

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
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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”).

Appointments

Receivership

2. By Order of this Honourable Court made on 8 August 2013 and later embodied in an Order dated 21 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; and
 - (b) pursuant to section 601NF(2) of the Act, as the receiver of the property of the FMIF,
3. I refer to my affidavit sworn and filed on 7 November 2014 (“my November Affidavit”). The background to my appointment is relevantly explained by me at paragraphs 12 to 37 of my November Affidavit.

Controllership

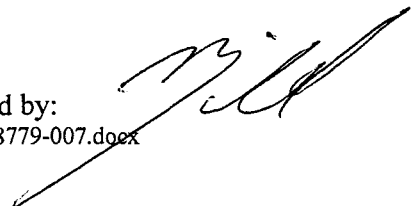
4. On 25 September 2014, pursuant to Deeds of Appointment, Andrew Fielding and I were appointed as agents of The Trust Company (PTAL) Ltd (“PTAL”), in lieu of LM Investment Management Ltd (receivers and managers appointed)(in liquidation) (“LMIM”), in respect of the securities it held from the following companies:-

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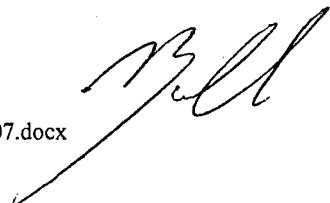
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- (a) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296 (“**Cameo**”);
- (b) Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 787 (“**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 (“**RBL**”);
- (e) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383 (“**RBLD**”);
- (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**”.

- 5. On 15 September 2014, the Honourable Justice Jackson gave directions that Andrew Fielding and I were justified in taking steps to effect the appointments as agents of PTAL, as mentioned in the previous paragraph.
- 6. 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;
 - (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;



- (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; and
- (d) "my appointments", I am referring to both my roles as mentioned at paragraphs 5(b) and (c) above.

Previous Remuneration

7. I have made three previous applications for approval of my remuneration:-

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)
1 October 2014 to 30 April 2015	Jackson J on 23 June 2015	\$1,761,911.25 (receivership) \$442,214.30 (controllership)

8. I now make an application for:-
- (a) approval of my remuneration for work performed in the period from 1 May 2015 to 31 October 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 \$2,279,205.50 (inclusive of GST); and



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- (b) approval of the remuneration of Andrew Fielding and me, for work performed 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 \$194,052.10 (inclusive of GST).
9. I am authorised by Andrew Fielding to make this application for our controllership remuneration on both our behalves.

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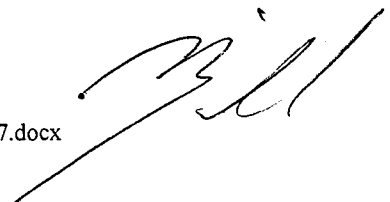
10. This affidavit is set out in the following parts:-

Part	Topic
Part 1	Executive Summary
Part 2	Status of the assets of the FMIF
Part 3	Reductions in costs
Part 4	Complexities of winding up the FMIF and during the Relevant Period
Part 5	BDO work practice
Part 6	Categories of work in the Receivership
Part 7	The details of the “ <i>Assets</i> ” tasks which I and my staff have undertaken during the Relevant Period in the course of my appointment, including a breakdown of work in respect of certain assets, and explanations as to why these tasks were necessary to the winding up of the FMIF
Part 8	The details of the “ <i>Investigations</i> ” tasks which I and my staff have undertaken during the Relevant Period in the course of my appointment, including as between particular investigations and

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Court proceedings, and explanations as to why those investigations were necessary to the winding up of the FMIF

Part 9 The details of the "*Trade On*" 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

Part 10 The details of the "*Creditors*" 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

Part 11 The details of the "*Administration*" 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

Part 12 Categories of work in the Controllershship: Details of the work in respect of tasks which I and my staff have undertaken during the Relevant Period in the course of my controllership role, and explanations as to why these tasks were necessary.

Part 13 Write-offs

Part 14 Remuneration

Part 15 Legal professional privilege

Part 1

Executive Summary

Winding up progress

11. Since my appointment, I have realised 7 retirement village assets. In total, I have so far realised assets worth \$46.5 million.
12. Cash at bank as at 30 September 2015 was \$51.9 million; cash at bank as at 30 April 2015 (the end of my previous application for approval of my remuneration) was \$35.1 million.
13. Legal proceedings have been progressed in relation to a claim for an amount of approximately \$20 million (inclusive of interest). This proceeding, as at the date of swearing this affidavit, is now at the discovery stage.
14. The current overall costs of operating the Fund are approximately \$3.6 million per annum (excluding legal fees and investigation costs). These costs will continue to reduce as the loan book reduces and the legal proceedings are completed. This represents a reduction of approximately \$10.4 million per annum as compared with the five years ended 30 June 2012.
15. More particularly during the Relevant Period:-
 - (a) \$229,874.00 (exclusive of GST) of my claimed remuneration for work undertaken in my appointment, has been in respect of tasks referred to as "*Assets*". This is work associated directly with realising the assets of the FMIF, of which there have been realisations of approximately \$14.5 million in the Relevant Period. This includes the sale of the retirement villages that the FMIF held a second mortgage over and the sale of the last remaining retirement village asset;
 - (b) \$1,267,929.50 (exclusive of GST) has been in respect of tasks referred to as "*Investigations*". This is work associated with investigating



claims and undertaking Public Examinations (“PEs”) of the former auditors of the FMIF and other parties. I anticipate that my current investigations, of which were significant in the Relevant Period, will result in a future substantial recovery for the benefit of the members of the FMIF;

16. On 3 November 2015, I informed members of an estimated return (based on professional valuations, offers received and unconditional contracts entered into in respect of the properties charged to the FMIF) of between 14.4 cents and 16.3 cents in the dollar. This excludes recoveries from legal proceedings and the costs to finalise the winding up of the Fund.
17. In my affidavit sworn on 28 May 2015 and filed on 29 May 2015 in this proceeding, I deposed that the estimated return to investors as at 31 March 2015, was between 14.3 and 17 cents in the dollar.
18. However, I am on notice from a number of parties of claims and potential claims against the FMIF which may affect the current estimate.
19. I expect it may be a further two to three years before I am in a position to retire from my appointment.

Summary of work in the Relevant Period

20. I have undertaken work in respect of numerous investigations in the Relevant Period:-
 - (a) A total of about four weeks of PEs held between 16 and 26 June 2015, and between 19 and 29 October 2015;
 - (b) Progressing the claim against LMIM, its directors and the trustee of the LM Managed Performance Fund (“MPF”);
 - (c) Progressing claims against various guarantors of loans from the FMIF;

- (d) Progressing issues in relation to funds held by Western Union subject to a set off claim;
- (e) Investigations as a result of evidence given at the PEs;
- (f) Dealing with an application to the Court by the liquidators of LMIM (“FTI”) in respect of their residual powers.

21. Significant work has also been undertaken in respect of:-

- (a) Undertaking the investor management function for over 4500 members, including answering queries on the winding up of the Fund and maintaining the investment database, including any change in details or transfer of units;
- (b) Selling the last remaining retirement village, meetings and negotiations with the purchaser and finalising outstanding trading matters from the sale of the other four retirement villages;
- (c) Negotiating with the mortgagor and the purchaser of the retirement villages that the FMIF held a second mortgage over;
- (d) Preparation of unit price calculation as at 30 June 2015;
- (e) Preparation of management accounts as at 30 June 2015 and review of asset listings under my control;
- (f) Preparation of reports to Investors in July 2015 and November 2015; and
- (g) Responding to a Claim by the trustees of the MPF against the assets of the FMIF.

22. The above, very brief, summary of work is detailed further in my affidavit below.

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Part 2

Status of the FMIF assets

23. I set out below three tables breaking down the realisation of specific assets during the Relevant Period. This includes information as to which assets have been realised during the Relevant Period, which assets were partially realised during the Relevant Period, and those assets in the winding up of the FMIF that are yet to be sold. The assets (referred to for ease of reference as “FMIF assets”) are assets over which the FMIF has held security for loans advanced by the FMIF.
24. The summary below also indicates who has been responsible for the recovery of each particular asset.

Assets realised in full

Location	Description of Asset	Insolvency Practitioner responsible for recovery of each particular asset
VIC	A supported living community, with 69 completed independent living units and a further 129 proposed. Asset was sold on 31 July 2015.	David Whyte & Andrew Fielding (BDO)
WA	The development has been subdivided into three super lots. The first lot was sold in January 2014. The two remaining lots settled on 27 July 2015 and 30 July 2015 respectively.	Joseph Hayes & Anthony Connelly (McGrath Nicol)
QLD	90 strata titled hotel rooms. There were 3 units sold during the relevant period with the last remaining units sold in June 2015.	Joseph Hayes & Anthony Connelly (McGrath Nicol)
QLD	Two supported living communities. The Fund held a second mortgage over these properties which settled in October 2015.	David Whyte (BDO)

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Assets with partial realisation

Location	Description of asset	Insolvency Practitioner responsible for recovery of each particular asset
QLD	Residential land subdivision. 80 lots with operational works approval and additional land (approx. 57ha) with pending development approval are on the market. There are currently 11 lots remaining to be sold with no units sold during the relevant period.	Joseph Hayes & Anthony Connelly (McGrath Nicol)
QLD	72 strata titled unit resort complex with management rights. There was 1 unit sold during the relevant period with 31 units plus management rights remaining to be sold.	Joseph Hayes & Anthony Connelly (McGrath Nicol)

Assets to be realised

Location	Description of asset	Insolvency Practitioner responsible for recovery of each particular asset
WA	The development has been subdivided into three super lots. The first lot was sold in January 2014. The remaining lots settled on 27 July 2015 and 30 July 2015 respectively. Possession of a guarantor's property has been obtained, which is now on the market for sale.	Joseph Hayes & Anthony Connelly (McGrath Nicol)


Receivers and managers

25. 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.
26. 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 terminate the appointment of the DB Receivers.

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Distribution

27. 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 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.
28. Following the 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 (“the **Residual Powers Proceeding**”), Justice Jackson, in his reasons for judgment, stated that any distribution to members could only be contemplated following an application for directions with the Court, by me. Justice Jackson has not yet made final orders in that proceeding. The Residual Powers Proceeding is listed for hearing for two further days on 17 and 18 December 2015.

Part 3

Reduction in costs

29. As part of the winding up process and in conjunction with the DB Receivers, I am reducing the costs of managing the FMIF.
30. Prior to the appointment of FTI Consulting (Australia) Pty Limited 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.
31. The current costs of managing the FMIF are the costs of myself (in my appointments), the DB Receivers, the costs of employing consultants to assist in managing down the loan book and undertaking investigations, and equipment costs.

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32. In summary, the current overall annualised costs of operating the Fund (of the DB Receivers and BDO) is approximately \$3.6 million per annum (excluding legal fees and investigation costs). These costs will continue to reduce as the loan book reduces and the legal proceedings are completed. This represents a reduction of approximately \$9.6 million per annum, as compared with the five years ended 30 June 2012.
33. Based upon the information available to me as at the date of swearing this affidavit, I expect that my future remuneration claims will reduce now because:-
- (a) The retirement villages assets have been realised; and
 - (b) The PEs have concluded.

Part 4

Complexities in the winding up of the FMIF and during the Relevant Period

34. Some of the overarching factors which have contributed to the complexity of the winding up of the FMIF include:
- (a) the fact that there are over 4500 members of the FMIF, both in Australia and internationally, and the responsibility to communicate with each of those members as to the progress of the winding up;
 - (b) the number of properties held as security for the various loans made by the FMIF;
 - (c) that a number of those properties are Retirement Villages in multiple states across Australia. These assets require specialised knowledge, consideration of realisation strategy and day-to-day management;
 - (d) the risk of personal liability being incurred under agreements proposed to be entered into with residents of the retirement villages;
 - (e) the number and complexity of issues requiring investigation;

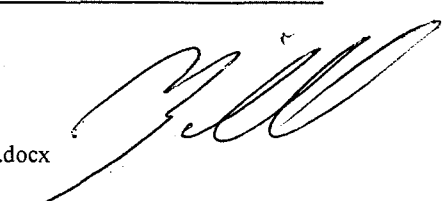


- (f) the complex inter-relationship between LMIM , LMIM as Responsible Entity of the FMIF, and LM Administration Pty Ltd (in liquidation) (“LMA”);
 - (g) the complex inter-relationship between the FMIF and other funds of which LMIM is responsible entity, including claims against the FMIF by KordaMentha as trustee of the MPF (both made and foreshadowed);
 - (h) the need to co-operate with a number of other appointees, including the DB Receivers, the liquidators of LMIM and the liquidator of LMA;
35. In addition to the overall complexities, certain other issues have surfaced in the Relevant Period which have added to the complexity of the winding up, and contributed to the time taken in the Relevant Period, including:-
- (a) PEs:-
 - (i) Difficulties with the timing, content and form of the summonsed auditors’ working papers; and
 - (ii) The extent and complexity of work required to be done in preparation for, and during, the PEs.
 - (b) Delayed settlement of the last remaining retirement village situated in Victoria due to issues with the purchaser;
 - (c) Protracted negotiations with the purchaser and mortgagor of two of the retirement villages, in relation to the terms of the sale and associated contractual arrangements;
 - (d) The number and scope of litigious matters in the Relevant Period, including:-

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- (i) Applications by the Liquidators of LMIM;
- (ii) Two court proceedings brought by the trustee of the MPF, KordaMentha, against the assets of the FMIF;
- (iii) Discovery and court proceedings in relation to a claim brought by me on behalf of the FMIF against current and former directors and, the trustee of the MPF. In this regard, I have had to communicate with numerous defendants, coordinate a significant volume of LMIM documents (over 3 million), deal with legal professional privilege issues, and responding to the parties requests for access to the LMIM records.

