

**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**

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Page 1

  
**Signed:**

**Witnessed by:** 

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

**Filed on behalf of the Applicant**

**TUCKER & COWEN**  
**Solicitors**  
**Level 15, 15 Adelaide Street**  
**Brisbane, Qld, 4000.**  
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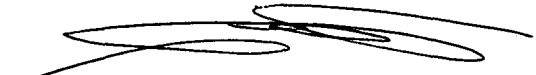
I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland, Registered Liquidator, state on oath:-

1. I am a Registered Liquidator and a Partner of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand (formerly the Institute of Chartered Accountants of Australia) and 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,

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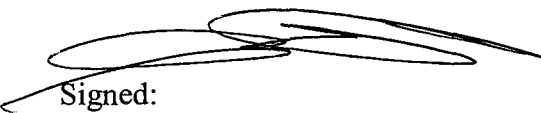
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or claim against, LMIM, in acting as Responsible Entity (“**RE**”) of the FMIF;

- (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:-
  - (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 Australian 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**”);

  
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- (d) Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916 (“**RBL**”);
- (e) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383 (“**RBLD**”);
- (f) Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780 (“**Pinevale**”),


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

*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;

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7. For ease of reference, I use the following terms which are defined throughout this affidavit:-

Defined Term	Definition	Paragraph No.
the Act	the <i>Corporations Act 2001</i> (Cth)	2(a)
ARITA	the Australian Restructuring, Insolvency and Turnaround Association (formerly known as the Insolvency Practitioners Association of Australia)	1
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)	16
BR	BDO Business Restructuring Pty Ltd	32
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 LMIM, certain former directors of LMIM and the trustees of the MPF	70
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.	163
DB	Deutsche Bank AG	17(m)
CPAIF	The LM Currency Protected Australian Income Fund	89

  
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DB Receivers	Joseph Hayes and Anthony Connelly	21
EY	EY also known as Ernst and Young	16
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	86
Feeder Fund Claim	Supreme Court proceeding 13534 of 2016 against LMIM and the Feeder Funds.	85
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	19
FTI Remuneration Proceeding	Further Amended Originating Application filed in Supreme Court of Queensland proceeding 3508 of 2015	117
FTI	FTI Consulting	117
Fund	the LM First Mortgage Income Fund ARSN 089 343 288	2(a)
ICPAIF	The LM Institutional Currency Protected Australian Income Fund	91
June 2016 Affidavit	Affidavit of David Whyte filed 8 June 2016 in this proceeding	65
June 2017 Affidavit	Affidavit of David Whyte filed 14 June 2017 in this proceeding	65
KordaMentha	Trustees of the MPF	22
LMA	LM Administration Pty Ltd (in liquidation)	1(f)
LMIM	LM Investment Management Ltd (receivers and managers appointed)(in liquidation)	4(a)
LMIM claim	Supreme Court of Queensland proceeding no.11560/16	17(i), 55(b)(v)
MPF	LM Managed Performance Fund	15(e)
MPF Proceedings	Supreme Court of Queensland Proceedings 8032/14 and 8034/14 commenced by KordaMentha seeking equitable compensation against LMIM and relief over assets of the FMIF by way of subrogation to LMIM's alleged	17, 141

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	right of indemnity out of assets of the FMIF	
November 2015 Affidavit	Affidavit of David Whyte filed 24 November 2015 in this proceeding	65
November 2016 Affidavit	Affidavit of David Whyte filed 18 November 2016 in this proceeding	65
November 2017 Affidavit	Affidavit of David Whyte filed 10 November 2017 in this proceeding	65
OVST	OVST Pty Ltd (Controllers Appointed) (In Liquidation) ACN 103 216 771	5(c)
PEs	Public Examinations	69 65
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 2017 to 30 April 2018	1(a)
Residual Powers Orders	Orders made by Jackson J on 17 December 2015	4(c)
RBLL	Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916	5(d)
RBLLD	Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383	5(e)
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 winding up of the FMIF).	47
WCL	Wollongong Coal Ltd	55
WFMIF	The LM Wholesale First Mortgage Income Fund	89(g)
\$2M proceeding	Supreme Court of New South Wales proceeding no.2014/332566	76
\$8M proceeding	Federal Court of Australia at New South Wales proceeding no. NSD1488/2015	84 80

