formed the view that the services provided by LMA were therefore essential to the continuing operation of the Funds, at least in the early stages of the administration and subsequent liquidation of LMIM and LMA.

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20. Part of the remuneration and expenses which are sought to be approved by this application relate to the LMA Service Agreement. This is explained in greater detail below.

21. Each of the Funds also had a custodian trustee, meaning that, for example, a mortgage in respect of a loan made by LMIM on behalf of a Fund would be in the name of the custodian trustee and the custodian trustee's name would be registered on the title of the property secured by the mortgage.

22. The custodian trustee for each fund was The Trust Company (PTAL) Limited ACN 008 412 913 (formerly Permanent Trustee Nominees) ("PTAL"). A copy of the custody agreements, as they apply to each Fund and the various amending deeds appear at [71] to [166].

23. In respect of the following companies, which borrowed money from LMIM as responsible entity of the Funds, and by the following instruments, PTAL appointed LMIM as a controller to enforce PTAL's security rights (for the benefit of the Funds) and indemnified LMIM for that appointment:-

Borrower	Appointment Instrument	Indemnity Instrument
Australian International Investment Services Pty Ltd ACN 102 261 898	Deed of appointment between PTAL and LMIM dated 30 May, 2013	Deed of indemnity between PTAL and LMIM dated 30 May, 2013
Brambleton Pty Ltd (controller appointed)	Deed of appointment between PTAL and LMIM	Deed of indemnity between PTAL and LMIM

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ACN 118 835 742	dated 30 May, 2013	dated 30 May, 2013
Bridgewater Lake Estate Pty Ltd (in liquidation) ACN 086 203 787	Deed of appointment between PTAL and LMIM dated 1 April, 2010	Deed of indemnity between PTAL and LMIM dated 1 April, 2010
Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (receivers and managers appointed) ACN 098 955 296	Deed of appointment between PTAL and LMIM dated 9 February, 2011	Deed of indemnity between PTAL and LMIM dated 9 February, 2011
Coulter Developments Pty Ltd ACN 114 459 111	Undated Deed of appointment between PTAL and LMIM	Undated Deed of indemnity between PTAL and LMIM
Glendenning Developments Pty Ltd ACN 119 218 174	Deed of appointment between PTAL and LMIM dated 6 August, 2012	Deed of indemnity between PTAL and LMIM dated 6 August, 2012
Green Square Property Development Corporation Pty Ltd ACN 104 248 053	Deed of appointment between PTAL and LMIM dated 30 May, 2013	Deed of indemnity between PTAL and LMIM dated 30 May, 2013
Greystanes Projects Pty Ltd ACN 119 783 470	Deed of appointment between PTAL and LMIM dated 8 September, 2011	Deed of indemnity between PTAL and LMIM dated 8 September, 2011
Kingopen Pty Ltd ACN 009 225 576	Deed of appointment between PTAL and LMIM dated 9 February, 2011	Deed of indemnity between PTAL and LMIM dated 9 February, 2011
LM Capalaba Pty Ltd ACN 132 298 353 and	Deed of appointment between PTAL and LMIM	Deed of indemnity between PTAL and LMIM

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Balmoral Commodities Pty Ltd ACN 134 607 006	dated 3 June, 2013	dated 3 June, 2013
Lot 111 Pty Ltd ACN 106 102 005	Deed of appointment between PTAL and LMIM dated 30 May, 2013	Deed of indemnity between PTAL and LMIM dated 30 May, 2013
Northshore Bayview ST Pty Ltd ACN 111 109 418	Deed of appointment between PTAL and LMIM dated 18 May, 2011	Deed of indemnity between PTAL and LMIM dated 18 May, 2011
OVST Pty Ltd (in liquidation) ACN 103 216 771	Deed of appointment between PTAL and LMIM dated 29 October, 2010	Deed of indemnity between PTAL and LMIM dated 29 October, 2010
Peregian Beach Pty Ltd ACN 127 412 864	Deed of appointment between PTAL and LMIM dated 9 July, 2013	Deed of indemnity between PTAL and LMIM dated 9 July, 2013
Pinevale Villas Morayfield Pty Ltd (in liquidation) ACN 116 192 780	Deed of appointment between PTAL and LMIM dated 21 January, 2014	Deed of indemnity between PTAL and LMIM dated 21 January, 2014
Redland Bay Leisure Life Pty Ltd (in liquidation) ACN 109 932 916	Deed of appointment between PTAL and LMIM dated 9 February, 2011	Deed of indemnity between PTAL and LMIM dated 9 February, 2011
Redland Bay Leisure Life Development Pty Ltd (in liquidation) ACN 112 002 383	Deed of appointment between PTAL and LMIM dated 8 February, 2011	Deed of indemnity between PTAL and LMIM dated 8 February, 2011
Rocola Pty Ltd ACN 104 964 061	Undated Deed of appointment between	Undated Deed of indemnity between PTAL

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	PTAL and LMIM	and LMIM
Source Developments No 1 Pty Ltd ACN 126 999 871	Undated Deed of appointment between PTAL and LMIM	Undated Deed of indemnity between PTAL and LMIM
St Crispin's Pty Ltd ACN 104 769 244	Undated Deed of appointment between PTAL and LMIM	Undated Deed of indemnity between PTAL and LMIM
Young Land Corporation Pty Ltd ACN 102 989 686	Deed of appointment between PTAL and LMIM dated 20 November, 2012	Deed of indemnity between PTAL and LMIM dated 20 November, 2012

(collectively, "**the Controllerships**")

24. Copies of the instruments by which the Controllerships appointments and indemnities which appear in the records of LMIM to which I have access appear at [167] to [346].