Part 5

BDO work practice

Time recording

- 36. 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.
- 37. The partners of BDO Business Recovery and Insolvency (Qld) (“BRI”) are members of ARITA and follow the ARITA Statement of Best Practice – Remuneration. BDO’s scale of BRI hourly charge out rates for 2014/2015 (exhibit 22 to my November Affidavit) and 2015/2016 are the same as were applied in my calculation of remuneration for work performed in the period for the purposes of my third remuneration application.
- 38. 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

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category (Assets, Creditors, etc.) and as work undertaken pursuant to my controllership appointment.

39. 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 has been allocated against my 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).
40. However, each task is only recorded once, and the time for carrying out each task is only recorded once.

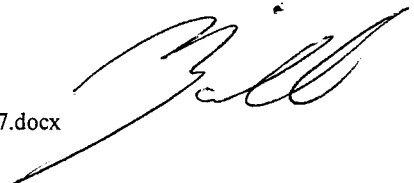
Teams assisting

41. Staff from across several practice areas of BDO, in addition to members of the BRI practice area, assist me in my receivership role and controllership role. These staff are generally sourced from the Corporate Finance, Audit, Tax 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.
42. 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, in particular in the lead up to, and during, the conduct of the PEs during the Relevant Period. Their assistance was necessary to pursue these investigations, and also in preparation of the management accounts.
43. With the exception of the Tax team, the charge out rates charged in the winding up of the FMIF by our Corporate Finance, Private Clients and Audit staff are equal to, or lower than, the BRI rates. Where lower, these lower rates have been used in calculating the fees to be charged.

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44. The standard rates across most employee levels in practice groups (other than BRI staff) rose marginally effective from 1 July 2015. The average increase in the hourly charge out rate was \$10 - \$20 across employees of different levels. This is reflected in the table entitled "*Remuneration Report – summary of professional fees by category of work for the period 1 May 2015 to 23 October 2015*", where several BDO staff are listed twice on account of their hourly charge out rate increasing after 1 July 2015. The charge out rates applied for BDO staff, in practice groups other than BRI, are either less than, or equal to, the charge out rates of BRI staff of a similar level. Where a rate is lower, that lower rate has been charged for that member of staff.
45. In respect of the Audit partner Clark Jarrod, his rate increased by \$75 per hour, for the 2015/2016 financial year. Mr Jarrod's role differs from that of the other Audit partners working on the winding up during the Relevant Period; he is a technical expert on Australian Accounting standards and provides technical assistance and expertise to the other Audit partners. I am informed by Mr Jarrod, and believe, that Mr Jarrod worked almost exclusively on the PEs during the Relevant Period, and was conducting minimal other work. Mr Jarrod assisted Counsel briefed for the PEs in relation to the Audit of the FMIF. The audit of the FMIF was the focus of the PEs.
46. Exhibited hereto and marked "**DW-27**" are copies of the hourly charge out rate schedules of the BRI, Corporate Finance, Audit, Tax and Private Clients practice groups across the 2014/2015 and 2015/2016 financial years.

Corporate Finance

47. In the Relevant Period, the Corporate Finance team has provided me with ongoing assistance in relation to preparing for the PEs, and assessing any potential claim against the auditors of the FMIF. The Corporate Finance team has specialised knowledge in the valuation of assets, allowing them to assist me with:-

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- (a) Reviewing auditors' working papers in relation to the audit of the FMIF financial accounts for the financial years ending 2008 to 2012; and the half years ending 31 December 2007 to 2011.
 - (b) Consider the net book value of the assets recorded in the financial accounts; and
 - (c) Undertake an analysis, and investigating any deficiencies, in the valuation models and methodology used by the auditors in respect of the FMIF.
48. This work was necessary to assist with the preparation of the PEs, and to assist with determining the level of impairments that should have been applied to the loan book of the FMIF in the relevant financial years.

Audit

49. During the Relevant Period, the Audit team at BDO has assisted me by:-
- (a) Reviewing, analysing and reconstructing the files and records of the former auditors of the FMIF;
 - (b) Conducting investigations into the working papers of the former auditors of the FMIF;
 - (c) Conducting investigations into the LMIM files in relation to the financial accounts, compliance plan and half yearly reviews between 30 June 2008 and 30 June 2012 to identify any deficiencies and inadequacies;
 - (d) Undertaking detailed reviews and analysis of the assessment of borrower loans for impairment so as to identify any deficiencies in compliance with accounting and auditing standards, statutory provisions, regulatory guides and the constitution and compliance plans of the FMIF;

- (e) Undertaking detailed reviews and analysis of the former auditors working papers and LMIM records of related party transactions so as to identify any deficiencies in compliance with accounting and auditing standards, statutory provisions, regulatory guides and the constitution and compliance plans of the FMIF;
 - (f) Preparing extensive and detailed Briefs to Counsel in preparation for the PEs;
 - (g) Attending meetings with Counsel and solicitors in preparation for the PEs; and
 - (h) Attending the PEs (at the request of Counsel) to assist Counsel with questions to the examinees and assessment of their responses.
50. Given the expertise required to perform this work, it was necessary for the Audit team to assist me, as this work was necessary in preparation and conduct of the PEs.

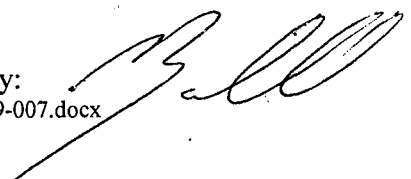
Private Clients

51. During the Relevant Period, the Private Clients team at BDO has assisted me in my roles by:-
- (a) Maintaining and finalising the MYOB accounts for the retirement village controllerships; and
 - (b) Assisting with tax compliance obligations in relation to the retirement village controllerships.
52. Given the expertise required to perform this work, it was necessary for the Private Clients team to assist me in the winding up, to ensure that the financial accounts in respect of the retirement villages were accurately prepared, and that such accounts were tax compliant.

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Tax

53. During the Relevant Period, it was necessary for the Tax team at BDO to assist me in my roles by:-
- (a) Preparing a Private Binding Ruling (“PBR”) application to the Australian Taxation Office (“ATO”) in relation to the treatment of GST on the sale of the Bridgewater retirement village;
 - (b) Liaising with the ATO and the purchaser of the Bridgewater Lake Estate retirement village in relation to the PBR; and
 - (c) Reviewing the Business Activity Statements for the retirement village assets for the June and September 2015 quarters.
54. Given the expertise required to perform this work, it was necessary for the Tax team to assist me in the winding up, to ensure the successful realisation of the last remaining retirement village asset and ongoing compliance with our tax obligations.

Part 6

Categories of Work in the Receivership

55. 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) Investigations;
 - (c) Trade on;
 - (d) Creditors; and
 - (e) Administration.



56. 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.
57. Exhibited hereto and marked "DW-28" is a breakdown of time charged by BDO employees pursuant to both of my appointments.
58. Exhibit "DW-28" also contains tables in respect of "Disbursements" charged against either my appointment, or my controllership appointment (per each respective Controllership Company). These are office expenses that BDO has incurred. I do not seek approval in this application for these office expenses.
59. Exhibited hereto and marked "DW-29" is a schedule of work performed by staff of the Brisbane office of BDO during the Relevant Period ("the Schedule") in relation to my appointment (in connection with the winding up of the FMIF).
60. 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	554.5	229,874.00
Investigations	2,793.0	1,267,929.50

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Witnessed by:



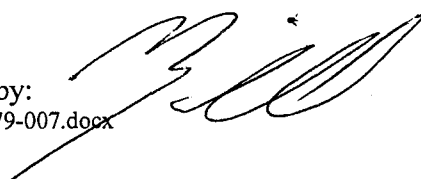
Category/area	Total hours	Amount (net of GST) \$
Trade on	641.4	229,022.00
Creditors	716.3	226,415.00
Administration	485.0	118,764.50
Total	5,190.2	2,072,005.00
GST		207,200.50
Total claim		2,279,205.50

61. 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.
62. I am informed by Clark Jarrold, Craig Jenkins and Scott Birkett, other Partners at BDO who assisted me in the Relevant Period, and believe, that they also delegated work within their practice groups so that the level of experience of the person responsible for particular work reflected, and was appropriate to, the nature of the work.
63. The entries in the Schedule reflects BDO's scale of insolvency and other hourly charge out rates.

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Witnessed by:



64. 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.
65. 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.
66. 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.

Part 7

Assets

67. In the Relevant Period, my staff and I have undertaken various tasks and activities that can be described as falling within the category “Assets”.
68. Generally, work attributed to this category includes tasks in respect of:-
- (a) Realisation of the Bridgewater retirement village;
 - (b) Realisation of the second mortgage held over retirement villages;
 - (c) Undertaking investigations in relation to monies retained in an account in the name of FMIF held with Western Union, and issuing demands for the release of the balance of monies held;
 - (d) Pursuing a claim against LMIM, the former directors and the MPF in Queensland Supreme Court proceeding number 12317 of 2014;
 - (e) Responding to two actions by the trustee of the MPF; and

- (f) Reviewing loan files regarding claims to be pursued against guarantors where it is considered commercially worthwhile to do so.
69. In total, \$229,874.00 (exclusive of GST) of remuneration is sought for approval in the Relevant Period in respect of the "Assets" category.
70. Total realisations in the Relevant Period have been approximately \$14.5 million.
71. I set out below the extent of work undertaken in respect of "Assets".

Asset realisation strategy

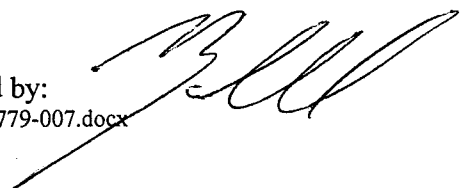
72. As discussed, despite DB being paid out in full, the DB receivers continue to be involved and as such, we have agreed to split the realisation of the assets, with me and the staff at BDO under my supervision attending to the sale of the retirement village assets, and the DB Receivers realising the remainder of the assets.
73. 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.
74. My dealings with the DB Receivers concerning these matters were limited during this period to:-
- (a) Providing updates in relation to the strategy and status of the remaining retirement village assets;
 - (b) Seeking approval to execute documents/release securities where appropriate; and
 - (c) Discussing claims against certain guarantors.
75. 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.

Maintaining and updating records relevant to my appointment and FMIF winding up

76. Following my 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.
77. 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.

Retirement Villages

78. 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.
79. As at the date of my swearing this affidavit, all of the retirement village assets have now been realised, with deferred consideration of \$16 million payable in April 2016. This payment is secured by bank guarantee.
80. During the Relevant Period the final retirement village (in respect of Bridgewater) was prepared for sale.
81. A majority of the work undertaken in respect of the sale of the Bridgewater retirement village has been recorded against my controllership appointment, and is detailed further in Part 12 of this affidavit. Whilst some of the work was recorded in other categories in the schedule, the work undertaken was only recorded once.
82. My staff and I have also finalised the sale process in respect of four retirement villages realised prior to the Relevant Period.

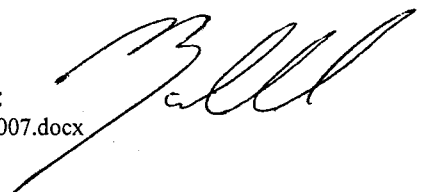


83. Again, a majority of the work undertaken in respect of those four retirement villages has been recorded against my controllership appointment. This work is detailed at Part 12 of my affidavit. Whilst some of the work was recorded in other categories in the schedule, the work undertaken was only recorded once.
84. In respect of the retirement village that the FMIF held a second mortgage over (and which I was not the controller of) I have undertaken the following work (charged to my appointment):-
- (a) Negotiating with the mortgagor and the first mortgagee;
 - (b) Negotiating with the purchaser;
 - (c) Liaising with my solicitors in relation to the terms of the transaction, including preparation of a Deed of Settlement and Release;
 - (d) Reviewing the Deed of Settlement and Release and liaising with my solicitor in relation those documents;
 - (e) Reviewing settlement statements and liaising with my solicitor in relation to those documents; and
 - (f) Facilitating a release of securities.
85. 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.

The MPF Proceedings

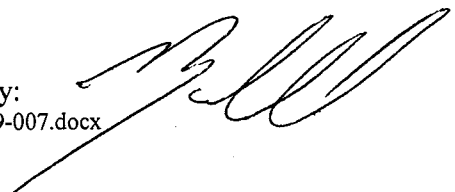
Court proceedings summary

86. On 27 August 2014, the trustee of the MPF, KordaMentha, filed two proceedings in this Honourable Court in proceeding numbers 8032 of 2014,



and 8034 of 2014. These proceedings were brought against LMIM, and seek a declaration of constructive trust against the assets of the FMIF. The claim relates to two loans allegedly assigned from the FMIF to the MPF on 28 August 2008, in the sums of \$9.7 million, and \$19.5 million (“the **MPF Proceedings**”).

