

**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:-

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

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Signed: 

Witnessed by: 

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**AFFIDAVIT:**  
Form 46, R.431

**TUCKER & COWEN**  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000.  
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Filed on behalf of the Applicant, Mr David Whyte

Institute of Chartered Accountants of Australia) and a professional 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. The background to my appointment is relevantly explained by me at paragraphs 12 to 37 of my November 2014 Affidavit.
4. By Order of this Honourable Court made on 17 December 2015, I was:-
  - (a) Empowered subject to the balance of orders therein, to determine the extent LM Investment Management Ltd (receivers and managers appointed)(in liquidation) (“LMIM”) is entitled to be indemnified from the property of the FMIF, in respect of any expense or liability, or claim against, LMIM, in acting as Responsible Entity (“RE”) of the FMIF;
  - (b) Authorised, and empowered, to exercise the powers of, and am responsible for, the functions of the RE of the FMIF as set out in Clauses 9,10 and 22 of the Constitution of the FMIF, in respect of:-

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- (i) The transfer, registration and suspension of units in the FMIF (Clause 9);
  - (ii) Transmission of units (Clause 10); and
  - (iii) Maintaining the Register of Members of the FMIF (Clause 22).
- (c) Directed to apply to the Australia Securities and Investments Commission (“ASIC”) to obtain relief from financial reporting and audit obligations of the FMIF under Part 2M.3 of the Act, herein referred to as the “Residual Powers Orders”.

*Controllership*

5. On 25 September 2014, Andrew Fielding and I were appointed as agents of The Trust Company (PTAL) Ltd (“PTAL”), in lieu of LMIM, in respect of the securities it holds from the following companies:-
- (a) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296 (“Cameo”);
  - (b) Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786 (“Bridgewater”);
  - (c) OVST Pty Ltd (Controllers Appointed) (In Liquidation) ACN 103 216 771 (“OVST”);
  - (d) Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916 (“RBLL”);
  - (e) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383 (“RBLLD”);
  - (f) Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780 (“Pinevale”),

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

*References*

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;
  - (d) “BRI” or “BR” I am referring to BDO Business Recovery & Insolvency (Qld) Pty Ltd. On 16 August 2016, BDO Business Recovery and Insolvency (Qld) Pty Ltd changed its name to BDO Business Restructuring Pty Ltd;
  - (e) “my appointments”, I am referring to both my roles as mentioned at paragraphs 6(b) and (c) above;
7. For ease of reference, I use the following terms which are defined throughout this affidavit:-

<b>Defined Term</b>	<b>Definition</b>	<b>Paragraph No.</b>
the Act	the <i>Corporations Act 2001</i> (Cth)	2(a)
ARITA	the Australian Restructuring, Insolvency and Turnaround Association (formerly	1

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	known as the Insolvency Practitioners Association of Australia)	
ASIC	Australian Securities and Investments Commission	4(c)
Auditors Claim	Supreme Court of Queensland proceeding number 3166 of 2015 against the former auditors of the FMIF	15(a)
Bellpac	Bellpac Pty Ltd (Receivers and Managers Appointed)(In Liquidation)	
BR	BDO Business Restructuring Pty Ltd	35
Bridgewater	Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786	5(b)
Cameo	Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296	5(a)
Claim against the MPF	Supreme Court of Queensland proceeding number 12317 of 2014 against the trustees of the MPF	15(b)
Controllership Companies	Cameo, Bridgewater, OVST, RBLL, RBLLD and Pinevale	5
Controllership Schedules	six schedules of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Bridgewater, Pinevale, RBLL, Cameo, OVST and RBLLD.	161
DB	Deutsche Bank AG	18(h)
DB Receivers	Joseph Hayes and Anthony Connelly	21

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FASOC	Further Amended Statement of Claim in Supreme Court of Queensland proceeding number 12317 of 2014	15(b)
Feeder Funds	the LM Currency Protected Australian Income Fund, the LM Institutional Currency Protected Australian Income Fund and the LM Wholesale First Mortgage Income Fund	
Feeder Fund Claim	Supreme Court proceeding 13534 of 2016 against LMIM as RE of the Feeder Funds.	16(b)
the First Claim	The formal claims submitted seeking the payment of \$241,453.54	113(a)
FMIF	the LM First Mortgage Income Fund ARSN 089 343 288	2(a)
FMIF assets	Assets over which the FMIF has held security for loans advanced by the FMIF	20
FTI Remuneration Proceeding	Further Amended Originating Application filed in Supreme Court of Queensland proceeding 3508 of 2015	107
FTI	FTI Consulting	83(a)(i)
KordaMentha	Trustees of the MPF	24
LMA	LM Administration Pty Ltd (in liquidation)	32(f)
LMIM	LM Investment Management Ltd (receivers and managers appointed)(in liquidation)	4(a)
MPF	LM Managed Performance Fund	15(b)
MPF Proceedings	Supreme Court of Queensland Proceedings 8032/14 and 8034/14	17

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	commenced by KordaMentha seeking equitable compensation against LMIM and relief over assets of the FMIF by way of subrogation to LMIM's alleged right of indemnity out of assets of the FMIF	
OVST	OVST Pty Ltd (Controllers Appointed) (In Liquidation) ACN 103 216 771	5(c)
PEs	Public Examinations	69
Pinevale	Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780	5(f)
PTAL	The Trust Company (PTAL) Ltd	5
RE	Responsible Entity	4(a)
Relevant Period	from 1 November 2016 to 30 April 2017	9(a)
Residual Powers Orders	Orders made by Jackson J on 17 December 2015	4(c)
RBL	Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916	5(d)
RBLD	Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383	5(e)
the Second Claim	The formal claims submitted seeking the payment of \$375,499.78	113(b)
the Schedule	a schedule of work performed by staff of the Brisbane office of BDO during the Relevant Period in relation to my appointment (in connection with the	50

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	winding up of the FMIF).	
SFASOC	Second Further Amended Statements of Claim	77(a)
WCL	Wollongong Coal Ltd	58(b)(iv)
\$2M proceeding	Supreme Court of New South Wales proceeding no.2014/332566	80
\$8M proceeding	Federal Court of Australia at New South Wales proceeding no.NSD1488/2015	84

**Previous Remuneration**

8. I have made six previous applications for approval of my remuneration:-

<b>Remuneration Period</b>	<b>Remuneration Order</b>	<b>Amount of remuneration approved (incl. of GST)</b>
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)
1 May 2015 to 31 October 2015	Martin J on 11 December 2015	\$2,279,205.50 (receivership) \$194,052.10 (controllership)
1 November 2015 to 30 April 2016	Douglas J on 26 June 2016	\$1,405,155.40 (receivership) \$36,510.65 (controllership)
1 May 2016 to 31 October 2016	Daubney J on 2 December 2016	\$1,119,991.40 (receivership) \$13,385.35 (controllership)

9. I now make an application for:-

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- (a) approval of my remuneration for work performed in 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 \$897,580.20 (inclusive of GST); and
  - (b) approval of the remuneration of Andrew Fielding and me during the Relevant Period, for acting as agents of PTAL in respect of the securities held by the FMIF over the Controllership Companies, in the amount of \$12,314.50 (inclusive of GST).
10. I am authorised by Andrew Fielding to make this application for our controllership remuneration, on both our behalves.

**Executive Summary**

*Winding up and asset realisation progress*

11. Cash at bank as at 28 February 2017 was \$73.2 million.
12. The remuneration sought in this application for the Relevant Period has again reduced (for the third time in a row) as compared with the previous remuneration application:-
- (a) 1 May 2015 to 31 October 2015: approximately \$2.47 million (inclusive of GST) (approximately \$412,000 per month);
  - (b) 1 November 2015 to 30 April 2016: approximately \$1.44 million (inclusive of GST) (approximately \$240,000 per month).
  - (c) 1 May 2016 to 31 October 2016: approximately \$1.13 million (inclusive of GST) (approximately \$188,000 per month).
  - (d) 1 November 2016 to 30 April 2017: approximately \$0.909 million (inclusive of GST) (approximately \$152,000 per month).

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13. On 31 March 2017, I informed members of an estimated return (based on the quantum of assets realised to date, professional valuations and offers received for those assets yet to be realised) of between 13.6 cents and 14.9 cents in the dollar as at 28 February 2017. This estimate excludes recoveries from legal proceedings and the costs to finalise the winding up of the FMIF. Depending on the results of those claims, the cents in the dollar returnable to members is likely to improve markedly.
14. My remuneration in the Relevant Period predominantly relates to:-
- (a) Prosecuting the substantial Court proceedings I have initiated to recover money for the benefit of the FMIF;
  - (b) Investigating claims or potential claims; and
  - (c) commencing further Court proceedings in which claims are made that I anticipate may be able to be relied upon in defence of various claims made against assets of the FMIF and which may ultimately, protect the assets of the FMIF for the benefit of members.