25. The Controllerships which were then still active were terminated by a Deed of Termination which was signed by me on 26 September, 2014 and by an authorised representative of PTAL on or about 28 October, 2014, a copy of which appears at [347] to [354].

This Application

26. Several issues have arisen throughout the course of the windings up of LMIM and the Funds. Those which are sought to be resolved by this application are:-

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-
- (a) the determination of the quantum of the administrators' and liquidators' remuneration generally and insofar as it relates to each of the Funds (aside from the MPF);
- (b) the approval of the payment of that remuneration, once the quantum is determined, from the assets of the various Funds;
- (c) the approval of the payment of expenses incurred by myself and Ms Muller, as administrators and liquidators, insofar as they relate to the FMIF, from the property of the FMIF;
- (d) the determination of the quantum of mine and Ms Muller's remuneration, as administrators and liquidators, insofar as it relates to matters common to the Funds, but not:-
- (i) directly attributable to any particular Fund; nor
 - (ii) directly attributable to tasks performed in the winding up of the company, LMIM;

("General Funds Management Remuneration")

- (e) the approval of the payment of the General Funds Management Remuneration from the assets of the Funds in such proportion as is just and equitable;
- (f) the approval of the payment of the costs and expenses incurred by me and Ms Muller, as administrators and liquidators, insofar as they relate to matters common to the Funds, but not:-
- (i) directly attributable to any particular Funds; nor
 - (ii) directly attributable to tasks which would have been performed in the winding up of the company, LMIM

("General Funds Management Expenses").



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27. At [355] to [487] are copies of correspondence passing between FTI Consulting, BDO, McGrath Nichol and their respective legal representatives. The matters of fact set out in those pieces of correspondence emanating from FTI Consulting are true. To the extent such correspondence conveys my opinion, I genuinely held that opinion at the time.

FTI Consulting Time Recording System

28. FTI Consulting calculates remuneration to be charged on a matter on the basis of an hourly rate charged for each person who carries out work multiplied by the number of hours (or part thereof) spent by each person on each of the tasks performed. This method of calculation is preferred by FTI Consulting as it fairly reflects the necessary work performed and overcomes the difficulty in identifying the scope of the work required, particularly on long and complex engagements (as this matter is).

29. At [488] to [490] are copies of schedules setting out the rates at which FTI Consulting charges, according to the position of the person doing the work, along with a description of the qualifications generally needed to obtain each position.

30. My staff and I record time on a daily basis. We enter our time in six minute units and we enter the details of the time spent and the description of the tasks undertaken in an electronic system. My staff and I review these time entries on a periodic basis and when necessary, entries will be written off.

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31. The Australian Restructuring Insolvency and Turnaround Association (“ARITA”) published a Code of Professional Practice (“the ARITA Code”). The relevant parts of the ARITA Code, as they relate to remuneration and disbursements appear at [491] to [519]. The systems in use by FTI Consulting for time recording are designed to ensure compliance with the ARITA Code.

32. Additionally, the ARITA Code recommends dividing work into seven categories. It also gives examples of the sort of work which falls into each category, which is the most useful means of explaining the categories. The categories and some of the relevant examples are:-

- (a) “Assets” – including work relating to:
 - (i) the sale of real property or of a business as a going concern;
 - (ii) debtors;
 - (iii) identifying, managing and valuing stock;
- (b) “Creditors” – including work relating to:-
 - (i) responding to creditor enquiries;
 - (ii) preparing reports to creditors;
 - (iii) identifying and dealing with retention of title claims;
 - (iv) convening meetings of creditors;
- (c) “Employees” – including work relating to:-
 - (i) responding to employee enquiries;
 - (ii) calculation of employee dividends and entitlements;
 - (iii) dealing with matters relating to the Commonwealth Fair Entitlements Guarantee and General Employee Entitlements and Redundancy Scheme;
- (d) “Trade On” – including work relating to:-
 - (i) managing an ongoing business;


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-
- (ii) processing receipts and payments;
 - (iii) budgeting and financial reporting;
 - (e) "Investigation" – including work relating to:-
 - (i) conducting investigations into the affairs of the company;
 - (ii) litigation or other Court matters (for example, public examinations);
 - (iii) reporting to ASIC;
 - (f) "Dividend" – including work relating to:-
 - (i) processing proofs of debt;
 - (ii) determining and conducting the procedures relating to the declaration of a dividend; and
 - (g) "Administration" – including work relating to:-
 - (i) general correspondence, document maintenance and the review of files;
 - (ii) dealing with insurers and administering the bank accounts of the winding up;
 - (iii) statutory reporting functions.

33. While my staff and I used the above categories to allocate recorded time, certain items of work may fall within more than one category so that, for example, time may have been spent liaising with employees to approve payments to creditors of the Funds, which might appropriately fall within either the Trade On category or the Creditors category. However, each task is only recorded once and the time for carrying out each task is only recorded once. Where the task and time for carrying out each task may be within more than one category, my staff and I used our best judgement to allocate the time to the most appropriate ARITA category.

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34. At the time of my appointment, it was apparent to me that there would likely be issues relating to the remuneration and expenses which ought to be borne by each Fund and which ought to be borne only by the company, LMIM.

35. I was (and remain) cognisant of the need to carefully identify the relevance of each particular time entry to one of the Funds or to LMIM, the company.

36. I caused my staff to arrange a separate FTI matter time code for each of the Funds and also a separate time code for LMIM. The LMIM time code was also broken down into sub-task time codes including:

- (a) LM as Responsible entity; and
- (b) LMIM in its own right.