  
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## Previous Remuneration

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

Remuneration Period	Remuneration Order	Amount of remuneration approved (incl. of GST)	Approximate remuneration per month
8 August 2013 to 31 March 2014	McMurdo J on 28 August 2014	\$702,480.35	\$88,000.00
1 April 2014 to 30 September 2014	Mullins J on 27 November 2014	\$1,005,948.35 (receivership) \$7,000.95 (controllership)	\$169,000.00
1 October 2014 to 30 April 2015	Jackson J on 23 June 2015	\$1,761,911.25 (receivership) \$442,214.30 (controllership)	\$315,000.00
1 May 2015 to 31 October 2015	Martin J on 11 December 2015	\$2,279,205.50 (receivership) \$194,052.10 (controllership)	\$412,000.00
1 November 2015 to 30 April 2016	Douglas J on 26 June 2016	\$1,405,155.40 (receivership) \$36,510.65 (controllership)	\$240,000.00
1 May 2016 to 31 October 2016	Daubney J on 2 December 2016	\$1,119,991.40 (receivership) \$13,385.35 (controllership)	\$189,000.00
1 November 2016 to 30 April 2017	Mullins J on 30 June 2017	\$897,580.20 (receivership) \$12,314.50 (controllership)	\$152,000.00
1 May 2017 to 31 October 2017	Applegarth J on 30 November 2017	\$1,280,897.20 (receivership) \$26,155.25 (controllership)	\$218,000.00

9. I now make an application for:-

- (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

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up in accordance with its constitution in the amount of \$1,041,907.90 (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 \$22,306.90 (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 30 April 2018 was \$70,269,770.40.
- 12. The remuneration sought in this application for the Relevant Period of about \$177,000 per month has decreased as compared with most previous remuneration applications:-
  - (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 \$189,000 per month);
  - (d) 1 November 2016 to 30 April 2017: approximately \$0.909 million (inclusive of GST) (approximately \$152,000 per month);
  - (e) 1 May 2017 to 31 October 2017: approximately \$1.3 million (inclusive of GST) (approximately \$218,000 per month).

  
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13. On or about 29 March 2018, I informed members, in a report to members, of an estimated return (based on the quantum of real property assets realised) of between 13.1 cents and 14.3 cents in the dollar as at 28 February 2018. This estimate does not take into account or include any allowance for future recoveries from legal proceedings, the effect of the claim and relief sought against the Feeder Funds, any allowance for claims filed by MPF against the assets of the Fund 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.
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 or to protect the assets of the FMIF or defend claims against the assets of the FMIF;
  - (b) conducting detailed accounting and other investigations in relation to such claims and the quantum of such claims.

*Significant claims for the benefit of the FMIF*

15. In the Relevant Period, significant time was spent advancing, or defending, the following Court proceedings:-
- (a) Supreme Court of Queensland proceeding numbered 2166/15 against the former auditors of the FMIF. The significant work included finalisation of the loss quantification for a number of dates in 6 monthly intervals to assist with amending the claim against the former auditors (EY) as required by counsel following the decision of Justice Jackson on the strike out application in the proceeding and preparing detailed particulars in support of the claims made. The quantum of the claim is for in excess of \$200 million ("**Auditors Claim**");

  
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- (b) Supreme Court of Queensland proceeding numbered 13534/16 against LMIM and the Feeder Funds. The significant work included conducting ongoing further investigations in relation to redemptions paid and purported income distributions to the Feeder Funds, providing detailed instructions in relation to amending the claim, and providing instructions in relation to a commercial list application, and applications pursuant to section 59 of the *Trusts Act 1973* (Qld) ("**Trusts Act**") and section 500(2) of the Act. The claim is for in excess of \$55 million with the relief sought being to withhold distributions or other monies payable to the Feeder Funds from the winding up of the Fund up to specific amounts claimed against each of them or certain alternative remedies as set out in the claim;
- (c) Supreme Court of Queensland proceeding numbered 11560/16 against LMIM. The significant work included conducting further investigations in relation to certain unauthorised payments LMIM caused to be made including loan management fees, overpaid management fees and prepaid management fees, and the calculation of interest foregone due to prepaid management fees. The quantum of the claim is yet to be finalised, but includes claims for the aggregate amounts of approximately \$13.7 million and \$12.9 million plus interest;
- (d) Supreme Court of Queensland proceedings numbered 8032/14 and 8034/14 against LMIM and FMIF. The significant work included conducting further investigations in relation to FMIF records of the assignment of the KPG and Lifestyle loans to the MPF in 2008, in particular the purpose of the transactions, how the transactions were negotiated, the values of the securities at different dates, FMIF accounting records of the transactions and purported repayments and providing detailed instructions in relation to the defence of the claim,

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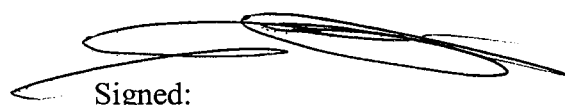
and correspondence regarding security for costs, requests for particulars and establishing a proposed timetable for the future conduct of the proceedings. The quantum of the claim against LMIM and FMIF is approximately \$24 million plus interest; and

- (e) Supreme Court of Queensland proceeding numbered 12317/14 against the trustees of the LM Managed Performance Fund (“MPF”) and others. The claim is for approximately \$15.5 million plus interest.