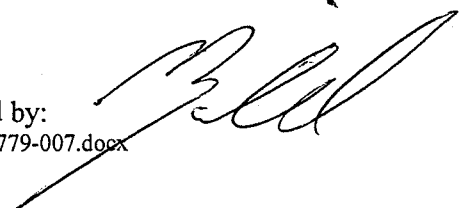
87. I did not become aware of the MPF Proceedings until 1 April 2015 and first obtained a copy of the statements of claim on 21 April 2015. The application was served on me, and I appeared by my solicitors.
88. On 29 May 2015, KordaMentha filed an application in this Honourable Court in proceeding number 5329 of 2015, seeking a direction that it was justified in pursuing the two claims filed in the MPF Proceedings.
89. On 23 July 2015, the Honourable Justice Daubney made Orders adjourning the application to allow further evidence to be filed by the parties to assist the Court in determining the application.
90. In that time, my staff and I undertook further investigations of the records of the FMIF and, as a result, I swore an affidavit which was filed on 10 August 2015; the affidavit was some three volumes in size, and provided information relating to the transaction and other relevant circumstances.
91. On 18 August 2015, the application was heard before Justice Daubney. His Honour reserved his decision.
92. On 26 August 2015, Justice Daubney delivered judgment, giving directions that KordaMentha is justified in pursuing the claims in the MPF Proceedings. KordaMentha was also granted leave to proceed against LMIM.
93. On 8 September 2015, Amended Statements of Claim were served on LMIM (being the documents filed in this Honourable Court, Document number 8 in BS 8032/14 and Document number 8 in BS 8034/14).



94. On 14 October 2015, Further Amended Statements of Claim were served on LMIM, and included additional relief against the assets of the FMIF (Document number 13 in BS 8032/14 and Document number 13 in BS 8034/14).
95. On 28 October 2015, I made an application in the MPF Proceedings, seeking the Court's direction that:-
- (a) I would be justified in representing the interests of LMIM in the proceeding, and conducting the defence of the claims against LMIM, in the name of LMIM, to the extent necessary to defend any claim pursuant to which relief is sought from the assets of the FMIF; or alternatively
 - (b) I would be justified in seeking to be joined as a court appointed receiver of the property of the FMIF as a party to the claims as a further Defendant to defend the claims for relief as against the assets of the FMIF.
96. I believe it is necessary in the winding up of the FMIF for me to make the applications to either represent the interests of LMIM, or be a party to the proceeding, in order to fulfil my obligation to protect the interests of the FMIF in the best interests of the members.
97. My application for directions is listed to be heard on 7 December 2015.

Work undertaken by BRI staff in the Relevant Period

98. My staff and I have undertaken the following work in relation to the MPF Proceedings:-
- (a) Reviewing the Statements of Claim and considering the implications for the FMIF, liaising with my solicitors in relation to the different



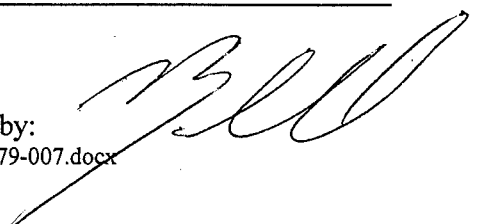
aspects of the claims and the manner in which the claims were pleaded;

- (b) Undertaking preliminary investigations of the LMIM records in relation to the allegations;
- (c) Pursuant to the orders made by Daubney J on 23 July 2015 in the application for directions pursuant to section 96 of the *Trusts Act*, undertaking investigations to locate and interrogate the LMIM electronic and archive records in relation to the constructive trust claim against the assets of the FMIF, including work:-
 - (i) Reviewing LMIM servers for the audit records relating to the MPF assigned loans receivable;
 - (ii) Reviewing spreadsheets and reconciling the repayment of receivables including the assigned loans the subject of the MPF Proceedings;
 - (iii) Reviewing material in respect of prepaid management fees;
 - (iv) Reviewing the EY working papers in respect of EY's audit of the repayment of the loans receivable;
 - (v) Reviewing the LMIM server to identify relevant ledgers amongst varying accounting systems and comparing the ledger transactions against audit records;
 - (vi) Undertaking a reconciliation of the ledger transactions against bank accounts operated in respect of the FMIF;
 - (vii) Investigating the archive paper accounting records to:-
 - (A) Review bank statements;

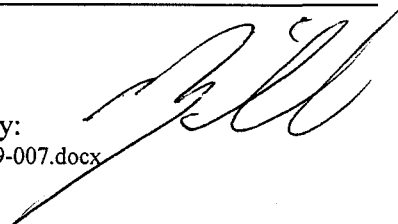
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- (B) Review source documents in respect of the repayment of MPF loans receivable; and
 - (C) Review documentation supporting any payments made utilising the proceeds from any repayment.
- (viii) After identifying that KordaMentha were monitoring the repayment of the MPF loans receivable as Investigating Accountants, undertaking investigations of the LMIM records in relation to the Commonwealth Bank of Australia (“CBA”) facility variations, reviewing any KordaMentha communications with LMIM, reviewing monthly reports created by LMIM, reviewing any reports by KordaMentha to CBA and any affidavits filed by KordaMentha;
- (ix) Commencing further investigations in relation to the tracing of repayments made by the MPF for the loans receivable in preparation for work to assist in the defence of the MPF Proceedings.
- (d) Liaising and meeting with my solicitors in regard to the MPF Proceedings, including:-
- (i) Discussing preliminary issues;
 - (ii) Discussing and considering constructive trust issues;
 - (iii) Considering my preliminary investigations in relation to tracing funds repaid to the FMIF;
 - (iv) Considering the potential conflict of KordaMentha given their former role as the Investigating Accountant for the CBA;
 - (v) Reviewing correspondence received from the parties to the MPF Proceedings, and considering proposed responses with



my solicitors. This often required locating documents and interrogating the LMIM records;

- (vi) Reviewing and considering submissions to the Court in the MPF Proceedings;
- (vii) Preparation of my affidavit in respect of my preliminary investigations into the constructive trust aspect of the MPF Proceeding;
- (viii) Work in respect of who will represent the interests of the FMIF and members in the MPF Proceeding, including:-
 - (A) reviewing correspondence with FTI;
 - (B) assisting my solicitors in the preparation of my affidavit; and
 - (C) making my application for directions with the Court;
- (ix) Reviewing the Amended Statements of Claim and Further Amended Statements of Claim;
- (x) Liaising with my solicitors on the implications of the amendments to the Plaintiff's pleading and consideration of a defence of the Claim.

Claim against LMIM, MPF and Certain LMIM Former Directors

Summary

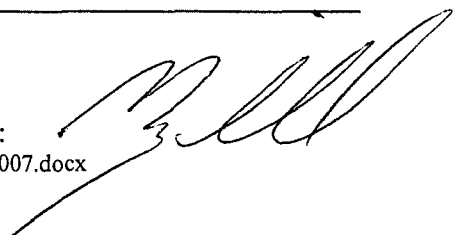
99. A proportion of the "Assets" work has been in respect of the Claim I have filed in Supreme Court of Queensland proceeding number 12317 of 2014 ("the Claim").

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Witnessed by:



100. Work in respect of the Claim is now attributed to the “*Assets*” category, having formerly been charged to the “*Investigations*” category of work. The reason for this move was to reflect that the investigation aspect of the work has come to an end, that the Claim has now been filed and the Claim should therefore be treated as what is considered an asset of the FMIF.
101. I am anticipating a return to investors in the order of \$20 million if the Claim is successful. The Claim, as filed, seeks \$15,546,147.85, plus interest (calculated from 2011).

Background

102. The FMIF has first ranking security over the assets of a borrower, Bellpac Pty Ltd (In Liquidation) (Receivers and Managers Appointed) (“**Bellpac**”).
103. In November 2010, proceedings by Bellpac, LMIM and LMIM’s custodian (PTAL) against Gujarat NRE Minerals Limited (Gujarat) were agreed to be settled at mediation.
104. The MPF funded the majority of the costs of the litigation; the settlement proceeds received in 2011 (totalling approximately \$45.6M), were shared between the funds on the basis of a 65%/35% split.
105. According to the security held by the FMIF and MPF over the property the subject of the litigation, the FMIF held first priority to all of the proceeds of the settlement, and was entitled to all of the settlement proceeds.

Court proceeding history

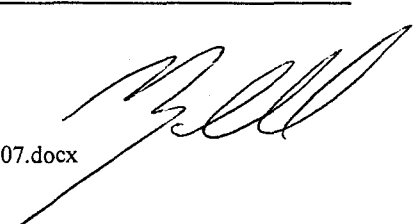
106. On 17 December 2014, I filed a Claim in the Supreme Court of Queensland proceeding number 12317 of 2014 for the loss suffered by the FMIF against LMIM, the trustee of the MPF and six directors and/or former directors (“**Director Defendants**”).

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Witnessed by:



107. On 8 April 2015, Justice Jackson made Orders placing the proceeding on the Commercial List of this Honourable Court.
108. On 30 April 2015, Justice Jackson made Orders in favour of the Director Defendants to lodge limited defences due to certain privileges claimed by them.
109. On 7 May 2015, the Liquidators of LMIM filed an application for directions in Supreme Court of Queensland proceeding number 4526 of 2015. The application sought directions that the liquidators were justified in allowing the Director Defendants to the Claim, access to the books and records of LMIM.
110. On 14 May 2015, Justice Jackson made Orders granting the Director Defendants access to the books and records of LMIM.
111. On 30 June 2015, Justice Jackson made further Orders at a review hearing of the Claim, including:-
 - (a) That, by 14 July 2015, I file and serve an interlocutory application for directions under the Trusts Act that the cause of action against certain parties under the Corporations Act falls within my powers under the Order of my appointment, with such application returnable on 21 July 2015;
 - (b) The parties adopt a proportionate and efficient approach to the management of both paper and electronic documents in the proceeding;
 - (c) By 20 July 2015 the parties are directed to confer and reach agreement, where possible, as to appropriate directions in relation to disclosure of documents in the proceeding; and



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- (d) By 10 August 2015 the parties shall provide to the Court a document plan and proposed directions in relation to disclosure of documents in the proceeding.
112. On 14 July 2015, I filed an application in accordance with paragraph 111(a) above (Document number 56 in BS 12317/14).
113. On 21 July 2015, Justice Jackson made Orders that it was within my power, pursuant to my appointment, to pursue the causes of action, as filed, in the Claim (Document number 70 in BS 12317/14).
114. Prior to 20 July 2015, I caused my solicitors to send to the Defendants the proposed process for which documents were to be exchanged in the discovery process, and a timetable to meet the dates allocated by the Court Order of 30 June 2015.
115. As part of the document plan for discovery of the documents, I proposed to the parties that after I undertake discovery of documents directly relevant to an allegation in issue in the Claim from the LMIM servers, that FTI discover any relevant, permanently deleted emails from the forensic image copy of the LMIM servers ("**Forensic Image Server**") taken by FTI shortly after their appointment as Voluntary Administrators of LMIM in March 2013.
116. FTI resisted this part of the document plan on the basis of the likely cost of the process. As a consequence, and in order to not delay the discovery process, that part of the document plan was removed. However, I reserved the right to seek this disclosure once further investigations were undertaken as to the process and cost of recovering permanently deleted emails from the Forensic Image Server.
117. On 14 August 2015, there was a review of the Claim. Justice Jackson made Orders as per the agreement between the parties, as follows:-



- (a) I am permitted to undertake discovery of all documents of LMIM, the MPF and LMIM for the purposes of the proceeding which is directly relevant to an allegation in issue in the proceedings;
 - (b) Each of the Director Defendants are relieved from making disclosure;
 - (c) The other parties make disclosure and exchange their disclosure in accordance with the Document Plan; and
 - (d) FTI deliver to me its response to my request dated 17 July 2015 for Further and Better Particulars of FTI's defence by 17 August 2015.
118. On my instruction, I caused my solicitors to amend the Statement of Claim on two occasions. These amendments were filed on 14 May 2015 and 17 June 2015 .
119. As at the date of my swearing this affidavit:-
- (a) All of the Defences to the Claim have been filed;
 - (b) I have filed and served Replies to those Defences; and
 - (c) I have filed and served Requests for Further and Better Particulars on the Seventh and Eighth Defendants.

Persons conducting work in the Relevant Period on the Claim

120. In respect of the Claim, the following BRI BDO staff have undertaken work:-
- (a) Myself – Partner;
 - (b) Eric Leeuwendal – Executive Director;
 - (c) Ashleigh Simpson Wade – Supervisor; and
 - (d) Julia Mayne – Accountant II.



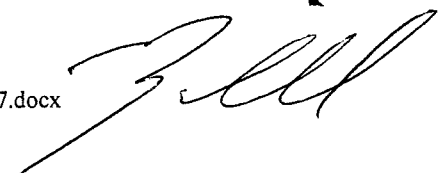
121. Only BDO staff in the BRI practice group have worked (on my instruction) on the Claim.
122. Work undertaken in respect of the Claim was recorded predominantly in the Assets category. As I had considered that the matter had progressed from the investigation stage during the Relevant Period, only minimal time was recorded in the Investigations category of work. Despite being recorded in two categories of work, time spent on the Claim has only been recorded once.