37. I instructed all staff who worked on the LMIM matter to record Fund related time into one of the following categories:

- (a) "Category 1" – being work which is clearly referable to a particular Fund to be recorded to the respective specific Fund time code;
- (b) "Category 2" – being work which relates to all of the Funds generally (that is, the funds management business of LMIM), but not to LMIM in its corporate capacity to be recorded to the LMIM as Responsible Entity sub-task time code; and
- (c) "Category 3" – being work which relates only to the Controllerships of FMIF to be recorded to specific loan book sub-task time codes within the primary FMIF time code.

38. The Category 3 claims relating to the Controllerships were recorded separately because each of the relevant Deeds of Indemnity for each Controllership



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appointment referred to in paragraph 23 herein contained a provision entitling LMIM to its reasonable costs and expenses.

39. Those costs and expenses have been paid by the FMIF and, by this application, I do not intend to make any further claim from the assets of the FMIF for remuneration, costs or expenses related to the Controllerships. Instead, because I and my staff have recorded time relevant to the Controllerships in a separate category (and for the reasons concerning my review of those time entries to which I shall depose), I am confident that none of the remuneration, costs or expenses which are claimed by this application as Category 1 or 2 claims have already been paid by the FMIF pursuant to the Controllerships arrangements; that is, there is no "double dipping".

40. I have also caused my staff to record time which relates only to LMIM, in its corporate capacity, or which would have had to be done in the winding up of any company, by recording this time against the sub-task time code titled LMIM in its own right.

41. I have caused my staff to manually review all time recorded across the varying time codes and make adjustments to the allocations where necessary to ensure the time recorded had been recorded against the appropriate time code.

Status of Creditors

42. As part of my usual practise in any complex liquidation, I have caused to be identified all of the creditors of LMIM of which I am presently aware.

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43. At [520] to [535] is a list of all of the persons or entities which, as at 19 November, 2015, have made claims against LMIM, or which I believe may have a claim against LMIM as a result of my investigations as at 19 November, 2015.

44. That listing does not treat those parties who have obtained leave to proceed against LMIM pursuant to section 500 of the *Corporations Act 2001* ("the CA") as creditors because I presently remain unsure as to the proper scope and treatment of those claims. This is an issue upon which I will be taking legal advice in due course.

45. At [536] to [546] is a copy of the list of creditors as it stood at 31 July, 2013, the day before the second meeting of creditors in the administration of LMIM. That list identifies those creditors in respect of whom I believed at that time LMIM would have a right of indemnity out of the Funds.

46. Since that meeting, for the Funds other than the FMIF and the MPF, where I formed the view that the respective Fund would have sufficient assets to meet all creditors' claims and that a particular creditor's claim was clearly one for which LMIM would have a right of indemnity against that Fund, I have caused the creditor to be paid.

47. Accordingly, for example, there are no remaining pre-administration creditors of the CPF in respect of whom, in my opinion, LMIM clearly has a right of indemnity out of the CPF.

48. There is a category of creditors referred to as "Advisors." Those creditors are the financial advisors of the members of the Funds, who claim what are effectively trailing commissions based on those members' investment into the Funds.



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49. There is a question whether the Advisors will be creditors in respect of whom LMIM has a right of indemnity out of the respective Funds. I understand the trustees of the MPF are considering rejecting the Advisors' claims insofar as they relate to the MPF. I have not yet formed a final view on the question insofar as it may relate to the other Funds. Again, this is an issue upon which I will likely seek legal advice at the appropriate time.

50. The relevance of distinguishing between the various classes of unsecured creditors is that, in my view, there is a real question about whether, for example in respect of the CPF, there are any creditors in respect of whom LMIM will have a right of indemnity against the assets of the CPF.

51. Accordingly, I consider there is a real question about the propriety of persons who have no claim on the assets of the CPF (that is, the creditors of LMIM) determining my and Ms Muller's remuneration, without the opportunity for members of the particular Fund to be heard on that issue.

52. Further, following the receipt of legal advice, I also believe that there is a real question whether a meeting of creditors LMIM, is empowered, even if the creditors of LMIM are able to determine the remuneration payable to the administrators and liquidators, to authorise me and Ms Muller to draw that remuneration, along with our reasonable expenses, from the assets of the Funds.

53. Because of those concerns, Ms Muller and I bring this application for the approval of our remuneration, costs and expenses in respect of the Funds other than



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the MPF for Category 1 amounts (that is, sums which we believe are directly referable to the administration of those Funds).

Prior Approval of Remuneration

54. On 1 July 2013, a meeting of the Committee of Creditors of LMIM passed the following resolution:-

“That the remuneration of the Administrators and their staff in the amount of \$2,429,702.49 (excluding GST) for the period 19 March 2013 to 30 June 2013, calculated on the basis of time at the Schedule of FTI Consulting Rates as at 1 October 2012 be approved by the Committee of Creditors pursuant to Section 449E(1)(a) of the Corporations Act 2001.”

55. On 1 August, 2013, a meeting of the creditors of LMIM, passed the following resolution:-

“That the remuneration of the Administrators and their staff in the amount of \$817,782 (exclusive of GST) for the period 1 July 2013 to 31 July 2013, calculated on the basis of time at the Schedule of FTI Consulting Rates as at 1 July 2013, be approved by the creditors of LM Investment Management Limited pursuant to Section 449E(1)(b) of the Corporations Act 2001.”

56. Copies of the minutes of those meetings appear at [547] to [591].



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Fund Apportionment

57. The 'Category 2' claims (to which I shall depose in detail) relate to the General Funds Management Remuneration and Expenses of the administrators and liquidators.

