

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY
AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE
INCOME FUND

AND

Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

AFFIDAVIT OF ALEXANDER PHILIP NASE

I, ALEXANDER PHILIP NASE of C/- Level 15, 15 Adelaide Street, Brisbane in the State of Queensland,
Solicitor, state on oath:-

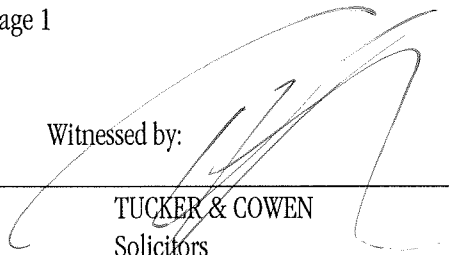
1. I am a solicitor employed by Tucker & Cowen Solicitors, the solicitors for Mr David Whyte. I have the carriage of this matter on behalf of Mr Whyte, under the supervision of Mr David Schwarz, a partner at Tucker & Cowen.

Page 1

Signed:



Witnessed by:



AFFIDAVIT:
Form 46, R.431

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

Filed on behalf of the Applicant, Mr David Whyte

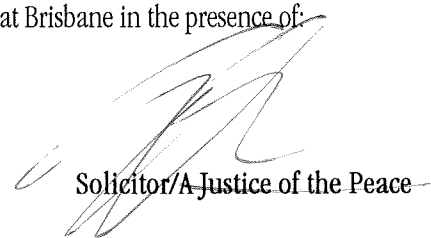
2. Exhibited hereto and marked "APN-1" is a copy of the following correspondence between Tucker & Cowen, and Russells, the solicitors for the First Respondent:-

No.	Description	Exhibit page no.
1.	Letter dated 17 June 2014 from Tucker & Cowen Solicitors to Russells sent by email on 17 June 2014.	1 – 3
2.	Letter dated 2 July 2014 from Tucker & Cowen to Russells sent by email on 2 July 2014.	4 – 5
3.	Letter dated 8 July 2014 from Russells to Tucker & Cowen sent by email on 8 July 2014.	6 – 8
4.	Letter dated 11 July 2014 from Tucker & Cowen to Russells sent by email on 11 July 2014.	9 – 11
5.	Letter dated 18 July 2014 from Tucker & Cowen to Russells sent by email at 12:26 pm on 18 July 2014.	12 – 14
6.	Letter dated 18 July 2014 from Russells to Tucker & Cowen sent by email at 4:59 pm on 18 July 2014.	15 – 17
7.	Letter dated 22 July 2014 from Tucker & Cowen to Russells sent by email on 22 July 2014.	18 - 20

3. All the facts and circumstances above 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 ALEXANDER PHILIP NASE on the 23rd day of July 2014 at Brisbane in the presence of:


Deponent


Solicitor/A Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED
(IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY
AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE
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Second Respondent: THE MEMBERS OF THE LM FIRST MORTGAGE
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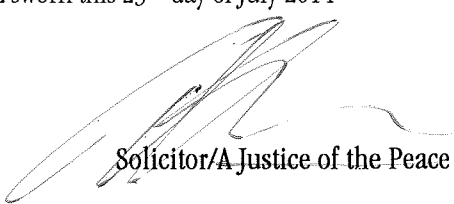
AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

CERTIFICATE OF EXHIBIT

Exhibit "APN-1" to the Affidavit of ALEXANDER PHILIP NASE sworn this 23rd day of July 2014


Deponent


Solicitor/A Justice of the Peace

(APN-1)

Alex Nase

From: Simone Mulvey
Sent: Tuesday, 17 June 2014 10:04 AM
To: ibisson@russellslaw.com.au
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Limited & Ors -ats- Bruce - Supreme Court Proceeding No. 3383/2013
Attachments: Letter to Russells dated 17.06.14-doc id 822490-005 (TCS00829076).pdf

Dear Sir,

Please see attached correspondence dated 17 June 2014.

**SENT ON BEHALF OF
DAVID SCHWARZ, PARTNER**

Regards

Tucker&CowanSolicitors.

Level 15, 15 Adelaide St, Brisbane, Qld, 4000 / GPO Box 345, Brisbane, Qld, 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowan.com.au

Our reference: Mr Schwarz/Mr Nase

17 June 2014

Your reference: Ms Craig/Mr Bisson

Russells
Lawyers
GPO Box 1402
Brisbane QLD 4001

Email: ibisson@russellslaw.com.au

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David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Tyler Griffin.
Geoff Hancock.