Work in the Relevant Period

123. I set out below the work my staff and I have undertaken in respect of the Claim.
124. In respect of the application filed on 7 May 2015 for directions to permit the Director Defendants access to the LMIM books and records:-
- (a) Reviewing correspondence received from, and draft responses to, the solicitor's for the Defendants to the Claim, in relation to the Director Defendants' access to Bellpac's legal files. Copies of these files, which were in my possession, were provided to FTI and KordaMentha;
 - (b) Reviewing correspondence received from, and draft responses to, FTI regarding whether FTI had a "live" copy of the LM servers to enable the Director Defendants to interrogate those electronic records;
 - (c) Reviewing correspondence received from, and draft responses to, FTI and KordaMentha in respect of the draft orders sought by FTI and the apportionment of the costs of the application to be claimed against the FMIF and the MPF;



- (d) Reviewing correspondence received from, and draft responses to, FTI and KordaMentha as to whether or not it was necessary that I arrange for an appearance on my behalf at the hearing of the application;
125. In respect of the Amended Statement of Claim (“ASOC”) filed on 14 May 2015, work has included:-
- (a) Reviewing the draft ASOC and assisting my solicitors to finalise the ASOC;
- (b) Reviewing correspondence received from, and draft responses to, the solicitors for the Director Defendants and FTI in relation to:-
- (i) issues raised as to parts of the ASOC;
- (ii) FTI’s request to discontinue the proceeding against them; and
- (iii) Counsel’s consideration of those issues.
- (c) Reviewing correspondence received from, and draft responses to, FTI as to possible alternative claims that could be brought by FTI under the Corporations Act in relation to the transaction the subject of the Claim;
- (d) Reviewing correspondence received from, and draft responses to, KordaMentha in relation to filing an amended defence to the ASOC; and
- (e) Reviewing correspondence received from five of the Defendants seeking copies of documents pursuant to Rule 222 of the *Uniform Civil Procedure Rules 1999* (“UCPR”), undertaking searches of the LMIM records and locating and producing the requested documents.
- (f) Investigations and discussions with former directors and employees of LMIM as to whether emails may have been deleted from the LMIM server;



- (g) Enquiries and discussions with a forensic IT expert as to obtaining a forensic image of LMIM's computer servers;
- (h) Liaising with my solicitors in relation to obtaining a copy of the Forensic Image Server, and work including:-
 - (i) Liaising with the BDO forensic unit for assistance to assess the nature of the LMIM servers' image that was obtained from LMA following the Orders of Justice Daubney on 18 December 2014, and 29 January 2015, and investigating the likelihood that permanently deleted emails remained on the Forensic Image; and
 - (ii) Reviewing correspondence received from, and draft responses to, FTI regarding a request to obtain a copy of the Forensic Image to assess and obtain any permanently deleted emails existing in the Forensic Image server;
- (i) Filing the Further Amended Statement of Claim ("FASOC") on 17 June 2015, which included work in relation to:-
 - (i) Liaising with my solicitors on a regular basis;
 - (ii) Reviewing the draft FASOC received from my solicitors;
 - (iii) Reviewing Counsel's amendments, comments and advice as to the FASOC;
 - (iv) Assisting my solicitors to finalise the FASOC, including responding to queries as and when they arose, and performing numerous searches of LMIM records for relevant material;
 - (v) Reviewing correspondence received from one of the Director Defendants pursuant to Rule 222 of the UCPR. And collating and providing such material;

- (vi) Reviewing correspondence received from, and draft responses to one of the Director Defendants pursuant to Rule 444 of the UCPR, and communications with LMIM's former solicitors to assist with locating and producing the material pursuant to the request;
- (j) Assisting my solicitors preparing for the review hearing on 30 June 2015 including:-
 - (i) Regularly liaising with my solicitors;
 - (ii) Reviewing correspondence received from, and draft responses to, FTI and one of the Director Defendants in relation to proposed orders;
 - (iii) Reviewing proposed orders received from each party to the Claim;
 - (iv) Considering, in parallel with my solicitors, the suggested amendments to draft proposed orders received from the Defendants to the Claim; and
 - (v) Reviewing the outcome of the hearing, and the timetable established under the orders to arrange for further steps in the Claim.
- (k) Liaising with my solicitors in relation to the Defences received from the parties to the Claim after being served with the FASOC, and work:-
 - (i) Reviewing the First to Sixth Defendants' Defences, and the Eighth Defendant's Defence received in or around June 2015;
 - (ii) Considering, reviewing and assisting my solicitors in preparation of the draft Replies to the Defences and draft Requests for Further and Better Particulars;
 - (iii) Reviewing LMIM records to locate copies of material to assist in preparation of the above material;

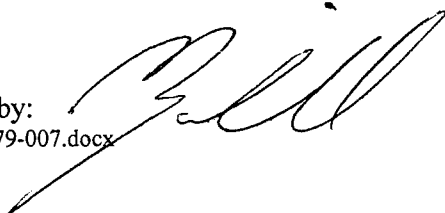
- (iv) Reviewing the Seventh Defendant's Defence received in or around July 2015;
 - (v) Meeting with Counsel, and reviewing and assisting my solicitors in preparation of the proposed Reply to the Defence of the Seventh Defendant and proposed Request for Further and Better Particulars;
 - (vi) Reviewing LMIM records (including hardcopy archive boxes) to respond to queries in relation to the draft Reply and Request for Further and Better Particulars in respect of the Seventh Defendant;
 - (vii) Reviewing LMIM records to locate bank transactions from the Gujarat litigation settlement;
 - (viii) Reviewing and assisting my solicitors to finalise the Sixth Defendants Request for Further and Better Particulars and draft Reply; and
 - (ix) Reviewing the Seventh Defendant's response to the Request for Further and Better Particulars;
 - (x) Meeting with my solicitors and Counsel in relation to a response to the Seventh Defendant as to other investigations undertaken in relation to the Commonwealth Bank of Australia's ("CBA") restrictions on the FMIF between late 2008, and the middle of 2010, and CBA's monitoring of the FMIF's outgoings.
- (l) Liaising with my solicitors regarding correspondence received from, and draft responses to, FTI's claim for costs against KordaMentha and appearing at the hearing of the issue.
- (m) Liaising with my solicitors in relation to my application for directions pursuant to Section 59 of the *Trusts Act* filed on 14 July 2015, and associated work including:-

- (i) Assisting my solicitors to prepare, and reviewing, the draft application, and my draft affidavit in support of that application;
 - (ii) Reviewing LMIM records to respond to my solicitor's queries in respect of matters to include in my draft affidavit;
 - (iii) Reviewing submissions drafted on my behalf for the hearing of the application;
 - (iv) Reviewing submissions received from FTI in respect of the application;
 - (v) Reviewing the orders as made at the hearing.
- (n) In respect of the discovery process work including:-
- (i) Reviewing the LMIM server listings;
 - (ii) Corresponding with former LMIM staff, and IT consultants, in relation to the content and size of the LMIM servers to assist Law in Order (an external provider of legal administrative services) to prepare a quote on the discovery process;
 - (iii) Meeting with Law in Order to discuss the discovery process and formulate a document protocol and document plan;
 - (iv) Reviewing the proposed document protocol and document plan, and assisting my solicitors to finalise those documents;
 - (v) Reviewing correspondence received from, and draft responses to, the Defendants in relation to the document protocol and document plan;
 - (vi) Consideration of which LMIM servers it would be appropriate to interrogate for the discovery process so as to obtain relevant documents and the proprietary file formats of those documents;

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Witnessed by:



- (vii) Reviewing the LMIM data room to ascertain whether the LMIM server hosting the documents was a duplicate of those already contained on the LMIM server system G: Drive;
- (viii) Making enquiries with former LMIM staff in relation to the accounting systems used by LMIM, and the ability to copy, extract and interrogate that data;
- (ix) Considering the proposed categories of discovery;
- (x) Considering the key words and strings to be used to interrogate the relevant LMIM servers for discovery;
- (xi) Reviewing correspondence received from, and draft responses to, the Defendants in relation to the document categories and key words and string searches;
- (xii) Reviewing instructions from Law in Order to the engaged IT consultant;
- (xiii) Liaising with the IT consultant, and our solicitors, in relation to instructions to Law in Order and reviewing and amending those instructions;
- (xiv) Obtaining quotes from Law in Order by providing copies of relevant servers;
- (xv) Communicating with the IT consultant regarding:-
 - (A) the scope of the work, work orders and payment of invoices;
 - (B) updates on progress of copying of the servers; and
 - (C) resolving issues in the process of copying the servers.

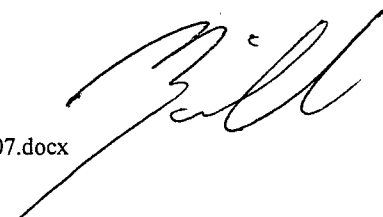
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Witnessed by:



- (xvi) Reviewing LMIM archive records listings, identifying archive boxes for review, arranging retrieval of the boxes identified, reviewing the archive boxes and assessing whether documents therein are potentially relevant to an allegation in issue in the Claim, and arranging for delivery of the identified material to my solicitors;
 - (xvii) Reviewing hard copy and electronic records to identify potentially relevant material;
 - (xviii) Communicating with my solicitors to prepare for the review hearing on 14 August 2015, including reviewing draft orders and submissions.
 - (xix) Reviewing correspondence received from, and draft responses to, FTI in relation to the discovery process, document protocol and timetable for discovery;
 - (xx) Reviewing quotes from Law in Order and liaising with my solicitors as to the extent of LMIM servers that would be interrogated for the purposes of complying with disclosure in accordance with the orders made 14 August 2015.
- (o) Undertaking discovery in relation to the Bellpac loan transactions including:-
- (i) Reviewing various spreadsheets prepared by LMIM personnel detailing the MPF litigation funding for the Gujarat litigation;
 - (ii) Reviewing and analysing LMIMs Composer loan module system records. This involved obtaining copies of source documents supporting the Bellpac loan transaction drawings (being relevant to an allegation in issue in the Claim);
 - (iii) Liaising with the Bellpac Liquidator, Bellpac Receivers and Allens Lawyers to obtain further documentation and explanations regarding the drawings recorded against the Bellpac loan;



- (iv) Reviewing and analysing the documents provided by the Bellpac Liquidator, Bellpac Receivers and Allens Lawyers;
- (v) Reviewing LMIM email records as to the drawings on the Bellpac loan;
- (vi) Reconciling the Gujarat litigation funding schedule produced by the Seventh Defendant as against the Composer Bellpac loan transactions and the most recent version of the Gujarat litigation funding schedule prepared by LMIM;
- (vii) Preparing a schedule assessing the source documents for the drawings against the Bellpac loan and assessing the Gujarat litigation funding;
- (viii) Liaising with our solicitors in respect of foreshadowed security for costs applications raised by certain Defendants. This also involved:-
 - (A) Reviewing correspondence from FTI raising the issue of security for costs;
 - (B) Communicating with my solicitors as to obtaining the allocation of funds for security for costs and advice as to privilege issues;
 - (C) Communicating with McGrathNicol as to privilege issues;
 - (D) Preparing a formal request for the release of the funds for security for costs; and
 - (E) Communicating with my solicitors as to the receipt and deposit of the security for costs funds, and proposed correspondence to Defendants.



\$2 million of Wollongong Coal Ltd (“WCL”) - Convertible Bonds

Background

126. The FMIF has a first ranking security over the assets of a borrower from the FMIF, Bellpac.
127. In August 2008, \$10 million of Bonds were issued by WCL to Bellpac. These Bonds were then transferred to another party, who further transferred the Bonds to other parties.
128. The proceedings by Bellpac, and its Liquidators, in regard to \$2 million Bonds commenced in, or around, January 2010 (“the **\$2M Proceeding**”).
129. On 30 September 2011, the Honourable Justice Emmett of the Federal Court of Australia ordered that Bellpac was the true owner of the Bonds (Warner v Hung; Re Bellpac Pty Ltd (Receivers and Managers appointed) (in liquidation) (2001) 297 ALR 56).
130. On 17 May 2013, the Full Court of the Federal Court dismissed the appeal in relation to that primary decision, and upheld Bellpac to be the true owner of the Bonds (Hung v Warner; Re Bellpac Pty Ltd (Receivers and Managers appointed)(in liquidation) [2013] FCAFC 48).
131. I am informed by the Liquidator of Bellpac, and believe that:-
 - (a) After WCL failed to convert the Bonds into shares, the Liquidator of Bellpac applied to enforce the terms of the bonds and demanded that WCL redeem the bonds for their face value being \$2 million plus interest.
 - (b) The Liquidators then served a creditor’s statutory demand on WCL for \$2.9 million, being the face value of the bonds, plus interest.



- (c) In May 2015, the Liquidator of Bellpac negotiated a settlement with WCL to set aside the creditor's statutory demand, on the basis that WCL pays the Liquidators \$2 million over a period of twelve months (with a bank guarantee as partial security).
 - (d) Following several amendments to the Deed in respect of the agreement, the Liquidator has now received \$1.5 million following three instalment payments, with the final instalment to be paid on 21 December 2015.
132. As the FMIF will be the beneficiary of the funds recovered from the \$2 million Bonds (after costs), the FMIF is funding the Liquidator of Bellpac's care and preservation costs of realising the Bonds, for the benefit of investors.
133. Under the funding agreement with the Liquidator of Bellpac, he is entitled to priority for care, preservation and realisation costs from the proceeds of realisation of the Bonds.