58. Pursuant to the constitution of each Fund, LMIM is entitled to charge a management fee as a percentage of fund assets in addition to the reimbursement of its fees and expenses (for example, auditor's fees, legal fees, search fees, valuation fees and the like are all expressly mentioned in the constitution as a separate entitlement to the right to charge a management fee).

59. I do not exhibit the constitutions of each fund here because they amount to several hundred pages of material. Having reviewed the constitutions, the relevant entitlements to a management fee appear to be:-

- (a) for the AIF, 5.5% per annum (inclusive of GST) of the Net Fund Value;
- (b) for the ASPF, 1.1% per annum (inclusive of GST) of the Net Fund Value;
- (c) for the CPF, 2.2% per annum (inclusive of GST) of the Net Fund Value;
- (d) for the FMIF, 5.5% per annum (inclusive of GST) of the Net Fund Value;
- (e) for the CPAIF, 3.3% per annum (inclusive of GST) of the Net Fund Value;
- (f) for the ICPAIF, 5.5% per annum (inclusive of GST) of the Net Fund Value.

60. As an indication of the potential quantum of such management fees, were it to be calculated based on FUM (noting the differences between the two concepts), based on FUM as at 30 June, 2015, the management fee for the Funds for the financial year ended 30 June, 2015 could have been in the order of:-

- (a) for the AIF, \$1,669,389.19;



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(b) for the ASPF, \$86,060.84; and

(c) for the FMIF, \$4,066,482.70

61. In all of the circumstances, I do not consider it appropriate that LMIM claims a management fee from the Funds. I have not charged any Fund a management fee since my appointment and will not do so.

62. Instead, relevantly, I seek remuneration and the repayment of costs and expenses:-

(a) where the work or expense relates directly to a particular Fund, from that Fund;

(b) where the work or expense relates to the funds management business generally, from each Fund proportionate to the respective funds under management,

on the basis of the hourly rates detailed in paragraph 29 herein.

63. At [592] to [593] is a copy of a schedule summarising my proposed allocation of the General Funds Management Remuneration and Expenses ("**the Category 2 Schedule**").

64. The General Funds Management Remuneration and Expenses total \$1,882,205.49 for the period from 19 March, 2013 until 30 September, 2015, a period of over two and a half years.

65. The General Funds Management Remuneration and Expenses include work undertaken relating to the management and administration of the funds management business conducted by the LMIM. This includes claims for outlays



incurred by LMIM relating to work undertaken as part of the administration of LMA across the period 19 March 2013 to 26 July 2013. Such work is in respect of the services LMA provided to LMIM in support of and to facilitate the funds management business. These costs were invoiced to LMIM by LMA pursuant to clause 4.2(b) of the LMA Service Agreement.

66. The work undertaken in the administration of LMA was claimed as remuneration in LMA, and has been approved by creditors in that Administration. However, where tasks undertaken by LMA related purely to the maintenance and ongoing trading of the service business conducted by LMA, those tasks has been invoiced by LMA to LMIM as responsible entity who is in turn seeking to recover these costs as part of its Category 2 claims from the various Funds that accepted the benefit of the services provided. LMIM incurred this expense by continuing to retain LMA as the service provider enabling LMIM to fulfil its role as Responsible Entity to the various funds.

67. For the reasons outlined in paragraph 19 herein, Ms Muller and I formed the view that it was essential for LMIM to retain the services of LMA as detailed in the LMA Services Agreement so that the funds management business could continue to operate, at least in the short term. This view was arrived at not only to ensure continuity of service but also because continuing to employ the staff at LMA was a significantly more cost effective step than having FTI staff undertake those roles, with charges then being applied at hourly rates as opposed to staff salaries (this representing a significant saving to creditors). Additionally, there were substantial time efficiencies gained, in light of LMA's staff having familiarity with the business, including day to day dealings with investors, borrowers and lawyers.

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68. There are no claims against the MPF following the MPF Trustees' appointments. Ms Muller and I settled our claim against the MPF for our remuneration, costs and expenses on 29 November, 2013. The Trustees of the MPF sought, and obtained, an order pursuant to section 96 of the *Trusts Act 1973* approving that settlement on 7 February, 2014 in proceeding number 11593 of 2013 in this Honourable Court of the amount referred to at paragraph 62 herein, being an amount of \$278,522.49 having been allocated to the MPF for the period ending on 12 April, 2013.

69. "FUM", meaning Funds Under Management, is a term used throughout the Category 2 Schedule. In the period following my appointment, I received assistance from Mr Steve Hannan in calculating FUM.

70. Mr Hannan was the Investment Services Operations Manager at LMIM (though technically employed by LMA) prior to mine and Ms Muller's appointment as LMIM's administrators. He had served in that role for seven years prior to LMIM entering voluntary administration. As part of that role, Mr Hannan was responsible for all of the administrative aspects of a member's investment from initial investment to monitoring and recording the cash monies invested and the processing of withdrawals or distributions to members of the Funds.

71. Mr Hannan was the person within LMIM who historically would calculate FUM using the method below. He continued to perform that particular task until December, 2014, when all employees of LMIM and LMA were terminated by the Receiver and Mr Clout respectively.



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72. Mr Hannan has informed me and I verily believe that FUM, in the context of LMIM, has been calculated on the basis of the book values of the underlying assets of each of the Funds. LMIM was empowered under the constitutions of the various Funds to value the assets of the Funds from time to time.

73. LMIM maintained an Investor Master Register, which contained the raw data relating to the details of each member of a Fund, the number of units held by each member and other relevant information. When the assets were re-valued by LMIM, as they were from time to time, that information would be reconciled within the Investor Master Register, allowing LMIM to determine the value of a unit, in accordance with the relevant Fund's constitution.