Associates.
Dan Ryan.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Nicole Withers.
Dugald Hamilton.
Olivia Roberts.

Dear Colleagues,

LM Investment Management Limited & Ors –ats- Bruce
Supreme Court Proceeding No. 3383/2013

We refer to the above matter and to the Application by Mr Whyte for approval of his remuneration ("the application"), which came before the Court on 26 May 2014.

The application has been adjourned to a two day hearing on 28 and 29 August 2014.

At the hearing on 26 May, your Counsel announced an appearance for the First Respondent to the proceeding, LM Investment Management Limited (In Liquidation) ("LMIM") as Responsible Entity ("RE") of the LM First Mortgage Income Fund ("FMIF") and relied upon an Affidavit of Mr John Park, one of the liquidators of LMIM.

Mr Park's Affidavit speaks of a desire to review and consider the claim by our client, and refers to some general concerns as to the quantum of the remuneration claimed by Mr Whyte, namely:-

1. possible duplication of costs (having regard to the appointment of Messrs Hayes and Connolly of McGrathNicol as receivers and managers by Deutsche Bank);
2. the work undertaken with respect to the attempted re-finance of the Deutsche Bank facility (as to which Mr Park expresses a view that the costs were unnecessary and unjustified); and
3. delegation of tasks; that is, whether there was appropriate delegation of work by Mr Whyte.

Your client pressed a submission at the hearing on 26 May that your client desires an opportunity to obtain expert evidence as to the quantum of the claim made by Mr Whyte. It was on that basis that directions were made for the application to be adjourned for a two day hearing, in order to accommodate a potential exchange of expert reports and cross-examination of the experts, as well as of our client, Mr Whyte.

As noted above, your clients' Counsel announced an appearance for the First Respondent only. By reason of the Orders made on 21 August 2013 (following our client's appointment on 8 August 2013), our client is the person responsible for ensuring that the FMIF is wound up in accordance with its Constitution and is the receiver of the property of the FMIF. Your clients (the liquidators of LMIM) have no further role in relation to the FMIF; at least, not in any capacity to represent the interests of

the members of the FMIF. It is our client who is now charged with, in effect, carrying out the functions of the responsible entity of the FMIF and ensuring that the FMIF is wound up in accordance with its Constitution.

Accordingly, our client fails to see what actual interest your clients have, as liquidators of LMIM, in maintaining an active opposition to our client's application. We invite you to explain the position of your clients in that regard, as soon as possible.

Our client is also concerned that the significant legal and other costs that will be incurred by reason of your client's approach will have, which can only serve to increase the costs borne by the members of the FIMF. Mr Park has expressed a desire to ensure that the quantum of Mr Whyte's remuneration is appropriate and justified (presumably having regard to the interests of the members of the FMIF); however, the costs to be incurred by Mr Whyte in obtaining expert reports and undertaking a two day trial will certainly be substantial, and (given Mr Whyte's indemnity from the FMIF) will be a further impost on the FMIF.

It occurs to us, and to our client, that your client may also seek to be indemnified from the FMIF for the costs of opposing Mr Whyte's remuneration, obtaining expert evidence and appearing at the two day trial. Could you please let us know by return whether your clients do intend to make such a claim on the FMIF. If that be the case, and if your client is to be indemnified from the FMIF, then the cost to the FMIF will represent a sizeable proportion of the amount of remuneration being claimed by Mr Whyte.

Our client fails to see the need for such a costly exercise. Not only is the obtaining of expert evidence as to the quantum of Mr Whyte's costs counter to the practice adopted in other such matters in relation to the remuneration of insolvency practitioners, which has been noted in certain decided authority, but it is unlikely to provide any greater assistance to your client than a proper review of Mr Whyte's claim by Mr Park himself. Mr Park is an insolvency practitioner of some considerable experience and would surely be in a position to identify any reasonable and considered objection to any particular part of Mr Whyte's claim to remuneration.

Accordingly, we are instructed that our client proposes that in lieu of an exchange of expert reports, if your clients have any particular objections to the remuneration claimed by our client, our client invites your clients to identify those objections in a written outline, with some explanation for the basis for the objection. Our client will then consider, and respond to the objections. Our client will consider any reasonable objections and, if satisfied that there is merit in the objection, would propose an appropriate reduction in the amount of remuneration claimed, in the interests of saving legal and other costs associated with the hearing of the application.