*All Court proceedings*

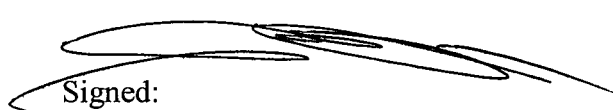
16. A summary of all court proceedings (including those substantial matters mentioned above) in which the FMIF has had an interest during the Relevant Period, or in respect of which work was performed during the Relevant Period (either to advance the proceeding or finalise matters arising as a consequence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

<b>Title, Court &amp; No.</b>	<b>Description of proceeding</b>	<b>Remuneration category in the Relevant Period</b>
Bruce v LM Investment Management Ltd (in liq.) in its capacity as responsible entity of the LM First Mortgage Income Fund & Ors.  Supreme Court of Queensland Proceeding No. 3383/13	This is the proceeding in which I was appointed and winding up orders made.  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.	Trade On and Administration
LM Investment Management Ltd (in liq.) in its capacity as	Claim by LMIM as RE of the FMIF against the auditors (EY) and two	Investigations and assets

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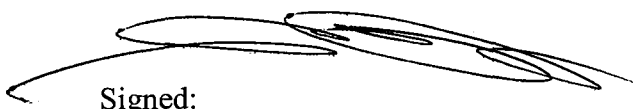
<p>responsible entity for the LM First Mortgage Income Fund (Receivers &amp; Managers Appointed) (Receiver Appointed) v EY (formerly known as Ernst &amp; Young) (a firm) &amp; Ors., (“<b>Auditors Claim</b>”)</p> <p>Supreme Court of Queensland Proceeding No. 2166/15</p>	<p>partners of EY for misleading and deceptive conduct and professional negligence</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.) &amp; Anor.</p> <p>Supreme Court of Queensland Proceedings Nos. 8032/14 and 8034/14</p>	<p>Claim by MPF Trustee against LMIM, arising out of the assignment of KPG and 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>Creditors</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 atf 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</p>	<p>Creditors</p>

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	MPF in breach of trust.	
<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 Queensland Proceeding No. 3508/2015</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 (Indemnity Proceedings).</p> <p>By application filed 19 December 2017, seeking further orders against me for payment of the amounts ordered on 22 November 2017.</p>	Trade On and Investigations
<p>LM Investment Management Ltd v Drake &amp; Ors.</p> <p>Supreme Court of Queensland Proceeding No. 12317/2014</p>	Claim against the MPF Trustee, LMIM and certain former 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
<p>Supreme Court of New South Wales Proceeding No. 2014/332566</p>	Claim with respect to \$2 million of bonds issued by Wollongong Coal Ltd to Bellpac, where the FMIF holds a first ranking security over the assets of Bellpac.	Assets
<p>Federal Court of Australia at New South Wales Proceeding</p>	Claim against Wollongong Coal by Bellpac Pty Ltd Liquidator with	Assets

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No. 2016/00120239	respect to non-conversion of \$8 million of bonds to shares, where the FMIF holds a first ranking security over the assets of Bellpac.	
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 \$13.8 million plus interest and costs	Assets
The Trust Company (PTAL) Ltd v Ross Lamb  Federal Circuit Court SYG2097/2016	Creditors Petition against Guarantor. The Guarantor has been made bankrupt.	Assets
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) as responsible entity for the LM Currency Protected Australian Income Fund (Receiver Appointed) & Ors  Supreme Court of Queensland Proceeding No. 13534/16	Seeking a declaration against LMIM as responsible entity of the Feeder Funds to withhold from distributions or payments otherwise payable to the Feeder Funds in the amount of \$55,059,318.12 or certain alternative remedies as set out in the claim	Assets and Investigations
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)	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.	Assets and Investigations

  
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Supreme Court of Queensland Proceeding No.11560/16 (this is the LMIM claim )		
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*Summary of work in the Relevant Period*

