

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

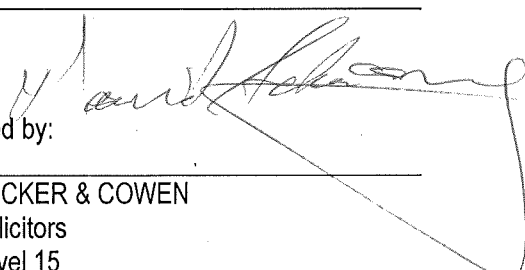
Intervener: AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION

AFFIDAVIT OF DAVID WHYTE

I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland, Official
Liquidator, state on oath:-

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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

1. I am an Official Liquidator and a Partner of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand (formerly the Institute of Chartered Accountants of Australia) and an associate member of the Australian Restructuring, Insolvency and Turnaround Association (formerly known as the Insolvency Practitioners Association of Australia) ("**ARITA**").
2. By Order of this Honourable Court made on 8 August 2013, I was appointed:
 - (a) pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) ("**the Act**") to take responsibility for ensuring that the LM First Mortgage Income Fund ARSN 089 343 288 ("**the FMIF**") is wound up in accordance with its constitution ("**the appointment**"); and
 - (b) pursuant to section 601NF(2) of the Act, as the receiver of the property of the FMIF.
3. I have made two prior applications for approval of my remuneration in relation to the work performed in the course of the appointment; this application (in support of which I make this affidavit) is my third application for approval of my remuneration in respect of the appointment.
4. I refer where relevant below to my affidavit filed in this proceeding on 7 November 2014 ("**my November affidavit**") in support of my second application for remuneration approval. Some of the matters to which I deposed in that affidavit, and some of the documents exhibited to that affidavit, continue to be relevant to my third application for remuneration approval.
5. Exhibited to my affidavit dated 7 November 2014:-
 - (a) At "**DW-1**" are the reasons for Judgment of the Honourable Justice Dalton delivered in this proceeding on 8 August 2013; and
 - (b) At "**DW-2**" the Orders made by Justice Dalton dated 21 August 2013.

6. On 25 September 2014, Andrew Fielding and I were appointed as agents of The Trust Company (PTAL) Ltd ("**PTAL**"), in lieu of LM Investment Management Ltd (receivers and managers appointed)(in liquidation)("LMIM"), in respect of the securities it holds from the following companies:

- (a) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296 ("**Cameo**");
- (b) Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786 ("**Bridgewater**");
- (c) OVST Pty Ltd (Controllers Appointed) (In Liquidation) ACN 103 216 771 ("**OVST**");
- (d) Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916 ("**RBLL**");
- (e) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383 ("**RBLLD**");
- (f) Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780 ("**Pinevale**"),

together, referred to in this affidavit as the "**Controllership Companies**".

7. I now make an application for:-

- (a) approval of my remuneration for work performed in the period between 1 October 2014 to 30 April 2015 ("**the relevant period**") for acting as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution in the amount of \$1,761,911.25 inclusive of GST; and
- (b) approval of the remuneration of Andrew Fielding and me during the relevant period, for acting as agents of PTAL in respect of the securities held by the

FMIF over the Controllership Companies, in the amount of \$442,214.30 (inclusive of GST).

8. I am authorised by Andrew Fielding to make this application for our controllership remuneration on both our behalves.
9. The background to my appointments is relevantly explained by me at paragraphs 12 to 37 of my November affidavit.
10. This affidavit sets out the following, in the following parts:-
 - (a) Part 1 - A summary of my previous remuneration applications;
 - (b) Part 2 - An overview of the progress of the appointment since 30 September 2014 and the current position of the assets of the FMIF;
 - (c) Part 3 – A summary of the BDO work practice in relation to my appointments;
 - (d) Part 4 - The details of the tasks which I and my staff have undertaken during the relevant period in the course of my appointment, and explanations as to why these tasks were necessary to the winding up of the FMIF; and
 - (e) Part 5 - The details of the tasks which my staff and I have undertaken during the relevant period in the course of the role undertaken by Andrew Fielding and I, and explanations as to why these tasks were necessary.
11. Throughout this affidavit, where I refer to:-
 - (a) "BDO", I am referring in a 'short-hand' way to staff at BDO (under my supervision or (in respect of work performed in our controllership role) under the supervision of Mr Fielding and me), and me;
 - (b) "my appointment", I am referring to my role as the person appointed under section 601NF(1) of the Act as person responsible for ensuring the FMIF is wound up in accordance with its constitution. Specifically, this work is set out in paragraphs 45 to 106 of this affidavit; and

- (c) "my controllership role" or "our controllership role", I am referring to my role, with Mr Fielding, as agent in respect of the securities held by the FMIF over the Controllership Companies. Specifically this work is set out in paragraphs 107 to 115 of this affidavit.

Part 1 - Summary of remuneration applications

12. I have made two previous applications for my remuneration in the course of my appointments, summarised as follows:-

Remuneration Period	Remuneration Order	Amount of remuneration approved
8 August 2013 to 31 March 2014	McMurdo J on 28 August 2014	\$702,480.35
1 April 2014 to 30 September 2014	Mullins J on 27 November 2014	\$1,005,948.35 (receivership) \$7,000.95 (controllership)

13. The remuneration claimed in the period relevant to this application has increased relative to the two previous applications. The increase is primarily due to:-
- (a) The relevant period for which remuneration is sought in this application spans seven months, as compared with six in the previous application;
- (b) Preparing the retirement village assets for sale (four of which were realised in this period) and assisting in that sale process, including meetings and negotiations with interested parties;
- (c) I was appointed agent in respect of certain FMIF assets on 25 September 2014, and, as such, approximately only a week of that work was included in my previous remuneration application. The current application is for work undertaken by both Mr Fielding and me (and staff under our direction) in our controllership role, over the entire relevant period of seven months;

- (d) Progression of my investigations and litigious matters (detailed further at paragraph 89);
- (e) The closure of the LM Administration Pty Ltd (in liquidation) ("LMA") office on 24 December 2014. This consequently involved my staff and me taking on the responsibilities previously undertaken by the LMA staff and consultants who were made redundant at the time. These responsibilities can be summarised as follows:-
 - (i) Maintenance of the Microsoft AX finance database; including preparing cheque/payment requisitions, processing payments, accounting for asset sales, reconciling bank accounts, processing month end, half year end and year-end adjustments;
 - (ii) Maintenance of the Microsoft AX loan management database, including preparing cheque/payment requisitions, processing payments, accounting for asset sales, reconciling statements, processing month end, half year end and year-end adjustments;
 - (iii) Maintenance of the Microsoft AX investor management database including updating investor details, transferring units as requested or as directed by executors of deceased estates and attending to unit balance enquiries;
 - (iv) Attending to investor/advisor enquiries in relation to unit balances, tax statements, deceased estates, updating account information; and
 - (v) Accounting for the six retirement village controllerships, including maintaining the MYOB accounts (accounts payable/accounts receivable/invoicing/reconciliations/accounting for unit sales etc.) and attending to statutory lodgements in relation to receipts and payments accounts.

- (f) Following the closure of the LMA office, three former LMA staff were retained from 5 January 2015 to 1 May 2015 on a consulting basis, to assist with the realisation of the remaining assets. The costs of engaging these staff, in addition to rent of a temporary office from which they could work, IT expenses and other operating costs, was approximately \$206,000. Two of the three consultants that were retained post closure of the LMA office finished their roles on 1 May 2015 and at the same time the temporary office was vacated. This will further reduce operating costs of the Fund. The closure of the LMA office has resulted in a considerable reduction in operating costs. The costs of LMA maintaining to operate prior to its closure (for the half-year to 31 December 2014) were \$1.626 million.
- (g) Taking control of, and running, the computer servers and databases previously maintained at the LMA office site.

Part 2 - Progress and Status of the FMIF Assets

Receivers and managers of the FMIF

14. On 11 July 2013, Joseph Hayes and Anthony Connelly of McGrath Nicol ("the **DB Receivers**") were appointed as the receivers and managers of the assets and undertakings of the FMIF by the secured creditor Deutsche Bank AG ("**DB**"). As at the date of swearing this affidavit Mr Hayes and Mr Connelly remain undischarged in that role.
15. Despite DB being paid out in full in early January 2014, I am informed by McGrath Nicol and DB's solicitors, Clayton Utz, and believe that DB does not consider it is in a position to release its charge over the FMIF and retire the DB Receivers. I am informed and believe that this is due to the FMIF being put on notice by the trustee of the LM Managed Performance Fund ("**MPF**") of a potential breach of trust claim. Whilst this is a position they have held for some time, I am informed by McGrath Nicol and DB's solicitors and believe that DB's position has not changed and that the investigations into the potential claim are ongoing.