Please let us know as soon as possible, your clients' attitude to this proposal.

We look forward to hearing from you.

Yours faithfully


David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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Alex Nase

From: Simone Mulvey
Sent: Wednesday, 2 July 2014 4:39 PM
To: ibisson@russellslaw.com.au
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Limited & Ors -ats- Bruce, Supreme Court Proceeding No. 3383/2013
Attachments: Letter to Russells dated 02.07.14-doc id 834957 (TCS00835185).pdf

Dear Sir

Please see **attached** correspondence dated 2 July 2014.

**SENT ON BEHALF OF
DAVID SCHWARZ, PARTNER**

Regards

Simone Mulvey
Personal Assistant

E: smulvey@tuckercowen.com.au
D: 07 3210 3519 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

Member of MSI Global Alliance



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Tucker & Cowen Solicitors.

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Associates.
Dan Ryan.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Nicole Withers.
Dugald Hamilton.
Olivia Roberts.

Our reference: Mr Schwarz/Mr Nase

2 July 2014

Your reference: Ms Craig/Mr Bisson

Russells
Lawyers
GPO Box 1402
Brisbane QLD 4001

Email: ibisson@russellslaw.com.au

Dear Colleagues,

LM Investment Management Limited & Ors –ats- Bruce
Supreme Court Proceeding No. 3383/2013

We refer to our letter to you dated 17 June 2014. We note that we have not received a response to our letter.

You might kindly let us have your clients' reply to our letter by Monday, 7 July 2014.

In the absence of a response by Monday, our client will assume that your client does not wish to explore the proposal made in our letter, with a view to resolving any particular objections that your clients may have in a commercial and cost effective manner.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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Alex Nase

From: Ian Bisson [IBisson@russellslaw.com.au]
Sent: Tuesday, 8 July 2014 1:13 PM
To: Alex Nase
Cc: Ashley Tiplady
Subject: LMIM - Claim for Remuneration ~20140653~
Attachments: IAB_20140653_019(1).pdf

Importance: High

Dear Colleagues

Please see our attached correspondence of today.

Yours faithfully

RUSSELLS

Ian Bisson
Senior Lawyer

Direct (07) 3004 8890
Mobile 0437 147 982
IBisson@RussellsLaw.com.au

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For more information please visit <http://www.symanteccloud.com>

RUSSELLS

8 July, 2014

Our Ref: Ms Craig/Mr Bisson
Your Ref: Mr Nase

EMAIL TRANSMISSION

Mr Alex Nase
Tucker & Cowen Solicitors
BRISBANE

email: anase@tuckercowen.com.au

Dear Colleagues

**LM Investment Management Limited & Ors -ats- Bruce
Supreme Court Claim No. 3383 of 2013**

We refer to the above matter, the Order of P Lyons J dated 26 May, 2014 and your recent correspondence.

It appears you may not be aware that, in the interests of reducing matters in issue and consequently the costs associated with these proceedings, there has been some recent, high-level, without prejudice discussions between representatives of our respective clients. Those discussions are ongoing.

To enable those discussions to continue we propose adjusting the timetable for filing of expert and other evidence by our respective clients, so that:

1. Our client is to file its material by 21 July, 2014; and
2. Your client to file its material by 11 August, 2014.

We note the matter is set down for hearing on 28 and 29 August, 2014. The adjusted timetable should not reasonably impact on either parties preparation for the hearing, if one is still required.

Please confirm as a matter of urgency whether your client is agreeable to the proposed amendment to the time table so that we may prepare a consent order for filing with the Court, or have the matter re-listed so that the timetable may be re-set.

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IAB_20140653_019.docm

We look forward to hearing from you.

Yours faithfully



Ian Bisson
Senior Lawyer

Direct (07) 3004 8890
Mobile 0437 147 982
IBisson@RussellsLaw.com.au

Alex Nase

From: Simone Mulvey
Sent: Friday, 11 July 2014 9:00 AM
To: ibisson@russellslaw.com.au
Cc: Alex Nase
Subject: LM Investment Management Limited & Ors -ats- Bruce/Supreme Court Proceeding No. 3383/2013
Attachments: Letter to Russells dated 11.07.14-doc id 837561 (TCS00838396).pdf

Dear Sir

Please see [attached](#) correspondence dated 11 July 2014.

