

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3508 of 2015

First Applicant

JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS 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 AND MANAGERS 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

AFFIDAVIT

I, **DAVID ANTHONY O'FARRELL** of Level 19, 480 Queen Street, Brisbane in the State of Queensland, Solicitor, state on oath:

A. Introduction

1. I am a partner of the firm of HWL Ebsworth Lawyers (**HWLE**).
2. Unless otherwise indicated, in this affidavit capitalised terms have the meaning given in the interlocutory application filed by the applicants in this proceeding on 10 October 2018 (**Application**). Additionally, in this affidavit:
 - (a) **Gadens** means the solicitors for the Plaintiff in the Feeder Fund Proceeding;

Deponent:

Taken by:

AFFIDAVIT

Filed on behalf of Said Jahani
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

HWL Ebsworth Lawyers
Level 19, 480 Queen Street
Brisbane QLD 4000
Tel: +61 7 3002 6700
Fax: 1300 368 717
Ref: DOF:KCP.ECS:683682

- (b) **June 2018 Order** means the order made by the Honourable Justice Jackson in the Feeder Fund Proceeding on 13 June 2018;
- (c) **Mr Whyte** means Mr David Whyte of BDO, the receiver of the FMIF and the person responsible for winding up the FMIF in accordance with its constitution;
- (d) **RE** means responsible entity;
- (e) **Russells** means the solicitors for the applicants in this proceeding;
- (f) **Trust Company** means The Trust Company Limited ACN 004 027 749 as custodian of the property of the WMIF; and
- (g) **WMIF** means the LM Wholesale First Mortgage Income Fund.
3. HWLE are the solicitors for Said Jahani (**Mr Jahani**), the receiver and manager of LMIM in its capacity as RE of the CPAIF and the ICPAIF. Mr Jahani is a party to a related proceeding no. 13543/16, known as the Feeder Fund Proceeding, having been appointed by the June 2018 Order to represent the interests of LMIM as RE of the CPAIF and ICPAIF in that proceeding.
4. I am responsible for the conduct of the Feeder Fund Proceeding, and this proceeding, on behalf of Mr Jahani, and I am authorised to make this affidavit on behalf of Mr Jahani.
5. This affidavit is made in response to the Application which seeks, among other things, directions pursuant to section 511(1) of the Old Act and section 601NF(2) of the Act or, alternatively section 90-15(1) of the Insolvency Schedule and section 601NF(2) of the Act that:
- (a) subject to certain payments being made, the Liquidator be directed to act as contradictor in respect of the Feeder Fund Proceeding (sub-paragraph 1(a)(ii) of the Application);
- (b) Mr Whyte's appointment to act as the person appointed to supervise the winding up of the FMIF is to continue only in respect of the conduct on behalf of the FMIF of three proceedings, including the Feeder Fund Proceeding; and
- (c) the Liquidator be appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution, together with such ancillary orders as may be appropriate to give effect to this appointment (sub-paragraph 2(b) of the Application).
6. In this affidavit:
- (a) in **Part B**, I address the orders made for the representation of LMIM in the Feeder Fund Proceeding by the June 2018 Order, and the correspondence with Russells about the making of those orders;
- (b) in **Part C**, I address communications I have received from members of the CPAIF and the ICPAIF in respect of the Feeder Fund Proceeding and the mediation of that proceeding;

Deponent:

Doc ID 606000293/v1

Taken by:

- (c) in **Part D**, I address the legal work undertaken on Mr Jahani's behalf in preparing for and participating in the mediation of the Feeder Fund Proceeding, and the cost of that work; and
- (d) in **Part E**, I address correspondence with Russells to date in respect of the Application.

- 7. I am informed by Mr Jahani, and believe, that where I refer in this affidavit to communications between my firm, counsel and Mr Jahani, he seeks to preserve, and does not intend to waive, legal professional privilege attaching to those communications.
- 8. Where I refer in this affidavit to legal fees charged by HWLE to Mr Jahani for the work which I describe in this affidavit, I do so on the basis that I consider the fees to be reasonable having regard to my experience as a solicitor engaged in commercial and insolvency litigation over approximately the past 27 years, and to the complexity of the Feeder Fund Proceeding.

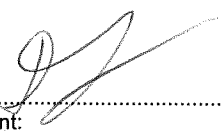
B. June 2018 Order and related correspondence

- 9. The June 2018 Order was made in the Feeder Fund Proceeding by consent.
- 10. Prior to the making of the June 2018 Order, the solicitors for the parties to the Feeder Fund Proceeding engaged in correspondence about appropriate orders to be made for the representation of LMIM in its various capacities in the proceeding (the **representation orders**).
- 11. In the course of the parties' correspondence, Russells explained the Liquidator's position about the making of the representation orders, as follows:
 - (a) by letter to Gadens dated 1 September 2017, which indicated that:
 - (i) Mr Jahani would assume carriage of the Feeder Fund Proceeding on behalf of LMIM as RE of the CPAIF and the ICPAIF, with the Liquidator's consent; and
 - (ii) LMIM in its own right was without funds and would not be taking an active role in the Feeder Fund Proceeding.

Exhibited hereto and marked **DAO-1** is a copy of the letter from Russells to Gadens dated 1 September 2017;

- (b) by letter to HWLE dated 21 September 2017, which indicated that:
 - (i) Mr Jahani had taken carriage of the Feeder Fund Proceeding; and
 - (ii) the Liquidator would provide Mr Jahani with as much assistance as is practicable in the conduct of the Feeder Fund Proceeding.

Exhibited hereto and marked **DAO-2** is a copy of the letter from Russells to HWLE dated 21 September 2017;

Deponent: 
Doc ID 606000293/v1

Taken by: 

(c) by letter to Gadens dated 10 November 2017, copied to HWLE, which indicated that:

- (i) Mr Jahani had assumed carriage of the Feeder Fund Proceeding, with the consent of the Liquidator;
- (ii) LMIM in its own right was without funds; and
- (iii) the Liquidator did not wish to be heard in respect of the making of the representation orders.

Exhibited hereto and marked **DAO-3** is a copy of the letter from Russells to Gadens dated 10 November 2017;

(d) by email to the Associate to the Honourable Justice Jackson sent on 24 April 2018, and copied to me among others, which indicated that:

- (i) LMIM as the fourth defendant in the Feeder Fund Proceeding would not appear at a hearing in respect of the representation orders;
- (ii) LMIM in its own right was without any funds; and
- (iii) Mr Jahani had assumed carriage of the Feeder Fund Proceeding on behalf of LMIM.