*Significant claims for the benefit of the FMIF*

15. In the Relevant Period, significant time was spent advancing the following Court proceedings:
- (a) Supreme Court of Queensland proceeding number 2166 of 2015 against the former auditors of the FMIF. The claim is for in excess of \$100 million (“**Auditors Claim**”); and
  - (b) Supreme Court of Queensland proceeding number 12317 of 2014 against the trustees of the LM Managed Performance Fund (“**MPF**”) and others.

*Significant claims being made on behalf of the FMIF*

16. In the Relevant Period, significant time was also spent:

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- (a) Investigating and commencing Supreme Court of Queensland Proceedings 11560 of 2016 against LMIM, and conducting investigations relevant to proposed amendments to this claim. The quantum of this claim is yet to be finalised but presently is for in excess of \$26 million (“**LMIM claim**”). The claims made in this proceeding are being relied upon in defence of the FTI Indemnity Application and, subject to obtaining appropriate directions of the Court, I expect that that the claims made in this proceeding might also be relied upon in the defence of the MPF Proceedings and, possibly, other claims for indemnity expected to be made, or that might be made, by LMIM against assets of the FMIF.
  
- (b) Investigating and commencing Supreme Court of Queensland Proceedings 13534 of 2016 against LMIM as RE of the Feeder Funds and conducting investigations to amend this claim. The claim is for in excess of \$55 million (“**Feeder Fund claim**”). The relief sought in this claim includes declarations to the effect that LMIM as RE of the FMIF is entitled to withhold from distributions or payments otherwise payable to each of the Feeder Funds the sums claimed from the relevant Feeder Fund in the proceeding.

*All Court proceedings*


- 17. A summary of all court proceedings (including those substantial matters mentioned above) in which the FMIF has had an interest during the Relevant Period, or in respect of which work was performed during the Relevant Period (either to advance the proceeding or finalise matters arising as a consequence of the proceeding), is set out in the table below:-


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<b>Title, Court &amp; No.</b>	<b>Description of proceeding</b>	<b>Remuneration category in the Relevant Period</b>
<p>Bruce v LM Investment Management Ltd (in liq.) in its capacity as responsible entity of the LM First Mortgage Income Fund &amp; Ors.</p> <p>Supreme Court of Queensland Proceeding 3383/13</p>	<p>This is the proceeding in which I was appointed and winding up orders made.</p> <p>Various interlocutory applications have been made in the proceeding including applications for approval of remuneration, applications for orders in relation to books and records, and application for directions in relation to the appointment of myself and Mr Fielding as controllers of the retirement villages, in place of LMIM.</p>	<p>Trade On and Administration</p>
<p>LM Investment Management Ltd (in liq.) in its capacity as responsible entity for the LM First Mortgage Income Fund (Receivers &amp; Managers Appointed) (Receiver Appointed) v EY (formerly known as Ernst &amp; Young) (a firm) &amp; Ors.,</p> <p>Supreme Court of Queensland Proceeding 2166/15</p>	<p>Claim by LMIM as RE of the FMIF against the auditors (EY) and two partners of EY for misleading and deceptive conduct and professional negligence</p>	<p>Investigations and assets</p>
<p>Austcorp Project No. 20 Pty Ltd &amp; Ors. v LM Investment Management Ltd (Austcorp Proceedings)</p> <p>Federal Court of Australia File No. NSD 186/2013</p>	<p>Claim made by Austcorp Projects No. 20 Pty Ltd, and Compromise Creditors Management Pty Ltd against PTAL alleging that it sold securities at an undervalue.</p> <p>Claims made against all parties i.e. PTAL, LMIM, the Bellpac receivers and others have now been discontinued.</p>	<p>Creditors and Assets</p>
<p>KordaMentha Pty Ltd in its capacity as trustee</p>	<p>Claim by MPF Trustee against LMIM, arising out of the assignment of KPG and</p>	<p>Creditors</p>

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<p>of the LM Managed Performance Fund v LM Investment Management Ltd (Receivers &amp; Managers Appointed) (in liq.) &amp; Anor.</p> <p>Supreme Court of Queensland Proceedings 8032/14 and 8034/14</p>	<p>Lifestyle loans from LMIM as RE of the FMIF to LMIM as trustee of the MPF, for, inter alia, equitable compensation for breach of duties owed to members of the MPF, and for declarations that LMIM is entitled to indemnity out of the FMIF with respect to any such liability, and that the MPF trustee is entitled to be subrogated to the rights of LMIM in respect of FMIF assets.</p> <p>In my position as receiver of the FMIF, I have been joined as a Defendant.</p>	
<p>KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund v LM Investment Management Ltd (Receivers &amp; Managers Appointed) (in liq.)</p> <p>Supreme Court of Queensland Proceeding No. 12716/15</p>	<p>Claim by MPF Trustee against LMIM, in relation to a loan made by LMIM as trustee for the MPF to AIIS, for equitable compensation against LMIM, and for a constructive trust and other proprietary relief against assets of the FMIF.</p> <p>The claims for proprietary relief allege that LMIM at the FMIF received certain interest payments on a loan facility that it had provided to AIIS from LMIM as trustee of the MPF, with knowledge that the payments were made by LMIM as trustee of the MPF in breach of trust.</p>	<p>Creditors</p>
<p>John Richard Park and Ginette Dawn Muller as liquidators of LM Investment Management Ltd (in liq.) (Receivers and Managers Appointed) the responsible entity of the LM First Mortgage Income Fund &amp; Anor. V David Whyte as the person appointed to supervise the winding up of the LM First Mortgage Income Fund</p> <p>Supreme Court of</p>	<p>Application by Mr Park, Ms Muller, and LMIM for directions as to how the FMIF is to be wound up and as to the extent of their powers, functions, and duties.</p> <p>By Further Amended Originating Application filed on 16 December 2015, seeking remuneration and expenses of the liquidators (and as administrators) of the Responsible Entity LMIM.</p> <p>By further Application filed 20 May 2016 pursuant to the Orders of Jackson J made 12 December 2015, seeking an indemnity from the FMIF for expenses incurred by the Responsible Entity.</p>	<p>Trade On</p>

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Witnessed by:



Queensland Proceeding No. 3508/2015		
LM Investment Management Ltd v Drake & Ors.  Supreme Court of Queensland Proceeding no. 12317/2014	Claim against the MPF Trustee, LMIM and its directors in respect of a loss suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter.	Assets
Supreme Court of New South Wales proceeding no.2014/332566	Claim with respect to \$2 million dollars of bonds issued by Wollongong Coal Ltd to Bellpac, where the FMIF holds a first ranking security over the assets of Bellpac.	Assets
Federal Court of Australia at New South Wales proceeding no. 2016/00120239	Claim against Wollongong Coal by Bellpac Pty Ltd Liquidator with respect to non-conversion of \$8 million dollars of bonds to shares, where the FMIF holds a first ranking security over the assets of Bellpac.	Assets
PTAL and LM Investment Management Ltd v Coulter Developments Pty Ltd & Ors  Supreme Court of Western Australia proceeding no. 2403/2014	Claim against Borrowers and Guarantors for \$13.8M plus interest and costs	Assets
The Trust Company (PTAL) Ltd v Ross Lamb  Federal Circuit Court SYG2097/2016	Creditors Petition against Guarantor	Assets
LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation) as responsible entity for	Seeking a declaration against LMIM as responsible entity of the Feeder Funds to withhold from distributions or payments otherwise payable to the Feeder Funds the amount of \$55,059,318.12 or certain alternative remedies as set out in the	

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<p>the LM First Mortgage Income Fund (Receiver Appointed) v LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation) as responsible entity for the LM Currency Protected Australian Income Fund (Receiver Appointed) &amp; ors</p> <p>Supreme Court of Queensland proceeding no. 13534/16</p>	<p>claim</p>	
<p>LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation) as responsible entity for the LM First Mortgage Income Fund (Receiver Appointed) v LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation)</p> <p>Supreme Court of Queensland proceeding no.11560/16 (this is the LMIM claim )</p>	<p>Claim against LMIM in relation to payments LMIM caused to be made from the property of the FMIF which were not authorised by the constitution or the Act and material losses suffered by the FMIF by reason of breaches of duty by LMIM .</p>	<p>Investigations</p>

*Summary of work in the Relevant Period*

18. By way of short summary, I have undertaken the following work in the Relevant Period, that I considered necessary for the winding up of the FMIF:-

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- (a) Investigation of a sample of FMIF loans to calculate and compare the actual cash flows to estimated cash flows on a hypothetical basis, to estimate the difference in amounts realised and timing thereof had a receivership of the FMIF been undertaken earlier, to assist with the prosecution of the Auditors Claim;
- (b) Undertaking an assessment of the quantification of loss against the former auditors, the results from the hypothetical receivership assessments of a sample of FMIF loans and prepare an estimated loss calculation to assist with the prosecution of the Auditors Claim;
- (c) Assisting our solicitors and counsel to finalise the preparation of further and better particulars, affidavits and submissions to respond to an amended strike out application and amended submissions filed by the former auditors and assisting in the preparation for the hearing of the defendants' strike out proceedings;
- (d) Investigation of redemptions, hardship redemptions and distributions transactions between the FMIF and the Feeder Funds after 30 June 2008 and assisting our solicitors and counsel to prepare for and commence the Feeder Fund claim and a proposed amendment to the claim;
- (e) Investigation of prepaid management fees, management fees, loan management fees from the period 2008 and assisting our solicitors and counsel to prepare for and commence the LMIM claim;
- (f) Assisting our solicitors and counsel to prepare points of claim and consolidated particulars documents in response to the application filed by the liquidators objecting to the rejection of certain parts of two indemnity claims made against the FMIF ("**FTI Indemnity Proceedings**");
- (g) Continuing investigations of the migration of the Composer investor management database to the AX database, and liaising with consultants