74. The fluctuations in value are attributable partly to the fact that many of the Funds accepted investments from overseas investors. Accordingly, LMIM would make investments in a foreign currency in order to hedge against losses caused by members investing funds in a foreign currency, the value of which currency may change between the time a foreign investor applied for the investment, the application was accepted and units were issued.

75. The relative proportions of FUM also change following the making of any capital distributions. For example, in December, 2013, having determined that there would be sufficient assets in the AIF to permit an eventual distribution to members, Ms Muller and I declared and paid an interim distribution of \$20 million, being approximately 42.8% of the Fund.

76. That distribution is reflected in the differing proportions of FUM in the Category 2 Schedule between November and December, 2013. To not reflect such a



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change in the FUM calculation across the various Funds would, in my view, be incorrect and prejudicial to the other Funds.

77. In my view, FUM is the fairest way to assess the differing interests of each Fund in work undertaken which is applicable to all Funds. I also received legal advice (the privilege in which I do not intend to waive by referring to it here) that such work may be charged and be allocated across the following funds in accordance with the corresponding percentage of FUM (reviewed periodically):

- (a) FMIF;
- (b) AIF;
- (c) CPF;
- (d) ASPF; and
- (e) MPF (for period to 12 April 2013).

78. For the period 1 January 2015 onwards, the CPF has been removed from my proposed FUM allocation schedules due to the minimal assets remaining in that fund and the resulting immaterial allocations of expenses to CPF that would result if CPF continued to be included in the allocations. For example, as at 31 December, 2015, the net assets of the CPF were valued at approximately \$44,908.69.

79. The Feeder Funds are excluded from the proposed FUM allocation schedules given the only assets of the CP AIF and the ICP AIF are units in the FMIF. It is my view that excluding the Feeder Funds in any proposed allocation will avoid the unit holders of those funds, in effect, being charged twice.



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Work performed in the Relevant Period

Category 1 – FMIF

80. As stated at paragraph 37(a) herein, Category 1 comprises the tasks and time for carrying out each task which are directly referable to a particular Fund.

81. For the FMIF, because I have been dealing with McGrath Nichol and the Receiver in respect of my and Ms Muller's remuneration and expenses, I have had occasion to have caused to be prepared schedules summarising the tasks performed and the costs (and time) involved in each task. Copies of those schedules appear at [594] to [603]. Given the relevant appointments to the FMIF, I considered it most appropriate to break down our claims across the following periods:

- (a) 19 March 2013 to 10 July 2013;
- (b) 11 July 2013 to 8 August 2013;
- (c) 9 August 2013 to 31 December 2013; and
- (d) periodically thereafter.

82. Those schedules were prepared from FTI's time recording records referable to FTI matter number 435604 being the time code referred to in paragraph 36 herein for the FMIF.

83. The preparation of those schedules has been a time consuming exercise, but I consider it appropriate given the queries raised by BDO and McGrath Nichol in the correspondence referred to in paragraph 27 herein.

84. In accordance with the ARITA Code, I have also caused to be prepared summaries showing the persons involved in the work and how much time has been



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spent on each of the categories described in paragraph 32 herein by each of those persons. Copies of those schedules appear at [604] to [610].

85. At [611] to [678] are copies of schedules of the narrations for each time entry in Category 1 for the FMIF. The schedules are drawn directly from the system maintained by FTI Consulting for recording time, described in paragraphs 28 to 30 herein.

86. The work which I believe to be directly referable to the FMIF has been summarised in those documents. The principal tasks involved are:-

- (a) reporting to and dealing with the FMIF's secured creditor, DB, and, subsequently, its receivers McGrath Nichol;
- (b) managing the 'loan book' of the FMIF, being those tasks related to dealings with respect to particular loans made by LMIM from the assets of the FMIF;
- (c) Controllership time not specifically allocated to the loan accounts of one of the borrowers mentioned in paragraph 23 herein, but which nevertheless related to the FMIF;
- (d) the preparation of budgets, strategic overviews and cash flows for the FMIF;
- (e) tasks associated with complying with the statutory obligations placed upon LMIM as responsible entity of the FMIF by the *Corporations Act* and other relevant legislation;
- (f) communicating with the investors and members of the FMIF;
- (g) attendances, meetings, correspondence and other tasks related to litigation involving LMIM in its capacity as responsible entity of the FMIF; and
- (h) general administrative time relevant to those tasks.



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87. Adopting the ARITA Code recommended categories, the amount of remuneration which I seek to have approved as Category 1 claims against the FMIF is summarised as follows:-