Exhibited hereto and marked **DAO-4** is a copy of the email from Russells to the Associate dated 24 April 2018; and

(e) by email to Gadens dated 11 June 2018, which indicated that the Liquidator had no objection to proposed amendments to a draft of the June 2018 Order. Exhibited hereto and marked **DAO-5** is a copy of the email from Russells to Gadens dated 11 June 2018.

C. Communications from members of the CPAIF and the ICPAIF

12. The June 2018 Order required that notice of the Feeder Fund Proceeding, and a proposed mediation of the proceeding, be given to the members of the CPAIF and the ICPAIF (paragraphs 12 to 15).

13. The notice, which was Annexure A to the June 2018 Order, relevantly provided that members of the CPAIF and the ICPAIF:

- (a) had a right to apply to the Court if they wished to be heard in the Feeder Fund Proceeding or to be represented at the mediation; and
- (b) could contact me if they wished to know more about the Feeder Fund Proceeding and the proposed mediation, including if they wished to request any material relating to the mediation.

14. In response to the notice, I received 23 enquiries from members and their financial advisers about the nature and effect of the Feeder Fund Proceeding (**enquiring members**). I provided, in response to each of the enquiring members, background information about the Feeder Fund Proceeding.

.....
Deponent:

Doc ID 606000293/v1

.....
Taken by:



15. Two enquiring members, Mr Michael Stephen Wood and Mrs Fiona Jane Wood (who are jointly members of the ICPAIF), applied to the Court to be heard at the mediation. Mr and Mrs Wood participated, by their solicitors, Mr Duke Myrteza and Mr Robert Casalegno of Australian Law Partners, and counsel, Mr Simon Trewavas, in part of the first day of the mediation, but did not return for the subsequent days.
16. One enquiring member, Mr Raj Kumanan, indicated that he would await the outcome of the mediation before deciding whether he wished to be heard in the Feeder Fund Proceeding.
17. None of the other enquiring members indicated that they wished to be heard in the Feeder Fund Proceeding or be represented at or participate in the mediation.
18. I have received no communication from or on behalf of any member of the CPAIF and the ICPAIF other than those to which I depose above.

D. Legal work undertaken in the Feeder Fund Proceeding

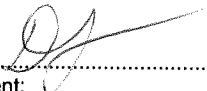
19. The June 2018 Order also required the parties, except for the fourth and fifth defendants (the fourth defendant being LMIM in its own right and the fifth defendant being Trust Company), to attend, participate in, and act reasonably and genuinely in, a mediation on a date to be agreed by the participating parties and the mediator, to be completed by 28 September 2018 (paragraph 16), and that the parties exchange position papers (sub-paragraph 18(e)).
20. The directions for the mediation made by the June 2018 Order were subsequently varied by orders made by consent on 4 September 2018, deferring the mediation to 5 and 6 November 2018.
21. Since the June 2018 Order, HWLE and counsel have undertaken extensive legal work on Mr Jahani's behalf in preparing for and participating in the mediation of the Feeder Fund Proceeding.
22. The primary tasks which have been undertaken in preparing for the mediation are as follows:
 - (a) corresponding with the other parties to the Feeder Fund Proceeding in relation to disclosure of documents to Mr Jahani;
 - (b) undertaking review and analysis of the various and extensive tranches of documents received from the other parties to the Feeder Fund Proceeding. This has involved review and analysis of approximately 9 volumes of printed materials, and a significant volume of electronic materials;
 - (c) communicating with Mr Jahani in relation to his review of the documents received from the other parties to the Feeder Fund Proceeding;
 - (d) briefing counsel to:
 - (i) draw and settle a position paper for the mediation;
 - (ii) prepare for, and appear at, the mediation;

.....
Deponent:

Doc ID 606000293/v1

.....
Taken by:

- (e) assisting counsel with preparation of the position paper for the mediation;
 - (f) participating in conferences with counsel and Mr Jahani in preparation for the mediation; and
 - (g) reviewing the position papers provided by the other parties to the Feeder Fund Proceeding who were participating in the mediation, and the position papers provided by other non-parties in attendance at the mediation.
23. In connection with the above work, the legal fees payable to and charged by HWLE to Mr Jahani are in the sum of \$353,227.90, comprising:
- (a) HWLE's fees of approximately \$213,544.40; and
 - (b) fees of Queen's Counsel (Dominic O'Sullivan) and junior counsel (David Turner) in the aggregate sum of \$139,683.50.
24. The mediation was initially held on 5 and 6 November 2018 before the Honourable Richard Chesterman AO RFD QC. I participated in the mediation, along with:
- (a) Elizabeth Singleton of HWLE;
 - (b) Mr Jahani and his colleague, Danielle Franjic; and
 - (c) Dominic O'Sullivan QC and David Turner of counsel.
25. The mediation was adjourned, with the consent of the parties and the mediator, eventually to 20 November 2018.
26. I also participated in the further day of the mediation on 20 November 2018, along with:
- (a) Elizabeth Singleton of HWLE; and
 - (b) Mr Turner of counsel.
- Mr Jahani and Ms Franjic both participated by telephone.
27. In connection with participation in the mediation, the legal fees payable to and charged by HWLE to Mr Jahani were \$61,732.00, comprising:
- (a) HWLE's fees of approximately \$21,692.00;
 - (b) Queen's Counsel's and junior counsel's fees in the aggregate sum of \$30,140.00; and
 - (c) Mr Jahani's share of the mediator's fees, in the sum of \$9,900.00.
28. In addition to the work described above, I, along with employees of HWLE under my supervision, and counsel, undertook further work between 6 November 2018 and 20 November 2018 seeking to resolve the Feeder Fund Proceeding.
29. The legal fees payable to and charged by HWLE to Mr Jahani for this further work is included in the fees I describe above.

Deponent: 

Doc ID 606000293/v1

Taken by: 

E. Correspondence with Russells about the Application

30. The Application was filed by the Liquidator in this proceeding on 10 October 2018.
31. The first notice I received of the Application was on 5 November 2018 when it was referred to, without detailed explanation, by the representatives of the Liquidator at the first day of the mediation.
32. The first written notice I received was on 6 November 2018 by way of a letter from Russells dated 6 November 2018 (being the second day of the mediation) to me which stated, among other things, that:

As you know, our client is applying for directions that he act as contradictor in respect of the [Feeder Fund Proceeding], the application returnable on 19 November 2018 and provisionally for 10 December 2018. It may well be that, depending on the practicalities of what emerges during the course of the mediation and leading into any application which may be made pursuant to section 96 of the Trusts Act 1973 (Qld) and the Corporation Act 2001 (Cth), that it becomes appropriate for the [June 2018 Order] to be modified such that our client does play an active role regarding the "residual interest" of the members of the Funds in the [Feeder Fund Proceeding]. We wish to raise that possibility now as a matter for consideration and future discussion.