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as to that process, and the units acquired in the FMIF in foreign currencies prior to my appointment;

- (h) Liaising with stakeholders regarding the retirement of the receivers appointed by the secured creditor Deutsche Bank AG (“DB”);
- (i) Complying with the obligations pursuant to the relief from ASIC from financial reporting and compliance plan audit requirements;
- (j) Finalising outstanding issues from the sale of the retirement villages, including resolving tax compliance issues;
- (k) Preparation of unit price calculation as at 31 December 2016;
- (l) Preparation of management accounts for the half year ending 31 December 2016;
- (m) Preparation of reports to members in December 2016 and March 2017; and
- (n) Work undertaking the investor management function for over 4500 members, including answering queries on the winding up of the FMIF and maintaining the investor database, including changes in details and transfers of units.

19. The above, very brief, summary of work undertaken by my staff and me is detailed further in my affidavit below.

#### **Status of the FMIF assets**

20. I set out a table below showing the remaining assets of the FMIF to be realised. The assets (referred to for ease of reference as the (“**FMIF assets**”)) are assets over which the FMIF has held security for loans advanced by the FMIF.
21. Following the appointment of Joseph Hayes and Anthony Connelly as receivers and managers of the assets and undertakings of the FMIF (“**the DB Receivers**”)

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by DB , I agreed with the DB Receivers to a division of the work realising the assets of the FMIF. The FMIF assets remaining to be realised are those being realised by the DB Receivers. As they are assets of the FMIF, I have had ongoing communication and interactions with the DB Receivers, where necessary, to stay abreast of the realisation of those remaining assets.

- 22. After sales of the remaining assets have been completed and the controller/s account to the FMIF for the net proceeds, the FMIF is expected to receive approximately \$2.85 million. This relates to a single property asset, and two residential units (seen in the table below which is based on the most recent update provided to me by the DB Receivers as to the sale of these assets).

Location	Description of asset	Insolvency Practitioner responsible for recovery of each particular asset
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QLD	61 hectares of englobo land with various approvals for up to 257 residential lots plus retail space and a childcare centre remain to be sold within a residential land subdivision in Central Queensland. Various applications have been prepared for easements relating to the properties and have been submitted to council for approval. Further updated legal notices are also required to be issued. Following the resolution of these matters, a fresh marketing campaign is expected to commence before the end of the year, but will be subject to the timely receipt of the council's approval.	Joseph Hayes & Anthony Connelly (McGrath Nicol)
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QLD	Two units in a strata titled unit resort situated in North Queensland remain. The incorrect title reference issue has now been resolved and we are in the process of preparing to take these units to market.	Joseph Hayes & Anthony Connelly (McGrath Nicol)
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*Status of the DB Receivers*

- 23. Although DB was paid out in full in early January 2014, I am informed by Mr Hayes of McGrath Nicol, 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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24. In essence, DB contends that the existence of claims or potential claims by the trustee of the MPF, KordaMentha (hereafter referred for ease as “KordaMentha”), against DB and the DB Receivers is the reason why the DB Receivers are not in a position to retire.
25. During the Relevant Period, I have had ongoing discussions with the DB Receivers as to the DB Receivers possible retirement.

*Distribution*

26. Once the DB Receivers have retired, and the funds of the FMIF are released to me, in accordance with the Residual Powers Orders, I will seek directions from the Court in relation to a distribution to investors. Any distributions will of course only occur 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.

**Reduction in costs**

27. As part of the winding up process, and in conjunction with the DB Receivers, I have continued to reduce the costs of managing the FMIF.
28. Prior to the appointment of Mr Park and Ms Muller as administrators in March 2013, the management fees charged by LMIM as RE of the FMIF averaged \$14 million per annum, for the five years ended 30 June 2012.
29. The current costs of managing the FMIF are the costs of myself (by my appointments), the DB Receivers, and any amounts to be paid to the liquidators of LMIM pursuant to the FTI Remuneration application;
30. The remuneration I seek by this application has reduced in comparison to my previous three applications. The remuneration for the Relevant Period averaged approximately \$152,000 per month, compared to the previous six months, where an average of approximately \$188,000 per month was approved, \$240,000 per

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month approved for the six month period prior to that, and \$412,000 for the six month period prior to that.

31. The remuneration has reduced because all hard property assets have largely been realised, and I am, for the most part, now progressing claims on behalf of the FMIF, and defending those made against it.

### Complexities

32. 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 4,500 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 and type of properties held as security for the various loans made by the FMIF;
  - (c) the complexity of litigation on foot, including claims made to recover funds for the benefit of members of the FMIF and claims made against assets of the FMIF;
  - (d) risk of personal liability being incurred under agreements entered into with residents of the retirement villages;
  - (e) the number and complexity of issues requiring my various investigations in the period from 2008 to 2012;
  - (f) the complex inter-relationship between LMIM, LMIM as RE 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 RE, including claims against the FMIF by KordaMentha; and

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Witnessed by:



- (h) the need to liaise with a number of other appointees, including the DB Receivers, the liquidators of LMIM, the liquidator of LMA, the Receivers of the LM Currency Protected Australian Income Fund and the LM Institutional Currency Protected Australian Income Fund and the RE of the LM Wholesale First Mortgage Income Fund.

33. In addition to the overall complexities, certain other issues have arisen or continued to require attention, in the Relevant Period which have added to the complexity of the winding up, and contributed to the time taken, and remuneration sought, including:-

- (a) Investigation of a sample of FMIF loans to calculate and compare the actual cash flows to estimated cash flows on a hypothetical receivership basis, to compare the potential difference in amounts realised and timing thereof had a receivership of the FMIF been undertaken earlier, to assist with the prosecution of the Auditors Claim;
- (b) Analysing and interpreting the comparative data from the hypothetical cash flow comparison assessment referred to in (a) above, reviewing the effects on the estimated loss quantification calculations and undertaking an assessment of the quantification of the loss suffered by the FMIF in the Auditors Proceeding. The quantification of loss claim included a detailed investigation and consideration of the expenses actually incurred and paid by the FMIF for a number of financial reporting periods, the likely outcomes in a hypothetical receivership scenario to the payment of these expenses and the incurring of liabilities, and a detailed estimation of the loss in regard to interest foregone in a hypothetical receivership scenario
- (c) Investigation of the circumstances around the redemption and distribution transactions with the Feeder Funds, including hardship redemptions, over a number of financial periods, involving a significant

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number of transactions to enable the Feeder funds to pay expenses, to assist with preparation of a claim against the Feeder Funds;

- (d) Investigation and preparation of a claim against LMIM (being the LMIM claim referred to in paragraph 16(a) above) which included a review of complex accounting transactions which involved loan management fees, pre-paid management fees, management fees and Feeder Fund transactions;
- (e) The number and scope of litigious matters in the Relevant Period;
- (f) Given the complexity of the above matters, the extensive investigations needed to be undertaken, dealing with the quantification of the loss claimed against the former auditors and the need to continue to liaise with my solicitors and counsel on these matters, it has been necessary to continue to engage staff at a more senior level with a higher charge out rate. Mr Eric Leeuwendal has been extensively involved in all of these matters including conducting the detailed investigations of the records of the FMIF transactions as required by my solicitors and counsel in the litigation matters, liaising with my solicitors and counsel in the litigation matters and working with Mr Clark Jarrold, one of the partners in the BDO Audit team on the estimation of the quantification of the loss;

**BDO work practice**

*Time recording*

- 34. 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 are written off.
- 35. The partners of BDO Business Restructuring Pty Ltd (“BR”) are members of ARITA, and follow the ARITA Statement of Best Practice – Remuneration.

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BDO's scale of BR hourly charge out rates for 2016/2017 are the same as were applied in my calculation of remuneration (after 1 July 2016) for work performed for the purposes of my sixth remuneration application.

36. When a task arose, that could be attributed to a specific retirement village, the time taken by BR staff to perform that task was recorded in the relevant category (Assets, Creditors, etc.) and as work undertaken pursuant to my controllership appointment.
37. When a task arose in relation to work relevant to the realisation of all the retirement villages, this time was recorded in the relevant category, and as work performed in the course of my appointment. Work performed by BDO's Business Services, Corporate Advisory and Audit teams has been allocated against my appointment, unless specific to a retirement village; each task, and the time for carrying out each task, is only recorded once.