SENT ON BEHALF OF ALEX NASE

Regards.

Tucker&CowenSolicitors.

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

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Associates.
Dan Ryan.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Nicole Withers.
Dugald Hamilton.
Olivia Roberts.

Our reference: Mr Schwarz/Mr Nase

11 July 2014

Your reference: Ms Craig/Mr Bisson

Russells
Lawyers
GPO Box 1402
Brisbane QLD 4001

Email: ibisson@russellslaw.com.au

Dear Colleagues,

LM Investment Management Limited & Ors –ats- Bruce
Supreme Court Proceeding No. 3383/2013

We refer to your letter dated 8 July 2014.

We are instructed that the “high level, without prejudice discussions” to which you refer related primarily to another matter, namely the remuneration claimed by your client from the FMIF, and not our client’s remuneration application.

We note that our client, in the interests of saving costs and expense for members of the FMIF, put forward a proposal to deal with any objections made by your clients to our client’s remuneration in a structured way, not involving expert evidence or cross-examination. Your clients have not taken our client up on that proposal.

It would not be a simple matter to vary the directions. Your clients would need to bring the matter back before the Court, on notice to the members, or at least the members referred to in paragraphs 3 and 6 of the Orders made by His Honour Justice Lyons on 26 May 2014 (“the Orders”). If the directions were varied, it would arguably be necessary for our client to re-serve the varied Orders on the members of the FMIF on whom the Orders were served pursuant to the Orders made by His Honour Justice Lyons on 26 May 2014, at not insignificant expense and inconvenience.

We note that the application for approval of our client’s remuneration was served on your client on 14 May 2014. Your client has therefore had almost two months to deliver its evidence, which ought to have been ample time.

Your client has not put forward any proper explanation of why it has failed to comply with the Orders. Our client is not prepared to countenance any delay in the hearing of his remuneration Application. The Court has made directions, and our client expects that your client will comply with those directions. Any further delays on the part of your client will potentially prejudice our client in terms of preparing material in reply.

Our client does not consent to the extensions of time requested by your client.

Would you please confirm whether or not your client intends to rely upon any expert evidence, and, if so, let us know the name of the expert, by Monday.

Our client requires your client to serve any Affidavits (including any expert evidence) that it intends to seek leave of the Court to rely upon at the hearing of the remuneration application forthwith.

We reserve our client’s rights arising out of your client’s failure to comply with the Orders, including, but not limited to, our client’s right to re-list the application on the applications list pursuant to paragraph 10 of the Orders.

In the event that it becomes necessary for our client to re-list the matter before the Court, our client will be relying upon this correspondence on the question of costs.

Yours faithfully



Alex Nase
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au

Direct Line: (07) 3210 3503

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Alex Nase

From: Simone Mulvey
Sent: Friday, 18 July 2014 12:26 PM
To: ibisson@russellslaw.com.au
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Limited & Ors - ats- Bruce - Supreme Court Proceeding No. 3383/2013
Attachments: Letter to Russells Lawyers dated 18.07.14 - doc id 840678-003 (TCS00840985).pdf

Dear Sir/Madam

Please see **attached** correspondence dated 18 July 2014.

**SENT ON BEHALF OF
DAVID SCHWARZ, PARTNER**

Regards

Tucker&CowenSolicitors.

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz/Mr Nase

18 July 2014

Your reference: Ms Craig/Mr Bisson

Partners.
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Tyler Griffin.
Geoff Hancock.

Associates.
Dan Ryan.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Nicole Withers.
Dugald Hamilton.
Olivia Roberts.

Russells
Lawyers
GPO Box 1402
Brisbane QLD 4001

Email: ibisson@russellslaw.com.au

Dear Colleagues,

LM Investment Management Limited & Ors –ats- Bruce
Supreme Court Proceeding No. 3383/2013

We refer to our letter to you of 11 July 2014, which has not been favoured with any response.

The Orders made by the Honourable Justice P Lyons on 26 May 2014 (“the Orders”) required your client to deliver any affidavits, including any expert evidence, upon which your client intends to rely by 7 July 2014. No such affidavits have been served, nor any explanation provided as to the reasons for that. By our letter of 11 July 2014, we inquired as to whether your client does intend to rely upon any expert evidence and, if so, the identity of the expert; we have received no reply.