We reiterate that our client remains willing to engage and discuss any resolution given that the interests of the members of the Funds ought be actively advanced (as opposed to simply not being recklessly disregarded) come the commercial aspects of any settlement of the [Feeder Fund Proceeding].

Exhibited hereto and marked **DAO-6** is a copy of the letter I received from Russells on 6 November 2018.

33. The letter dated 6 November 2018 did not provide a copy of the Application nor any affidavit material filed.
34. On or about 12 November 2018, I caused to be downloaded from the Queensland Courts eCourts facility (<http://apps.courts.qld.gov.au/esearching/>), a copy of the Application and an affidavit sworn by the Liquidator on 12 November 2018.
35. On 16 November 2018, I caused a letter to be sent to Russells seeking an explanation as to why:
- (a) the Liquidator sought a direction that he be directed to act as contradictor in respect of the Feeder Fund Proceeding, in circumstances where he had consented to the June 2018 Order; and
 - (b) the Liquidator filed the Application on 10 October 2018 but did not notify Mr Jahani of it until 6 November 2018.

This letter also indicated that:

[Mr Jahani] has proceeded to prepare for and attend a mediation and participate in settlement discussions in respect of the Feeder Fund Proceedings, at significant expense to his appointor, on the basis of the representation orders

Deponent: 

Doc ID 606000293/v1

Taken by: 

made on 13 June 2018 with [the Liquidator's] consent. [Mr Jahani] intends to continue to pursue those discussions on the basis of the representation orders, in accordance with what he considers to be his duty to do so.

Exhibited hereto and marked **DAO-7** is a copy of the letter from HWLE to Russells dated 16 November 2018.

36. On 18 November 2018, I received a letter from Russells in response which stated that:

We confirm that on 10 October 2018 our client filed [the Application] as to the future conduct of the liquidation of LMIM and the LM Funds ... The Application was brought to your attention on 5 November 2018.

The orders sought in the Application differ to the 13 June 2018 representation orders made in respect of [the Feeder Fund Proceeding]. The orders sought are that our client act as contradictor in respect of the Feeder Fund Proceeding and also, in effect, in respect of remuneration and expenses. Seeking orders as to a funded contradictor differs to the 13 June 2018 orders. ...

Exhibited hereto and marked **DAO-8** is a copy of the letter from Russells to HWLE dated 18 November 2018.

37. On 19 November 2018:

- (a) I caused an email to be sent to Russells which requested a copy of the orders made at the directions hearing in respect of the Application on 19 November 2018. Exhibited hereto and marked **DAO-9** is a copy of the email from HWLE to Russells dated 19 November 2018; and
- (b) I received an email from Russells attaching a copy of the order of the Court dated 19 November 2018. Exhibited hereto and marked **DAO-10** is a copy of the email from Russells to HWLE dated 19 November 2018.

38. On 22 November 2018, I received a letter from Russells enclosing, by way of service:

- (a) the Application; and
- (b) the affidavit of the Liquidator sworn on 12 November 2018.

Exhibited hereto and marked **DAO-11** is a copy of the letter from Russells to HWLE dated 22 November 2018 (without enclosures).

39. On 26 November 2018, I caused a search to be conducted of the Queensland Courts' eCourts facility for this proceeding, which indicated further documents had been filed since 12 November 2018.

40. On 28 November 2018, I caused an email to be sent to Russells requesting delivery of a copy of certain documents filed in this proceeding since the Application was made. Exhibited hereto and marked **DAO-12** is a copy of the email from HWLE to Russells dated 28 November 2018.

41. Russells provided a copy of the requested documents to me by email on 29 November 2018.

Deponent

Doc ID 606000293/v1

Taken by:

All the facts and circumstances herein 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 in this my affidavit.

SWORN by **DAVID ANTHONY O'FARRELL** on 7 December 2018 at Brisbane in the presence of:



Deponent



Taken by: Solicitor

Elizabeth Caroline Singleton
Solicitor

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: 3508/15

First Applicant

JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS 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 AND MANAGERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

AND


Respondent

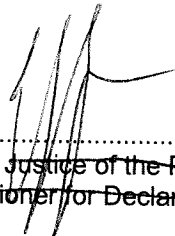
DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001

CERTIFICATE OF EXHIBITS

INDEX OF EXHIBITS

Bound and marked **DAO-1** to **DAO-12** are the exhibits to the affidavit of **DAVID O'FARRELL** sworn at Brisbane on 7 December 2018


.....
Deponent


.....
Solicitor / Justice of the Peace /
Commissioner for Declarations

Elizabeth Caroline Singleton
Solicitor

CERTIFICATE OF EXHIBIT

Filed on behalf Said Jahani
Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

HWL Ebsworth Lawyers
Level 19, 480 Queen Street
Brisbane QLD 4000
Tel: (07) 3169 4700
Fax: 1300 368 717
Ref: DOF:ECS:683682

RUSSELLS

1 September, 2017

Our Ref: Mr Tiplady
Your Ref: Ms Ogden

Gadens Lawyers
GPO Box 129
BRISBANE QLD 4001

email: Jacqueline.Ogden@gadens.com

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ("LMIM")
Supreme Court of Queensland Proceedings numbered 13534 of 2016**

We refer to your correspondence of 4 August, 2017.

Mr Park has now had an opportunity to consider the matter and also to discuss it with the receivers appointed with respect to LMIM in its capacity as the responsible entity of both the CPAIF and the ICPAIF.

As a result:-

1. the receivers will assume carriage of this litigation on behalf of LMIM in its capacity as the responsible entity of both the CPAIF and the ICPAIF (to which our client has consented); and
2. LMIM in its own right is, as your client knows, without funds and in these circumstances will not be taking an active role in the proceeding.

Despite LMIM not taking an active role, we would be most obliged to receive from you (as and when) copies of all court documents and relevant correspondence in respect of the matter so that we may keep our client informed of its progress.