Work in the Relevant Period

134. My staff and I have undertaken the following work in respect of this proceeding:-
- (a) Liaising with the Liquidator of Bellpac in relation to each aspect of the developments in the court proceeding, including:-
 - (i) Reviewing, considering and analysing the terms of the first settlement deed with WCL, and subsequent variations to the settlement deed;
 - (ii) Obtaining updates from the Liquidator of Bellpac on developments as to WCL's compliance with the settlement deed and variations;

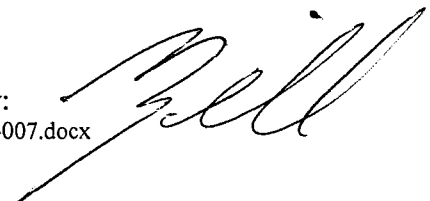
- (iii) Assessing recommendations provided by the Liquidator of Bellpac to me; and
 - (iv) Liaising with the Liquidator of Bellpac on the funding of the proceeding and the Liquidator of Bellpac's own care and preservations costs.
- (b) Providing regular updates on the progress of the settlement to the DB Receivers and KordaMentha.

\$8 million of WCL Convertible Bonds

Background

135. I am informed by the Liquidator of Bellpac, and believe, that:-

- (a) On or about July 2012, the Liquidators of Bellpac commenced proceedings in Federal Court of Australia proceeding number NSD1063/2012 ("the **\$8M Proceeding**");
- (b) The \$8M Proceeding is a claim that Bellpac is the true owner of the \$8 million Bonds transferred by WCL;
- (c) The trial of the \$8M Proceeding was heard over four days, from 9 March 2015 to 12 March 2015. The decision was reserved.
- (d) On 18 September 2015, the Honourable Justice Griffiths found that Bellpac was the true owner of the \$8 million Bonds.
- (e) Submissions were filed with the Federal Court to give effect to the judgment, including:-
 - (i) Declarations that Bellpac is the true owner of the Bonds;
 - (ii) Declarations that the Defendants deliver up the original Bonds to the Liquidator of Bellpac;



- (iii) Orders that WCL rectify its register of bondholders to reflect Bellpac as the owner of the Bonds; and
- (iv) Orders as to costs payable by the Defendants in favour of Bellpac.
- (f) Once the Orders are made, the Liquidator of Bellpac intends to serve notices on WCL at the earliest opportunity to convert the Bonds to shares, or, if there is again a failure by WCL to issue shares (as happened with the \$2M Proceeding), seek redemption of the Bonds for cash.

Work in the Relevant Period

136. My staff and I have undertaken the following work in respect of the \$8M Proceeding:-

- (a) Liaising with the Liquidator of Bellpac in relation to each aspect of the above developments including:-
 - (i) Reviewing and considering the judgment and the terms of the proposed Orders to give effect to the judgment;
 - (ii) Reviewing submissions as to costs;
 - (iii) Obtaining updates from the Liquidator of Bellpac as to the filing and publication of any proposed orders and assessing the Liquidator of Bellpac's recommendations;
 - (iv) Funding of the legal costs and his own care and preservation costs;
 - (v) Providing regular updates on the progress of the \$8M proceeding to the DB Receivers and KordaMentha.



Claim against a quantity surveyor

137. On or about late February 2015, in agreement with the DB Receivers, I now have conduct of the claim in Supreme Court of New South Wales proceeding number 2013/362563.

Background

138. Expert evidence has been submitted by both parties and a mediation was held in June 2015 in Sydney. The matter was not settled at mediation.

139. The parties filed a joint expert report on 29 September 2015.

140. The report concludes that the quantity surveyor overvalued the progress claims by \$2.1M (excluding interest).

141. The matter went to trial on 2 November 2015 however, it has been adjourned to 9 December 2015 with a review hearing prior to that time.

142. During the Relevant Period, my staff and I undertook work:-

- (a) Preparing for the mediation;
- (b) My attendance at the mediation on 10 June 2015 for one full day;
- (c) Reviewing and considering the joint expert report;
- (d) Reviewing correspondence between the parties to the proceeding;
- (e) Reviewing outlines of submissions, the transcripts of the trial and reports from my solicitors as to the progress of the trial.

Western Union

143. Based on investigations undertaken in the period of my previous remuneration application, it appeared to me that a number of payments in



respect of capital distributions to overseas investors in the FMIF (on, or about, March 2013) were retained by Western Union.

144. In the Relevant Period, my staff and I conducted further investigations which revealed that this view was not correct. Rather, the balance of funds held in the FMIF's account with Western Union was as a result of payments returned to the account due to investor details not being up to date.
145. Accordingly, I have demanded the repayment of \$93,340.74, plus interest, representing the balance held in FMIF's account with Western Union.
146. During the Relevant Period, my staff and I, in addition to the investigations crystallising the position of the funds held by Western Union, undertook work:-
 - (a) Reviewing and reconciling Western Union accounts;
 - (b) Reviewing and considering the facility agreement with Western Union and their purported set-off claim;
 - (c) Liaising with a former employee in relation to the Western Union facility agreement and accounts;
 - (d) Briefing my solicitors in relation to the Western Union facility agreement and accounts; and
 - (e) Liaising with my solicitors, and providing instructions to demand repayment of the balance of monies held in the FMIF's Western Union account.

Part 8

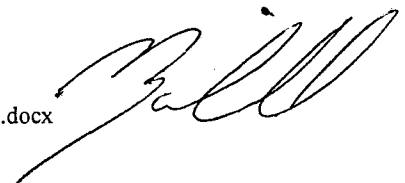
Investigations

147. 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*".

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Witnessed by:



148. This category relates to work undertaken in pursuit of my investigations, which may result in legal proceedings. Once a proceeding is started, time is then recorded and allocated to the "Assets" category of work. My investigations to date relate to the following categories of matters:-

- (a) Public Examinations;
- (b) LM Administration Pty Ltd (In Liquidation)('LMA')/Director related claims;
- (c) Potential claim against former auditors;
- (d) External valuations; and
- (e) Distributions to Class B unit holders.

149. In total,\$1,267,929.50 of remuneration is sought for approval in respect of the "Investigations" category.

150. The remuneration claimed for pursuing investigations during the Relevant Period relates to the following work as summarised below, and divided into investigations relating to discrete proceedings.

151. All of this work was necessary for the winding up of the FMIF in accordance with its constitution. The work undertaken was necessary, and undertaken with a view to investigating matters which, if commercially viable to pursue, would result in a return to the members of the FMIF.

Public Examinations

Summary

152. A considerable proportion of the "Investigations" work has been in respect of the PEs.



Background

153. As a result of my review of the financial statements of the FMIF and the audit reports prepared by Ernst & Young (“EY”), for the financial years ending 30 June 2008 to 30 June 2012 (“**Financial Periods**”), I identified a number of issues concerning the financial transactions and financial affairs of the FMIF, and the audits carried out by EY. In my view, these issues warranted further investigation. Those investigations would inform whether or not any claims were available arising out of financial transactions of the FMIF and audits of the FMIF, and, if so, whether it is in the best interests of members of the FMIF for any such claim to be brought.
154. My investigations and interrogation of the books and records of the FMIF revealed that:-
- (a) The FMIF had a loan book as at 30 June 2008 with a gross value of \$604 million. Most of the loans were to property developers and secured by mortgages over real property;
 - (b) During the financial years ended 30 June 2008, 30 June 2009 and 30 June 2010, loan impairment provisions as a percentage of gross loans were less than 1%; and
 - (c) By 30 June 2012, the loan book had a gross value of \$467.5 million, and a 21% loan impairment provision.
155. After I caused to be prepared management accounts for the FMIF for the year ended 30 June 2013, it was revealed that the gross loan book value was \$415.4 million, and had a 76% impairment provision totalling \$315 million raised against the loan book.
156. On or about December 2013, EY declined to provide me with their working papers for the Financial Periods.

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Witnessed by:



157. Soon thereafter, I sought from ASIC, and obtained, eligible applicant status to make application for a public examination to summons the production of EY's working papers, and to examine EY auditors, and certain former and current directors of LMIM ("**Director Examinees**").

Court proceedings

158. On 17 November 2014, I filed an application in the Supreme Court of Queensland proceeding number 10709 of 2014 to summons certain people for public examination.
159. On 6 March 2015, the former auditors at EY filed an application in Court to discharge the summonses against them, and to defer the production of the documents to a date following the hearing.
160. On 16 March 2015, the Director Examinees and former auditors produced a small quantity of documents.
161. On 15 May 2015, the Honourable Justice Burns made orders dismissing the application by the former auditors.
162. Between 15 June 2015 and 26 June 2015, the Director Examinees and auditors were examined under oath ("**the June PE**").
163. The production of documents pursuant to the summonses by the former auditors remained incomplete. I sought further documents from the former auditors (mainly emails) and they agreed to provide the documents in three tranches, with the final tranche due by 29 August 2015.
164. The transcripts from the June PE were sent to the examinees for review and confirmation. As at the date of swearing this affidavit, the transcripts from the June examinations have been signed by the examinees:
165. Soon thereafter, I made application to the Court to examine three further persons as follows:



- (a) Alexander David Monaghan, who was a former commercial manager;
 - (b) Shelley Chalmers, who was a former paralegal officer for LMIM; and
 - (c) Angelo Venardos, who was a former chairperson for LMIM's compliance committee.
166. On 24 September 2015, the Honourable Justice Ann Lyons made Orders granting my application, and summonses were issued for the additional examinees soon thereafter.
167. On 19 October 2015 the PEs continued, concluding on 29 October 2015 ("the **October PE**"). The three individuals named at paragraph 165 above were examined under oath.
168. As at the date of swearing this affidavit, the transcripts of the October 2015 PE have not been signed by the examinees.

Persons conducting the work

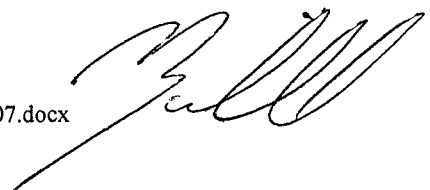
169. In respect of the PEs, the following BDO staff were involved in the work undertaken:-
- (a) BRI Team:
 - (i) Myself – Partner;
 - (ii) Eric Leeuwendal – Executive Director;
 - (iii) Alastair Raphael – Senior Manager;
 - (iv) Ashleigh Simpson-Wade – Supervisor; and
 - (v) Samantha Brown – Accountant II.
 - (b) Audit team:-

- (i) Clark Jarrold – Partner;
 - (ii) Craig Jenkins – Partner;
 - (iii) Tim Mann – Associate Director;
 - (iv) Julie Pagcu – Senior Manager;
 - (v) Brooke Streidl – Team Assistant;
 - (vi) Sarah May – Supervisor;
 - (vii) Selina Leung – Supervisor;
 - (viii) Clare Coyle – Senior Accountant 1;
 - (ix) Lisa Fishwick – Team Assistant; and
 - (x) Emma Sheahy – Junior Practice Assistant
- (c) Corporate Finance Team:-
- (i) Margaux Beauchamp Associate Director;
 - (ii) Chris Catanzaro – Associate Director.

BRI: Summary of work in the Relevant Period

170. By way of summary, in the Relevant Period, the BRI members of my team and I, undertook the following work in relation to the PEs:-

- (a) Co-ordinated the preparation for the PEs;
- (b) Liaised with my solicitors and Counsel (Queen's Counsel) to prepare for the PEs;
- (c) Reviewed the FMIF loan book, and selected a quantity of loans for investigation. The loans selected, as at 30 June 2008, had a gross loan



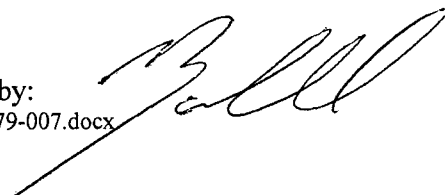
value of \$289 million and represented a majority of the loans where significant losses were incurred or expected;

- (d) Reviewed the selected loan files to gain an understanding of the history of those loans and prepared detailed loan chronologies. These loans had a number of valuations throughout the course of each respective loan. There were also a number of loan variations over the terms of the loans;
- (e) Reviewed the FMIF's audit work papers for each Financial Period over the relevant period of the loans;
- (f) Reviewed EY's work papers for each of the selected loans, and for each financial period;
- (g) Reviewed documents produced by examinees;
- (h) Prepared briefs to Counsel for advice as to:-
 - (i) the impairment assessments for each Financial Period of the underlying security of the Bellpac loan;
 - (ii) the circumstances surrounding the funding of the litigation against Gujarat NRE Minerals;
 - (iii) the related party dealings and split of the litigation settlement proceeds; and
 - (iv) the distributions and redemptions involving the Feeder Funds.
- (i) Prepared additional briefs and questions for Counsel for two further examinees summoned to be examined in October 2015;
- (j) Prepared questions to be put to the examinees for Counsel;

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Witnessed by:



- (k) Assisted the BDO audit team to review and finalise loan reviews, and locate and access certain of the FMIF's books and records for inclusion in the briefs to Counsel; and
- (l) Prepared a summary schedule of all selected loans.

Audit: Summary of work in the Relevant Period

171. By way of summary, in the Relevant Period, the Audit team undertook the following work in relation to the PEs:-

- (a) Co-ordinated the investigation of the FMIF's financial and compliance plan audits, EY's work papers and the FMIF's audit work papers;
- (b) Researched applicable statutory provisions, accounting and auditing standards over the Financial Periods;
- (c) Researched applicable ASIC regulatory guides during the Financial Periods;
- (d) Reviewed the Fund's constitution, compliance plan, policies and procedures, product disclosure statements, regulatory guide disclosures to investors and changes to these documents prior to and during the Financial Periods;
- (e) Researched financial statements of real estate investment trusts and comparable mortgage investment schemes to gather information about the timing of recognition of impairment of assets by other funds in the industry during the Financial Periods;
- (f) Prepared substantial briefs to Counsel in relation to:-
 - (i) the financial audits of the FMIF; and
 - (ii) the Compliance Plan audits of the FMIF;

- (g) Prepared 11 substantial subsidiary briefs to Counsel on selected loans covering each Financial Period (totalling some 2,460 pages);
- (h) Assisted in the finalisation of additional briefs prepared by the BRI team for Counsel;
- (i) Assisted Counsel in the day to day conduct of the PEs;
- (j) Reviewed the tranches of EY's work papers, compiled documents into categories to enable the audits to be understood, copied relevant documents and prepared files for each financial period and for each selected loan file for each Financial Period;
- (k) Compiled the necessary evidence to be referred to by Counsel for the PEs, including all material supporting the two major briefs; and
- (l) Conducted testing of compliance by the FMIF with approved loan to valuation ratios.