Category	Total hours	Amount (net of GST)
<u>Assets</u>		
<i>For the period 19 March, 2013 to 10 July, 2013</i>	807.90	\$284,031.50
<i>For the period 11 July, 2013 to 7 August, 2013</i>	54.1	\$26,516.00
<i>For the period 8 August, 2013 to 31 December, 2013</i>	24.7	\$12,841.00
<i>For the period 1 January, 2014 to 31 March, 2014</i>	7.2	\$3,525.50
<i>For the period 1 April, 2014 to 30 June, 2014</i>	0.7	\$411.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	12.1	\$6,532.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>	2.4	\$1,215.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>	0.7	\$394.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>	0.4	\$120.00
SUBTOTAL	910.20	\$335,586.00
<u>Creditors</u>		
<i>For the period 19 March, 2013 to 10 July, 2013</i>	234.2	\$98,587.00
<i>For the period 11 July, 2013 to 7 August, 2013</i>	137.9	\$71,522.50
<i>For the period 8 August, 2013 to 31 December, 2013</i>	53.0	\$27,645
<i>For the period 1 January, 2014 to 31 March, 2014</i>	6.5	\$3,352.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>	1.4	\$728.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	11.3	\$4,669.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>	7.4	\$2,881.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>	31.6	\$13,149.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	15.7	\$7,051.00
SUBTOTAL	498.6	\$229,364.50
<u>Trade on</u>		
<i>For the period 19 March, 2013 to 10 July, 2013</i>	1,164.80	\$415,868.96
<i>For the period 11 July, 2013 to 7 August, 2013</i>	234.3	\$122,064.50
<i>For the period 8 August, 2013 to 31 December, 2013</i>	455.6	\$210,425.00
<i>For the period 1 January, 2014 to 31 March, 2014</i>	152.80	\$64,820.50
<i>For the period 1 April, 2014 to 30 June, 2014</i>	79.5	\$39,308.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	136.1	\$65,877.50
<i>For the period 1 October, 2014 to 31 December, 2014</i>	36.2	\$16,228.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>	68.0	\$37,057.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>	32.2	\$17,900.50
SUBTOTAL	2,359.50	\$989,549.96
<u>Investigations</u>		



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<i>For the period 19 March, 2013 to 10 July, 2013</i>	34.4	\$17,259.00
<i>For the period 11 July, 2013 to 7 August, 2013</i>	10.5	\$6,061.50
<i>For the period 8 August, 2013 to 31 December, 2013</i>	47.6	\$26,731.50
<i>For the period 1 January, 2014 to 31 March, 2014</i>	6.7	\$3,705.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>	9.1	\$4,959.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	2.8	\$1,644.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>	2.1	\$937.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>	6.1	\$2,289.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>	4.1	\$2,040.00
SUBTOTAL	123.4	\$65,626.00
<u>Dividend</u>		
<i>For the period 19 March, 2013 to 10 July, 2013</i>	0.0	\$0.00
<i>For the period 11 July, 2013 to 7 August, 2013</i>	0.0	\$0.00
<i>For the period 8 August, 2013 to 31 December, 2013</i>	0.0	\$0.00
<i>For the period 1 January, 2014 to 31 March, 2014</i>	0.0	\$0.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>	1.0	\$299.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	1.8	\$486.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>	0.0	\$0.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>	3.5	\$1,538.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>	0.0	\$0.00
SUBTOTAL	6.3	\$2,323.00
<u>Administration</u>		
<i>For the period 19 March, 2013 to 10 July, 2013</i>	79.4	\$37,728.40
<i>For the period 11 July, 2013 to 7 August, 2013</i>	50.8	\$26,718.50
<i>For the period 8 August, 2013 to 31 December, 2013</i>	42.5	\$14,329.50
<i>For the period 1 January, 2014 to 31 March, 2014</i>	32.4	\$10,238.50
<i>For the period 1 April, 2014 to 30 June, 2014</i>	52.7	\$26,559.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>	82.8	\$39,921.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>	26.6	\$10,398.50
<i>For the period 1 January, 2015 to 30 June, 2015</i>	9.3	\$3,467.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>	8.1	\$3,508.00
SUBTOTAL	384.6	\$172,868.40
<u>TOTAL</u>	<u>4,283.0</u>	<u>\$1,795,537.86</u>

88. Of those amounts, the sum of \$36,092.50 has been paid by FMIF leaving \$1,759,445.36 outstanding.



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89. Additionally, Ms Muller and I have incurred disbursements incidental to the tasks described in paragraph 86 herein in the sum of \$35,919.18. At [679] to [681] is a schedule of those costs, recorded in a system maintained by FTI Consulting for that purpose.

90. I caused the removal of certain entries from the Category 1 claim relating to the FMIF where I considered that there may not be sufficient nexus to work undertaken for the benefit of the LM FMIF. On this basis, I confirm entries to the value of \$155,839.50 were removed from our Category 1 claims.

91. In accordance with the undertakings accepted by Justice Dalton on 20 December 2013, I have not included in the claim against the assets of the FMIF, any remuneration concerning or incidental to the meeting convened by notice dated 26 April 2013 (or any adjournment thereof). An amount of \$113,162.50 incurred in relation to this meeting has been excluded, in compliance with this undertaking.

92. As can be seen in the copies of the schedules of the narrations for each time entry in Category 1 for the FMIF at [682] to [701], Mr John Corbett's entries for the period 19 March 2013 to 31 May 2013 were weekly entries and consequently appear as large blocks of time. For this period, Mr Corbett was working as a consultant for FTI and provided a weekly time sheet detailing his work performed. These costs are therefore more accurately categorised as disbursements, and are included as part of our remuneration claim in the interest of being as transparent as possible. Mr Corbett was engaged at that time in this manner whilst his full-time employment with FTI was being finalised. His time was charged in the Administration at an hourly rate of \$190 for this period, far less than that if Mr Corbett was at that time employed as an employee of our firm, which would have been at an hourly rate of \$550.00.



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Category 1 – Other Funds

93. In accordance with the ARITA Code, I have also caused to be prepared summaries showing the persons involved in the work and how much time has been spent on each of the categories described in paragraph 32 herein by each of those persons for the funds other than the FMIF. Copies of those schedules appear at [682] to [701].

94. At [702] to [828] are copies of schedules of the narrations for each time entry in Category 1 for the Funds other than the FMIF. The schedules are drawn directly from the system maintained by FTI Consulting for recording time, described in paragraphs 28 to 30 herein.