Yours faithfully



Ashley Tiplady
Partner

Direct (07) 3004 8833
Mobile 0419 727 626
ATiplady@RussellsLaw.com.au

Liability limited by a scheme approved under professional standards legislation

DAO-2

RUSSELLS

21 September, 2017

Our Ref: Mr Tiplady
Your Ref: GBW:MXY:543400

Mr Matthew Youssef
HWL Ebsworth
SYDNEY

email: myoussef@hwle.com.au

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers
Appointed) (in Liquidation)
Supreme Court of Queensland Proceeding Number 13534 of 2016**

Thank you for your correspondence of 18 September, 2017.

We have been instructed by the liquidator of LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM"), Mr Park, that your clients, being the receivers of LMIM in its capacity as the responsible entity of the LM Currency Protected Australian Income Fund and LMIM in its capacity as the responsible entity of the LM Institutional Currency Protected Australian Income Fund will take carriage of Supreme Court of Queensland proceeding number 13534 of 2016. Our client will, obviously, provide your clients with as much assistance as is practicable in the conduct of that litigation.

In your letter you have sought the provision of various categories of documents which relate to a number of the managed investment schemes in respect of which LMIM was the responsible entity.

What you may not be aware is that there are a number of court orders in place restricting the access and use of the documents of LMIM held by our client. These orders will need to be reviewed and potentially variations sought to provide your clients with the documents which you have requested.

Given the volume of material you have sought (and only following any issues arising from the operation of the Court Orders regarding the access and use of LMIM documents having been worked through), there will be a large amount of work involved in reviewing and sorting through the documents to be delivered to you (both by this firm and also the liquidator of LMIM). This work may take some days.

LMIM is without funds and, as such, there is no means to meet the costs associated with undertaking these tasks. In these circumstances, we write to query whether or not your clients would be willing to fund the above work.

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

RussellsLaw.com.au

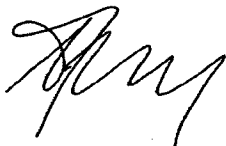
AJT_20170943_008.docx

Please understand that neither this firm nor our client is seeking to be obstructionist but your request for the provision of documents is not as straight forward as one might think given the protected history and the numerous applications which have been heard by, predominately, the Supreme Court of Queensland following the Administration and subsequent Liquidation of LMIM.

The writer is more than happy to discuss these issues with you over the phone if that would be more convenient.

We look forward to hearing from you.

Yours faithfully



Ashley Tiplady
Partner

Direct (07) 3004 8833
Mobile 0419 727 626
ATiplady@RussellsLaw.com.au

RUSSELLS

10 November, 2017

Our Ref: Mr Tiplady/Mr Walsh
Your Ref: Ms Ogden

Gadens Lawyers
GPO Box 129
BRISBANE QLD 4001

email: Jacqueline.Ogden@gadens.com

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ("LMIM")
Supreme Court of Queensland Proceeding numbered 13534 of 2016**

We refer to your letter of 1 November, 2017 enclosing by way of service:-

1. Interlocutory Application dated 30 October, 2017; and
2. Affidavit of David Whyte sworn 31 October, 2017.

Our client's position in respect of this proceeding remains as stated in our 1 September, 2017 letter. The receivers have assumed carriage of this proceeding on behalf of LMIM in its capacity as the responsible entity of both the CPAIF and the ICPAIF, our client having consented to this. LMIM is still in its own right without funds.

Our client does not wish to be heard in respect of your client's application. Your client should however bring to the Court's attention at the hearing:-

1. the fact that LMIM in its own right is without funds to meet any judgment ordered against it;
2. why it is not appropriate for your client's claims to fall within the proof of debt process in the liquidation of LMIM (i.e. why does Mr Whyte believe that he has priority right/interest in the funds sought in this proceeding);
3. your client's likely legal costs in running this matter to a trial;
4. your client's advice on his prospects (provided confidentially to the Court, of course); and
5. the likely monetary benefit to the members of the FMIF in this proceeding should leave be granted.

Please confirm by return that these issues (and this letter) will be placed before the Court at the hearing on 21 November, 2017.

Liability limited by a scheme approved under professional standards legislation

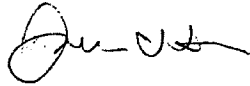
Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

RussellsLaw.com.au

AJT_20170943_011.docx

Yours faithfully



Julian Walsh
Special Counsel

Direct (07) 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au

cc: *HWL Ebsworth Lawyers*
Mr Matthew Youssef
myoussef@hwle.com.au

DA04

Elizabeth Singleton

From: Julian Walsh <JWalsh@russellslaw.com.au>
Sent: Tuesday, 24 April 2018 3:14 PM
To: Associate JacksonJ; Jamie O'Regan; comcausemanager
Cc: Associate BondJ; Emma Allatt; David O'Farrell; amanda.banton@squirepb.com; Ashley Tiplady; Olivia Briers; Scott Couper
Subject: RE: LM Investment Management Limited (In Liquidation) - Supreme Court of Queensland no 13534 of 2016 [HWLE-Matter.C076980.683682] [GQ-BD.FID1645525]

Dear Associate

The fourth defendant will not be appearing on the hearing of the commercial list application and the interlocutory application.

The fourth defendant in its own right is without any funds. Mr Said Jahani, the receiver of LM Investment Management Limited (In Liquidation)(Receivers and Managers Appointed) ("LMIM") in its capacity as the responsible entity of both CPAIF and ICPAIF, has assumed carriage of the proceeding on behalf of LMIM.

Yours faithfully

RUSSELLS

Julian Walsh
Special Counsel

Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au



Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney
Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone 07 3004 8888 / Facsimile 07 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Associate JacksonJ
Sent: Tuesday, 24 April 2018 10:54 AM
To: Jamie O'Regan ; comcausemanager
Cc: Associate BondJ ; Emma Allatt ; David O'Farrell ; amanda.banton@squirepb.com; Julian Walsh ; Ashley Tiplady ; Olivia Briers ; Scott Couper

In the interest of convenience and so as to ensure the Proceedings proceed as efficiently as possible, we propose that the Application and the Commercial List Application be returnable on the same day.

To this end, we advise that the plaintiff, the first defendant and the third defendant have mutual availability in respect of the hearing of the Application and the Commercial List Application on **29-30 May, 4-8 June and 18-20 June 2018**.

We have not as of yet been able to ascertain from the solicitors for the second defendant or the fourth defendant as to their availability.

The solicitors for the each of the defendants have been copied into this correspondence. For convenience, we note that:

1. the first defendant and third defendant are represented by HWL Ebsworth;
2. the second defendant is represented by Squire Patton Boggs; and
3. the fourth defendant is represented by Russells Solicitors.

We await confirmation from you that the Commercial List Application has been received and the day on which the Application and the Commercial List Application are to be heard.