*Teams assisting*

38. Staff from across several practice areas of BDO, in addition to members of the BR practice area, assist me in my receivership role and controllership role. These staff are sourced from the Audit, Corporate Finance and Business Services practice groups. I set out generally below, the function of each practice group and their assistance to me in the Relevant Period.
39. Given the complexities and nuances of this particular winding up, I considered that it was necessary to involve the assistance of these persons, given the specialist knowledge they possess with regard to particular areas. For example, I sought specialist knowledge regarding the audit issues arising in preparation of the Auditors Claim. The assistance of these teams was necessary for the purposes of the winding up.

Exhibited hereto and marked "DW-67" are copies of the hourly charge out rate schedules of the BDO practice groups that applied during the Relevant Period. Exhibit "DW-67" includes two schedules of charge out rates because the hourly

  
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rate of Craig Jenkins, a partner of the BDO audit division increased from \$490 to \$500 on 1 January 2017.

*Audit*

40. During the Relevant Period, the Audit team at BDO has assisted me by:-
- (a) Assisting with the hypothetical receivership assessments of a sample of FMIF loans to assist with the prosecution of the Auditors Claim;
  - (b) Assisting with analysing and interpreting the comparison information from (a) above, estimation of the quantification of the loss suffered by the FMIF in the Auditors Proceeding and undertaking a re-assessment of the quantification of the loss under an adjusted scenario;
  - (c) Assisting our solicitors and counsel in responding to an amended strike out application and amended submissions, filed by the former auditors and with the finalisation of the preparation of a second further amended statement of claim;
  - (d) Assisting with the preparation of the claim against the Feeder Funds involving the redemptions and distributions transactions with the Feeder Funds;
  - (e) Assisting our solicitors and counsel with the completion of the particulars document supporting the proposed amended statement of claim against LMIM in relation to loan management fees;
  - (f) Assisting with the review of and completion of the management accounts for the half year ended 31 December 2016.
41. Given the expertise required to perform this work, I believe it was necessary for the Audit team to assist me with the above matters.

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***Corporate Finance***

42. During the Relevant Period, the Corporate Finance team at BDO has assisted me in my roles by:-
- (a) Assisting with a high level review of the proposed methodology, fundamental assumptions and estimation of the quantification of the loss suffered by the FMIF in the Auditors Proceeding.
43. Given the expertise required to perform this work, I believe it was necessary for the Corporate Finance team to assist me with the above matters.

***Business Services***

44. During the Relevant Period, the Private Clients team at BDO has assisted me in my roles by:-
- (a) Reviewing an ATO private ruling and amended BAS calculations for a controllership for periods post the appointment of FTI to the RE to assist in the collection of refunds for the benefit of investors.
45. Given the expertise required to perform this work, it was necessary for the Business Services team to assist me, to ensure that the Business Activity Statements in relation to the Controllership Companies were correctly prepared and lodged.

**Categories of work**

46. 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;

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- (d) Creditors; and
  - (e) Administration.
47. 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.
48. Exhibited hereto and marked "DW-68" is a breakdown of time charged by BDO employees pursuant to both of my appointments.
49. Exhibit "DW-68" 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.
50. Exhibited hereto and marked "DW-69" is a schedule of work performed by staff of BDO during the Relevant Period ("the **Schedule**") in relation to my appointment (in connection with the winding up of the FMIF). The charges in the Schedule exclude GST.
51. 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 \$
Assets	642.10	\$296,775.50
Investigations	456.90	\$153,233.00
Trade on	297.50	\$120,331.50
Creditors	709.60	\$198,013.00


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Category/area	Total hours	Amount \$
Administration	152.40	\$47,629.00
Total (exclusive of GST)	2258.50	\$815,982.00
GST	0	\$81,598.20
Total claim (inclusive of GST)	2258.50	\$897,580.20

52. 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. I refer to paragraph 33(f) above concerning the need to continue to use certain staff who have a higher charge out rate due to the level of complexity of the litigation matters and investigations needed to properly prosecute these substantial claims.
53. The entries in the Schedule reflect BDO's scale of insolvency and other hourly charge out rates.
54. 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.
55. In order to further assist the Court, I set out below explanations 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.

  
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56. 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.

**Assets**

57. In the Relevant Period, my staff and I have undertaken various tasks and activities that can be described as falling within the category "*Assets*".

58. Generally, work attributed to this category includes tasks in respect of:-

- (a) Advancing claims against guarantors;
- (b) Court proceedings, including:-
  - (i) Pursuing the Claim against the MPF;
  - (ii) Pursuing the Auditors Claim;
  - (iii) Pursuing the recovery of the security for costs in favour of PTAL provided by the plaintiffs in the Austcorp Proceedings following the reimbursement of PTAL's defence costs by FMIF under the Custody Deed;
  - (iv) The litigation associated with the realisation of bonds held in Wollongong Coal Limited ("**WCL**") by Bellpac; and

59. In total, \$296,775.50 (exclusive of GST) of remuneration is sought for approval in the Relevant Period in respect of the "*Assets*" category.

60. I set out below the extent of work undertaken in respect of "*Assets*".

61. 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.

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

62. 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.
63. 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.

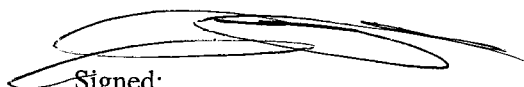
*Retirement Villages*

64. 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.
65. All of the retirement village assets have been realised. The work undertaken during the period were tasks to finalise the retirement village controllerships including investigation of the transfer of a residential lot by Bridgewater in 2008 to a related party.
66. A majority of the work undertaken in respect of the retirement village assets has been recorded against the controllership appointment. However, the work undertaken is only recorded once.
67. 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.

*Court Proceedings*

68. Generally, work in respect of court proceedings that have been initiated by me is now attributed to the "Assets" category, having formerly been charged to the

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“Investigations” category of work. The reason for this move is to reflect that the investigation aspect of the work has for the most part come to an end, that the court proceedings filed are treated as what is considered to be an asset of the FMIF.

*Auditors Claim - Supreme Court of Queensland Proceeding 2166/15*

69. Paragraphs 158 to 168 of my November 2015 Affidavit, sets out the background to the Public Examinations (“PEs”), and paragraphs 104 to 111 of my June 2016 Affidavit and paragraph 78 of my November 2016 affidavit, sets out the steps in the proceeding to the period ending 31 October 2016.
70. Since that time, the following progress has been made in the proceeding by way of responding to the defendants’ amended strike-out application and amended submissions:-
- (a) I caused to be filed Further and Better Particulars of the SFASOC;
  - (b) I caused to be filed two further affidavits and an outline of submissions.
71. There has been a considerable amount of work carried out by my staff (including, significantly, the BDO Audit team) and me with respect to the Auditors Claim including assisting my solicitors in preparation of the material to respond to the defendants’ amended strike-out application and amended submissions and the continuation of the quantification of the loss suffered by the FMIF.
72. During the Relevant Period, the following staff, under my instruction and supervision, assisted me in this matter:-
- (a) Clark Jarrold;
  - (b) Craig Jenkins;
  - (c) Eric Leeuwendal;

Signed:

Witnessed by:



- (d) John Somerville;
- (e) Julie Pagcu;
- (f) Brooke Streidl.

73. During the Relevant Period, the work of my staff and I has included:-

- (a) Liaising with my solicitors and counsel in dealing with and responding to the amended submissions and amended strike out application filed by the former auditors. The work involved complex issues and included the following:
  - (i) Reviewing, considering and discussing:
    - (A) EY's amended strike out application and EY's amended submissions
    - (B) Preparation of the Further and Better Particulars of the SFASOC;
    - (C) Preparation of two further affidavits and outline of submissions;
    - (D) Preparation for the hearing of the strike out application
  - (ii) Assisting our solicitors with the preparation of the supporting material for the purposes of preparing the further particulars as required by Counsel including preparing, reviewing, checking and finalising the summary schedule of the former auditors work papers revealing or indicating an awareness of certain allegations in the SFASOC, collating copies of the former auditors work papers and supporting documents included in the summary schedule;

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- (iii) Liaising with our solicitors regarding seeking agreement from the former auditors solicitors for an extension to the completion and filing of our outline of submissions for the strike out application hearing;
- (iv) Meeting with our solicitors and discussions with our solicitors to finalise the affidavit prepared to support our submissions on the former auditors' strike-out application. Review drafts, check and assist our solicitors and counsel to finalise the affidavits;
- (v) Discussions with our solicitors to finalise our submissions on the former auditors' strike-out application. The submissions paper was an extensive document of more than 75 pages. Undertake reviews of drafts, check and assist our solicitors and counsel to finalise the submissions;
- (vi) Liaising with our solicitors in regard to queries on certain other possible points of claim against the former auditors and whether amendments to the SFASOC may be required;
- (vii) Liaising with our solicitors in regard to a request by the former auditors for a copy of documents referred to in our Further and Better Particulars, undertake searches for certain documents in LM's audit work papers/records and the former auditors' work papers produced for the public examination and provide copies to our solicitors;
- (viii) Reviewing, considering and analysing the former auditors' work papers that raised the issue of the requirement to amend prior period errors in financial statements and communications with our solicitors for their consideration to assist in the claim against the former auditors;