Estimated return to investors

16. On 30 January 2015, I provided to investors a letter updating them on the estimated unit price of the fund as at 31 December 2014. The unit price at this time was 16 cents in the dollar. Exhibited hereto and marked "DW-21" is a copy of that letter.
17. As advised in my report to investors on 30 April 2015, based on professional valuations, offers received and unconditional contracts entered into for the properties charged and mortgaged to the FMIF, I provided an estimated return to investors of between 14.3 and 17 cents in the dollar as at 31 March 2015.

Distributions

18. Once the DB Receivers have retired, and the funds of the FMIF are released to me, I may seek directions from the Court in relation to a further distribution to investors. Any distributions will of course only be released after I have accounted for certain funds to meet the liabilities of the FMIF, including for any contingent claims that may arise from litigation undertaken on behalf of the FMIF.
19. Whether or not I am able to consider or seek directions relating to a distribution to the FMIF members is also likely to be dependent upon the outcome of an application made by the liquidators of LMIM in this Court (in proceeding number 3508 of 2015) for directions in relation to the exercise of powers concerning the FMIF. That application was filed on 8 April 2015 and has been set down to be heard on 20 and 21 July 2015.

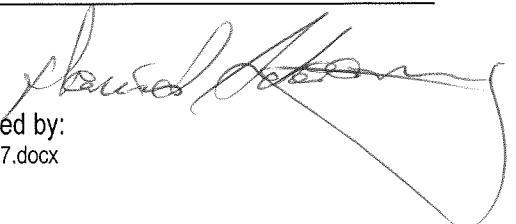
Reduction in costs

20. As part of the winding up process, I am reducing the costs of managing the FMIF in conjunction with the DB Receivers. Prior to the appointment of FTI Consulting (Australia) Pty Limited ("FTI") as Administrators in March 2013, the management fees charged by LMIM as responsible entity for the FMIF averaged \$14 million per annum for the five years ended 30 June 2012.

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Witnessed by:



21. The current costs of managing the FMIF are the costs of myself, as court appointed receiver (and now as controller), myself and Andrew Fielding as controller of certain fund assets, the DB Receivers, the costs of employing staff and consultants to assist in the managing down the loan book and premises and equipment costs.
22. The operating costs have been reduced from in excess of \$5 million per annum (paid to Court for staff and other costs), at the time of FTI's appointment as administrators on 19 March 2013 to around \$250,000 per annum (based on costs being incurred as at 1 May 2015). Those amounts exclude the fees and costs of the insolvency practitioners. Presently, those insolvency practitioner fees and costs (of the DB Receivers and BDO, but excluding amounts claimed by the LMIM liquidators but not yet paid) are running at approximately \$370,000 per month combined.
23. In summary, the current overall costs position is approximately \$4.7 million per annum. These costs will continue to reduce as the loan book reduces.

Status of the FMIF Assets

24. I set out below the realisation of specific assets during the relevant period, being those fully realised, those partially realised, and those assets yet to be realised. The assets referred to (referred to loosely and for ease of reference as "FMIF assets") are assets over which the FMIF has security for loans advanced by the FMIF. The summary below also indicates which controllers have been responsible for the recovery of the asset; that is, whether by BDO or the DB Receivers.

Assets realised in full

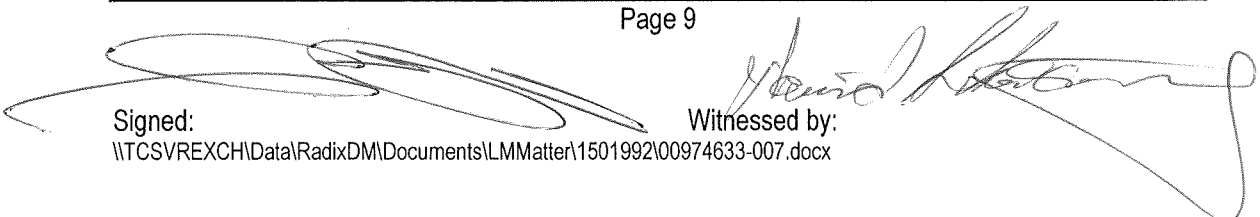
25. A summary of the FMIF assets that have been fully realised since 1 October 2014 is as follows:-

Location	Description of asset	Status / responsibility
QLD	The development is an eight stage project to provide 116, 3 or 4 bedroom townhouses. Since October 2014, the remaining 14 lots in stages 7 and 8 have settled.	Settled in December 2014 (DB Receivers)

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Location	Description of asset	Status / responsibility
NSW	The security is comprised of 4 units within a larger purpose built commercial building. Two adjoining units are occupied by a dance and yoga studio with the other two units unoccupied. A sale of the occupied units was completed in June 2013. The remaining units settled in December 2014.	Settled in December 2014 (DB Receivers)
NSW	The development comprises of 83 strata titled office lots with 63 of these units charged to the FMIF. Of the 63 units, 56 remained at the start of the marketing campaign in June/July this year. An offer was received to purchase the remaining units in one line. The sale of the unleased units settled in December 2014 and the leased units in March 2015.	Settled in December 2014 and 25 March 2015 (DB Receivers)
QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units.	Settled on 23 April 2015 (BDO)
NSW	A supported living community, with 83 completed independent living units.	Settled on 23 April 2015 (BDO)
QLD	A supported living community, with 37 completed independent living units plus balance land for further development. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Settled on 23 April 2015 (BDO)
TAS	A supported living community, with 29 completed independent living units and a further 15 proposed.	Settled on 23 April 2015 (BDO)

Assets with partial realisation

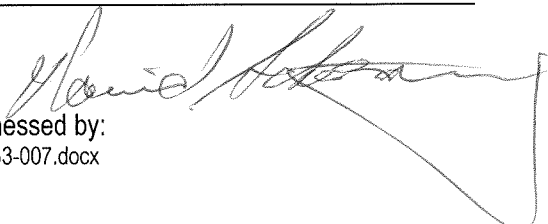
26. A summary of the FMIF assets that have been partially realised is as follows:

Location	Description of asset	Status / responsibility
QLD	90 strata titled hotel rooms. Sell down of units ongoing with 87 sold to date. The remaining 3 units are currently on the market.	On the market (DB Receivers)
WA	The development has been subdivided into three super lots. The first lot was sold in January 2014. The remaining lots are currently on the market.	On the market (DB Receivers)

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Location	Description of asset	
QLD	Residential land subdivision. 4 constructed detached dwellings (3 sold), 16 completed residential land lots (all sold), 80 lots with operational works approval and additional land (approx. 57ha) with or pending development approval.	On the market (DB Receivers)
QLD	72 strata titled unit resort complex with management rights. At the time of my appointment, 57 units remained. Following a marketing campaign in June/July last year, a further 22 units have settled with a further 4 under contract.	Under contract/on the market (DB Receivers)
VIC	A supported living community, with 69 completed independent living units and a further 129 units proposed.	Contract executed on 25 May 2015 with settlement 60 days from signing (BDO)

Assets to be realised

27. A summary of the FMIF assets yet to be realised at all, and the status of those assets is as follows:

Location	Description of asset	Status
QLD	Two supported living communities. One currently has 62 completed units with a further 106 proposed. The other has 110 completed units.	(Borrower in control of assets)

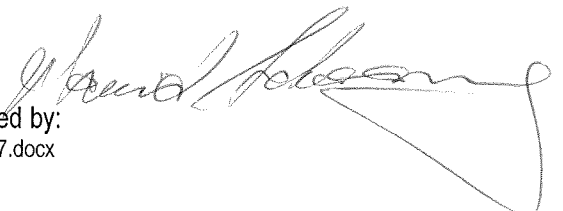
28. In respect of those assets mentioned in the previous paragraph, the borrower from the FMIF remains in control of the assets due to the status of the security taken by the FMIF being second-ranking security, and due to the nature of certain priority arrangements entered into by LMIM as responsible entity for the FMIF with the first-ranking security holder. However, my staff and I have nonetheless been working to realise value for the FMIF from its security over those assets. I refer to paragraph 63 below.