95. Given that it was very time-consuming to prepare the schedules referred to in paragraph 81 herein, I have not caused similar schedules to be prepared in respect of the Funds other than FMIF. Mr Glenn O’Kearney, a Senior Director of FTI Consulting familiar with FTI’s time recording process, informs me, and I believe, that he estimates it would take a member of my staff more than a week of working continuously on the task to re-allocate all of the entries contained in the narrations referred to in paragraph 94 into a schedule of the kind referred to in paragraph 81 herein for each of the funds other than the FMIF.

Category 2

96. Category 2 comprises of the tasks and the time for carrying out each task referable to LMIM and the LM Funds as a whole, being the General Funds Management Remuneration and Expenses.



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97. The tasks which are considered to be part of the General Funds Management Remuneration and Expenses include:-

- (a) dealing with issues relating to the books and records of the Funds, which were intermingled and, because of the systems employed, not practicably separable into the books and records of the individual Funds (in respect of which I crave leave to refer to my affidavit sworn 27 November, 2013 in proceeding number 11112 of 2013 in this Honourable Court;
- (b) dealing with issues relating to insurance in the name of LMIM, which may respond to claims against the Funds;
- (c) tasks involved in the administration and management of LMIM's funds management operations including services provided by LMA pursuant to the LMA Service Agreement, which relate to the management of the business of LMIM being a funds manager generally;
- (d) tasks associated with complying with the statutory obligations placed upon LMIM as a responsible entity (generally, not just of a particular Fund) by the *Corporations Act* and other relevant legislation;
- (e) work undertaken for LMIM as Responsible Entity for the benefit of all funds where it would be impractical and inequitable to make multiple entries across the specific fund time codes. For example, where a meeting concerned all of the Funds but the actual time spent on the meeting was short (e.g. 2 units), the units would be allocated to the Category 2, rather than attempting to allocate such a short time period to a specific Fund; and
- (f) general administrative tasks incidental to those matters.

98. From time to time, LMIM would invoice the Category 2 claims to the FMIF. At [829] to [869] are copies of those invoices and summaries of the time entries referred to in paragraph 99 herein, prepared in accordance with the ARITA Code.

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99. At [870] to [1102] are copies of schedules of the narrations for each time entry in Category 2. The schedules are drawn directly from the system maintained by FTI Consulting for recording time, described in paragraphs 28 to 30 herein.

100. Adopting the ARITA Code recommended categories, the amount of remuneration which I seek to have approved as General Funds Management Remuneration and Expenses (being the 'Category 2' claim) is summarised as follows:-

Category	Total hours	Amount (ex. GST)
Assets		
<i>For the period 19 March, 2013 to 30 June, 2013</i>		\$5,747.50
<i>For the period 1 July, 2013 to 31 July, 2013</i>		\$2,344.00
<i>For the period 1 August, 2013 to 31 August, 2013</i>		\$3,540.50
<i>For the period 1 September, 2013 to 30 September, 2013</i>		\$1,617.50
<i>For the period 1 October, 2013 to 31 October, 2013</i>		\$954.50
<i>For the period 1 November, 2013 to 30 November, 2013</i>		\$1,732.50
<i>For the period 1 December, 2013 to 31 December, 2013</i>		\$271.00
<i>For the period 1 January, 2014 to 31 March, 2014</i>		\$10,571.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>		\$10,748.50
<i>For the period 1 July, 2014 to 30 September, 2014</i>		\$1,348.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>		\$3,363.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>		\$1,490.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>		\$771.00
SUBTOTAL		\$44,499.00
Creditors		
<i>For the period 19 March, 2013 to 30 June, 2013</i>		\$9,050.00
<i>For the period 1 July, 2013 to 31 July, 2013</i>		\$3,013.00
<i>For the period 1 August, 2013 to 31 August, 2013</i>		\$2,066.50
<i>For the period 1 September, 2013 to 30 September, 2013</i>		\$898.00
<i>For the period 1 October, 2013 to 31 October, 2013</i>		\$650.00
<i>For the period 1 November, 2013 to 30 November, 2013</i>		\$1,252.00
<i>For the period 1 December, 2013 to 31 December, 2013</i>		\$1,123.50
<i>For the period 1 January, 2014 to 31 March, 2014</i>		\$5,001.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>		\$5,634.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>		\$2,097.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>		\$1,539.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>		\$3,462.00