Corporate Finance: Summary of work in the Relevant Period

172. By way of summary, in the Relevant Period, the Corporate Finance team, undertook the following work in relation to the PEs:-

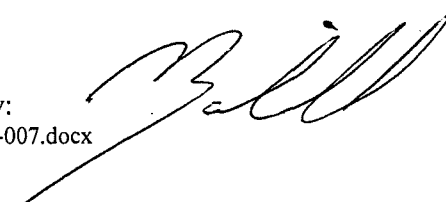
- (a) Reviewed loan chronologies prepared for selected loans where the value of the underlying security was calculated by reference to discounted cash flow analysis;
- (b) Prepared critical assessments of the internal discounted cashflow analysis prepared by LMIM's staff; and
- (c) Supported the BDO audit team to complete certain loan reviews.

Tasks in respect of each PE period

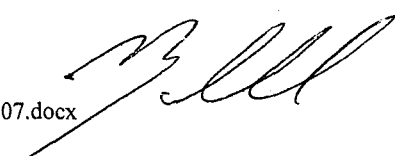
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Witnessed by:



173. In early May 2015, I received the second tranche of EY's working papers. The second tranche contained hard copy work papers that were, what appeared to me to be, photocopies of electronic files. There was no discernible order or categorisation of the work papers, and the work papers did not correlate to a specific financial period.
174. The BDO staff under my direction, and I, undertook the following work in respect of the PE held from 15 June 2015 to 26 June 2015:-
- (a) Reviewing four boxes of unorganised hard copy documents;
 - (b) Assessing and sorting those documents into specific audit categories for each financial year under review and specific loan file documents under review;
 - (c) Copying relevant documents from the working papers and setting up specific files for each financial year and half-year from 1 July 2007 to 30 June 2012 (a total of 10 discrete 'Financial Periods');
 - (d) Reviewing the laptop containing EY's electronic work papers for each of the 10 Financial Periods (half and full financial years). As the encryption of the laptop prevented any printing, access to the hard drive or the ability to download documents and information, it was necessary to:
 - (i) take photographs of the relevant documents appearing on the computer screen for the briefs; and
 - (ii) as there were not hard copies of all the electronic documents contained on the laptop, this single laptop had to be shared amongst our team.
 - (e) Correspondence with my solicitors to discuss my legal position in regard to, what I considered as, the inadequate provision of work



papers by EY, and the delay caused by having a single, encrypted laptop.

- (f) Arrangements to return the laptop to EY so as to upload missing data and receive a further encrypted laptop;
- (g) Reviewing additional documents received from EY (further to the two tranches of material received). These documents needed to be sorted, copied and considered in preparation for the PEs;
- (h) Reviewing two further boxes of documents produced by the Director Examinees, to assess whether the documents were relevant for the purposes of the PEs;
- (i) Reviewing the EY work papers in respect of the EY auditor's approach to the financial audit program for the FMIF, and EY's Gamx software system (the operating tool used to conduct the audits of the FMIF for the Financial Periods);
- (j) Researching accounting and auditing standards in respect of the approach undertaken by LMIM (as Responsible Entity of the FMIF), and those standards accepted by EY in the assessment of impairment of the FMIF's loan book;
- (k) Reviewing the FMIF's constitution, compliance plan, policies and procedures, Product Disclosure Statements and any amendments to these documents, prior to, and during, the Financial Periods;
- (l) Reviewing regulatory guide disclosures to investors and any updates to those disclosures during the Financial Periods;
- (m) Preparing a brief to Counsel in relation to the financial audits. The brief included material in respect of the statutory provisions relevant to the financial audits, the relevant auditing and accounting standards,

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observations of my staff and I in respect of EY working papers and proposed questions for the examinees;

- (n) Reviewing the hard copy EY working papers to analyse each loan selected for investigation and its treatment in each Financial Period;
- (o) Reviewing the laptop provided by EY for additional documents relating to the selected loans in each Financial Period;
- (p) Reviewing the general EY working papers where references appear to any of the selected loans for each Financial Period. This included reviews of:-
 - (i) Valuations;
 - (ii) External consultant reports; and
 - (iii) Other supporting documents relied on by the RE and EY during each of the Financial Periods to assess impairment of the loans.
- (q) Reviewing the LMIM records in relation to related party dealings and arrears management processes;
- (r) Preparing observations for Counsel in relation to:-
 - (i) The information gathered for each selected loan; and
 - (ii) Compliance with the Corporations Act, and applicable accounting standards for each Financial Period;
- (s) Preparing a detailed loan review for briefing Counsel in relation to nine of the selected loans;
- (t) Attending meetings with my solicitors and Counsel in regard to the planning and preparation for the PE;

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Witnessed by:



- (u) Attending to enquiries by Counsel and my solicitors as to certain aspects of material provided to Counsel;
- (v) Researching comparable industry information in relation to the impact of the global financial crisis;
- (w) Reviewing reported financial information from comparable property funds and undertaking an analysis of the recognition and timing of impairment on other property fund assets over the Financial Periods in order to compare to the FMIF;
- (x) Liaising with my solicitors as to the timing and order of the persons to be examined and related correspondence with the examinees' solicitors;
- (y) Attending the PE to assist Counsel and my solicitors. At the request of Counsel, both Craig Jenkins and Clark Jarrold (partners in the Audit team at BDO) attended the PE to assist Counsel with the day-to-day conduct of the PE. Craig Jenkins is a registered auditor and has specialised experience and knowledge in relation to audits of mortgage investment funds. Clark Jarrold is a former registered auditor, who now specialises in financial reporting and accounting advisory services, and provided advice on the application of Accounting Standards. I also intermittently attended the PEs. However, this time was limited and only when I considered it was necessary;
- (z) Reviewing the transcripts from the PE.

175. The BDO staff under my direction, and I, undertook the following work in respect of the PE that took place between 19 October 2015 and 29 October 2015:-

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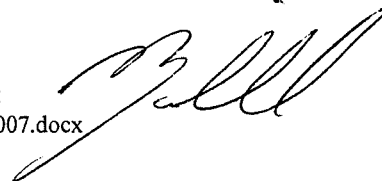
Witnessed by:



- (a) Liaising with my solicitors to obtain the emails that formed part of EY's working papers. This also involved corresponding with the solicitors for EY as to:-
 - (i) an acceptable electronic medium to enable the searching of those emails; and
 - (ii) the timing of producing the email tranches so as to review them in preparation for the PE;
- (b) Work in respect of the emails (mentioned above) including:-
 - (i) Key word searches of the initial electronic email tranches received;
 - (ii) Liaising with my solicitors in regard to undertaking an analysis of email tranches received to report on the number of hits of selected key words, considering and agreeing as to refined key word searches;
 - (iii) Reviewing the email pages that were identified following the key word searches; and
 - (iv) Assessing whether the emails identified and reviewed were relevant to the investigations in respect of the selected loans for inclusion in briefing Counsel.

This work was further complicated because:-

- (v) The emails that were received from EY were in an alternative medium that did not retain the email in its original form, nor have any discernible order to expedite my review;
- (vi) The manner in which the emails were received from EY inhibited my staff and I assessing the nature of the flow of



communications, and individual emails' relevance to the auditing process utilised by EY; and

- (vii) The email tranches were not all received on the agreed dates. The majority of the emails were received in the last tranche on 18 September 2015, and contained over 5,700 pages.
- (c) Reviewing the EY work papers as to their approach to the compliance plan audit program for the FMIF and EY's Gamx software system;
- (d) Liaising with my solicitors on the timing and order of the persons to be examined, and reviewing correspondence with the Court and examinees' solicitors in relation to the availability and the order of examinations;
- (e) Liaising with my solicitors as to the progress of the PEs and examinees;
- (f) Reviewing LMIM records to:-
 - (i) analyse the relevant background of proposed examinees;
 - (ii) the proposed examinees role within LMIM;
 - (iii) his or her involvement in the compliance of the FMIF to auditing standards; and
 - (iv) his or her involvement in relevant committees concerning the FMIF.
- (g) Reviewing LMIM records to prepare for Counsel a chart of the committees appearing in the compliance plan, and the respective members of each of those committees;
- (h) Attending meetings with my solicitors and Counsel in regard to the planning and preparation for the PE;

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Witnessed by:



- (i) Attending to enquiries by Counsel as to aspects of the material provided to Counsel, as and when, those queries arose;
- (j) Researching applicable accounting and auditing standards, and relevant statutory provisions in relation to the treatment of those standards and provisions by LMIM (as RE of the FMIF), which were accepted by EY during the assessment of LMIM's compliance with the compliance plans for the Financial Periods;
- (k) Reviewing the FMIF's constitution, compliance plan, policies and procedures, Product Disclosure Statements and any amendments to these documents, prior to, and during, the Financial Periods;
- (l) Reviewing regulatory guide disclosures to investors and updates to those disclosures during the Financial Periods;
- (m) Prepared further material for Counsel in relation to the compliance plan audits. This material set out the relevant statutory provisions, the relevant auditing and accounting standards, observations by my staff and I as to our review of the EY working papers, and proposed questions for the examinees;
- (n) Reviewing, in relation to the Relevant Periods, related party transactions. This included transactions with respect to pre-paid management fees, loan recovery costs, distributions and redemptions of units held in the FMIF by the Feeder Funds;
- (o) Preparing supplementary material for Counsel in relation to loan recovery costs;
- (p) Reviewing material prepared by my solicitors in relation to the related party transactions with the FMIF Feeder Funds;



- (q) Reviewing the RE's (LMIM's) compliance framework relative to the FMIF, the RE's compliance programs, and determinations by the compliance committee in relation to the FMIF;
- (r) Reviewing the FMIF loan book to select further loans for review. These further selected loans concentrated on loans where discounted cash flow analyses had been performed by LMIM staff, and relied upon, in assessing the value of the underlying security of the loans;
- (s) Conferring with my solicitors in relation to the further relevant loans identified, and selection of three of those loans for examination at the PE;
- (t) Undertaking a review of the EY working papers for each Financial Period on the selected loans;
- (u) Reviewing the EY laptop for additional relevant documents for each Financial Period;
- (v) Reviewing the general EY working papers where reference is made to that loan for each Financial Period. This work included a review of valuations, external consultant reports and other supporting documents relied on by the LMIM (as RE of the FMIF) and EY during each of the Financial Periods to assess impairment of the loans;
- (w) Preparing observations for inclusion in the material to Counsel in relation to:-
 - (i) The information gathered for each selected loan; and
 - (ii) Compliance with the Corporations Act, and applicable accounting standards for each Financial Period;
- (x) Summarising information and preparing a detailed loan review (for each selected loan) for inclusion in briefing Counsel;

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Witnessed by:



- (y) Reviewing LMIM records to create schedules of valuations over each Financial Period in relation to the selected loans;
- (z) Preparing a summary schedule of the selected loans;
- (aa) Reviewing the information obtained from the June PE and preparing further material for Counsel in respect of the two examinees in the October Examinations;
- (bb) Attending the PE to assist Counsel. At the request of Counsel, both Craig Jenkins and Clark Jarrold attended the PE to assist Counsel with the day to day conduct of the examinations.

Estimate of the possible return to members as a result of PE

- 176. On 2 March 2015, I caused to be filed a Claim in Supreme Court of Queensland proceeding number 2166 of 2015 to preserve any potential actions I, on behalf of the FMIF, may pursue against the auditors of the FMIF, EY ("the Auditor Proceeding").
- 177. On 12 June 2015 I caused my solicitors to amend the Statement of Claim in the Auditor Proceeding.
- 178. The Auditor Proceeding does not quantify the amount of the Claim, as, at that time, I had not obtained EY's working papers, and the PE of the EY auditors and Director Defendants had not yet commenced.
- 179. During the Relevant Period, considerable work was undertaken by the BRI and Audit team:
 - (a) in the preparation and finalisation of the Amended Statement of Claim; and
 - (b) liaising with our solicitors in respect of the Amended Statement of Claim



180. Once I have assessed all of the information obtained from the PEs, and conferred with both Counsel and my solicitors, I expect that a substantial claim will be pursued against EY.

LM Administration Pty Ltd (In Liquidation) ('LMA')/Director related claims

181. During the Relevant Period, I continued to investigate the following matters:-

- (a) Management Service Agreements with LMA;
- (b) Changes to the Constitution; and
- (c) Fund Valuation Policy.

182. As part of my investigations for the PEs, my staff and I have reviewed the above issues as they relate to the financial statements and compliance plan audits.

183. Subject to the outcome and advice received following the PEs, I intend to assess what claims, if any, may arise against certain parties in respect of those matters, and whether any such claims would benefit the members of the FMIF.