  
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- (ix) Discussions with our solicitors in regard to the hearing of the former auditors' strike out application, the reserved judgement and the judge's comments for further consideration with counsel. Review and consider the written summary of the hearing from our solicitors;
- (x) Review of transcript of the strike out application hearing;
- (b) Review, consider and analyse work papers of the former auditors including those regarding impairment for loans secured by property with development projects and consideration of prior period errors to assist with the claim against the former auditors;
- (c) Continue with work regarding the hypothetical receivership assessments of selected loans to compare the potential difference in outcomes had a receivership of the FMIF been undertaken earlier, to assist with the prosecution of the Auditors Claim. The work involved complex issues and included the following:
  - (i) Reviewing loan files and loan accounts to identify and calculate actual cash inflows and outflows over numerous financial periods to the realisation of the security property (which in some cases occurred over a 7 year period) which are relevant to those financial periods.
  - (ii) In regard to retirement village loans, reviewing actual cash inflows and identifying, assessing and calculating income from both new sales and re-sales and then using the data from new sales, assess the net sale prices achieved by category of unit type to assist in the estimation of market value for the hypothetical sales;
  - (iii) Reviewing loan files and former auditors' work papers to ascertain the actual steps taken to realise the security property, the

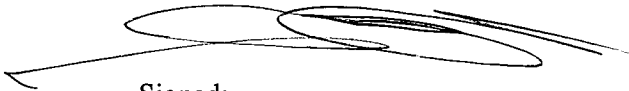
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manner of realising the property, the strategy of the RE to realising the property, timing of sale, the time taken to sell the property, any issues impacting realisation of the property and causing delay in sale and the cash flows that would need to be taken into account in a hypothetical realisation scenario;

- (iv) Assessing the hypothetical sales strategy, timing and a reasonable sale price at the time of the hypothetical sale by reviewing, considering and assessing all available data and property valuations and other available market evidence;
  - (v) Preparation of a summary of the hypothetical receivership assessments and actual cash flows to compare the overall result of a hypothetical receivership to the actual amount realised and interpret the outcome. Discuss the outcome and consider the quantification of loss calculation and an overall cash flow comparison of a hypothetical receivership
- (d) Continue with work to estimate the quantification of the loss as requested by our solicitors and counsel for the claim against the former auditors. The work involved was extensive and in addition to the above, included the following:
- (i) Consideration of and assessment of the impact of the delayed sale of the security properties as compared to a hypothetical earlier receivership based on the sample of hypothetical receivership assessments. Consideration of and assessment of the estimated quantification of loss calculation and recommendation to undertake an overall cash flow comparison of a hypothetical receivership as a check measure to the estimated quantification of loss as prepared. The work involved in the estimated quantification of loss was extensive and included the following:

  
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- (A) Reviewing, considering and analysing audited accounts for a number of financial years commencing from 2008 and consider the impacts of each relevant expense line item from the audited accounts and assess whether or not, in a hypothetical receivership scenario, those expenses would in all likelihood have been avoided and, if so, calculate the potential loss for those expense items;
- (B) Undertake an assessment of the cash flow effects of the assumed timing of the realisation of security properties for a number of financial years in a hypothetical receivership scenario, the estimated surplus cash after pay out of the bank debt and other necessary expenses and estimate the loss of interest foregone on the surplus cash over the period of the assessment;

Prepare a draft paper on the estimated quantification of the loss being claimed against the former auditors as requested by our solicitors based on a hypothetical receivership scenario.

Claim against the MPF – Queensland Supreme Court proceeding 12317 of 2014

- 74. 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.
- 75. The Claim against the MPF, as filed, seeks \$15,546,147.85, plus interest (calculated from 2011). Whilst the Claim has been brought in the name of LMIM, pursuant to the orders of Justice Jackson on 21 July 2015, the interests of LMIM as the responsible entity of the FMIF are being represented by me.
- 76. The background to the Claim against the MPF is set out in my November 2015 Affidavit at paragraphs 102 to 105, and the court history in the proceeding up to November 2015, at paragraphs 106 to 119 therein and my June 2016 Affidavit,


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at paragraph 80. Further progress in the proceeding is recorded in my November 2016 Affidavit, at paragraph 81 to 83.

77. Since that time, the following progress has been made in the proceeding itself:-
- (a) I caused to be filed a second further amended statement of claim (SFASOC);
  - (b) In response to a Request for Further and Better Particulars of my SFASOC from the 6<sup>th</sup> defendant, I caused to be served a Further and Better Particulars
  - (c) The 2<sup>nd</sup> and 6<sup>th</sup> defendants have filed defences;
  - (d) A Request for Further and Better Particulars was served on the 6<sup>th</sup> defendant and the 6<sup>th</sup> defendant has filed and served the Further and Better Particulars;
  - (e) A Reply to the 6<sup>th</sup> defendant's defence has been filed and served;
78. Only BDO staff in the BR practice group have worked (on my instruction) on the Claim against the MPF.
79. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with my solicitors and counsel and the parties to progress the negotiations with the parties to settle the proceedings.;
  - (b) reviewing numerous correspondence between the parties and assisting my solicitors to settle the correspondence sent to the parties;
  - (c) numerous meetings with my solicitors and a meeting with counsel which included a consideration of the outcome of the ASIC proceedings against the director defendants in relation to a different LM fund which was relevant to whether privilege afforded to the director defendants ought to continue;

  
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- (d) Liaising with my solicitors in dealing with the 6<sup>th</sup> defendant's requests for extensions of the court timetable to deliver his amended defence;
- (e) Liaising with my solicitors in regard to a request from the 6<sup>th</sup> defendant for a copy of parts of the public examination transcripts documents;
- (f) Liaising with my solicitors in regard to the 6<sup>th</sup> defendant's amended defence, reviewing and considering the amended defence and assisting my solicitors to prepare a Reply to the amended defence and a Request for Further and Better Particulars;
- (g) Liaising with my solicitors in regard to the 1<sup>st</sup> defendant's queries on certain documents in my disclosure, conducting searches for certain documents from electronic and paper archive records and producing copies to assist my solicitors in responding to the 1<sup>st</sup> defendant;
- (h) Liaising with my solicitors in regard to the decision handed down by Jackson J in regard to my application for Orders filed in October 2016 for the 2<sup>nd</sup> defendant to file an amended defence in accordance with the Uniform Civil Procedures Rules;
- (i) Liaising with my solicitors in regard to a short extension to the Court timetable for me to file and serve my Request for Further and Better Particulars;
- (j) Liaising with my solicitors in regard to consent orders in relation to the court timetable for the filing of the 2<sup>nd</sup> defendant's defence and other documents including discovery;
- (k) Liaising with my solicitors in regard to providing updates to the solicitors for McGrath Nicol and Deutsche Bank;
- (l) Liaising with my solicitors in regard to the 6<sup>th</sup> defendant's response to our Request for Further and Better Particulars, reviewing and

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considering the amended defence and assisting my solicitors to prepare a Reply;

- (m) Liaising with my solicitors in regard to the 2<sup>nd</sup> defendant's request for an extension of time for delivering their pleadings;
- (n) Liaising with my solicitors in regard to finalising my Reply to the 6<sup>th</sup> defendant's defence, reviewing the draft Reply and assisting my solicitors to finalise the Reply;
- (o) Liaising with my solicitors in regard to a request from the 1<sup>st</sup> defendant to require production of certain parts of the PE transcripts and documents and assisting my solicitors in settling the reply to the correspondence. Liaising with my solicitors in regard to settling correspondence to the relevant parties seeking their consent to the disclosure of parts of the PE transcripts. Liaising with my solicitors in regard to the responses received from the parties to the disclosure of the PE transcripts and assisting my solicitors in settling correspondence in reply;
- (p) Liaising with my solicitors in regard to the defence filed by the 2<sup>nd</sup> defendant, reviewing and considering the defence;

\$2 million of WCL convertible bonds - Federal Court of Australia at New South Wales proceeding 2014/332566

- 80. Paragraphs 126 to 133 of my November 2015 Affidavit sets out the background in Federal Court of Australia at New South Wales proceeding 2014/332566 ("**\$2M proceeding**").
- 81. The claim was successfully prosecuted by the liquidator of Bellpac, and the FMIF is the beneficiary of the funds recovered from the \$2 million bonds (after costs).