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<i>For the period 1 July, 2015 to 30 September, 2015</i>		\$0.00
SUBTOTAL		\$35,786.00
<u>Employees</u>		
<i>For the period 19 March, 2013 to 30 June, 2013</i>		\$16,856.00
<i>For the period 1 July, 2013 to 31 July, 2013</i>		\$1,046.00
<i>For the period 1 August, 2013 to 31 August, 2013</i>		\$3,215.00
<i>For the period 1 September, 2013 to 30 September, 2013</i>		\$2,880.50
<i>For the period 1 October, 2013 to 31 October, 2013</i>		\$1,193.50
<i>For the period 1 November, 2013 to 30 November, 2013</i>		\$0.00
<i>For the period 1 December, 2013 to 31 December, 2013</i>		\$365.50
<i>For the period 1 January, 2014 to 31 March, 2014</i>		\$1,115.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>		\$0.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>		\$0.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>		\$0.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>		\$0.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>		\$0.00
SUBTOTAL		\$26,671.50
<u>Trade on</u>		
<i>For the period 19 March, 2013 to 30 June, 2013</i>		\$216,228.00
<i>For the period 1 July, 2013 to 31 July, 2013</i>		\$32,295.50
<i>For the period 1 August, 2013 to 31 August, 2013</i>		\$53,148.00
<i>For the period 1 September, 2013 to 30 September, 2013</i>		\$12,894.50
<i>For the period 1 October, 2013 to 31 October, 2013</i>		\$12,904.50
<i>For the period 1 November, 2013 to 30 November, 2013</i>		\$8,782.00
<i>For the period 1 December, 2013 to 31 December, 2013</i>		\$4,567.50
<i>For the period 1 January, 2014 to 31 March, 2014</i>		\$27,331.50
<i>For the period 1 April, 2014 to 30 June, 2014</i>		\$9,102.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>		\$7,049.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>		\$9,191.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>		\$26,520.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>		\$22,277.00
SUBTOTAL		\$442,290.50
<u>Investigations</u>		
<i>For the period 19 March, 2013 to 30 June, 2013</i>		\$15,233.50
<i>For the period 1 July, 2013 to 31 July, 2013</i>		\$1,218.00
<i>For the period 1 August, 2013 to 31 August, 2013</i>		\$0.00
<i>For the period 1 September, 2013 to 30 September, 2013</i>		\$5,141.00
<i>For the period 1 October, 2013 to 31 October, 2013</i>		\$1,358.00
<i>For the period 1 November, 2013 to 30 November, 2013</i>		\$2,376.50
<i>For the period 1 December, 2013 to 31 December, 2013</i>		\$436.50

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<i>For the period 1 January, 2014 to 31 March, 2014</i>		\$3,143.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>		\$469.00
<i>For the period 1 July, 2014 to 30 September, 2014</i>		\$4,341.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>		\$1,993.00
<i>For the period 1 January, 2015 to 30 June, 2015</i>		\$732.00
<i>For the period 1 July, 2015 to 30 September, 2015</i>		\$362.00
SUBTOTAL		\$36,803.5
Administration		
<i>For the period 19 March, 2013 to 30 June, 2013</i>		\$406,429.49
<i>For the period 1 July, 2013 to 31 July, 2013</i>		\$47,444.00
<i>For the period 1 August, 2013 to 31 August, 2013</i>		\$56,201.00
<i>For the period 1 September, 2013 to 30 September, 2013</i>		\$52,198.00
<i>For the period 1 October, 2013 to 31 October, 2013</i>		\$28,908.00
<i>For the period 1 November, 2013 to 30 November, 2013</i>		\$15,793.50
<i>For the period 1 December, 2013 to 31 December, 2013</i>		\$9,546.00
<i>For the period 1 January, 2014 to 31 March, 2014</i>		\$22,230.00
<i>For the period 1 April, 2014 to 30 June, 2014</i>		\$38,896.50
<i>For the period 1 July, 2014 to 30 September, 2014</i>		\$35,773.00
<i>For the period 1 October, 2014 to 31 December, 2014</i>		\$24,061.50
<i>For the period 1 January, 2015 to 30 June, 2015</i>		\$64,481.50
<i>For the period 1 July, 2015 to 30 September, 2015</i>		\$20,480.00
SUBTOTAL		\$822,442.49
<u>TOTAL</u>		<u>\$1,408,492.99</u>

101. Additionally, in accordance with the practice set out in paragraph 65 herein, LMA issued LMIM with invoices pursuant to the LMA Services Agreement as follows:-

- (a) on 30 June, 2013, for work for the period 19 March, 2013 to 30 June, 2013, in the sum of \$444,260.85 (including GST); and
- (b) on 26 July, 2013, for work for the period 1 July, 2013 to 26 July, 2013, in the sum of \$76,822.90 (including GST).

102. In total, to 30 September, 2015, the Category 2 remuneration and expenses are \$1,882,205.49 (excluding GST).



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103. By this application, Ms Muller I seek directions permitting us to apportion that sum in accordance with FUM as set out in paragraphs 63 to 79 herein. I have caused to be prepared a schedule setting out the allocation on a FUM basis for those Category 2 claims, which appears at [592] to [593].

Reasonableness of work undertaken

104. The Category 1 Schedule and the Category 2 Schedule (“the **Schedules**”) are illustrative of the delegation of work to members of my staff in a manner reflective of the nature of the work. For example, the less complex work is performed by junior staff member and the more complex work is performed by senior staff members and myself or Ms Muller.

105. Similarly, where there was work which could have been performed by me or my staff, but which was, in my judgment, not necessary for the efficient conduct of the administration and the liquidation of LMIM, that work was not performed. For example:-

- (a) following the Receiver’s appointment, I have minimised contact with members of the FMIF;
- (b) following the Receiver’s appointment, I have not caused to be prepared financial statements in respect of the FMIF;
- (c) I have not caused to be conducted a “line-by-line” review of the Receiver’s applications for approval of his remuneration;
- (d) I have not intervened in Federal Court proceedings QUD 596 of 2014, brought by ASIC against some of the directors of LMIM, despite section 1317J(3) of the Corporations Act 2001; and
- (e) I have limited my involvement in those proceedings wherever possible, including, for example, by only seeking to claim privilege on behalf LMIM



Williamson
SOLICITOR

over documents identified by ASIC as potentially privileged, rather than reviewing all of the material disclosed in those proceedings.

106. In preparing this affidavit and the schedules exhibited hereto, I have had the assistance of Ms Kelly-Anne Trenfield and Mr Glenn O’Kearney of FTI Consulting.

107. In my experience as an official liquidator over the past decades, and from my knowledge and supervision of the work undertaken during the relevant period, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.

108. 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 **JOHN RICHARD PARK** on 28 January, 2016 in the presence of:



Deponent



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

STEPHANIE WILLIAMSON
SOLICITOR