17. 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:-

- (a) Increasing the sample of loans and finalisation of the estimated quantification of loss papers as required by Counsel to assist with the prosecution of the Auditors Claim;
- (b) Finalising the quantification of loss against the former auditors at numerous hypothetical receivership dates in 6 monthly intervals as required by Counsel and prepare 8 quantification of loss papers at each of the 6 monthly dates to assist with the prosecution of the Auditors Claim, to facilitate the serving of the loss calculation papers, which form particulars to the amended claim filed on 20 November 2017, on EY's solicitors on 12 January 2018;
- (c) Preparation of detailed notes for two loans, as requested by Counsel to assist with the prosecution of the Auditors Claim;
- (d) Liaising with and assisting our solicitors in regard to preparing the Feeder Fund amended claim and the filing thereof, and the Commercial List, directions, and leave to proceed applications;
- (e) Liaising with my solicitors in regard to the proposed deed of settlement with the plaintiffs for the Claim against the MPF and others, and as the matter had not settled, having the matter listed to facilitate the future conduct of the proceedings. Subsequently, this has included the review of amended defences, replies to same, requests

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for further and better particulars and the undertaking of further discovery;

- (f) Liaising with my solicitors and the Bellpac liquidator in regard to the Fund's entitlement to the bond proceeds and claims made by the MPF to part of the proceeds in the \$2m proceeding;
- (g) Liaising with the Bellpac liquidator in regard to the status of the Heads of Agreement with Wollongong Coal Ltd ("WCL") and to the sunset date sought by WCL for obtaining shareholder approval in the \$8M proceeding;
- (h) Complying with the obligations pursuant to the relief from ASIC from financial reporting and compliance plan audit requirements;
- (i) Calculation of interest foregone at relevant court rates in relation to prepaid management fees to assist with the prosecution of the LMIM claim;
- (j) Liaising with and providing instructions to my solicitors in regard to progressing the MPF Proceedings, including my requests for further and better particulars from the plaintiffs, providing detailed instructions and documents relevant to the defence of the proceedings, and providing instructions in regard to correspondence to the plaintiffs' solicitors regarding security for costs and a proposed timetable for the future conduct of the proceedings;
- (k) Meeting and corresponding with FTI to explore the possibility of reaching an agreement in respect of issues relating to the court orders concerning FTI's remuneration (including the GST position) and other issues relating to the winding up of the FMIF;

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- (l) Continuing investigations of the migration of the Composer investor management database to the AX database, and liaising with consultants as to that process, and the units acquired in the FMIF in foreign currencies prior to my appointment;
- (m) Liaising with stakeholders regarding the retirement of the receivers appointed by the secured creditor Deutsche Bank AG (“DB”);
- (n) Finalising outstanding issues from the sale of the retirement villages, including resolving tax compliance issues;
- (o) Preparation of unit price calculation as at 31 December 2017;
- (p) Preparation of management accounts for the half year ending 31 December 2017;
- (q) Preparation of reports to members in December 2017 and March 2018; and
- (r) Work undertaking the investor management function for over 4,500 members, including answering queries on the winding up of the FMIF and maintaining the investor database, including any change in details or transfer of units.

18. 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**

- 19. All real property assets have now been sold.
- 20. There remain various legal proceedings on foot (in which claims are made both for and against the Fund) that must be determined or resolved, before the winding up can be completed.

  
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*Status of the DB Receivers*

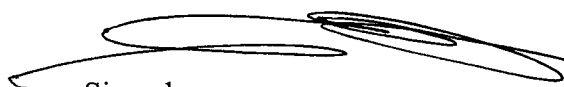
21. Although DB was paid out in full in early January 2014, I have seen and am informed by Mr Henry of McGrath Nicol, and believe, that DB does not consider it is in a position to release its charge over the FMIF and terminate the appointment of the DB Receivers.
22. In essence, DB contends that the 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.
23. During the Relevant Period, I have had ongoing discussions with the DB Receivers as to the DB Receivers possible retirement. Discussions have continued following receipt of correspondence from the MPF’s solicitors on 1 May 2018 advising of the MPF’s intention to seek directions to discontinue the MPF Proceedings.

*Distribution*

24. 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 need to seek directions from the Court before I am able to make a distribution to investors. However, before doing so it will be necessary to obtain orders from the court rectifying the register of members to correct the discrepancy referred to in paragraph 138. 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**

25. As part of the winding up process, and in conjunction with the DB Receivers, I have reduced the costs of managing the FMIF.

  
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26. 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.
27. 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 for remuneration.
28. The remuneration had reduced because all hard property assets have been realised, and I am, for the most part, now progressing claims on behalf of the FMIF, and defending those made against it. The remuneration is expected to reduce on average as the litigation matters will require less intensive work, and detailed accounting and other investigations in relation to the quantum of such claims are largely finalised.

### **Complexities**

29. 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;

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- (e) the number and complexity of issues in the period from 2008 to 2013 requiring my various investigations;
- (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
- (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.