If we can be of any further assistance to Court please let us know.

Yours faithfully

Jamie O'Regan | Solicitor | gadens
jamie.oregan@gadens.com | T +61 7 3114 0137 | F +61 7 3229 5850
Level 11, 111 Eagle Street, Brisbane, QLD, Australia 4000

gadens.com

If you receive this email by mistake, please notify us and do not make any use of the email. We do not waive any privilege, confidentiality or copyright associated with it.

Liability limited by a scheme approved under professional standards legislation.

Think before you print.

Please think about the environment before you print this message.

This email and any attachments may contain confidential, private or legally privileged information and may be protected by copyright. You may only use it if you are the person(s) it was intended to be sent to and if you use it in an authorised way. No one is allowed to use, review, alter, transmit, disclose, distribute, print or copy this email without appropriate authority.

If you are not the intended addressee and this message has been sent to you by mistake, please notify the sender immediately, destroy any hard copies of the email and delete it from your computer system network. Any legal privilege or confidentiality is not waived or destroyed by the mistake.

It is your responsibility to ensure that this email does not contain and is not affected by computer viruses, defects or interferences by third parties or replication problems.

DAO-5

Scott Couper

From: Julian Walsh <JWalsh@russellslaw.com.au>
Sent: 11/06/2018 10:39 AM
To: Scott Couper
Cc: Ashley Tiplady; Jamie O'Regan
Subject: FW: LMIM - Supreme Court of Queensland Proceeding Number 13534 of 2016 - Matter: 20170943 [IWOV-BD.FID1006751]
Attachments: 2466618 L - to Gadens.pdf; 0001 - 01117982 - Order of Justice Jackson (Proceedings number 803214).pdf; Draft order (version2) 08 06 2018.DOC

Dear Colleagues

We refer to your 8 June 2018 email.

Our client has no objection to the marked up amendments to the draft order and, in particular, no objection to the new paragraph 25 of the draft order.

Given the amendments you have made to the draft order, a draft consent order in respect of Supreme Court proceeding 3383 of 2013 and a further undertaking are no longer necessary.

We reiterate that LMIM is in its own right without any funds and that it is the receivers who have assumed carriage of this proceeding on behalf of LMIM as the responsible entity of both CPAIF and ICPAIF (our client having consented to this). For this reason our client's response is limited to paragraphs 9 to 15 and paragraph 25 of the draft order.

Yours faithfully

RUSSELLS

Julian Walsh
Special Counsel

Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au



Firm of the Year

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney
Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone 07 3004 8888 / Facsimile 07 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Scott Couper <Scott.Couper@gadens.com>
Sent: Friday, 8 June 2018 11:28 AM

DAO-6

RUSSELLS

6 November 2018

Our Ref: AJT:JTW:20170943

Your Ref: Mr O'Farrell

HWL Ebsworth Lawyers
Level 19
480 Queen Street
BRISBANE QLD 4000

By Email: dofarrell@hwle.com.au
esingleton@hwle.com.au

Dear Colleagues

**LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed)
("LMIM") - Supreme Court of Queensland Proceeding Number 13534 of 2016 ("the Proceeding")**

As you know Mr Peden QC, Mr Julian Walsh of this office and Ms Kelly Trenfield attended the mediation yesterday in the Proceeding.

Following the parties' opening comments and some separate discussions between various parties, it became clear that there was little utility in our continued involvement in the mediation given the lack of willingness to engage with us in respect of any potential resolution. A similar approach was taken with respect to EY, Trilogy as well as the members of the funds represented by Australian Law Partners. Accordingly, those parties left the mediation earlier in the afternoon.

As Mr Peden QC discussed with Mr O'Sullivan QC, the reason for our wishing to attend the mediation was to ensure that the interests of the members of the CPAIF and ICP-AIF ("**the Funds**") were represented at the mediation. Despite the form of orders made by Justice Jackson on 13 June 2018 regarding representation of the Funds by your client, our client is concerned to ensure that the "residual" interest held by the members of the Funds over and above the amount which is to be returned to your client's secured creditor appointee is considered as part of the negotiations.

We understand that it is uncontroversial and that your client has made it clear that his primary obligation is to his appointor but he is bound to not recklessly disregard the interests of the members of the Funds (i.e. in respect of the residual interest the members of the Funds have in the subject matter of the proceeding).

We and our client have confidence in your firm's and your counsels' ability to appropriately and effectively communicate the various positions to be advanced to contradict the points raised by Mr Whyte during the course of the mediation. Our concern is not that. Rather our concern is, come the time for commercial considerations to be negotiated, once your client's appointor has been paid in full then an actual conflict arises regarding your client's position – i.e. his interest then becomes to move on from the matter whilst the interests of the members of the Funds remain to be positively and actively advanced (as opposed to not being recklessly disregarded).

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney

Postal – GPO Box 1402, Brisbane QLD 4001 / Street – Level 18, 300 Queen Street, Brisbane QLD 4000

Telephone (07) 3004 8888 / Facsimile (07) 3004 8899

RussellsLaw.com.au

In these circumstances, we, in light of the events of yesterday, simply wish to write to you to ensure that our client's position is clarified and we again offer to participate and be involved in any negotiations towards a resolution of this matter to ensure that the interests of the members of the Funds are protected. As you know, our client is applying for directions that he act as contradictor in respect of the Proceeding before Justice Jackson, the application returnable on 19 November 2018 and provisionally for 10 December 2018. It may well be that, depending on the practicalities of what emerges during the course of the mediation and leading into any application which may be made pursuant to section 96 of the *Trusts Act 1973* (Qld) and the *Corporation Act 2001* (Cth), that it becomes appropriate for the orders made on 13 June 2018 to be modified such that our client does play an active role regarding the "residual interest" of the members of the Funds in the Proceeding. We wish to raise that possibility now as a matter for consideration and future discussion.

We reiterate that our client remains willing to engage and discuss any resolution given that the interests of the members of the Funds ought be actively advanced (as opposed to simply not being recklessly disregarded) come the commercial aspects of any settlement of the Proceeding.