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Witnessed by:



82. The net proceeds of the \$2M bonds settlement are held by the Bellpac liquidator, and are being utilised to fund the recovery of the \$8 million of WCL convertible bonds.
83. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with the Bellpac liquidator regarding ongoing costs, the Liquidator's AGM report and proposed meeting of creditors, the terms under which an amended proof of debt would be submitted to the liquidator and corresponding with the Liquidator in regard to the proposed proof of debt to be submitted;
  - (b) Reviewing and considering the Liquidator's AGM report and comments made in regard to seeking a valuation of Bellpac's formerly owned property to consider the sale of property transaction. Corresponding with the Liquidator in regard to the funding agreement and use of funds from the \$2M Bonds settlement;
  - (c) Liaising with the Liquidator regarding the outcome of the AGM meeting of creditors and the drawing of remuneration approved by creditors and expenses, reviewing the detailed fee reports and corresponding with the Liquidator in relation to queries and the funding of the approved remuneration;
  - (d) Liaising and corresponding with the Liquidator in regard to claims made by the MPF to the proceeds of the Bonds proceedings. Meetings with and liaising with our solicitors in regard to the claim by MPF to part of the proceeds of the Bonds litigation, reviewing correspondence from the MPF and assisting my solicitors to settle correspondence sent to the MPF

\$8 million of WCL convertible bonds - Federal Court of Australia at New South Wales proceeding no.NSD1488/2015

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Witnessed by:



84. Paragraph 135 of my November 2015 Affidavit sets out the background to the Federal Court of Australia at New South Wales proceeding no.NSD1488/2015 (“**\$8M proceeding**”). Reference to this proceeding is also made at paragraph 90 of my June 2016 Affidavit and paragraphs 90 and 91 of my November 2016 Affidavit.
85. During the Relevant Period, I was informed by the liquidator of Bellpac, and believe, that the application for special leave by the defendants to the High Court regarding the appeal decision was refused.

**Federal Court of New South New Wales Proceeding 2016/00120239**

86. The Liquidator has entered into a Heads of Agreement with WCL to settle a proceeding regarding conversion of the bonds to shares by WCL for \$6.3 million with the sunset date to complete the conditions precedent in the HOA being extended to 14 July 2017;
87. The proceedings with WCL have been adjourned to enable the parties to settle the litigation.
88. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with the Liquidator and Liquidator’s solicitor regarding offers of settlement and reviewing recommendations and correspondence in relation to same;
  - (b) Liaising with the Liquidator and Liquidator’s solicitor regarding meeting with WCL to further negotiate the settlement of the litigation, the outcome of those negotiations and heads of agreement (HOA) entered into. Reviewing the heads of agreement and corresponding with the Liquidator on queries in regard to the timing of the steps to settlement;
  - (c) Liaising with the Liquidator to obtain updates on the progress of completing the conditions precedent to the HOA, reviewing correspondence and updates in relation to the progress with Court

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approval and hearing dates to obtain Court approval for the transaction with Bellpac to acquire the Bellpac shares in order to settle the litigation (the Transaction);

- (d) Reviewing the Liquidator's report convening a meeting of creditors to approve a compromise of debt per the Corporations Act to give effect to one of the conditions precedent to the HOA, correspondence with the Liquidator regarding completion of an appointment of proxy by PTAL for the meeting and confirmation of conditions of submitting the amended proof of debt form, preparation of correspondence and communications to arrange approval for PTAL to execute the appointment of proxy document;
- (e) Corresponding with the Liquidator and liaising with our solicitors in regard to the query raised by the Liquidator in regard to the FMIF debt and securities;
- (f) Liaising with the Liquidator in relation to the Court's decision in regard to WCL's application and the proposed alternative to instead seek approval from shareholders to the Transaction;
- (g) Liaising with the Liquidator in relation to an extension sought by WCL to the sunset date in the HOA to enable time to convene the meeting of shareholders to approve the transaction with Bellpac, reviewing correspondence between the Liquidator and WCL in regard to negotiations on the agreement to the extension, reviewing recommendation from the Liquidator on accepting the proposal from WCL and responding to the recommendation;

### **Investigations**

89. During the course of the winding up, my staff and I have undertaken various tasks that can be described as falling within the category "*Investigations*".

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Witnessed by:



90. This category relates to work undertaken in pursuit of my investigations, which may result in legal proceedings.
91. Generally, once a proceeding is started, time is then recorded and allocated to the "Assets" category of work.
92. My investigations, in summary, relate to the following categories of matters:-
  - (a) LMA/Director related claims; and
  - (b) Redemptions and distributions to Class B unit holders.
93. In total, \$153,233.00 (exclusive of GST) in remuneration is sought for approval in respect of the "Investigations" category.
94. 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.
95. 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.

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

96. In the Relevant Period investigations continued in relation to management service agreements with LMA. These further investigations were undertaken to enable draft amendments to the statement of claim in the LMIM claim to be prepared.
97. During the Relevant Period, the work of my staff and I has included:-
  - (a) Responding to queries from our solicitors and counsel on a number of matters and undertaking investigation of those matters to respond which included:

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- (i) Conducting investigations to determine the ownership interest in LMIM and LMA;
  - (ii) Conducting further investigations of FMIF accounting records to assist counsel to particularise the payment of loan management fees between 1 July 2010 to 30 June 2013;
  - (iii) Conducting further investigations of FMIF records and prepare a schedule of wages and consultants fees paid over the period 2008 to 2013 to assess material changes in the level of these expenses as requested by counsel;
  - (iv) Conducting further investigations of FMIF records of the loan management fees invoiced to borrowers, the periodic schedules prepared to calculate these charges, how these charges were accounted for in the ledgers of FMIF, how these charges were paid as recorded in the accounting ledgers including the repayment of the pre-paid management fees account with LMA, undertaking reconciliations of the ledgers to the borrower invoices, reviewing other relevant journal transactions in the accounting ledgers, reviewing the expenses portion of these charges, considering the GST treatment in the accounting ledgers and invoices from LMIM, reviewing the former auditors working papers in relation to the journal of the reduction in loan management fees in the 30 June 2011 financial year against management fees;
- (b) Assisting my solicitors and counsel to prepare and finalise drafts of the amended statement of claim and particulars document and considering and reviewing several versions of these documents;

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*Redemptions and distribution to Class B Unit Holders*

98. The background to these investigations is relevantly set out at paragraphs 117 to 119 of my June 2016 affidavit.
99. During the Relevant Period, the work of my staff and I has included:
- (a) Responding to queries from our solicitors and counsel on a number of matters and undertaking investigation of those matters to respond which included:
- (i) Considering counsel's summary of our file note on the liquidity of FMIF before May 2009, conducting further investigations in regard to whether steps were taken by the RE to access the secondary market for distressed loans and responding to counsel's queries;
- (ii) Considering counsel's queries and recommendations in relation to hardship payments made to the Feeder Funds and discussion with our solicitors regarding those queries, conducting investigations of the records of the FMIF and former auditors work papers in relation to hardship payments, reviewing those records and identifying a schedule recording the cumulative hardship applications, approvals and payments made and periodic summary statistics of hardship applications, approvals and payments sent to ASIC;
- (iii) Conducting investigations of a sample of records of the FMIF to assess the efficacy of the FMIF records in relation to dealing with hardship applications and the approval process as required by the applicable ASIC relief instruments, making observations about the records and responding to the queries from our solicitors;

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- (iv) Considering Counsel's further queries and recommendations in relation to quantifying hardship redemptions paid to the Feeder Funds. Conducting investigations of the FMIF records of the approved hardship applications and payments made, assessing whether approvals were in accordance with the ASIC relief instruments. Making observations in relation to the total reviewed approved hardship applications and payments and the quantum of genuine hardship payments made to the Feeder Funds;
- (v) Conducting further investigations of the records of the FMIF and former auditors work papers in relation to documents that record the creation of the differing rights, restrictions and obligations of the different classes of the units in the FMIF, the development of those rights and distribution rates for the Feeder Funds and responding to counsel's queries;
- (vi) Conducting investigations of the records of the FMIF and the former auditors work papers in relation to cash distributions paid by the RE to FMIF investors in the 2012 financial year when all distributions declared were reinvested per the audited accounts. Make observations from the investigations undertaken and respond to counsel's queries;
- (vii) Conducting investigations of the records of the FMIF pertaining to income distributions which included reviewing the relevant constitutions, compliance plans, PDS's, audited accounts and other disclosures to investors and the former auditors work papers. The investigations covered the period from 1 July 2008 to 2012 and involved assessing documents identified as the RE's monthly calculation of distributable income and any certification thereof, the setting of distribution rates and any documentation of management's deliberations in setting the rates, the RE's compliance with the compliance plan and the existence and

  
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application of the differential fee arrangement with the Feeder Funds. Make observations as to whether the distributions paid to the Feeder Funds were disproportionate in their favour compared to their interest held in the FMIF and if so, estimating the likely loss to other investors, whether the distributions were made in cash or reinvested, whether the differential fee arrangement as proffered by the RE in relation to reduced management fees for FMIF compensating the higher distribution rates to the Feeder Funds was in fact occurring, whether a claim should be made against the Feeder Funds for receiving a higher distribution rate than other investors;