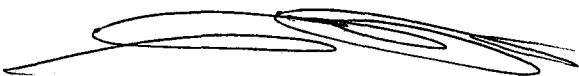
30. In addition to the overall complexities, certain other issues have arisen or continued to require attention, in the Relevant Period which have added to the complexity of the winding up, and contributed to the time taken, and remuneration sought, including:-

- (a) The requirement to amend the Auditors Claim to include the details of the quantification of loss and undertaking the loss quantification assessments for a series of 6 monthly intervals as required by Counsel. The work involved was extensive and complex which included:
  - (i) Undertaking and finalising an assessment of the cash flows from the assumed earlier realisation of security properties for each of the 13 loans in the sample for each of the 6 monthly intervals;

(ii) The above assessment required for each loan at each of the hypothetical receivership dates appropriate assumptions to be determined as to:

- (A) The sale strategy;
- (B) The sale price;
- (C) The sale timing;
- (D) The units or remaining property available for sale at each date;
- (E) Changes in circumstances at each date including changes in sale prices as many of the sample of security properties were multi-unit development properties;
- (F) Reviewing loan files, other Fund records and EY work papers to ascertain changes in circumstances including sale prices and other relevant data in regard to the loan cash flows;
- (G) With respect to retirement village loans, analysing anomalies or fluctuations in actual cash flows so that assumed cash flows were properly reflected in the cash flow assessments. This included matching of sale prices with sales cash flows, matching of the timing of sales and re-sales to the timing of receipt of settlement funds particularly where there were deferred settlement arrangements, review of the timing of payment of resident exit entitlements

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where those payments were in some cases independent of the re-sale of the units;

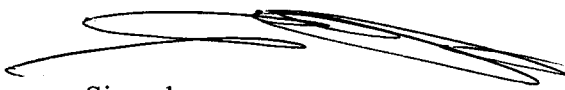
(iii) Undertaking and finalising 8 quantification of loss calculations for a number of categories of loss which included:

(A) Assessing and calculating at each hypothetical receivership date the assumed cash inflows and outflows of the Fund based on an analysis of actual inflows and outflows that would have occurred or would not have occurred had a receiver been appointed on those dates. This 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. In addition, reviewing management fees, loan management fees, finance costs, redemptions paid to certain classes of investor and other income and expenses at each 6 monthly hypothetical receivership date;

(B) Assessing and calculating at each hypothetical receivership date the assumed repayment of the Fund's bank loans and the subsequent assumed cash surplus and interest on the cash surplus from the assumed earlier sale of properties securing the Fund's loans.

- (b) The preparation of detailed notes for two loans as requested by Counsel to assist with the prosecution of the Auditors Claim, which included:
- (i) Reviewing EY's electronic accounting GAMx records of Compliance and Financial audits and reviews conducted for the six monthly periods from 30 June 2008 to 30 June 2012, and identifying alleged contraventions of audit and accounting standards in substantiation of allegations raised, and
  - (ii) Compiling detailed reports and supporting documentation for each loan in relation to the alleged contraventions identified in the claim.
- (c) Investigation of the circumstances around the redemption and distribution transactions with the Feeder Funds, including hardship redemptions and capital distributions, over a number of financial periods, involving a significant number of transactions to enable the Feeder funds to pay expenses, assisting with the preparation and filing of an amended claim against the Feeder Funds, assisting with and providing instructions for filing a Commercial List Application and applications to Court for directions and leave to proceed, and having the applications listed for 29 May 2018;
- (d) The number and scope of litigation matters in the Relevant Period;
- (e) Given the complexity of the above matters, and the extensive investigations that needed to be undertaken, particularly in relation to the quantification of the loss claimed against the former auditors, and providing detailed notes for loans to support allegations in the Auditors Claim and the need to continue to liaise with my solicitors and Counsel on these matters, it has been necessary to continue to

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engage staff at a more senior level with a higher charge out rate. Mr Eric Leeuwendal and Mr Arthur Taylor (from March 2018) have 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 and preparation of detailed notes of a sample of loans as required by Counsel.

### **Time recording**

31. 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.
32. The partners of BDO Business Restructuring Pty Ltd (“BR”) are members of ARITA, and follow the ARITA Statement of Best Practice – Remuneration.
33. 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.
34. 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 Finance 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.

  
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### **Teams assisting**

35. 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 Tax Services practice groups. I set out generally below, the function of each practice group and their assistance to me in the Relevant Period.
36. 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 and accounting 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-91**” are copies of the hourly charge out rate schedules of the BDO practice groups that applied during the Relevant Period.