Given that almost two weeks have now passed since the date by which your client was directed to file and serve any further affidavit evidence, were your client to now deliver any expert evidence or further affidavit material then your client’s failure to comply with the Orders would significantly prejudice our client, by making it difficult for our client to deliver his affidavits in reply by 28 July 2014. Were further material to now be filed and served by your client, our client would be in a position where, at least, variations to the timetable contemplated by the Orders would be required.

Our client’s application was listed for a two day hearing in the civil list of the Court upon the urging of your client’s Counsel and the submission that expert evidence would be required, with a consequent need for cross-examination. Given that no expert evidence has been filed or served, it appears unlikely that the application will require such a lengthy hearing.

By paragraph 10 of the Orders, in the event that no expert evidence was to be served by your client by 7 July 2014, the application for approval of our client’s remuneration may be re-listed for hearing in the applications list on the giving of seven days’ notice to each respondent and by giving seven days’ notice to members of the FMIF by placing the details of the date and time of the hearing on the website.

Your client has now had almost eight weeks since the Orders were made (and almost two weeks before that), in which to prepare any affidavit material. That is more than sufficient time for any expert evidence to be obtained, and any affidavits to be prepared, by your client.

In the event that your client fails to serve any affidavits, including any expert evidence that it intends to rely upon on the hearing of the application, by the close of business today, we hold instructions to take steps to re-list the application for hearing on the applications list, in accordance with paragraph 10 of the Orders.

Yours faithfully



David Schwarz
Tucker & Cowen

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Direct Line: (07) 3210 3506

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Alex Nase

From: Ian Bisson [IBisson@russellslaw.com.au]
Sent: Friday, 18 July 2014 4:59 PM
To: Alex Nase
Subject: LMIM & Ors ats Bruce ~20140653~
Attachments: IAB_20140653_027.pdf

Dear Colleagues

Please find attached our correspondence of today.

Yours faithfully

RUSSELLS

Ian Bisson
Senior Lawyer

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RUSSELLS

18 July, 2014

Our Ref: Ms Craig/Mr Bisson
Your Ref: Mr Nase

EMAIL TRANSMISSION

Mr Alex Nase
Tucker & Cowen Solicitors
BRISBANE

email: anase@tuckercowen.com.au

Dear Colleagues

**LM Investment Management Limited & Ors -ats- Bruce
Supreme Court Claim No. 3383 of 2013**

We refer to your letters of 11 and 18 July, 2014 respectively.

We note that, notwithstanding your instructions, it is clear on the facts that without prejudice discussions between our respective clients aimed at resolving issues related to the current proceedings, are ongoing. Those discussions are focussed on resolving all matters and issues with minimal expenditure on legal and other costs for the overall benefit of the members of the fund.

Your correspondence, and threats to re-list the application, is with respect unhelpful, not conducive to a resolution of the matter and does not, on our clear instructions, reflect the parties' true position. Our clients are fully cognisant of the orders of the Court and the progress of the proceedings.

Your letters intimate that your client is content to negotiate issues regarding our client's remuneration, but not negotiate in relation to their own remuneration, relying solely on expert evidence, a two day hearing and ultimately a judgment of the Court. Please confirm whether that is truly the case?

We note your comment that in the event that expert evidence is not filed, you do not believe that the application will take a two day hearing to be resolved. We disagree. Even if the matter was only one of submissions and a cross-examination of Mr Whyte in relation to more than 700 individual time cost entries, the matter would take, certainly, in excess of one day and probably most of the two days presently allocated.

Because of the ongoing negotiations and in the interests of saving costs overall to the fund, our client has not yet finalised its expert evidence. If it is your clients' position that they will not negotiate this matter, then our client will take

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immediate steps to comply with the timetable, albeit belatedly, and seek further amendments to the timetable as may be warranted.

Yours faithfully



Ian Bisson
Senior Lawyer

Direct (07) 3004 8890
Mobile 0437 147 982
IBisson@RussellsLaw.com.au

Alex Nase

From: Simone Mulvey
Sent: Tuesday, 22 July 2014 9:52 AM
To: ibisson@russellslaw.com.au
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Limited & Ors -ats- Bruce / Supreme Court Proceeding No. 3383/2013 (Our Reference: 1400951)
Attachments: Letter to Russells Lawyers dated 22.07.14-doc id 841586-003 (TCS00841919).pdf

Dear Sir/Madam

Please see attached correspondence dated 22 July 2014.