- (viii) Conducting investigations of the circumstances around the winding up of the Feeder Funds and responding to Counsel's queries;
- (b) Liaising with my solicitors in relation to clarifying the scope of our undertakings to the Court regarding interrogating the LM servers when conducting investigations
- (c) Liaising with my solicitors in regard to the preparation of a claim against the Feeder Funds, the ongoing investigations needed to finalise the claim in relation to distributions and other matters. Assisting my solicitors and counsel to prepare and finalise the statement of claim, considering and reviewing versions of the claim and confirming instructions to file the claim and conducting further detailed investigations in relation to proposed amendments to the claim;
- (d) Responding to queries from the receivers and managers of the LM Currency Protected Australian Income Fund and the LM Institutional Currency Protected Australian Income Fund and the RE of the LM Wholesale First Mortgage Income Fund as to the status of the winding

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up of the FMIF, the status of the investigations of the redemptions and distributions paid to the Feeder Funds and the claim being prepared;

**Trade on**

100. Generally, work is considered to be “*Trade-on*” if the work is considered to be incidental to the winding up.
101. Work undertaken in relation to trade-on may be recorded in more than one category, however, the work undertaken is only recorded once.
102. During the Relevant Period, work attributed to this category included:-
  - (a) Preparation of unaudited management accounts for the half year ended 31 December 2016;
  - (b) Acting as Respondent to the FTI Indemnity 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, reconciling bank accounts and processing month end cash, and half-year end adjustments;
  - (e) Maintenance of the Microsoft AX loan management database, including accounting for payments, reconciling statements and processing month end and half-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 half year ended 31 December 2016;

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- (ii) Status of litigation matters and work to be done to progress same;
  - (iii) Status of asset realisations and strategies; 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) Investigation of and ascertaining the potential claims by LMIM for indemnity out of assets of the FMIF;
- (h) Reviewing and updating the DB Receiver's cashflow forecasts;
- (i) Meeting with members of the BDO Audit practice group regarding the preparation of the management accounts for the half year ended 31 December 2016; and
- (j) Meetings with the DB Receivers and their staff regarding the continuing appointment of the DB Receivers and other matters.
103. In total, \$120,331.50 (exclusive of GST) of remuneration is sought for approval in respect of the "Trade on" category.

*Management Accounts*

104. During the Relevant Period, my staff and I worked on the preparation of the management accounts for the half year ended 31 December 2016.
105. During the Relevant Period, my staff and I have undertaken the following tasks in respect of completing the management accounts for the half year ended 31 December 2016:-
- (a) Reviewing work papers to verify the accuracy of the management accounts;

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- (b) Preparing summaries for the valuation of each of the assets which are expected to sell within twelve months of the half year end accounts;
- (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 outstanding at 31 December 2016;
- (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 during the financial year ending 30 June 2016,to determine the accrued expenses;
- (h) Calculating provisions for remaining loan accounts with security property or receivable balances 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.

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- (j) Preparing work papers to support the notes to the accounts, including, but not limited to, the movement in impairments as between the periods 30 June 2016 and 31 December 2016;
- (k) Preparing the management accounts 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 30 June 2016 and 31 December 2016;
- (m) Reviewing and amending the trial balance in respect to changes required by the BDO Audit practice group;
- (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 .

106. 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.

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*FTI Remuneration Proceeding – FAOA in Supreme Court of Queensland proceeding 3505 of 2015*

107. On 16 December 2015, the liquidators of LMIM, Mr Park and Ms Muller, filed a Further Amended Originating Application in Supreme Court proceeding 3508 of 2015 (“**FTI Remuneration Proceeding**”).
108. The FAOA sought approval of their remuneration as both the administrators in the period from 19 March 2013 to 31 July 2013, and as liquidators from 1 August 2013 to 30 September 2015.
109. In total, \$3,098,251.83 (excluding GST) was sought to be approved for payment from the FMIF in the FTI Remuneration Proceeding.
110. As at the date of swearing this affidavit, judgment with respect to the FTI Remuneration Proceeding has not been delivered.

*FTI Indemnity Proceeding – Supreme Court of Queensland proceeding 3505 of 2015*

111. Pursuant to the Residual Powers Orders, I have been directed to take certain steps to review, and decide on, claims by LMIM with respect to expenses sought to be paid from the assets of the FMIF.
112. To date, I have received two formal claims, and been put on notice as to a third.
113. The two formal claims submitted seek the payment of:-
- (a) \$241,453.54 (the “**First Claim**”); and
  - (b) The second for \$375,499.78 (the “**Second Claim**”), from the assets of the FMIF.
114. The First Claim relates to legal fees incurred by LMIM appealing the decision of Justice Dalton appointing me to wind up the FMIF. This claim was rejected in full.

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115. As to the Second Claim, I accepted \$84,954.41 of this claim, rejected \$169,243.26 and deferred \$5,473.59; the liquidators withdrew the balance.
116. As a result of my refusal to pay certain amounts of the First Claim and Second Claim, LMIM and its liquidators filed an application with the Court on 20 May 2016, for declarations that LMIM is entitled to indemnity out of assets of the FMIF in respect of certain claims.
117. After directions hearings during the Relevant Period, hearing dates have been listed for 19 and 20 June 2017. On 30 May 2017, I obtained judicial advice to the effect that I am justified in raising the “clear accounts” rule as a ground of objection to the application referred to in the preceding paragraph, by raising certain identified allegations of loss caused to or amounts by which LMIM is alleged to be liable to restore to the FMIF.
118. During the Relevant Period, the work of my staff and I has included:
- (a) Liaising with my solicitors and counsel in relation to considering the clear accounts rule regarding the FTI indemnity claims and those that are likely to subsequently be made against the assets of the FMIF, the preparation of and finalising the points of claim as required by the orders of the Court and the amendment of the statement of claim against LMIM including particulars, the investigations for which are detailed in paragraphs 97 and 98 above;
  - (b) Reviewing and considering correspondence from FTI’s solicitors and assisting my solicitors to settle correspondence in response.
119. I expect to receive further indemnity claims during the course of my appointment.

**Creditors**

120. I am seeking approval for remuneration in the order of \$198,013.00 (exclusive of GST) in respect of work that is categorised as “Creditors”.

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121. 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;
- (e) Responding to the MPF Proceedings; and
- (f) Work in respect of the Austcorp Proceeding.

*Reports to Members*

122. During the Relevant Period, I published on the FMIF website two reports to members of the FMIF updating them as to the ongoing winding up of the FMIF. Exhibited hereto and marked:-

- (a) "DW-70" is a copy of the sixteenth report to members; and
- (b) "DW-71" is a copy of the seventeenth report to members.

Each of those reports contains information which is, or was at the time of the report, correct, to the best of my knowledge and belief.

123. 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;

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- (d) Updating the status of litigation matters;
- (e) Reconciling the cash at bank and the loan balances;
- (f) Considering and calculating the updated estimated return to members;  
and
- (g) Considering and calculating the updated unit price as at 31 December  
2016

*Contact with members in respect of reports to members*

124. 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.

125. 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.

126. Work undertaken in relation to communications with members is sometimes also recorded in the "*Administration*" category of work depending on the

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context of the call or correspondence, and the work required following that communication. However, time for carrying out any task is only recorded once.

*Foreign currency units*

127. During the Relevant Period my staff and I continued to investigate a discrepancy identified between the units recorded in the FMIF members register in the AX database, and the units recorded in the audited and management accounts for the 2012 financial year.
128. During the Relevant Period, my staff and I undertook the following work to investigate this issue:-
- (a) Liaised with our IT consultant in relation to assessing the scope of the work required to rectify the incorrect conversion of foreign investor unitholding transactions into the AX investor management database, meetings with our IT consultant to discuss the proposed solution, resources necessary and work involved. Receive and consider a service request from our IT consultant outlining the proposed task to correct the foreign investor unitholding transactions back into the AUD currency;
  - (b) Conduct investigations of the LM servers to locate the conversion files from the former Composer investor management database used for the conversion of the data into AX, identify apparent conversion files and meet with IT consultant to consider whether the data can be used to streamline the service request;
  - (c) Liaised with our solicitors in relation to commencing preparation of the proposed application for orders authorising the correction of the register of members and the steps taken in relation to the service request and their recommendations in relation to the service request document; and
  - (d) Liaised with our IT consultant that maintains the access platform to the LM servers to discuss and obtain a cost estimate to host the relevant parts

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of the LM server investor database pertaining to the FMIF to enable our other IT consultant to undertake the tasks to firstly test the proposed solution to rectify the AX investor management database and once Court approval has been obtained, to complete the tasks to rectify the AX investor management database..

*AX Database*

129. During the Relevant Period my staff and I were required to continue to maintain the Microsoft AX investor management database. 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.
130. The AX Database is where the Register of Members is kept and maintained. In accordance with the Residual Powers Orders, this is a duty charged to me.
131. 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.

*Austcorp Proceedings*

132. The background and steps in the proceeding up until 30 April 2016 are contained in my November 2015 affidavit at paragraph 218, and June 2016 affidavit at paragraph 157. Further developments are set out in my November 2016 affidavit at paragraphs 141 to 144;
133. These proceedings relate to a claim against PTAL alleging a sale of a Bellpac property at undervalue. The proceeding was ultimately discontinued, with costs awarded against the Plaintiff.