Part 3 - BDO work practice in relation to my appointments

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Time recording and Scale of Charges

29. My staff and I record our 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.
30. Exhibited to my November Affidavit and marked "DW-17" is a copy of BDO's scale of Business Recovery and Insolvency hourly charge out rates for the 2013/2014 financial year and for the 2014/2015 financial year. The 2014/2015 charge out rates are the same as were applied in my calculation of remuneration for work performed in the period from 1 July 2014 for the purposes of my second remuneration application.
31. As I noted in my November Affidavit that the partners of BDO Business Recovery and Insolvency (Qld) are members of ARITA and follow the ARITA Statement of Best Practice – Remuneration. The standard rates across most employee levels rose marginally effective from 1 July 2014, as compared with the 2013/2014 financial year. The average increase in the hourly charge out rate is 3% with no increase at partner level.
32. Staff from across several practice areas of BDO, in addition to members of the Business Recovery and Insolvency practice area, assist me in my receivership role and controllership role. These staff are generally sourced from the Corporate Finance, Audit and Private Clients practice groups. I set out generally below, the function of each practice group and their assistance to me in the relevant period.
33. The work done by the persons in each of these practice areas, described below, was in my assessment necessary for the winding up of the FMIF in accordance with its constitution. The work undertaken by these persons is of a specialist nature and was necessary to assist with the realisation of the retirement village assets, pursuing claims and conducting investigations into potential claims against related parties and third parties and preparation of the management accounts.

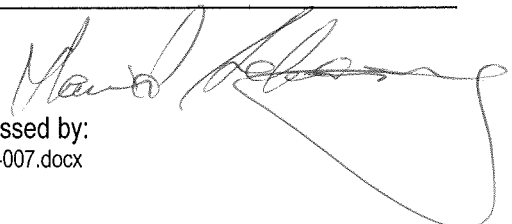
34. The charge out rates charged in the winding up of the FMIF by our Corporate Finance, Tax, Private Clients and Audit staff are equal to or lower than the Business Recovery and Insolvency rates. Where lower, these lower rates have been used in calculating the fees to be charged. The staff in these teams also recorded time under the five categories named in paragraph 43 to this affidavit.
35. Exhibited hereto and marked "DW-22" are copies of the hourly charge out rate schedules of the BRI, Corporate Finance, Audit, Tax and Private Clients practice groups.

Time recording as between appointments

36. When a task arose, that could be attributed to a specific retirement village, the time taken by BRI staff to perform that task was recorded in the relevant category (Assets, Creditors, etc.) and as work undertaken pursuant to my controllership appointment.
37. When a task arose in relation to work relevant to the realisation of all the retirement villages, this time was recorded in the relevant category, and as work performed in the course of the appointment. Work performed by our Corporate Finance, Private Clients, Audit and Tax areas have been allocated against the appointment and not to a specific retirement village (with the exception of a GST private ruling, in which case the relevant work related to a specific controllership and was allocated accordingly).
38. However, each task is only recorded once, and the time for carrying out each task is only recorded once.

Corporate Finance

39. The Corporate Finance team have provided me with ongoing assistance in relation to realising the retirement villages. The corporate finance staff have specialised knowledge in this sector allowing them to:
- (a) assist in determining the strategy for sale of the five retirement villages where the FMIF is mortgagee in possession;



- (b) assist with the analysis of the financial performance of the retirement villages;
- (c) prepare financial models for the retirement villages;
- (d) develop a marketing budget for three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;
- (e) prepare the retirement villages for sale by:
 - (i) collating the relevant resident agreements and property documentation for the sale process;
 - (ii) liaising with the appointed real estate agents in relation to the sale of the five retirement villages;
 - (iii) reviewing the marketing material used in the sale campaigns of the retirement villages; and
 - (iv) liaising with our solicitors in relation to advice surrounding the sale campaigns.

Audit

40. The Audit team at BDO have assisted me in the winding up of the FMIF during the relevant period by:
- (a) providing ongoing assistance with the review and preparation of the management accounts;
 - (b) assisting me with queries arising from investigations into the distribution of funds to Class B investors;
 - (c) preparing and reviewing trial balances in the relevant period;
 - (d) assisting with the reconciliation of default loans and receivables;

- (e) preparing the statement of cash flows for the management accounts for the half year ending 31 December 2014;
- (f) reviewing the management accounts for the year ending 30 June 2014 and the half year ending 31 December 2014 to ensure that the appropriate accounting standards have been applied in the preparation of the accounts; and
- (g) assisting in the review of auditors working papers obtained as a result of the recent public examinations.

Private Clients

41. The Private Clients team at BDO have assisted me in the winding up of the FMIF during the relevant period by:

- (a) providing me with monthly reconciliations of the Scheme Operator accounts for three of the retirement villages subject to my controllership appointments, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;
- (b) carrying out MYOB data entry for employee payroll and other payments for three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;
- (c) calculating payroll tax;
- (d) processing quarterly employee superannuation remittances;
- (e) preparing receipts and payments reports for inclusion with the ASIC Form 524 for three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;

- (f) undertaking MYOB data entry in respect of unit settlements at three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;
- (g) reviewing General Scheme Charge accounts in preparation for the statutory audit of three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;
- (h) assisting with generating reports to prepare the quarterly business activity statements for three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay;
- (i) Liaising with the manager of three of the retirement villages, namely, Tall Trees Caboolture, Tall Trees Ocean View and Tall Trees Redland Bay, in relation to the Scheme Operator and General Service Charge accounts; and
- (j) assisting to process the adjustments for the FMIF accounts for the period up to 31 December 2014 in the FMIF's accounting system.

Tax

42. The Tax team at BDO have assisted me in the winding up of the FMIF during the relevant period by:

- (a) providing me with Tax advice in relation to the disposal of the retirement villages;
- (b) providing me with Tax advice in relation to the assignment of debt and securities of two other retirement villages; and
- (c) preparing an application to the Australian Taxation Office for a Private Ruling in relation to the GST treatment on supplies to residents of a retirement village.

Part 4 - The winding up of the FMIF

43. In my receivership role during the relevant period my staff and I have undertaken tasks which broadly fall within the following five categories:

- (a) Assets;
- (b) Creditors;
- (c) Trade on;
- (d) Investigations; and
- (e) Administration.

44. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with members of the FMIF could be recorded under either Administration or Creditors. However, each task is only recorded once, and the time for carrying out each task is only recorded once.

Work performed in the relevant period in relation to the winding up of FMIF

45. Exhibited hereto and marked:-

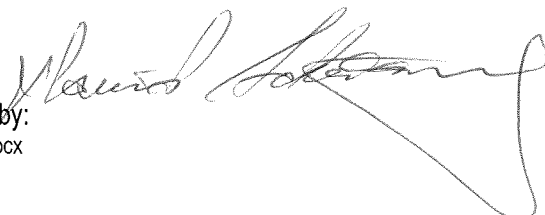
- (a) "DW-23" from pages 7 to 250 of the relevant volume of exhibits (the first part);
- (b) "DW-23A" from pages 251 to 500 of the relevant volume of exhibits (the second part);
- (c) "DW-23B" from pages 500 to 794 of the relevant volume of exhibits (the third part);

is a schedule of work performed by staff of the Brisbane office of BDO during the relevant period ("the **Schedule**") in relation to the winding up of the FMIF.

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Witnessed by:



46. The Schedule shows a description of each task undertaken, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged. A summary of the tasks undertaken, time taken and amount charged is detailed below:

Category/area	Total hours	Amount (net of GST) \$
Assets	1,692.40	\$579,730.00
Creditors	285.90	\$108,251.50
Trade on	1,045.20	\$411,643.50
Investigations	710.90	\$321,709.00
Administration	586.90	\$180,403.50
Total	4,321.30	\$1,601,737.50
GST		\$160,173.75
Total claim		\$1,761,911.25

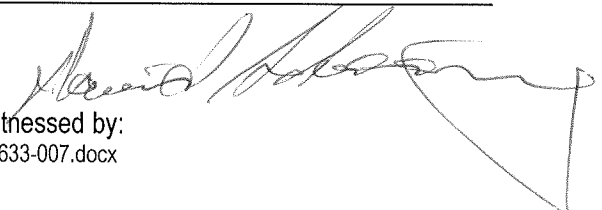
47. The Schedule reflects the fact that I delegated to members of my staff the performance of a number of tasks and activities in the winding up. This is in accordance with my usual practices. I delegated work so that the level of experience of the person responsible for particular work reflected, and was appropriate to, the nature of the work. For example, throughout the winding up I have endeavoured to ensure that the least complex of the required work is done by junior members of my staff at lower charge-out rates than senior members of my staff and me.

48. The entries in the Schedules reflect BDO's scale of insolvency and other hourly charge out rates mentioned at paragraphs 30 and 34.