Yours faithfully



Ashley Tiplady
Partner

Direct (07) 3004 8833
Mobile 0419 727 626
ATiplady@RussellsLaw.com.au
201707943/2546354

cc:- *Mr Philip Pan*
Philip.Pan@au.kwm.com

Mr Scott Couper
Scott.Couper@gadens.com

Mr Duke Myrteza
dmyrteza@australianlawpartners.com.au

Ms Claudia Dennison
Claudia.Dennison@gadens.com

Mr Jamie O'Regan
Jamie.OREgan@gadens.com

Mr Robert Casalegno
rcasalegno@australianlawpartners.com.au

Ms Susan Goodman
susan.goodman@squirepb.com

Ms Amanda Banton
amanda.banton@squirepb.com

Mr Cameron Mew
Cameron.Mew@au.kwm.com

Our Ref: DOF:ECS:683682

16 November 2018

Ashley Tiplady and Julian Walsh
Russells Law
Level 18, 300 Queen Street
Brisbane QLD 4000

Email: jwalsh@russellslaw.com.au; atiplady@russellslaw.com.au

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Colleagues

LMIM as responsible entity of the LM First Mortgage Income Fund (FMIF)
LMIM as responsible entity of the LM Currency Protected Australian Income Fund (Receiver and Manager Appointed) (CPAIF)
LMIM as responsible entity of the LM Institutional Currency Protected Australian Income Fund (Receiver and Manager Appointed) (ICPAIF)
Supreme Court of Queensland Proceeding Number 13534 of 2016 (Proceeding)

We refer to Supreme Court of Queensland proceeding BS3508 of 2015, in which an application by your client is returnable before the Court on Monday, 19 November 2018 (**Liquidator's Proceeding**).

1. Application in Liquidator's Proceeding

- 1.1 By his application in the Liquidator's Proceeding, your client seeks a range of directions, including, by sub-paragraph 1(a), a direction that subject to certain costs orders sought in his favour, your client "*be directed to act as contradictor*" in respect of (relevantly) Supreme Court of Queensland proceeding 13534 of 2016 (**Feeder Funds Proceeding**).
- 1.2 The purpose of this letter is to notify you that our client considers that your client ought undertake not to press for the direction referred to at paragraph 2 above at the hearing on 19 November 2018, as it is an application properly to be made in the Feeder Funds Proceeding and not the Liquidator's Proceeding, and any application in the Feeder Funds Proceeding ought be filed and served on the parties in that proceeding in an orderly manner in accordance with the UCPR.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

Doc ID 600522583/v1

Level 19, 480 Queen Street, Brisbane QLD 4000 Australia
GPO Box 2033, Brisbane QLD 4001 Australia

Telephone +61 7 3169 4700
Facsimile 1300 368 717 (Australia) +61 2 8507 6581 (International)
hwlebsworth.com.au

ABN 37 246 549 189

2. Background

- 2.1 On 13 June 2018, the Court made representation orders in the Feeder Funds Proceeding. We **enclose** a copy of the orders. The Court relevantly directed that:
- (a) the interests of LMIM in its capacity as responsible entity of the Feeder Funds as first defendant and third defendant be represented in the Feeder Funds Proceeding by our client in his capacity as receiver and manager of LMIM in its capacity as responsible entity of the Feeder Funds (sub-paragraph 3(b) and (c)); and
 - (b) the interests of LMIM in its own capacity as fourth defendant be represented by your client in his capacity as the liquidator of LMIM (sub-paragraph 3(d)).
- 2.2 Your client was served with the application giving rise to these orders, and consented to the order at (b) above.
- 2.3 The orders made on 13 June 2018 further provide for the production of documents in aid of a mediation (paragraphs 9 to 11); for notifications to be given to the members of the Feeder Funds (paragraphs 12 to 15); and for a mediation to be completed by 28 September 2018 (paragraphs 16 to 23). The date of the mediation was varied by subsequent order of the Court providing for the mediation to be held on 5 and 6 November 2018.
- 2.4 The mediation was held on 5 and 6 November 2018. The dispute was not resolved by the end of the mediation. With the consent of the mediator, the parties agreed to adjourn the mediation while settlement discussions continued. The mediation has been adjourned to Tuesday, 20 November 2018, being the day after your client's application is to be heard in the Liquidator's Proceeding.
- 2.5 In the meantime, on 10 October 2018, your client filed his application in the Liquidator's Proceeding.
- 2.6 The first notice we received of it was by your letter dated 6 November 2018 (being the second day of the mediation). Our client was not served with it. We recently downloaded it from the Queensland Courts website, together with the supporting affidavit of your client sworn on 12 November 2018.


3. The Feeder Funds Proceeding

- 3.1 The directions sought by your client in the Liquidator's Proceeding referred to at paragraph 1.1 above appear to be directed at displacing or modifying the representation orders in the Feeder Funds Proceeding referred to at paragraph 5 above. That said, we are unsure of the intended legal and practical effect of a direction that your client "*be directed to act as contradictor*" in respect of the Feeder Funds Proceeding, in the context of the existing representation orders. The affidavit of your client sworn on 12 November 2018 does not assist to elucidate the intended legal and practical effect of the direction. We would be grateful if you could explain it to us.
- 3.2 As you know, since 13 June 2018, our client has proceeded to prepare for and attend a mediation and participate in settlement discussions in respect of the Feeder Funds Proceeding, at significant expense to his appointor, on the basis of the representation

orders made on 13 June 2018 with your client's consent. Our client intends to continue to pursue those discussions on the basis of the representation orders, in accordance with what he considers to be his duty to do so.

- 3.3 We would be grateful if you could also explain to us why your client:
- (a) seeks the orders the subject of the application in the Liquidator's Proceeding, given he consented to the orders of 13 June 2018 and as a result of which significant expense has been incurred; and
 - (b) why your client filed his application on 10 October 2018 but did not notify our client of it until your letter dated 6 November 2018.
- 3.4 Please let us know whether your client will undertake not to press for the relief referred to at paragraph 2 above at the hearing of his application in the Liquidator's Proceeding on 19 November 2018.

Yours sincerely



David O'Farrell
Partner
HWL Ebsworth Lawyers

+61 7 3169 4844
dofarrell@hwle.com.au



Elizabeth Singleton
Solicitor
HWL Ebsworth Lawyers

+61 7 3169 4915
esingleton@hwle.com.au

cc. dschwarz@tuckercowen.com.au

DAO-8

RUSSELLS

18 November 2018

Our Ref: AJT:JTW:20180543

Your Ref: Mr O'Farrell and Ms Singleton

Mr David O'Farrell and Ms Elizabeth Singleton
HWL Ebsworth Lawyers
Level 19
480 Queen Street
BRISBANE 4001

By Email: dofarrell@hwle.com.au
esingleton@hwle.com.au

Dear Colleagues

**Application for directions as to the future conduct of the winding up of LMIM and the LM Funds
Supreme Court of Queensland Proceeding number 3508 of 2015**

We refer to your letter of 16 November 2018.