**SENT ON BEHALF OF
DAVID SCHWARZ, PARTNER**

Regards

Tucker & Cowen Solicitors.

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckerandcowen.com.au

Our reference: Mr Schwarz/Mr Nase 22 July 2014
Your reference: Ms Craig/Mr Bisson

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Brisbane QLD 4001

Email: ibisson@russellslaw.com.au

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Richard Cowen.
David Schwarz.
Justin Marschke.

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Marcelle Webster.
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Emily Anderson.
Daniel Davey.
Nicole Withers.
Dugald Hamilton.
Olivia Roberts.

Dear Colleagues,

LM Investment Management Limited & Ors –ats- Bruce
Supreme Court Proceeding No. 3383/2013

We refer to your letter of Friday, 18 July 2014, received by email at approximately 5pm that day.

We are instructed that our client disputes the substance of your letter. In summary, the position is as follows:-

1. Our client filed the application for approval of his remuneration on 2 May 2014. The application was served on your client on 14 May 2014.
2. On 26 May 2014, His Honour ordered your client to deliver any affidavits, including any expert evidence, that it intends to rely upon at the hearing of the remuneration application by 7 July 2014, with such material to identify the costs which are subject to objection and the basis for objection.
3. On 8 July 2014, you wrote to us requesting that the time for your client to file its material be extended to 21 July 2014.
4. On 11 July 2014, we wrote to you informing you that our client did not consent to the requested extension of time. We also inquired as to whether your client intends to rely upon any expert evidence, and if so, the identity of the expert; we have received no reply to that inquiry.
5. Your client has failed to serve any expert report or any further affidavits, even as at the date of this letter.

Your letter received on Friday afternoon suggests some desire on the part of your client to save costs overall to the Fund. We do point out that our letter of 17 June 2014 proposed a regime for doing just that, by avoiding the expense of expert evidence and a lengthy hearing (although some hearing before the Court would still be required). We have received no response to that letter, of any kind, at any time – even now. Accordingly, our letter of 2 July 2014 clearly stated that, absent a response by 7 July 2014, our client intended to proceed on the basis that your client did not wish to explore the proposal. Our client, and we, have proceeded on that basis.

Our client has not, at any time, agreed to any amendment to the timetable provided for by the Orders made by the Honourable Justice P Lyons on 26 May 2014. Indeed, the correspondence between us has been clear on the point; there has been no variation to the Orders.

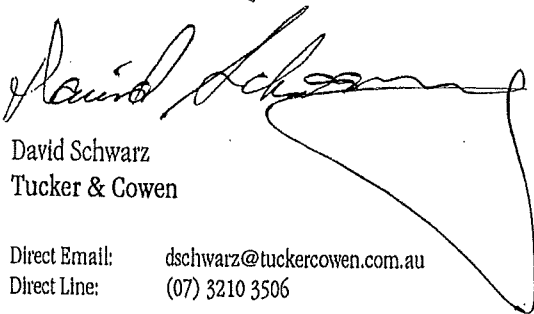
If your client does wish to put a "without prejudice" proposal to our client, then we invite you to set out the terms of such a proposal in separate correspondence. Lest there be any room at all for misunderstanding, please note that (should your client put such a proposal) any agreement on the part of our client to a variation to the timetable set by the Court would require express written agreement in correspondence between our respective firms and steps taken to vary the Orders of the Court.

Your letter of 18 July 2014 appears to suggest that the fixing of our client's remuneration might be done by agreement between our respective clients without any hearing or order of the Court. We point out, though, that our client's remuneration may only be approved by the Court – whatever steps might be taken to narrow or resolve any objections by your client to our client's remuneration, the amount of such remuneration must be approved by the Court.

Your letter also appears to suggest that your client may not have yet engaged any expert, but that your client may still intend to rely upon expert evidence at the hearing of our client's application. Your correspondence is far from clear as to that.

In the circumstances, given your client's apparent intention (as conveyed in your letter) to file and serve further material and the prejudice to our client that would result from your client's late delivery of further material, our client considers that it is appropriate to re-list the matter for directions. We are instructed to do so. Our client will be seeking an order that your client pay the costs of and incidental to our client re-listing the matter before the Court.

Yours faithfully



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