### *Audit*

37. During the Relevant Period, the Audit team at BDO has assisted me by:-
- (a) Assisting with the prosecution of the Auditors Claim, including attending meetings with my solicitors and Counsel as required;
  - (b) Assisting with the review of the actual loan cash flows as well as the selection of additional loans to add to the sample as required by counsel;
  - (c) Assisting with the formulation of the assumptions and preparation of the hypothetical receivership loan cash flow assessments for the loans included in the sample of loans to assist with the prosecution of the Auditors Claim;

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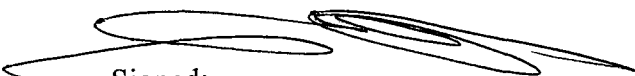
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- (d) Assisting with the formulation of the assumptions and preparation of the hypothetical receivership loan cash flow assessments for the sample of loans at each of the additional hypothetical receivership 6 monthly dates as required by Counsel to assist with the prosecution of the Auditors Claim;
- (e) Assisting with the methodology and preparation of the additional quantification of loss papers at each of the additional hypothetical receivership 6 monthly dates as required by Counsel to assist with the prosecution of the Auditors Claim;
- (f) Assisting with analysing and interpreting the comparison of actual and hypothetical receivership cash flows;
- (g) Responding to queries from my solicitors and Counsel regarding the auditor's duties to comply with applicable legislation in financial and compliance plan audits to assist with the prosecution of the Auditors Claim;
- (h) Assisting with the review and completion of the management accounts for the half year ended 31 December 2017; and
- (i) Assisting with the methodology for, and preparation of, detailed notes for a sample of loans to assist with the prosecution of the Auditors Claim.

38. 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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Witnessed by:



*Corporate Finance*

39. During the Relevant Period, the Corporate Finance team at BDO has assisted me in my roles by:-

- (a) Considering and providing feedback on the reasonableness of methodology applied for loss calculations for each date requested by counsel in relation to the loss claim against EY; and
- (b) Considering and providing feedback on the reasonableness and methodology of cash flow assessments for loans to be used in the hypothetical receivership comparison, to assist with quantifying the loss claim against EY.

40. 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.

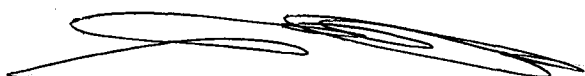
*Tax*

41. During the Relevant Period, the Tax team at BDO has assisted me in my roles by:-

- (a) Reviewing controllership business activity statements (“BAS’s”) lodged by FTI and work papers to review compliance with the GST Law and Private Ruling. Review the proposed amended BAS’s calculations and estimate the likely GST refund position;
- (b) Reviewing the GST position on FTI’s remuneration and corresponding with my solicitors in relation to the claim for GST.

42. Given the expertise required to perform this work, it was necessary for the Tax team to assist me, to ensure that the BAS’s in relation to the Controllership Companies were correctly prepared and lodged and to provide expert opinion on the GST treatment of FTI’s remuneration.

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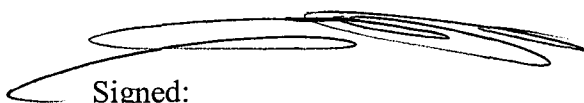


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### Categories of work

43. In my receivership role during the Relevant Period, my staff and I have undertaken tasks which broadly fall within the following five categories:-
- (a) Assets;
  - (b) Investigations;
  - (c) Trade on;
  - (d) Creditors; and
  - (e) Administration.
44. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with members of the FMIF could be recorded under either Administration or Creditors. However, each task is only recorded once, and the time for carrying out each task is only recorded once.
45. Exhibited hereto and marked “**DW-92**” is a breakdown of time charged by BDO employees pursuant to both of my appointments.
46. Exhibit “**DW-92**” 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 expenses.
47. Exhibited hereto and marked “**DW-93**” 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.
48. 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

  
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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	1,039.5	473,063.00
Investigations	132.4	35,625.00
Trade on	353.6	148,845.00
Creditors	957.1	249,480.00
Administration	167.8	40,176.00
<b>Total (exclusive of GST)</b>	<b>2,650.4</b>	<b>947,189.00</b>
GST		94,718.90
<b>Total claim (inclusive of GST)</b>		<b>1,041,907.90</b>

49. 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.
50. The entries in the Schedule reflect BDO's scale of insolvency and other hourly charge out rates.
51. 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.

52. 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.

53. 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*

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

55. 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) The litigation associated with the realisation of bonds held in WCL by Bellpac;
  - (iv) Pursuing the claim against the Feeder Funds, and
  - (v) Pursuing the claim against LMIM for breaches of duty (“the **LMIM claim**”).

56. In total, \$473,063.00 (exclusive of GST) of remuneration is sought for approval in the Relevant Period in respect of the “*Assets*” category.

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57. I set out below the extent of work undertaken in respect of “Assets”.
58. Insofar as I am exercising powers conferred on me in relation to the property of the FMIF, I am doing so with the consent and agreement of the DB Receivers.