We confirm that on 10 October 2018 our client filed an application as to the future conduct of the liquidation of LMIM and the LM Funds ("**the Application**"). The Application was brought to your attention on 5 November 2018.

The orders sought in the Application differ to the 13 June 2018 representation orders made in respect of Supreme Court of Queensland proceeding 13534 of 2016 ("**the Feeder Fund Proceeding**"). The orders sought are that our client act as contradictor in respect of the Feeder Fund Proceeding and also, in effect, in respect of remuneration and expenses. Seeking orders as to a funded contradictor differs to the 13 June 2018 orders.

That said, our client is not seeking the relief sought in subparagraph 1(a) of the Application at the 19 November 2018 hearing. We will be in contact shortly regarding the outcome of that hearing and the

Liability limited by a scheme approved under professional standards legislation

orders sought when the Application is heard on 10 December 2018.

Yours faithfully



Julian Walsh
Special Counsel

Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au
20180543/2555613

DAO-9

Elizabeth Singleton

From: Elizabeth Singleton <esingleton@hwle.com.au>
Sent: Monday, 19 November 2018 6:50 PM
To: 'Julian Walsh'; 'Ashley Tiplady'
Cc: David O'Farrell
Subject: FW: LMIM - Application for Directions - Supreme Court Qld Proceeding 3508 of 2015 - Matter: 20180543 [HWLE-Matter.C076980.683682]

Dear Colleagues

We refer to the abovementioned proceeding.

In preparation for tomorrow's mediation of proceeding 13534 of 2016, please provide us with the orders made at the hearing of your client's application before his Honour Justice Jackson today.

Kind regards

Elizabeth Singleton
Solicitor

**HWL
EBSWORTH**
LAWYERS

Level 19, 480 Queen Street | Brisbane QLD 4000
Phone +61 7 3169 4915 Fax 1300 368 717 (Australia) | Fax +61 2 8507 6582 (International)
esingleton@hwle.com.au | www.hwlebsworth.com.au

Full service | Commercially oriented | Unrivalled value

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Norwest | Perth | Sydney

If you receive this communication by mistake we prohibit you from using it in any way and do not waive client legal privilege. Please notify us, delete the communication (and any attachments) and destroy all copies. We do not represent or warrant that this communication is free from computer viruses or other defects. You are responsible for all loss or damage caused directly or indirectly by the use of this communication. If you do not receive all of the email or attachments please notify us immediately by reply email. This notice should not be deleted or altered.

From: Julian Walsh [<mailto:JWalsh@russellslaw.com.au>]
Sent: Sunday, 18 November 2018 4:41 PM
To: David O'Farrell; Elizabeth Singleton
Cc: Ashley Tiplady
Subject: LMIM - Application for Directions - Supreme Court Qld Proceeding 3508 of 2015 - Matter: 20180543

Dear Colleagues

Attached is our letter of 18 November 2018.

Yours faithfully

RUSSELLS

Julian Walsh
Special Counsel

Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au

Elizabeth Singleton

From: Julian Walsh <JWalsh@russellslaw.com.au>
Sent: Tuesday, 20 November 2018 10:25 AM
To: Elizabeth Singleton; Ashley Tiplady
Cc: David O'Farrell; David Schwarz; Alex Nase
Subject: RE: LMIM - Application for Directions - Supreme Court Qld Proceeding 3508 of 2015 - Matter: 20180543
Attachments: Draft Orders (19 November 2018) - FINAL (TCS01601342-009).docx

Dear Colleagues

As requested, attached is the draft order in respect of yesterday's hearing.

The draft order was provided to the Honourable Justice Jackson's Associate today, His Honour having requested that the parties submit a form of order.

PS. I note that the form of order was only agreed on this morning and only just went to His Honour's Associate.

Yours faithfully

RUSSELLS

Julian Walsh
Special Counsel

Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au



Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney
Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone 07 3004 8888 / Facsimile 07 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Elizabeth Singleton
Sent: Monday, 19 November 2018 6:50 PM
To: Julian Walsh ; Ashley Tiplady
Cc: David O'Farrell
Subject: FW: LMIM - Application for Directions - Supreme Court Qld Proceeding 3508 of 2015 - Matter: 20180543 [HWLE-Matter.CO76980.683682]

Dear Colleagues

We refer to the abovementioned proceeding.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

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

First Applicant: JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND
MANAGERS 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 AND MANAGERS 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

ORDER

Before: Justice Jackson
Date: 19 November 2018
Initiating document: Application filed 10 October 2018

THE ORDER OF THE COURT IS THAT:

1. Directions pursuant to section 511(1) of the *Corporations Act 2001* as in force immediately before 1 March 2017 and section 601NF (2) of the *Corporations Act 2001* or, alternatively section 90-15(1) of schedule 2 to the Act and section 601NF(2) of the Act:
 - (a) That by no later than 27 November 2018 the First Applicant ("**Liquidator**") file an affidavit setting out estimates of his remuneration and expenses ("**the**

ORDER
Form 59 R.661

Filed on behalf of the Respondent

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
Tele: (07) 300 300 00
Fax: (07) 300 300 33

Budget") up to and including the payment of the final distribution to the creditors of the First Applicant ("**LMIM**") and final distribution to the members of each of the following funds ("**the LM Funds**");

- (i) LM First Mortgage Income Fund ARSN 089 343 288 ("**FMIF**");
 - (ii) LM Cash Performance Fund ARSN 087 304 032 ("**CPF**");
 - (iii) LM Currency Protected Australian Income Fund ARSN 110 247 875 ("**CPAIF**");
 - (iv) LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("**ICPAIF**");
 - (v) LM Australian Income Fund ARSN 133 497 917 ("**AIF**"); and
 - (vi) LM Australian Structured Products Fund ARSN 149 875 669 ("**ASPF**").
- (b) The Budgets set out in the affidavits to be filed in accordance with paragraph 1 are to include:
- (i) estimates of the monthly remuneration of the Liquidator up to and including the payment of the final distribution to the creditors of LMIM and the members of the Funds, being the final distribution in respect of the winding up of LMIM and the final distribution in respect of each of the LM Funds, being distributions after payment of all proper debts ("**the Conclusion**");
 - (ii) an estimate of the monthly expenses of the Liquidator up to the Conclusion;
 - (iii) an estimate by the Liquidator of the costs of making an interim distribution to members of the FMIF ("**the Interim Distribution**");
 - (iv) an estimate by the Liquidator of the costs of making a final distribution to members of FMIF up to the Conclusion ("**the Final Distribution**");
 - (v) an estimate of the total remuneration and expenses up to the Conclusion;
 - (vi) a description of the work to be carried out by the Liquidator in respect of his estimated remuneration;
 - (vii) an estimate as to the expenses to be incurred by the Liquidator up to the Conclusion; and
 - (viii) a description of the expenses to be incurred by the Liquidator up to the Conclusion.