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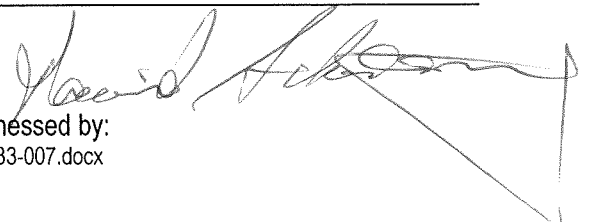
Witnessed by:



49. From my knowledge of the work carried out in relation to the winding up and my supervision of the tasks undertaken, 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.
50. Following a detailed review of the time recorded, and for the purposes of this application, work recorded to a value of \$19,415.00 plus GST has been written off and is not included in the amount claimed.
51. In order to further assist the Court, I set out below an explanation as to why the tasks detailed in the Schedule were undertaken, and why these tasks were necessary for the proper administration of the winding up of the FMIF.
52. I have also detailed a background to the complexities and difficulties which have arisen since my appointment under section 601NF(1) of the Act, and in particular, those difficulties encountered within the relevant period. The tasks detailed in the Schedule were carried out in furtherance of my appointment under s 601NF(1) of the Act to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution.

Complexities in the winding up of the FMIF

53. Some of the overarching main factors which have contributed to the complexity of the winding up of the FMIF include:
- (a) the fact that there are over 4,500 members of the FMIF and a need to communicate with and respond to questions from members;
 - (b) the need to obtain and review updated valuations of the securities held by the FMIF as LMIM had been relying upon discounted cash flows prepared by management on the feasibility of a project rather than obtaining valuations from a registered valuer;



- (c) the number of and the complexity of the properties held as security for the various loans made by the FMIF, and the need to put in place and carry out realisation strategies for each of those properties;
- (d) the legal and practical complexities associated with realising the security held by the FMIF over a significant number of retirement villages in multiple jurisdictions in Australia, the risk of personal liability being incurred under agreements proposed to be entered into with residents of the retirement villages, and the need to work with management of the various retirement villages in relation to the ongoing operation of the retirement villages;
- (e) the number and complexity of issues requiring investigation for the purposes of identifying potential claims that may be available to the FMIF, including but not limited to potential claims against the auditors of the FMIF, LMIM, the directors of LMIM, and those of LMA;
- (f) the complex inter-relationship between LMIM's affairs in its own right and LMIM's affairs as responsible entity of the FMIF, and those of LMA;
- (g) the complex inter-relationship between the FMIF and other funds of which LMIM is responsible entity, including claims against the FMIF foreshadowed by KordaMentha as trustee of the MPF;
- (h) variances of unit balances as between the holders of different classes of units in the FMIF;
- (i) the need to co-operate with a number of other appointees, including the DB Receivers, the liquidators of LMIM and the liquidator of LMA;
- (j) ongoing issues regarding the services agreement between the liquidator of LMA, the receivers and managers of LMIM and the liquidator of LMIM; and
- (k) the intermingling of records with those of LMIM and other funds resulting in four Court hearings to resolve the position.

Assets

54. In the relevant period, my staff and I have undertaken various tasks and activities that can be described as falling within the category "assets". I canvass these tasks and activities below.

Asset realisation strategy

55. As discussed, despite DB being paid out in full, the DB receivers continue to be involved and as such, we have agreed to split the realisation of the assets, with me and the staff at BDO under my supervision attending to the sale of the retirement village assets, and the DB Receivers realising the remainder of the assets. The breakdown of which assets are being realised by whom, is indicated in the tables at paragraphs 25 to 27 of this affidavit.

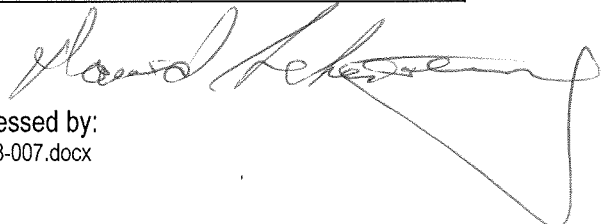
56. As part of this process, the DB Receivers and I (and our respective staff) have had and continue to have discussions regarding the asset realisation strategy. My dealings with the DB Receivers concerning these matters were limited during this period however in my view were necessary for the winding up of the FMIF in accordance with its constitution.

57. Insofar as I am exercising powers conferred on me in relation to the property of the FMIF, I am doing so with the consent and agreement of the DB Receivers.

Retirement Villages

58. The FMIF advanced funds to the operators of seven retirement villages, located in various states across Australia including Queensland, New South Wales, Victoria and Tasmania. It was agreed between the DB Receivers and me, that I would have carriage of the assessment of the options available and the realisation process for these retirement villages.

59. The seven retirement villages comprise the following:


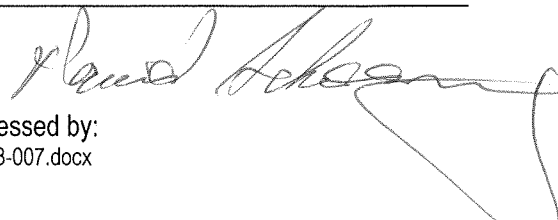


Location	Description of asset	Status / responsibility
Pinevale, QLD	A supported living community, comprising of 64 independent living units with the proposed development of a further 76 units.	Settled on 23 April 2015 (BDO)
OVST, NSW	A supported living community, with 83 completed independent living units.	Settled on 23 April 2015 (BDO)
RBL, QLD	A supported living community, with 37 completed independent living units plus balance land for further development. There are also a further 7 completed detached dwellings and a partly constructed subdivision of c.100 townhouse/small dwelling lots under community title plus residual land.	Settled on 23 April 2015 (BDO)
Cameo, TAS	A supported living community, with 29 completed independent living units and a further 15 proposed.	Settled on 23 April 2015 (BDO)
Bridgewater, VIC	A supported living community, with 69 completed independent living units and a further 129 units proposed.	Contract executed on 25 May 2015 with settlement 60 days from signing (BDO)
QLD	Two supported living communities. One currently has 62 completed units with a further 106 proposed. The other has 110 completed units.	(Borrower in control of assets)

60. As at the date of my swearing this affidavit, four of the retirement village assets have now been realised in full. One retirement village is subject to an unconditional contract, whilst two of the villages in Queensland are yet to be realised.

61. The four retirement villages mentioned above settled on 23 April 2015 for a total contract price of \$32 million (plus adjustments) with 50% of the sale price being secured by bank guarantees and payable in 12 months' time. It was structured this way to enable a higher price to be paid and noting that presently no distributions are able to be made to members.

62. An extensive sales and marketing campaign was undertaken for the four villages with expressions of interest required to be submitted by 18 November 2014. Six parties were subsequently invited to submit final offers by way of unconditional contract on or

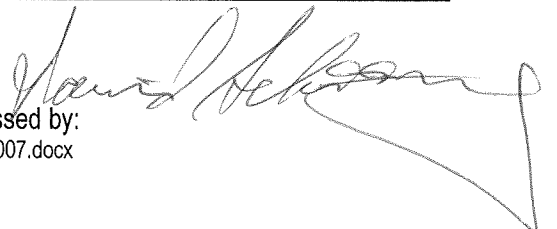
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before 17 December 2014. Following lengthy contract negotiations, contracts of sale were executed with the preferred bidder of the four villages on 23 January 2015 with settlement scheduled for 23 April 2015. During the course of the settlement period, negotiations were ongoing with the buyer to vary the terms of both the village business and land contracts. In total there were ten village business and land contracts and eight deeds of variation documenting the total \$32 million transaction.

63. The Bridgewater village is subject to an unconditional contract with settlement scheduled for 24 July 2015 with an offer accepted to assign the debt and securities for the other two villages; formal documentation for the assignment is in the process of being finalised. The total realisations from the Bridgewater village and the two Queensland villages is expected to be in excess of \$15 million.