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

59. 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.
60. 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*

61. 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.
62. All of the retirement village assets have been realised. The work undertaken during the period were tasks to finalise the retirement village controllerships including tax compliance and liaising with the liquidators of the various companies.
63. All of this work was necessary for the winding up of the FMIF in accordance with its constitution.



*Court Proceedings*

64. 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 “*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 and that the court proceedings filed are treated as what is considered to be an asset of the FMIF.

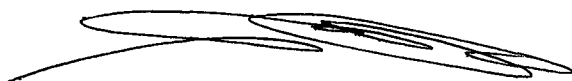
*Auditors Claim - Supreme Court of Queensland Proceeding 2166/15*

65. Paragraphs 158 to 168 of my November 2015 Affidavit, set out the background to the Public Examinations (“**PEs**”), and paragraphs 104 to 111 of my June 2016 Affidavit, paragraph 74 of my November 2016 affidavit, paragraph 70 of my June 2017 affidavit and paragraph 68 of my November 2017 affidavit, set out the steps in the proceeding to the period ending 30 October 2017.
66. An Amended Statement of Claim was filed on 20 November 2017 and served. The quantum of the loss claimed in the Amended Statement of Claim is at its highest in excess of \$200 million.
67. Loss calculation papers for 8 half year periods were served on EY’s solicitors on 12 January 2018.
68. During the Relevant Period I received and responded to various requests for copies of documents referred to in the Amended Statement of Claim.
69. During the Relevant Period, the work of my staff and I included the following:-
- (a) Reviewing and providing instructions to my solicitors in respect of the Amended Statement of Claim, which was filed in November 2017;



- (b) Reviewing EY's solicitors' request for documents referred to in the Amended Statement of Claim pursuant to UCPR rule 222. Locating and providing the documents sought;
- (c) Liaising with and instructing my solicitors in relation to Counsel's response to queries raised by EY's solicitors in relation to the Amended Statement of Claim;
- (d) Finalising the quantification of loss papers with the assistance of BDO technical staff and liaising with my solicitors to facilitate the serving thereof on EY's solicitors in January 2018;
- (e) Providing the documents referred to on the loan quantification papers to EY's solicitors;
- (f) Liaising with my solicitors in relation to Counsel's request to prepare particulars for 14 loans to support the relevant paragraphs of the statement of claim relating to financial statement audits and reviews, and compliance plan audits;
- (g) Undertaking the preparation of notes for two loans with the assistance of BDO technical and audit staff, and liaising with my solicitors in regard to submitting the notes to Counsel for review;
- (h) Liaising with and instructing my solicitors in relation to issues with the first and second laptops provided to facilitate the public examinations conducted in June 2015 and October 2015;
- (i) Liaising with and instructing my solicitors in regard to seeking EY's consent to granting leave to file an Amended Claim and a timetable for future conduct of the matter.

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Witnessed by:



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

70. A proportion of the “*Assets*” work has been in respect of the claim I have filed in Supreme Court of Queensland proceeding numbered 12317 of 2014.
71. The Claim against LMIM, various former directors of LMIM and 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.
72. 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, paragraph 80 of my June 2016 Affidavit, paragraph 81 of my November 2016 affidavit, paragraph 77 of my June 2017 affidavit, and paragraph 75 of my November 2017 affidavit.
73. Since that time, the following progress has been made in the proceeding itself:-
- (a) Correspondence to defendants regarding proposed Deed of Settlement;
  - (b) As the matter had not settled, proceeding to have the matter listed to facilitate appropriate orders for the future conduct of the Proceedings;
  - (c) A review hearing was held on 14 March 2018 where the court handed down various orders to progress the prosecution of the proceeding.
74. Only BDO staff in the BR practice group have worked (on my instruction) on the Claim against the MPF.

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Witnessed by:



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

- (a) Liaising with my solicitors in relation to their communications with the solicitors for the director defendants regarding a proposed settlement;
- (b) Liaising with my solicitors in relation to the future conduct of the proceeding;
- (c) Meeting with my solicitors, KordaMentha, FTI and their relevant solicitors, to discuss a potential settlement, considering offers to settle and providing counter offers;
- (d) As the matter had not settled, liaising with my solicitors to relist the matter for directions and to progress the proceeding to trial.
- (e) Liaising with and providing instructions to, my solicitors and assisting my solicitors to finalise the reply to the further amended defences of the third and fourth defendants;
- (f) Liaising with, and providing instructions to, my solicitors and assisting my solicitors to finalise the amended reply to the first defendants' amended defence, and
- (g) Liaising with my solicitors and providing instructions to my solicitors in regard to the proposed amended defence for the second and sixth defendants and reviewing the correspondence proposed by my solicitors to invite the second and sixth defendants to file and serve their proposed amended defence without delay and to seek the Court's leave to withdraw their admission at the next review date.