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134. A right of indemnity exists from LMIM out of the FMIF's assets under the custody agreement with PTAL (the custodian of the FMIF), and accordingly, the PTAL has an entitlement to the costs incurred by defending the matter prior to it being discontinued.

Work in the Relevant Period

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

- (a) Liaised with PTAL with a view to PTAL obtaining the security for costs bank guarantee submitted to the Court by the plaintiffs (Austcorp) and paying the amount realised to the FMIF once the Liquidators of Austcorp has consented to PTAL obtaining the full proceeds from the bank guarantee;
- (b) Liaised with the Liquidators of Austcorp in relation to the Liquidators investigations and likely return in the winding up and the status of the Austcorp Proceedings.

*MPF Proceedings – Queensland Supreme Court proceedings 8032 of 2014, and 8034 of 2014*

136. On 27 August 2014, KordaMentha filed two proceedings, namely, proceeding numbers 8032 of 2014, and 8034 of 2014. These proceedings were brought against LMIM, and initially sought 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.
137. At paragraphs 86 to 97 of my November 2015 Affidavit, I set out the relevant steps undertaken in the MPF Proceedings, up to the directions hearing heard on 7 December 2015.

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138. At paragraphs 161 to 164 of my June 2016 Affidavit, I set out the steps undertaken in the period to 30 April 2016.
139. At paragraphs 149 to 150 of my November 2016 Affidavit, I set out the steps undertaken in the period to 30 April 2016.
140. Since that time, the MPF Proceedings have progressed as follows:-
- (a) Orders were made on 7 December 2016 to give effect to the judgement on applications to strike out the claims against assets of the FMIF; and
  - (b) A review hearing was undertaken on 16 December 2016 at which the proceedings were adjourned for further review on a date to be fixed.
141. I believe it is necessary in the winding up of the FMIF for me to defend these proceedings, in order to fulfil my obligation to protect the interests of the FMIF in the best interests of the members, and I have been joined as a Defendant to those proceedings.
142. During the Relevant Period, the work of my staff and I have included:
- (a) Liaising with our solicitors regarding advising the Associate of the commercial list Judge of the delivery of judgment on the strikeout applications and to request that the matter be listed for a review, reviewing and assisting our solicitors to settle draft correspondence to the Associate to that effect and correspondence to the solicitors for the MPF seeking consent to the proposed correspondence to the Court;
  - (b) reviewing and assisting our solicitors to settle various correspondence to the solicitors for the MPF regarding draft orders to give effect to judgment on the strike out applications, including the orders as to the costs of the strike out applications and considering correspondence from our solicitors in relation to same;

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- (c) Liaising with our solicitors regarding correspondence from the Court regarding a date for a review of the proceedings, orders proposed for the review hearing and correspondence with the solicitors for the MPF.

**LMIM Claim**

143. This claim is defined in paragraph 16(a) above and described in the table at paragraph 17 above.

Work undertaken by BR staff in the Relevant Period

144. During the Relevant Period, the work of my staff and I has included:-

- (a) Meeting with and liaising with my solicitors in relation to the preparation of a claim against LMIM in relation to certain transactions to preserve limitations periods to assist with responding to the claim by MPF against the FMIF;
- (b) Responding to queries from our solicitors and counsel on a number of matters and undertaking investigation of those matters to respond which included:
- (i) Conducting investigations of FMIF records and former auditors work papers in relation to loan management fees charged and paid by FMIF to LMA/LMIM;
- (ii) Conducting investigations of FMIF records in relation to rates of interest paid by the FMIF to its financiers over the period 2009 to 2013;
- (iii) Conducting investigations of FMIF records and former auditors work papers in relation to pre-paid management fees. Undertaking calculation of interest foregone on pre-paid management fees paid to LMA or LMIM on daily balances at rates commensurate with rates charged by its financiers;

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- (iv) Considering and assessing whether the FMIF was overvalued leading to higher management fees paid by FMIF to LMIM;
- (c) Assisting my solicitors and counsel to prepare and finalise the statement of claim, considering and reviewing versions of the claim and confirming instructions to file the claim.

### **Administration**

145. In my role, my staff and I have undertaken various tasks that can be described as falling within the category "*Administration*".

146. 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.

147. In total, \$47,629.00 (exclusive of GST) of remuneration is sought for approval in respect of the "*Administration*" category.

148. The main tasks my staff and I undertook in the Relevant Period are set out further below.

### *Applications for approval of remuneration*

149. For the purposes of my remuneration application filed on 18 November 2016, 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

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required to liaise with, and provide instructions to, my solicitors in respect of that application and my affidavit.

*Job management*

150. 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 half year ending 31 December 2016;
  - (c) Investor issues and content for my regular reports to members;
  - (d) Status of the various investigations, claims and court proceedings;
  - (e) Status of creditor claims; and
  - (f) Coordinating my application for approval of my remuneration.
151. 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*

152. 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.
153. Regularly during the Relevant Period enquiries are fielded from members regarding changes to their details.

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154. 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..
155. 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.
156. Some work undertaken in relation to communications with members may be recorded in other categories, that is, under Creditors and/or Trade On, depending on the context of the phone call. However, time for carrying out each task is only recorded once.

*General*

157. In addition to the above specific matters, my staff and I also conducted the following ongoing tasks and activities in the Relevant Period:-
- (a) Preparation of and lodgement of receipts and payments accounts with ASIC (Form 524); and
  - (b) Attending to general file administration including filing, archiving books and records and maintaining the archive books and records register
158. 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.

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159. Work undertaken in respect of "*Administration*" may be recorded in other categories. However, the work undertaken is only recorded once.

### **Controllerships**

160. 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*

161. Exhibited hereto and marked:-

- (a) "DW-72" 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-73" 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-74" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of RBLI;
  - (d) "DW-75" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Cameo;
  - (e) "DW-76" 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-77" 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**").

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162. 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 where appropriate.
163. All work performed in relation to my controllership role was performed by members of the BDO BR team and BDO Business Services 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.
164. 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)
Trade On	15.6	3,385.50
Creditors	0.2	47.00
Employees	0.1	58.00
Administration	7.9	1,848.00
<b>Total</b>	<b>23.8</b>	<b>5,338.50</b>
GST		<b>533.85</b>
<b>Total Claim</b>	<b>23.8</b>	<b>5872.35</b>

Pinevale Villas Morayfield Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade On	0.7	164.00

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Creditors	0.2	47.00
Administration	3.0	585.00
<b>Total</b>	<b>3.9</b>	<b>796.00</b>
GST		<b>79.60</b>
<b>Total Claim</b>	<b>3.9</b>	<b>875.60</b>

Redland Bay Leisure Life Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade On	0.4	73.00
Administration	3.9	767.50
<b>Total</b>	<b>4.3</b>	<b>840.50</b>
GST		<b>84.05</b>
<b>Total Claim</b>	<b>4.3</b>	<b>924.55</b>

Cameo Estates Lifestyle Villages (Launceston) Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Creditors	0.2	47.00
Administration	2.3	505.00
<b>Total</b>	<b>2.5</b>	<b>552.00</b>
GST		<b>55.20</b>
<b>Total Claim</b>	<b>2.5</b>	<b>607.20</b>

Bridgewater Lake Estate Pty Limited		
Category/Area	Total hours	Amount (net of GST)
Assets	3.7	1,367.00
Trade On	1.6	264.00
Investigation	2.0	580.00
Administration	4.4	879.00
<b>Total</b>	<b>11.7</b>	<b>3,090.00</b>
GST		<b>309.00</b>

Signed:

Witnessed by:



Total Claim	11.7	3,399.00
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Redland Bay Leisure Life Development Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Assets	0.1	20.00
Administration	2.9	558.00
Total	3.0	578.00
GST		57.80
Total Claim	3.0	635.80

165. 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.
166. 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) Maintaining and reconciling the MYOB accounts;
  - (b) Preparing and lodging statutory receipts and payments accounts with ASIC;
  - (c) Preparing and lodging Business Activity Statements for the period pre and post my appointment as Controller to recover refunds;
  - (d) Conducting investigations in relation to the transfer to a related entity of Lot 260 by Bridgewater; and
  - (e) Reviewing outstanding matters and statutory requirements to finalise the controllerships.

Signed:

Witnessed by:



**Write-offs & reductions**

167. 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 \$14,956.15.
168. 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).

**Remuneration approval**

*Winding up*

169. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$897,580.20 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.
170. 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 \$897,580.20 inclusive of GST.
171. 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.

Signed:



Witnessed by:



*Controllership*

172. Given the nature and volume of the work involved as canvassed above, I believe that the sum of \$12,314.50 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 my controllership appointments.
173. 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 \$12,314.50 inclusive of GST.
174. As my controllership role is ongoing, there will be a need for further applications for approval of remuneration which I intend to seek on a regular basis.


**Legal professional privilege**

175. 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.
176. 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 13<sup>th</sup> day of June 2017 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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