64. In the relevant period, the activities my staff and I have undertaken, can be summarised as:-

- (a) Meetings with the operators of the retirement villages to discuss ongoing marketing and management of the sites;
- (b) Reviewing monthly management reports;
- (c) Liaising with LMA staff and consultants regarding:-
 - (i) ongoing marketing and building works at Bridgewater and Cameo;
 - (ii) operational matters and management of the retirement villages;
 - (iii) planning issues at Redland Bay with Local Council;
 - (iv) marketing campaign for the sale of the retirement villages including preparation of and collating documentation for the data room, offers received from interested parties and meeting with interested parties on site;



- (v) contracts of sale and variations to the contracts of sale for the retirement villages;
 - (vi) valuations of the retirement villages;
 - (vii) notices of exercise of power of sale for the retirement villages; and
 - (viii) settlement and handover issues in relation to the retirement villages.
- (d) Preparing announcements to the village residents;
- (e) Reviewing and preparing documents for the village audits;
- (f) Liaising with external accountants regarding treatment of GST at the retirement village level;
- (g) Dealing with ongoing matters relating to the operations, marketing and sale of the five retirement villages, including:
- (i) Maintaining the dataroom for interested parties;
 - (ii) Collation of lease documents for all residents;
 - (iii) Reconciling Scheme Operator and General Services Charge accounts for inclusion in the dataroom;
 - (iv) Liaising with agents regarding revisions to the marketing schedule, contents of advertisements and strategy in relation to sale campaigns undertaken and offers received from interested parties;
 - (v) Consideration and analysis of offers received from interested parties;
 - (vi) Liaising with our solicitors regarding the sale contracts, GST treatment and variations to the original contracts;
 - (vii) Extensive negotiations with interested parties in relation to offers received and terms of the contracts of sale;

- (viii) Negotiations with the buyer of four retirement villages in relation to the contract of sale, variations to the contract of sale and settlement issues;
 - (ix) Extensive planning and attending to issues to effect settlement of four retirement villages;
 - (x) Preparation of payments from the scheme operator accounts;
 - (xi) Liaising with the Receivers and Managers to process scheme operator payment requisitions;
 - (xii) Arranging for the authorised signatories of the retirement villages' bank accounts to be removed and replaced by Andrew Fielding and me;
 - (xiii) Liaising with village management regarding the processing of village payments;
 - (xiv) Reviewing resident agreements for incoming tenants to verify that appropriate forms are used and the details therein match the resident schedule for the retirement village; and
 - (xv) Liaising with insurance providers regarding ongoing insurance requirements.
-
- (h) Corresponding and meeting with the first mortgage holder and interested parties in regard to the two villages still in control of a borrower;
 - (i) Liaising with solicitors to deal with guarantor issues in relation to the loan supported by the two village assets to which the FMIF holds the second mortgage; and
 - (j) Providing instructions to independent valuers in respect of obtaining new valuations of the retirement villages.

65. All of this work was necessary for the winding up of the FMIF in accordance with its constitution. The work undertaken was necessary, given the complexity of the retirement village assets, to realise each of the retirement village assets.
66. Some work undertaken in respect of the retirement village assets may be recorded in other categories in the detailed schedule. However, the work undertaken is only recorded once.

Administration

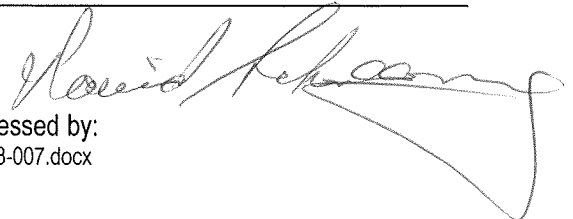
67. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "administration".
68. In essence, the remuneration claimed under this category for the relevant period includes work my staff and I undertook that was necessary for the proper and efficient administration of the winding up, and to ensure proper accounts and records were maintained.
69. The main tasks my staff and I undertook in the relevant period are set out further below.

Maintaining and updating records relevant to the receivership

70. After my receivership appointment, a master spreadsheet was created as a central location for recording information about the FMIF. During the relevant period, my staff and I have continued to maintain and update the master spreadsheet.
71. The master spreadsheet contains summaries of the loans and securities held by entities over assets of the FMIF. It also contains relevant details regarding the valuations of the assets and their individual realisation strategies.

Applications for approval of remuneration

72. For the purposes of my second remuneration application filed on 7 November 2014, work was undertaken in respect of the preparation of my affidavit and distribution of



notices to the members of the FMIF. My staff and I were required to liaise with, and provide instructions to, my solicitors in respect of that application and affidavit.

73. My staff and I were also required to liaise with, and provide, instructions to my solicitors in respect of this application and affidavit.

Job management

74. In the relevant period, my staff and I have conducted internal meetings and discussions in order to discuss:

- (a) the progression of the job;
- (b) efficient job administration and management;
- (c) the strategy for moving forward;
- (d) options available regarding the retirement villages;
- (e) loan strategies;
- (f) preparation for the public examination of the directors of LMIM and the auditors of the Fund;
- (g) investigations of and prosecution of legal claims against a number of parties; and
- (h) other general day to day management.

75. I consider that such tasks are necessary for the proper administration of the winding up and to ensure the winding up is conducted in an efficient manner.

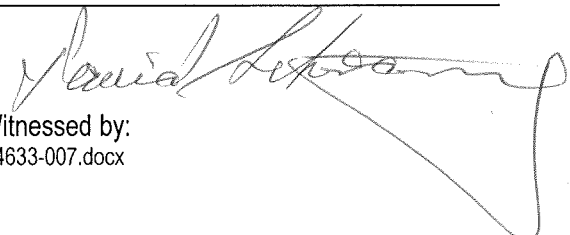
Investor relations and communications

76. During the course of the winding up and in the relevant period, my staff and I have attended to answering member enquiries both by telephone and in person, and issuing member communications to keep members updated as to the winding up

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including the process of asset realisation and the expected return to members. Enquiries from members regarding changes to their details arise regularly however the more in-depth queries from members mainly arise after a report to members has been issued.

77. For the purposes of the member communications, including my reports and letters to the members, my staff and I have been required to collate relevant material for these reports including documents concerning the status of the realisation of the assets and potential legal actions, updating the estimated valuation of the FMIF and estimated return to members, and preparing "work in progress" and remuneration reports. The reports have been compiled and issued to each member of the FMIF. I consider that these tasks are necessary to keep members of the FMIF properly informed as to the progress of the winding up of the FMIF.
78. Some work undertaken in relation to communications with members may be recorded in other categories, that is, under Creditors and/or Administration. However, time for carrying out each task is only recorded once.

General

79. In addition to the above specific matters, my staff and I also conducted the following ongoing tasks and activities in the relevant period:
- (a) travel to the offices of LMIM to meet with staff;
 - (b) travel to the retirement villages to view the properties and meet with management;
 - (c) liaising with the other appointees;
 - (d) liaising with Cyberthread, a company that BDO retained to set up and maintain a website for the FMIF, www.lmfimf.com ("the **FMIF website**") following my appointment regarding website issues, including the publishing of reports to members;

- (e) reviewing and attending to correspondence as required;
- (f) maintaining an appropriate filing system and filing correspondence; and
- (g) reviewing and considering GST obligations.

80. I consider that each of these tasks was necessary for the proper administration of the winding up and to keep members informed of the progress being made and assets realised for the benefit of members.

81. Work undertaken in respect of administration may be recorded in other categories. However, the work undertaken is only recorded once.

Creditors

82. During the relevant period, I published on the FMIF website three reports to members of the FMIF updating them as to the ongoing winding up of the FMIF. These reports were published on 16 October 2014, 30 January 2015 and 30 April 2015. Exhibited hereto and marked "DW-24" are copies of those three reports to investors.

83. In the reports, I provided members of the FMIF with a summary of:

- (a) The position of the secured creditor in relation to the potential claim by KordaMentha (the trustee of the LM Managed Performance Fund) to be filed against the FMIF;
- (b) The realisation of assets;
- (c) The status of the legal proceedings and investigations;
- (d) An updated estimate of the return to members;
- (e) An update as to any future distributions to members;
- (f) The fees claimed by LMIM and its liquidators Mr Park and Ms Muller;
- (g) Update as to the availability of the most current management accounts; and

- (h) My remuneration.
84. During the relevant period my staff and I were required to undertake tasks for the purposes of reporting to members of the FMIF, including:
- (a) drafting and reviewing reports to members of the FMIF;
 - (b) preparing and updating the asset realisation summaries;
 - (c) calculate the estimated return to members, this work included liaising with LMA staff and the DB Receivers to determine the bank account balances and reviewing the balance sheet entries; and
 - (d) preparing a table summarising my remuneration for inclusion in each report.
85. In addition to the reports to members set out above, my staff and I have also been contacted by email and telephone by members of the FMIF regarding:
- (a) the status of the winding up of the FMIF;
 - (b) queries arising from the reports to members regarding the winding up;
 - (c) queries regarding member unit balances and tax statements; and
 - (d) queries regarding updating member details, transferring of member units and deceased estates.
86. Work undertaken in relation to communications with members may be recorded in more than one category. However, time for carrying out the task is only recorded once.
87. During the relevant period my staff were required to maintain the Microsoft AX investor management database following the closure of the LMA office; including updating investor details, transferring units as requested or as directed by executors of deceased estates and generating reports to attend to members' unit balance enquiries.