Distribution to Class B Unit Holders

184. During the financial year ended 30 June 2012, distributions of approximately \$16.9 million were made to Class B unit holders in the FMIF. At this time, Class A and Class C unit holders did not receive a distribution (other than any hardship distributions as requested from time to time).

185. As a result of the distribution and reinvestment of a major portion of that distribution into units in FMIF, Class B unit holders increased their units in the FMIF from 44.33% to 46.14%.



186. As a result of my investigations above, in the Relevant Period, I have undertaken further investigations into the redemption of units permitted by LMIM at a time when the FMIF had suspended redemptions.

187. Subject to the outcome and advice received following the recent PEs, I will assess what claims may arise against certain parties, and whether any such claims would benefit the members of the FMIF.

External Valuations

188. During the Relevant Period, I continued to review the loans of the FMIF where material losses occurred and:-

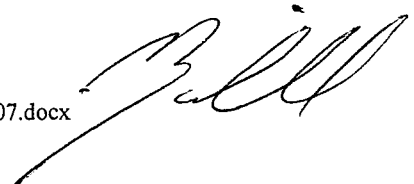
- (a) I engaged an expert valuer to review three professional valuations relied on by the RE;
- (b) I reviewed and considered the first report provided by the valuer; and
- (c) I am awaiting his two final reports before I can consider what claims may arise against certain parties, and whether any such claims would benefit the members of the FMIF.

Part 9

Trade on

189. Generally, work is considered to be "*Trade-on*" if the work is considered to be incidental to the winding up. During the Relevant Period, work attributed to this category included:-

- (a) Preparation of unaudited management accounts for the year ended 30 June 2015 (detailed further at paragraphs 191 to 193 below);
- (b) Acting as Respondent to the Residual Powers Proceeding;

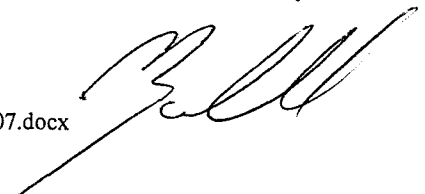


- (c) Reviewing and approving the payment of expenses and issuing payment requisitions and supporting documentation to the DB Receivers for review and final approval;
- (d) Maintenance of the Microsoft AX finance database. This involved accounting for receipts and payments, accounting for asset sales, reconciling bank accounts and 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 and processing month end, half-year end and year end adjustments;
- (f) Conducting internal meetings to discuss job management issues including:-
 - (i) Maintenance of accounts and preparation of the management accounts for the year ending 30 June 2015;
 - (ii) Status of asset realisations and strategies;
 - (iii) The Residual Powers Proceeding judgment; and
 - (iv) Investor issues including content for my regular reports to members, status of investigations, creditor claims and my application for approval of remuneration;
- (g) Reviewing and updating the DB Receiver's cashflow forecasts following realisation of FMIF assets;
- (h) Meeting with members of the BDO Audit practice group regarding the preparation of the management accounts as at 30 June 2015;

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Witnessed by:



- (i) Preparing an application to ASIC for relief from the requirement to prepare audited financial statements and liaising with ASIC as to the progress of that application; and
 - (j) Meetings with the DB Receivers and their staff regarding the continuing appointment of the DB Receivers and operating matters;
190. In total, \$229,022.00 (exclusive of GST) of remuneration is sought for approval in respect of the “Trade on” category.

Management Accounts

191. Although the unaudited management accounts for the year ending 30 June 2015 were not finalised and distributed to members until after the Relevant Period, during the Relevant Period, my staff and I worked extensively on their preparation. Exhibited hereto and marked “DW-32” is a copy of the letter to members dated 19 November 2015 enclosing the unaudited management accounts for the year ending 30 June 2015.
192. During the Relevant Period, my staff and I have undertaken the following tasks in respect of completing the management accounts for the year ending 30 June 2015:-
- (a) Reviewing work papers to verify the accuracy of the management accounts;
 - (b) Preparing summaries for the valuation of each of the assets which are expected to sell within twelve months of the accounts, and those that are expected to take longer than twelve months;
 - (c) Calculating the selling, statutory and holding costs for each of the assets and adjust the value to take into account these costs;



- (d) Liaising with the Liquidators of LMIM and the DB Receivers to ascertain amounts that are claimed to remain owing to them, including their legal costs, as at 30 June 2015;
- (e) Preparing a summary of loan reductions and drawdowns to calculate the movement in loans in default;
- (f) Calculating the net assets attributable to unitholders, movement in default loans, receivables and related party transactions;
- (g) Preparing a summary of invoices:-
 - (i) either paid after the year end; or
 - (ii) remaining to be paid, which relate to work incurred in the financial year ending 30 June 2015,to determine the accrued expenses;
- (h) Calculating provisions for each loan account and updating the loan spreadsheet;
- (i) Preparing a trial balance, and processing the:-
 - (i) Accrued expense journals;
 - (ii) Impairments journals;
 - (iii) Bank transaction journals;
 - (iv) Write off journals; and
 - (v) Relevant expenses and income journals;
- (j) Preparing work papers to support the notes to the accounts, including, but not limited to, noting the movement in impairments as between the periods 31 December 2014 and 30 June 2015;

- (k) Preparing the management accounts report for distribution to members, which includes:-
 - (i) a statement of comprehensive income;
 - (ii) a statement of financial position;
 - (iii) a statement of changes in net assets attributable to unitholders;
and
 - (iv) notes to the accounts.
- (l) Liaising with the BDO Audit practice group regarding movements in asset values, provisions and default loans between 31 December 2014 and 30 June 2015;
- (m) Reviewing and amending the trial balance in respect to changes required by BDO Audit;
- (n) Reviewing and amending financial statements in respect to changes required by the BDO Audit practice group;
- (o) Reviewing and considering disclosure requirements with reference to Australian Accounting Standards; and
- (p) Reviewing and amending the management accounts and notes in accordance with Australian Accounting Standards.

193. 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.


Responding to FTI applications

Residual Powers proceeding

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Witnessed by:



Background

194. On 8 April 2015, John Park and Ginette Muller, as liquidators of the RE of the FMIF, filed an application in this Honourable Court in Supreme Court proceeding number 3508 of 2015, seeking directions as to whether certain powers and responsibilities remained those of LMIM and the Liquidators of the RE following my appointment (“the **Residual Powers Proceeding**”).
195. On 7 May 2015, Justice Jackson made Orders placing the Residual Powers Proceeding on the Commercial List of this Honourable Court, and setting a timeline for filing of material.
196. On 20 July 2015, the Residual Powers Proceeding was heard before Justice Jackson. Justice Jackson reserved his decision.
197. On 15 October 2015, Justice Jackson delivered judgment in the Residual Powers Proceeding: *Park & Muller (liquidators of LM Investment Management Ltd) v Whyte (receiver of the LM First Mortgage Income Fund)* [2015] QSC 283. Justice Jackson, on this date, instructed the parties to submit minutes of Orders to reflect His Honour’s reasons for judgment.
198. On 12 November 2015 a review of the matter was held before Justice Jackson who made Orders in respect of a timetable for material to be filed in respect of a further application in the proceeding proposed by Mr Park and Ms Muller, and LMIM.
199. The further hearing of the Residual Powers Proceeding is listed for two days on 17 December 2015 and 18 December 2015.

Work in the Relevant Period

200. During the Relevant Period, my staff and I undertook the following work in assisting our solicitors respond to the Residual Powers Proceeding:-



- (a) Reviewed affidavit material from the liquidators of LMIM and their solicitors;
- (b) Prepared and collated affidavit material for filing with the Court in response to the application and supporting affidavit material filed by the liquidators of LMIM;
- (c) Liaised with my solicitors and Counsel; and
- (d) Issued notices to members in accordance with the direction of Justice Jackson.

201. Work undertaken in relation to trade-on may be recorded in more than one category. However, the work undertaken is only recorded once.

Part 10

Creditors

202. I am seeking approval for remuneration in the order of \$226,415.00 (exclusive of GST) in respect of work that is categorised as "Creditors".

203. Generally work attributed to this category includes:-

- (a) Preparing reports to members;
- (b) Attending to queries from members in relation to the reports to members;
- (c) Maintaining and updating the AX investor management database;
- (d) Investigating the investor register relating to units that were subscribed in foreign currencies; and
- (e) Work in respect of the Austcorp Proceeding.

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Reports to Members

204. During the relevant period, I published on the FMIF website one report to members of the FMIF updating them as to the ongoing winding up of the FMIF. This report was published on 31 July 2015. Exhibited hereto and marked "DW-30" is a copy of the tenth report to investors.
205. I also published an eleventh report to members on 3 November 2015. Although this report was not published during the Relevant Period, it was substantially prepared during the Relevant Period. Exhibited hereto and marked "DW-31" is a copy of the eleventh report to investors.
206. Each of those reports contains information which is, or was at the time of the report, correct, to the extent of my knowledge and belief.
207. 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 the reports to members;
 - (b) Preparing material summarising my remuneration for inclusion in the report;
 - (c) Updating the asset realisation summary;
 - (d) Reconciling the cash at bank and the loan balances;
 - (e) Considering and calculating the updated estimated return to members;
and
 - (f) Considering and calculating the updated unit price as at 30 June 2015.

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Witnessed by:




Contact with members in respect of reports to members

208. 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 and their financial advisors. This contact required responses regarding:-

- (a) The status of the receivership and the winding up of the FMIF;
- (b) Updating contact details;
- (c) Confirming unit balances and distributions paid prior to my appointment;
- (d) The transfer of units and the documentation required to effect same; and
- (e) Queries arising from the reports to members regarding the receivership.

209. During the Relevant Period my staff and I have also liaised with the beneficiaries and/or trustees of deceased members' estates. Where appropriate we have liaised with the beneficiaries, trustees and/or their solicitors/advisors to effect a transfer of the unitholding at the request of the investor's estate. My staff and I were required to undertake tasks including considering the request for a transfer of units, reviewing the documentation provided in support of such request, and processing such transfers.

210. Work undertaken in relation to communications with members is sometimes also recorded in the "*Administration*" category of work depending on the context of the call or correspondence, and the work required following that communication. However, time for carrying out any task is only recorded once.



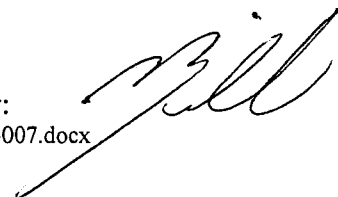
AX Database

211. During the Relevant Period my staff and I were required to maintain the Microsoft AX investor management database following the closure of the LMA office. This included work:-
- (a) Updating investor details;
 - (b) Transferring units as requested or as directed by executors of deceased estates; and
 - (c) Generating reports to attend to members' unit balance enquiries.
212. My staff have also liaised with an IT consultant in relation to the maintenance required with respect to the AX Database, including work streamlining the function to generate investor mailing lists.
213. 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.

Foreign Currency investors

Background

214. I identified what appeared to be a discrepancy between the units recorded in the investor register and the units recorded in the audited and management accounts for the 2012 financial year, which appears to relate to the method of issuing units to investors who subscribed for units in foreign currencies.
215. My investigations are ongoing in relation to this discrepancy and a solution to address same.



Work in the Relevant Period

216. My staff and I undertook the following work in relation to this matter:-

- (a) Reviewed the investor management databases in Microsoft AX and Composer and files for investors that acquired units in foreign currencies;
- (b) Investigated the method in which units were issued in Microsoft AX and Composer databases in relation to investors that acquired units in foreign currencies;
- (c) Liaised with former employees in relation to the process of issuing units to investors that acquired units in foreign currencies;
- (d) Prepared a brief to my solicitors in relation to the discrepancy identified; and
- (e) Liaised with my solicitors in relation to the discrepancy identified and proposed treatment to address to the same.

217. This work was, in my opinion, necessary for the winding up of the FMIF to ensure that units issued to foreign currency investors are treated equally as required under the constitution.

Austcorp Proceedings

Background

218. I am informed by the Liquidator of Bellpac, and believe, that:-

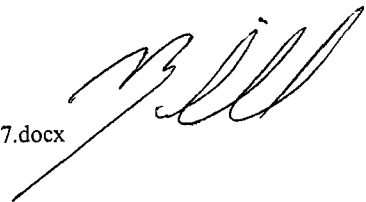
- (a) In February 2013, parties, including the third mortgagee over Bellpac, commenced proceedings in the Federal Court of Australia proceeding number NSD186/2013 in relation to an alleged sale, at undervalue, of Bellpac property;

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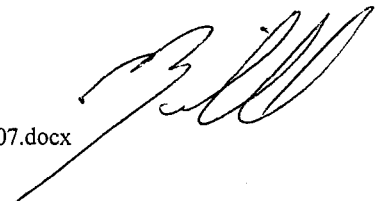
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- (b) LMIM (in its capacity as RE of the FMIF), and the other Defendants to the claim, filed applications seeking security for costs;
- (c) On 15 December 2014 the Honourable Justice Gleeson made Orders requiring the Plaintiffs to pay \$550,000 into Court, before the Austcorp Proceeding could continue;
- (d) The Plaintiffs failed to lodge the security for costs pursuant to the orders of Justice Gleeson;
- (e) Following the failure to provide security, the Defendants (including LMIM as RE of the FMIF) filed applications to strike out the Austcorp Proceeding as against them;
- (f) On 9 July 2015, Orders were made requiring the Plaintiffs to pay the costs of the hearing, and established a timetable for further steps;
- (g) On 13 July 2015 the plaintiffs filed Notices of Discontinuance of the proceedings as against LMIM (as RE of the FMIF). They also filed an application to revise the security for costs orders in favour of the remaining defendants being the Bellpac Receivers (appointed by LMIM as RE of FMIF) and the Fund's custodian, PTAL.
- (h) On 14 September 2015, the claim as against the Bellpac Receivers was also discontinued, and security was paid into the Court by the Plaintiffs to continue the proceedings against PTAL.
- (i) On 22 October 2015, a timetable was set for the Austcorp Proceeding as against PTAL only, and requiring PTAL to file its defence by 2 December 2015.