2. On or before 30 November 2018, the Respondent file and serve any Affidavits upon which he intends to rely at the hearing of the application filed 10 October 2018 ("**Application**").
3. On or before 5 December 2018, the Applicants file and serve:-
 - (a) any Affidavits in reply to the Respondent's Affidavits; and
 - (b) the Applicants' written outline of submissions.
4. On or before 7 December 2018, the Respondent file and serve the Respondent's written outline of submissions.
5. The parties are directed to send by email copies of their respective written outlines of submissions to the Associate to Justice Jackson on the day of filing.
6. On or before 22 November 2018, the Applicants serve a copy of these Orders on the Australian Securities and Investments Commission ("**ASIC**").
7. ASIC has liberty to apply, including to be heard in relation to the Application.
8. On or before 22 November 2018, the Applicants serve a copy of these Orders on Mr Said Jahani, of Grant Thornton, the receiver and manager of LMIM in its capacity as responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875 and in its capacity as responsible entity of the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("**Mr Jahani**").
9. Mr Jahani has liberty to apply, including to be heard in relation to the Application.
10. The Application is set down for a one-day hearing before Justice Jackson on 10 December 2018.
11. The Respondent:-
 - (a) give notice to members of the LM First Mortgage Income Fund ARSN 089 343 288 ("**FMIF**"), by sending a written notice in such form as the Respondent considers appropriate, and otherwise in accordance with paragraphs 5(b), (c) and (d) of the Order made in this proceeding on 3 October 2018 ("**Notice Order**"), of the date of hearing of the Application as fixed by paragraph 6 of this Order and of the fact that the affidavits filed or to be filed by the parties in respect of the Application will be made available on the website identified in paragraph 5(d) of the Notice Order;
 - (b) is not required to take further steps to serve or give notice to the members of the FMIF of the date of hearing of the Application or of any affidavit filed in respect of the Application.
12. Paragraph 5(e) of the Notice Order is varied by replacing "Respondent" with "Applicant".

13. Without limiting paragraph 6 of the Notice Order, the First Applicant upload any material filed by the Respondent in respect of the Application to the Website (as that term is used in the Notice Order).
14. Costs reserved.

Signed:

DAO-11

RUSSELLS

23 NOV 2018

22 November 2018

Our Ref: AJT:JTW:20180543

Your Ref: Mr O'Farrell and Ms Singleton

Mr David O'Farrell and Ms Elizabeth Singleton
HWL Ebsworth Lawyers
Level 19
480 Queen Street
BRISBANE 4001

By Delivery and
By Email: dofarrell@hwle.com.au
csingleton@hwle.com.au

Dear Colleagues

**Application for directions as to the future conduct of the winding up of LMIM and the LM Funds
Supreme Court of Queensland Proceeding number 3508 of 2015**

We refer to your letter of 16 November 2018 and our letter of 18 November 2018.

We confirm that you act from Mr Said Jahani, the receiver and manager of LMIM in its capacity as responsible entity of the Feeder Funds.

Enclosed by way of service is an Order made by Justice Jackson of the Supreme Court of Queensland on 19 November 2018 ("**the Order**"). The Order is served in accordance with paragraph 8 of the Order.

We note that your client has already reviewed our client's application and affidavit in support, however for the avoidance of any doubt we serve:

1. the Application filed 10 October 2018; and
2. the Affidavit of John Richard Park filed on 12 November 2018.

Liability limited by a scheme approved under professional standards legislation

Brisbane / Sydney

Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899
RussellsLaw.com.au

We confirm that the Application is set down for a one-day hearing before Justice Jackson on 10 December 2018. Pursuant to paragraph 9 of the Order your client has liberty to apply, including to be heard in relation to the Application.

Yours faithfully



Julian Walsh
Special Counsel

Direct 07 3004 8836
Mobile 0449 922 233
JWalsh@RussellsLaw.com.au
20180543/2559407

DAO-12

Elizabeth Singleton

From: Elizabeth Singleton
Sent: Wednesday, 28 November 2018 8:48 AM
To: 'Julian Walsh'; 'Ashley Tiplady'
Cc: David O'Farrell; Katrina Pagey
Subject: FW: LMIM - Application for Directions - Supreme Court Qld Proceeding 3508 of 2015 [HWLE-Matter.C076980.683682]

Dear Colleagues

We refer to your letter dated 22 November 2018, under cover of which you served upon us:

1. your client's application filed 10 October 2018 (**Application**); and
2. the affidavit of John Park filed on 12 November 2018.

In addition to those documents, we have downloaded from the electronic court file:

1. the affidavit of David Whyte sworn 16 November 2018; and
2. the affidavit of Neil Dempster sworn 18 November 2018.

Please could you provide us with all of the remaining court documents pertaining to the Application, including (but not limited to):

1. the affidavit of Julian Walsh, filed on 19 November 2018;
2. the affidavit of 'M Dempster', filed on 20 November 2018;
3. the exhibit ND-1 filed on 20 November 2018;
4. the affidavit of A Watt filed on 20 November 2018; and
5. the outline of submissions filed by the Respondent on 20 November 2018;

Having regard to the proximity of the return date, please provide these documents by **5:00 pm on 28 November 2018**.

Kind regards

Elizabeth Singleton
Solicitor

HWLEBSWORTH
LAWYERS

Level 19, 480 Queen Street | Brisbane QLD 4000
Phone +61 7 3169 4915 Fax 1300 368 717 (Australia) | Fax +61 2 8507 6582 (International)
esingleton@hwle.com.au | www.hwlebsworth.com.au

Full service | Commercially oriented | Unrivalled value

Adelaide | Brisbane | Canberra | Darwin | Hobart | Melbourne | Norwest | Perth | Sydney

If you receive this communication by mistake we prohibit you from using it in any way and do not waive client legal privilege. Please notify us, delete the communication (and any attachments) and destroy all copies. We do not represent or warrant that this communication is free from computer viruses or other defects. You are responsible for all loss or damage caused directly or indirectly by the use of this communication. If you do not receive all of the email or attachments please notify us immediately by reply email. This notice should not be deleted or altered.