88. I consider that it is necessary for the proper administration of the winding up to keep the investors properly informed as to the progress of the winding up of the FMIF, and to try to minimise the number of direct inquiries from members of the FMIF requesting the same information.

Investigations

89. During the course of the winding up, my staff and I have undertaken various tasks that can be described as falling within the category "investigations". This category relates not only to work undertaken in pursuit of my investigations, but also any resultant legal proceedings that follow. My investigations to date fall broadly into two categories:-

- (a) those concerning Bellpac Pty Ltd (in Liquidation) ("**Bellpac**"); Bellpac is a debtor of both the FMIF and the MPF. Four relevant proceedings concerning Bellpac have necessitated ongoing investigations and involvement by me and my staff; and
- (b) other potential claims against LMIM and related parties.

90. The remuneration claimed for pursuing investigations for the relevant period relates to the following work as summarised below.

General work

91. In the course of my investigations I cause to be prepared and maintained a master spreadsheet detailing such investigations. This master spreadsheet, amongst other things, provides for a record for:-

- (a) collating all matters requiring further investigation;
- (b) recording documentation and other evidence identified;
- (c) recording documentation or other evidence still to be located and obtained;
- (d) recording periodic progress of my investigations; and

- (e) recording my strategy in relation to pursuing legal actions and whether I should continue further investigation.
92. Members of my staff and I, also attended the former LMA offices at Level 1, 38 Cavill Avenue, Surfers Paradise and the temporary office leased following the closure of the LMA offices at 1/2537-2539 Gold Coast Highway, Mermaid Beach to review documentation and meet with staff in respect of:-
- (a) my investigations into the Bellpac loans and litigation;
 - (b) transactions between FMIF, LMIM and other related parties;
 - (c) FMIF lending practices and external valuations and distributions;
 - (d) strategies in relation to the realisation of assets and the ongoing operations of five retirement villages; and
 - (e) transactions with Class B unit holders.
93. In the conduct of my investigations, my staff and I have been regularly:-
- (a) Liaising with the former solicitors of LMIM in regard to access to legal files concerning the FMIF;
 - (b) Reviewing documents available on the LMIM website dataroom, other related-party maintained websites and documents obtained from ASIC;
 - (c) Reviewing historical financial reports for certain transactions and disclosures;
 - (d) Liaising with the DB Receivers in relation to all material matters concerning the FMIF;
 - (e) Meetings with my solicitors to discuss potential actions and review advices; and
 - (f) Liaising with ASIC.

Bellpac proceedings

94. The Bellpac proceedings relate to four distinct court proceedings, namely:-

- (a) Proceedings in relation to a claim for a portion of the proceeds from a settlement payout as between Gujarat NRE Minerals Limited and Bellpac in 2010. The FMIF claims to be entitled, as secured first in priority, to the portion claimed. On 17 December 2014, I filed a statement of claim in the Supreme Court of Queensland claiming approximately \$15 million plus interest (a total in excess of \$20 million). This proceeding has involved the following work being undertaken by me and members of my staff:-
 - (i) Briefing, instructing and liaising with my solicitors and Counsel in relation to the preparation, filing and progressing the action. Instructing and liaising with my solicitors and Counsel in relation to the preparation of and filing of an application to transfer the MPF proceedings to the Commercial List; and
 - (ii) Instructing and liaising with my solicitors in relation to responding to the interlocutory applications filed by certain respondents in the proceeding.
- (b) Proceedings in relation to two million dollars worth of bonds issued to Wollongong Coal Ltd. The claim was made by Bellpac and the liquidators of Bellpac, who were successful in obtaining judgment that Bellpac is the true owner of the bonds. This decision was unsuccessfully appealed and was subject to an application to set aside a statutory demand issued by the liquidators of Bellpac for the value of the bonds. The matter is now subject to a deed of settlement. Whilst not directly involved in the day-to-day work of this proceeding, as the beneficiary of the funds recovered under the bonds, the FMIF continues to fund this litigation and requires work by my staff and me, including:-
 - (i) Liaising with the Liquidators of Bellpac and their solicitors;

- (ii) Considering the strategy to prepare and serve a statutory demand on Wollongong Coal Ltd;
 - (iii) Consideration of negotiations regarding potential settlement of the \$2 million bonds claim; and
 - (iv) Agreement to a settlement of the claim for an amount in excess of \$2 million.
- (c) Proceedings in relation to eight million dollars worth of bonds issued to Wollongong Coal Ltd. Bellpac is seeking orders, again that Bellpac is the true owner of the bonds. Whilst not directly involved in the day-to-day work of this matter, as the FMIF is the beneficiary of any successful claim, my staff and I have undertaken the following work in the relevant period in relation to this proceeding:-
- (i) Liaising with the Liquidators of Bellpac and their solicitors;
 - (ii) Considering the strategy and preparation for the trial; and
 - (iii) Work in relation to a settlement offer from one defendant.
- (d) Proceedings against Bellpac receivers, LMIM and PTAL in relation to an alleged breach of the *Corporations Act* in regard to the alleged sale of the Bellpac land to Gujarat at undervalue. This involved :-
- (i) Instructing and liaising with my solicitors in relation to the defence of the proceeding; and
 - (ii) Preparation, filing and progressing an interlocutory application for security for costs against the plaintiffs;

Other potential claims and investigations against LMIM and related parties

Summary of specific investigations

95. During the relevant period I have investigated the following matters, some of which are on-going, but also including others that have now been temporarily delayed whilst I await the outcome of the Bellpac proceedings:-

(a) Ongoing investigations include:-

- (i) reviewing the loans where material losses have occurred to ascertain whether the valuations relied upon were too high and if there was negligence by the valuer contributing to the losses. This has involved engaging a valuer to review two professional valuations;
- (ii) reviewing the FMIF loan files maintained by LMIM staff and other internally prepared documentation including financial spreadsheets and ledger statements regarding distributions to Class B unit holders; and
- (iii) reviewing the recently obtained auditors' working papers obtained from the recent public examinations.

(b) Investigations delayed awaiting court outcomes include those in relation to:-

- (i) The circumstances in which Management Service Agreements were entered into with LMA;
- (ii) Investigations into the changes to the FMIF constitution since its execution on 24 August 1999; and
- (iii) Investigations into the FMIF valuation policy and whether appropriate professional valuations were obtained by LMIM;

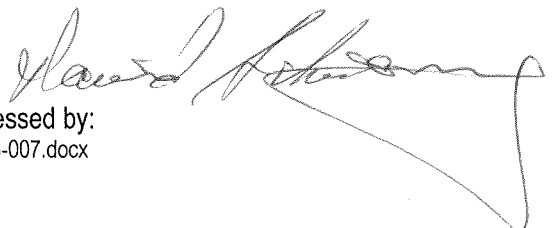
Summary of other legal proceedings

96. Work captured under investigations also includes work in regard to the following legal proceedings:-

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- (a) The preparation and filing of my application for public examinations concerning the audits of the FMIF. These examinations began on 16 March 2015 and will continue between 15 and 25 June 2015. In addition to instructing and assisting solicitors, work in the relevant period on these examinations included:-
- (i) issuing of the summonses to the examinees;
 - (ii) responding to the application by the former auditors to set aside the summonses against them;
 - (iii) review of the working papers of the auditors provided in a staged delivery; and
 - (iv) Liaising internally with BDO auditors to assist me with planning and preparing for the public examination and other matters;
- (b) Instructing and liaising with my solicitors in relation to the preparation and filing of a claim to preserve a potential action against certain parties (due to the sensitive and confidential nature of this matter, I would prefer not to disclose further information about it which is not already in the public domain);
- (c) The preparation and filing of my application for access to the books and records of the FMIF. This matter involved numerous Court appearances and work in the lead up to those appearances, and resulted in the Orders of the Honourable Justice Daubney on 8 December 2015, and 29 January 2015, made within this proceeding;
- (d) The preparation of claims against guarantors and borrowers, including:-
- (i) A claim against a quantity surveyor in the amount of \$2.4 million. A mediation has been arranged for June 2015; and

- (ii) Possible claims against guarantors of loans. These claims are being reviewed and will only be pursued if it is in the interests of members to do so.

97. In my view, all of my investigations work was necessary for the winding up of the FMIF in accordance with its constitution. By carrying out these investigations, I am ensuring I am in a position to reach an informed opinion as to whether or not it is in the best interests of members of the FMIF for any legal action to be taken with a view to recovering funds for the benefit of members.

98. Work undertaken in respect of the investigations may be recorded in other categories however, the work undertaken is only recorded once.