219. Under the custody agreement with PTAL (under which PTAL is the custodian of the FMIF), it has a right of indemnity from LMIM out of the FMIF's assets, including for any liability, demand and loss incurred in



connection with any action, suit, claim and demand which may be brought or threatened against PTAL by reason of it complying with any instruction by an authorised person.

Work in the Relevant Period

220. During the Relevant Period, my staff and I have undertaken the following work in respect of the Austcorp Proceeding:-

- (a) Liaising with our solicitors as to developments in the Plaintiffs' compliance with security for costs Orders;
- (b) Reviewing the application and affidavit to strike out the Austcorp proceeding;
- (c) Reviewing and considering outlines of submissions and court material filed by the Plaintiffs;
- (d) Reviewing the notices of discontinuance and consideration of the implications;
- (e) Obtaining the assessment of the costs of the proceedings as against the Plaintiffs;
- (f) Liaising with the Liquidator of Bellpac; and
- (g) Communicating with PTAL regarding their request to access LMIM's Bellpac legal files.

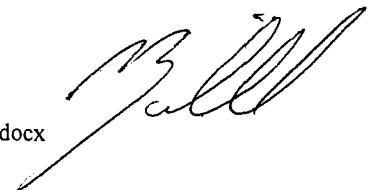
221. I will continue to monitor the progress of the Austcorp Proceedings.

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Witnessed by:



Part 11

Administration

222. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "*Administration*".
223. Generally, work attributed to this category includes:-
- (a) Work my staff and I undertook that was necessary for the proper and efficient administration of the winding up;
 - (b) Ensuring proper accounts and records were maintained;
 - (c) Preparing applications for approval of my remuneration; and
 - (d) Residual administrative functions in respect of preparing reports to members, such as organising for copying, mailing and uploading to the FMIF website.
224. In total, \$118,764.50 (exclusive of GST) of remuneration is sought for approval in respect of the "*Administration*" category.
225. The main tasks my staff and I undertook in the Relevant Period are set out further below.

Applications for approval of remuneration

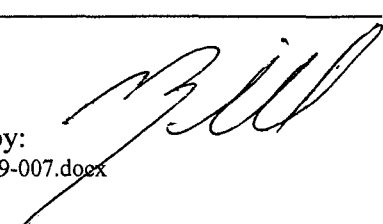
226. For the purposes of my third remuneration application filed on 29 May 2015, work was undertaken in respect of the preparation of my affidavit and distribution of notices to the members of the FMIF. My staff and I were required to liaise with, and provide instructions to, my solicitors in respect of that application and my affidavit.

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Job management

227. 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) Maintenance of the accounts and preparation of the management accounts for the year ending 30 June 2015 (including updates as to the status of asset realisations and strategies);
- (c) LMIM's Liquidators' Residual Powers Proceeding updates and judgement;
- (d) Investor issues and content for my regular reports to members;
- (e) Status of the various investigations, claims and court proceedings;
- (f) Status of an creditor claims; and
- (g) Coordinating my application for approval of my remuneration.

228. 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. These meetings also allow me to delegate tasks in accordance with the complexity of the work to be undertaken, and my staff's individual charge out rates.

Investor relations and communications

229. During the Relevant Period, my staff and I have attended to answering member enquiries both by telephone and in person. Members are updated as to the progress of the winding up, including the status of asset realisations and the expected return to members.



230. Regularly during the Relevant Period enquiries are fielded from members regarding changes to their details.
231. For the purposes of member communications, including my two reports to members exhibited to this affidavit, my staff and I have been required to collate relevant material, including:-
- (a) Documents concerning the status of the realisation of the assets and potential legal actions;
 - (b) Updates as to the estimated valuation of the FMIF and estimated return to members; and
 - (c) Preparing "*work in progress*" and remuneration reports.
232. 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.
233. Some work undertaken in relation to communications with members may be recorded in other categories, that is, under Creditors and/or Administration, depending on the context of the phone call. However, time for carrying out each task is only recorded once.

General

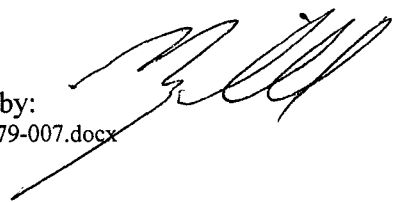
234. In addition to the above specific matters, my staff and I also conducted the following ongoing tasks and activities in the Relevant Period:
- (a) Liaised with an external IT consultant in relation to maintaining and updating content on the www.lmfimf.com and www.lmfimf.com.au websites
 - (b) Maintaining an appropriate filing system and filing correspondence; and
 - (c) Reviewing and attending to correspondence as required.

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Witnessed by:



235. I consider that each of these tasks was necessary for the proper administration of the winding up so as to keep accurate records of my work, progress of the FMIF, and keeping members informed and up to date.
236. Work undertaken in respect of "*Administration*" may be recorded in other categories. However, the work undertaken is only recorded once.

Part 12

Controllerships

237. 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.

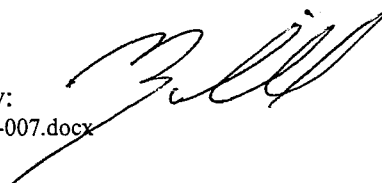
Work performed in the relevant period in relation to controllership appointments

238. Exhibited hereto and marked:-
- (a) "DW-33" is a schedule of work performed by BDO staff during the Relevant Period in relation to my controllership appointment in respect of Bridgewater;
 - (b) "DW-34" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Pinevale;
 - (c) "DW-35" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of RBLL;
 - (d) "DW-36" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Cameo;

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Witnessed by:



- (e) "DW-37" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of OVST;
- (f) "DW-38" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of RBLLD;

together, (the "Controllership Schedules").

239. 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 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.

240. All work performed in relation to my controllership role was performed by members of the BDO BRI team. I 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.

241. 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:

OVST Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	2.5	\$897.00
Creditors	1.5	\$329.00
Employees	0.3	\$112.00
Trade On	100.0	\$27,301.00

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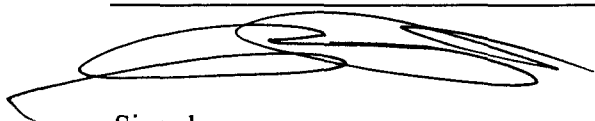


Administration	20.9	\$5,260.50
Total	125.2	\$33,899.50
GST		\$3,389.95
Total Claim		\$37,289.45

Pinevale Villas Morayfield Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	4.1	\$1,156.50
Creditors	0.8	\$229.00
Trade On	102.2	\$26,525.50
Administration	23.1	\$5,886.50
Total	130.2	\$33,797.50
GST		\$3,379.75
Total Claim		\$37,177.25

Redland Bay Leisure Life Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	2.9	\$791.50
Creditors	0.6	\$105.50
Trade On	97.7	\$25,242.00
Administration	20.2	\$4,834.00
Total	121.4	\$30,973.00
GST		\$3,097.30
Total Claim		\$34,070.30

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	0.9	\$282.00
Trade On	30.6	\$8,679.00
Administration	12.1	\$3,536.50



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Total	43.6	\$12,497.50
GST		\$1,249.75
Total Claim		\$13,747.25

Bridgewater Lake Estate Pty Limited		
Category/Area	Total hours	Amount (net of GST)
Assets	66.1	\$26,841.50
Creditors	2.1	\$752.50
Trade On	111.0	\$32,081.50
Administration	17.9	\$4,648.50
Total	197.1	\$64,324.00
GST		\$6,432.40
Total Claim		\$70,756.40

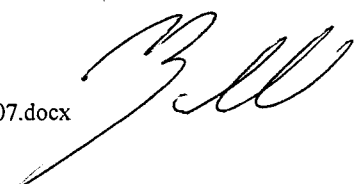
Redland Bay Leisure Life Development Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Creditors	0.3	\$58.50
Trade On	1.5	\$397.00
Administration	1.6	\$464.00
Total	3.4	\$919.50
GST		\$91.95
Total Claim		\$1,011.45

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

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Witnessed by:



243. By reference to each entity of which a loan was made, during the Relevant Period, the work I have undertaken as detailed in the Controllership Schedules above can be summarised as follows.

(a) In respect of each of OVST Pty Ltd, Pinevale Villas Morayfield Pty Ltd, Redland Bay Leisure Life Pty Ltd and Cameo Estates Lifestyle Villages (Launceston) Pty Ltd:-

- (i) Attending to statutory reporting requirements;
- (ii) Accounting for the settlement proceeds from the sale of the village;
- (iii) Attending to post settlement issues including:-
 - (A) Finalising supplier and service provider accounts;
 - (B) Finalising the MYOB accounts for the General Scheme Contribution and Scheme Operator accounts; and
 - (C) Calculating post settlement adjustments;
- (iv) Liaising with the purchaser of the village in relation to post-settlement issues including:-
 - (A) the General Scheme Contribution accounts;
 - (B) Books and records of the village;
 - (C) Provision of supplier accounts; and
 - (D) Finalising post-settlement adjustments;
- (v) Liaising with suppliers and service providers regarding finalisation of trading accounts; and
- (vi) Attending to tax compliance issues.

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Witnessed by:



- (b) In respect of Bridgewater:-
- (i) Attending to statutory reporting requirements;
 - (ii) Overseeing the ongoing trading of the village including:-
 - (A) Monitoring the sale of village units;
 - (B) Approving and processing payments;
 - (C) Reviewing village management reports; and
 - (D) Providing instructions to village management in relation to issues raised in the management reports;
 - (iii) Facilitating due diligence requirements with the purchaser of the village;
 - (iv) Negotiating the final contract terms in relation to the sale of the village;
 - (v) Liaising with my solicitor in relation to the terms of the contract of sale;
 - (vi) Preparing and lodging a Private Binding Ruling Application with the ATO in relation to the treatment of GST on the sale of the village;
 - (vii) Liaising with my solicitor and the purchaser of the village in relation to settlement issues;
 - (viii) Attending to issues in preparation for settlement of the village including:-
 - (A) Preparing schedules for settlement adjustments;
 - (B) Reconciling and finalising supplier accounts;



- (C) Liaising with village management; and
- (D) Reviewing settlement statements;
- (ix) Accounting for the settlement proceeds from the sale of the village;
- (x) Attending to post settlement issues including:-
 - (A) Finalising supplier and service provider accounts;
 - (B) Finalising the MYOB accounts for the General Scheme Contribution and Scheme Operator accounts; and
 - (C) Calculating post settlement adjustments;
- (xi) Liaising with the purchaser of the village in relation to post-settlement issues including:-
 - (A) the General Scheme Contribution accounts;
 - (B) Books and records of the village;
 - (C) Provision of supplier accounts; and
 - (D) Finalising post-settlement adjustments;
- (xii) Liaising with suppliers and service providers regarding finalisation of trading accounts; and
- (xiii) Attending to tax compliance issues.
- (c) In respect of RBLLD:-
 - (i) Attending to statutory reporting requirements; and
 - (ii) Attending to tax compliance issues.



Part 13

Write-offs & reductions

244. I have conducted a detailed review of all time charged by BDO staff in the Relevant Period. I have reduced the amount of remuneration sought by \$24,413.50.
245. The amount of the reduction represents, in summary, the value of work which I considered, while appropriate to be performed, was not directly connected to, or in furtherance of, my appointment (for example discussions and correspondence with investors of other LMIM investment funds).

Part 14

Remuneration approval

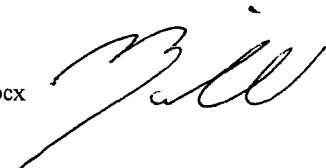
Winding up

246. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$2,279,205.50 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.
247. 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 \$2,279,205.50 inclusive of GST.
248. 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.

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Witnessed by:



Controllership

249. Given the nature and volume of the work involved as canvassed above, I believe that the sum of \$194,052.10 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 appointments.
250. I respectfully request this Honourable Court to make orders that my remuneration in relation to the controllership role of Andrew Fielding and me, for the Relevant Period, be fixed in the amount of \$194,052.10 inclusive of GST.
251. 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.

Part 15

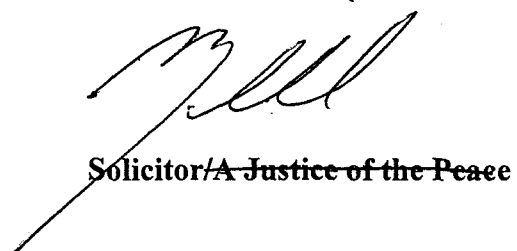
Legal professional privilege

252. In this affidavit, I have referred to dealings with solicitors and Counsel 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 and Counsel.
253. 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 23rd day of November 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-30	Tenth Report to Members	31 July 2015	2022 - 2053
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DW-37	Schedules of work performed by BDO staff in relation to the controllership appointment in respect of OVST	Various	2438 – 2514
DW-38	Schedules of work performed by BDO staff in relation to the controllership appointment in respect of RBLLD	Various	2515 - 2517