Trade on

99. Generally, "trade-on" work relates to work for the relevant period which is incidental to the winding up, and includes:

- (a) reviewing and approving payment of expenses. This process involves my staff preparing and collating payment requisitions and supporting documentation and uploading the payments to the online banking portal, a review of the payment requisitions and supporting documentation being signed off by me and my staff issuing the payment requisitions and supporting documentation to the DB Receivers" for review and approval for processing;
- (b) meetings with former LMA staff in relation to the closure of the LMA office and handover of the investor management, loan management and finance management functions;
- (c) reviewing employment contracts for consultants retained following closure of the LMA office to assist with the realisation of assets and setting up a temporary office to house the consultants;

- (d) maintenance of the Microsoft AX finance database; including accounting for payments, accounting for asset sales, reconciling bank accounts, processing month end, half year end and year-end adjustments;
- (e) maintenance of the Microsoft AX loan management database, including accounting for payments, accounting for asset sales, reconciling statements, processing month end, half year end and year-end adjustments;
- (f) reviewing and updating the DB Receivers' cashflow forecasts to take into account the realisation of FMIF assets under my control;
- (g) meetings with members of the BDO tax practice group regarding the tax status of the FMIF, and related GST issues;
- (h) meetings and follow up discussions with the DB Receivers and their staff, the liquidators of LMIM and the liquidator of LMA regarding the court order under which I was appointed, controllerships, claim from the MPF in relation to potential breaches of trust, books and records and operational matters including ongoing arrangements for the employment of staff and sharing of costs;
- (i) meetings with the DB Receivers and their staff regarding the future retirement of the DB Receivers and operational matters;
- (j) liaising with my solicitors regarding the termination of the DB Receivers' appointment;
- (k) reviewing correspondence with the DB Receivers and DB regarding the retirement of the DB Receivers.

Management Accounts

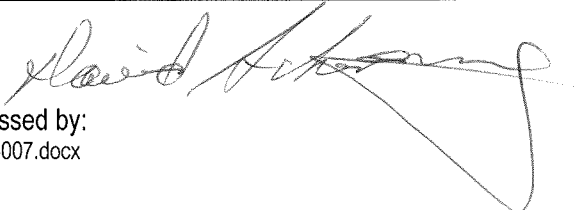
100. I have provided members during the relevant period with the unaudited management accounts for the year ending 30 June 2014 and half year ending 31 December 2014.

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Exhibited hereto and marked "DW-25" is a copy of the letter dated 26 March 2015, enclosing the unaudited management accounts.

101. During the relevant period, my staff and I have undertaken the following tasks in respect of the management accounts:-

- (a) Reviewing the year ending 30 June 2014, including:-
 - (i) Liaise with BDO audit regarding movements in asset values, provisions and default loans between the 31 December 2013 and 30 June 2014;
 - (ii) Review and amend trial balance in respect to changes required by BDO audit;
 - (iii) Review and amend financial statements in respect to changes required by BDO audit;
- (b) Creating the half year ending 31 December 2014, including:-
 - (i) Reviewing working papers to verify the accuracy of the management accounts;
 - (ii) Preparing summaries for the valuation of each of the assets which are expected to sell within twelve months of the account, and those that are expected to take longer than twelve months;
 - (iii) Calculate the selling, statutory and holding costs for each of the assets and adjust the value to take into account these costs;
 - (iv) Liaising with the Liquidators of LMIM and the DB Receivers to determine amounts that remain owing to them, including their legal costs, as at 31 December 2014;
 - (v) Preparing a summary of loan reductions and drawdowns to calculate the movement of loans in default;

- (vi) Calculating the net assets attributable to unitholders, movement in default loans, receivables and related party transactions;
- (vii) Preparing a summary of invoices:-
 - (A) either paid after the year end; or
 - (B) remaining to be paid, which relate to work incurred in the financial year ending 31 December 2014,

to determine the accrued expenses;
- (viii) Calculating provisions for each loan account and updating the loan spreadsheet;
- (ix) Preparing a trial balance, and processing the:-
 - (A) accrued expenses journal;
 - (B) impairments journal;
 - (C) bank transactions journal; and
 - (D) write-offs journal.
- (x) Preparing working papers to support the notes to the accounts, including, but not limited to, noting the movement in impairments as between the periods 31 December 2013, 30 June 2014 and 31 December 2014; and
- (xi) Preparing the management accounts report for distribution to investors, which includes:-
 - (A) a statement of comprehensive income;
 - (B) a statement of financial position; and

(C) a statement of changes in net assets attributable to unitholders.

102. This work was, in my opinion, necessary for the winding up of the FMIF in accordance with its constitution. By undertaking this work I am able to provide ongoing financial accounts to members and avoid incurring ongoing audit fees during the winding up.
103. Work undertaken in relation to trade-on may be recorded in more than one category. However, the work undertaken is only recorded once.

Remuneration for winding up the FMIF in the relevant period

104. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$1,761,911.25 inclusive of GST, represents a fair and reasonable amount for remuneration for the relevant period and that the work undertaken to which the remuneration relates was necessary for the proper conduct of the winding up of the FMIF pursuant to the Orders.
105. I respectfully request this Honourable Court to make orders that my remuneration in relation to my receivership appointment for the relevant period be fixed in the amount of \$1,761,911.25 inclusive of GST.
106. As the winding up of the FMIF is ongoing, there will be a need for further applications for approval of remuneration. These will be made on a regular basis.

Part 5 - Controllerships

107. In my application of 15 September 2014, I undertook to the Court that I would seek the approval for my remuneration in relation to my controllership appointments.

Work performed in the relevant period in relation to controllership appointments

108. Exhibited hereto and marked:-
- (a) "DW-26" from pages 893 to 1000 of the relevant volume of exhibits (the first part);

- (b) "DW-26A" from pages 1001 to 1250 of the relevant volume of exhibits (the second part);
- (c) "DW-26B" from pages 1251 to 1500 of the relevant volume of exhibits (the third part); and
- (d) "DW-26C" from pages 1501 to 1747 of the relevant volume of exhibits (the fourth part).

are schedules of work performed by staff of the Brisbane office of BDO during the relevant period in relation to my controllership appointments (the "**Controllership Schedules**").

109. The Controllership Schedules show a description of each task undertaken, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged. As was the case in relation to tasks undertaken in relation to my Receivership appointment, tasks I have undertaken in relation to my controllership role have been broken down into five categories: Assets, Creditors, Employees, Trade On and Administration. All work performed in relation to the controllership role was performed by members of the BDO BRI team. I again delegated to my staff the performance of certain tasks and 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.

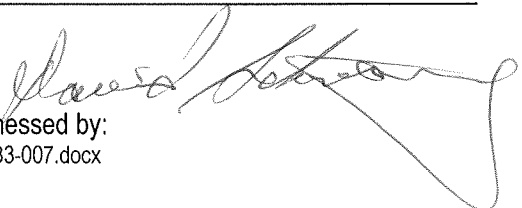
110. A summary of the tasks undertaken, time taken and amount charged, is detailed below and broken down into the relevant assets of my controllership appointment:

Bridgewater Lake Estate Pty Limited		
Category/Area	Total hours	Amount (net of GST)
Assets	69.20	\$32,084.50
Creditors	2.80	\$1,112.00
Trade On	108.80	\$29,874.50
Investigations	0.40	\$78.00

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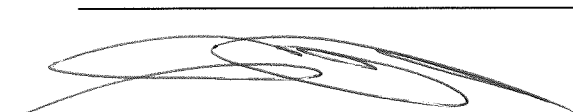


Administration	18.50	\$3,765.00
Total	199.70	\$66,914.00
GST		6,691.40
Total Claim		\$73,605.40

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	58.20	\$25,398.50
Creditors	1.60	\$536.00
Trade On	91.00	\$25,915.50
Investigations	0.20	\$45.00
Administration	23.70	\$5,930.50
Total	174.70	\$57,825.50
GST		\$5,782.55
Total Claim		\$63,608.05

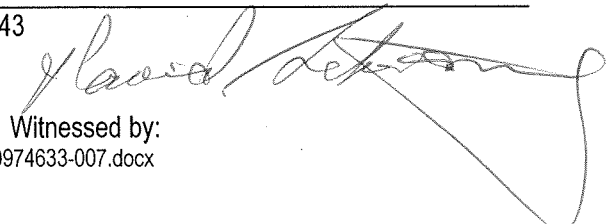
OVST Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	66.90	\$29,161.00
Creditors	1.80	\$625.00
Employees	3.10	\$802.50
Trade On	229.40	\$65,641.00
Investigations	0.40	\$137.00
Administration	38.30	\$7,724.00
Total	339.90	\$104,090.50
GST		\$10,409.05
Total Claim		\$114,499.55

Pinevale Villas Morayfield Pty Ltd		
Category/Area	Total hours	Amount (net of GST)



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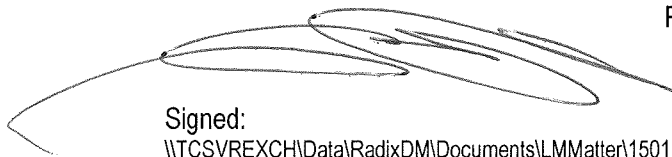
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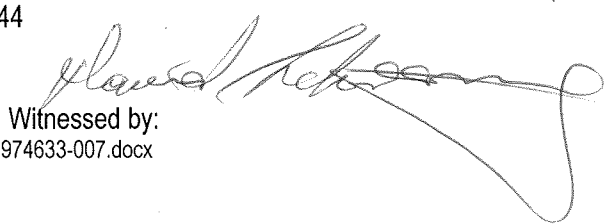
Assets	65.10	\$28,172.50
Creditors	1.00	\$480.00
Employees	1.10	\$281.00
Trade On	175.2	\$48,830.50
Administration	28.90	\$6,143.50
Total	271.30	\$83,907.50
GST		\$8,390.75
Total Claim		\$92,298.25

Redland Bay Leisure Life Development Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	1.10	\$376.00
Creditors	0.50	\$160.00
Trade On	5.10	\$1,260.50
Investigations	-	-
Administration	14.30	\$3,152.00
Total	21.00	\$4,948.50
GST		\$494.85
Total Claim		\$5,443.35

Redland Bay Leisure Life Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	72.30	\$33,083.00
Creditors	1.00	\$424.00
Employees	0.80	\$180.00
Trade On	169.30	\$45,462.50
Investigations	0.20	\$45.00
Administration	22.90	\$5,132.50
Total	266.50	\$84,327.00
GST		\$8,432.70
Total Claim		\$92,759.70

111. In order to further assist the Court, I set out below an explanation as to why the tasks detailed in the Controllership Schedules were undertaken, and why these tasks were

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necessary as part of my controllership appointments. All of the tasks detailed in the Controllership Schedules were carried out in my controllership role.

112. The work I have undertaken as detailed in the Controllership Schedules above can be summarised as undertaking the following work:

- (a) Meetings with the operators of the retirement villages to discuss ongoing marketing and management of the sites;
- (b) Reviewing monthly management reports;
- (c) Liaising with LMA staff and consultants regarding:-
 - (i) ongoing marketing and building works at Bridgewater and Cameo;
 - (ii) operational matters and management of the retirement villages;
 - (iii) planning issues at Redland Bay with Local Council;
 - (iv) the marketing campaigns for the sale of the retirement villages including preparation of and collating documentation for the data room, offers received from interested parties and meeting with interested parties on site;
 - (v) contracts of sale and variations to the contracts of sale Redland Bay, OVST, Pinevale and Cameo;
 - (vi) valuations of the retirement villages;
 - (vii) notices of exercise of power of sale for the retirement villages; and
 - (viii) settlement and handover issues in relation to Redland Bay, OVST, Pinevale and Cameo.
- (d) Preparing announcements to the village residents;
- (e) Reviewing and preparing documents for the village audits;

- (f) Liaising with external accountants regarding treatment of GST at the retirement village level;
- (g) Preparing and reviewing applications for a private binding ruling to the Australian Taxation Office in relation to the treatment of GST on supplies to residents of the Pinevale and OVST villages;
- (h) Dealing with ongoing matters relating to the operations, marketing and sale of the five retirement villages, including:
 - (i) Maintaining the dataroom for interested parties;
 - (ii) Collation of lease documents for all residents;
 - (iii) Reconciling Scheme Operator and General Services Charge accounts for inclusion in the data room;
 - (iv) Liaising with agents regarding revisions to the marketing schedule, contents of advertisements and strategy in relation to sale campaigns undertaken and offers received from interested parties;
 - (v) Consideration and analysis of offers received from interested parties;
 - (vi) Liaising with our solicitors regarding the sale contracts and GST treatment;
 - (vii) Liaising with our solicitors in relation to the variations to the original contracts for Redland Bay, OVST, Pinevale and Cameo;
 - (viii) Extensive negotiations with interested parties in relation to offers received and terms of the contracts of sale;
 - (ix) Extensive negotiations with the buyer of Redland Bay, OVST, Pinevale and Cameo in relation to the contract of sale, variations to the contract of sale and settlement issues;

- (x) Extensive planning and attending to issues to effect settlement of Redland Bay, OVST, Pinevale and Cameo;
- (xi) Extensive negotiations with the buyer of Bridgewater;
- (xii) Preparation of payments from the scheme operator accounts;
- (xiii) Liaising with the Receivers and Managers to process scheme operator payment requisitions;
- (xiv) Maintenance of the MYOB accounts for Pinevale, OVST and Redland Bay villages.
- (xv) Liaising with village management regarding the processing of village payments and maintenance of MYOB accounts;
- (xvi) Reviewing resident agreements for incoming tenants to verify that appropriate forms are used and the details therein match the resident schedule for the retirement village; and
- (xvii) Liaising with insurance providers regarding ongoing insurance requirements.

Remuneration in regard to controllership role in the relevant period

113. Given the nature and volume of the work involved as canvassed above, I believe that the sum of \$442,214.30 inclusive of GST, represents a fair and reasonable amount for remuneration for the relevant period and that the work undertaken to which the remuneration relates was necessary for the proper conduct of my controllership role appointments.

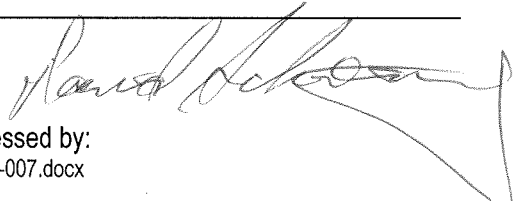
114. I respectfully request this Honourable Court to make orders that my remuneration in relation to the controllership role of Andrew Fielding and I, for the relevant period, be fixed in the amount of \$442,214.30 inclusive of GST.

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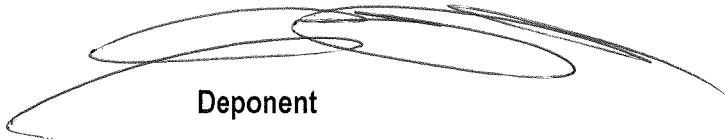
115. As my controllership role is ongoing, there will be a need for further applications for approval of remuneration which I intend to seek on a regular basis.

Legal professional privilege

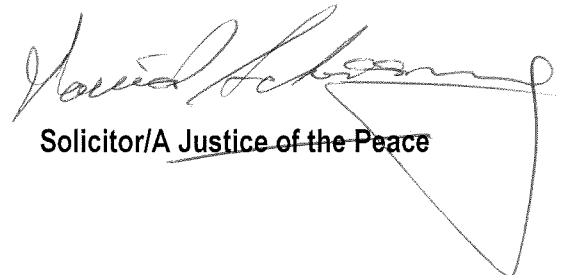
116. In this affidavit I have referred to dealings with solicitors in order to explain work undertaken for which I seek to be remunerated. I do not intend in doing so to waive any legal professional privilege that may attach to communications between me and my solicitors.

117. 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 **DAVID WHYTE** on the 28th day of May 2015 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
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**

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DW-21	Letter to investors re update on fund unit price	30 January 2015	1
DW-22	Hourly charge out rate schedules of the BRI, Corporate Finance, Audit and Private Clients practice groups	2014/2015	2 - 6
DW-23	Schedules of work performed by staff of BDO during relevant period in relation to the receivership appointment	Various	7 - 250
DW-23A	Schedules of work performed by staff of BDO during relevant period in relation to the receivership appointment	Various	251 - 500
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DW-24	Reports to members	16 October 2014 30 January 2015 30 April 2015	795 - 869
DW-25	Letter to members enclosing the unaudited management accounts of the FMIF for the period to 31 December 2014	26 March 2015	870 - 892
DW-26	Schedules of work performed by staff of BDO during relevant period in relation to the controllership appointments	Various	893 - 1000
DW-26A	Schedules of work performed by staff of BDO during relevant period in relation to the controllership appointments	Various	1001 - 1250
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DW-26C	Schedules of work performed by staff of BDO during relevant period in relation to the controllership appointments	Various	1500 - 1747