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Witnessed by:



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

76. Paragraphs 126 to 133 of my November 2015 Affidavit set out the background in Federal Court of Australia at New South Wales proceeding 2014/332566 (“**\$2M proceeding**”). Reference to this proceeding is also made at paragraph 88 of my June 2016 Affidavit, paragraph 87 of my November 2016 Affidavit and at paragraph 83 of my June 2017 Affidavit, and paragraph 81 of my November 2017 affidavit.
77. The claim was successfully prosecuted by the liquidator of Bellpac, and the FMIF is entitled as first ranking secured creditor to the funds recovered from the \$2 million bonds (after costs).
78. The net proceeds of the \$2 million bonds settlement are held by the Bellpac liquidator, and are being utilised to fund the recovery of the \$8 million of WCL convertible bonds.
79. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with my solicitors in relation to correspondence from the Liquidator’s solicitors regarding the Fund’s entitlement to be paid the net proceeds of the \$2 million bonds proceeds under the funding agreement with the Liquidator and the request for payment of the Liquidator’s fees and legal fees incurred from the bonds proceeds;
  - (b) Liaising with my solicitors in relation to correspondence concerning the claims made by the MPF to part of the proceeds of the \$2M proceedings and assisting to settle correspondence with the Liquidators and the solicitors for the MPF;
  - (c) Liaising and corresponding with the Liquidator in regard to claims made by the MPF to the proceeds of the \$2M proceedings;

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Witnessed by:



- (d) Liaising with my solicitors in regard to correspondence with the solicitors for the MPF regarding requests for documentation and the claim for funds.

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

80. 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, paragraphs 90 and 91 of my November 2016 Affidavit and at paragraph 85 of my June 2017 Affidavit, and paragraph 86 of my November 2017 affidavit.
81. In summary, the judgement in these proceedings was given in favour of the Liquidator of Bellpac and the defendant’s appeal and application to the High Court for special leave were not successful.

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

82. The Liquidator has entered into a Heads of Agreement (“**HOA**”) with WCL to settle a proceeding regarding conversion of the bonds to shares by WCL for \$6.3 million. The sunset date to complete the conditions precedent in the HOA was extended to 18 May 2018, and then further extended to 31 August 2018.
83. The proceedings with WCL remain adjourned to enable the parties to settle the litigation.
84. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with the Liquidator on an ongoing basis in relation to WCL’s progression towards satisfying the conditions precedent and including obtaining expert reports and shareholder approval.

  
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Witnessed by:



- (b) Liaising with the Liquidator in relation to a further extension sought by WCL to the sunset date in the HOA to 18 May 2018 to enable more time to prepare and finalise expert reports requested for the meeting of shareholders to approve the HOA with Bellpac. Reviewing correspondence between the Liquidator and WCL in relation to negotiations on the agreement to the extension.

Feeder Fund Claim - Redemptions and distribution to Class B Unit Holders -Supreme Court of Queensland proceeding no. 13534/16

85. The background to the Feeder Fund Claim is set out in my November 2015 Affidavit at paragraphs 184 to 187. Reference to this proceeding is also made at paragraphs 117 to 119 of my June 2016 affidavit, paragraph 104 of my November 2016 affidavit, paragraph 99 of my June 2017 affidavit and paragraph 90 of my November 2017 affidavit.
86. These proceedings were filed on 23 December 2016 claiming against LMIM and the Feeder Funds about \$55 million in respect of redemptions made to the Feeder Funds and seeking orders which include declarations to withhold from payments or distributions otherwise payable to the Feeder Funds the aggregate sum of about \$55 million plus interest.
87. On 27 July 2017 an amended claim was filed and served on the parties which includes a claim in respect of distributions made to the Feeder Funds between 1 January 2011 and 31 January 2013.
88. In October 2017, I caused to be filed an application under section 59 of the Trusts Act seeking directions as to how the differing interests of LMIM are to be represented in the proceedings, and an application under section 500 of the Act seeking leave to proceed against LMIM. The parties consented to an adjournment of that application.



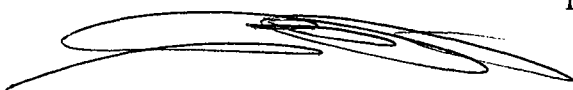
89. During the relevant period, the work of my staff and I has included:

- (a) Liaising with my solicitors in relation to advice from the solicitors for the CPAIF and ICPAIF that they intend making an application to have access to the books and records of LMIM and our position in regard to them seeking costs associated with the access application being paid by the FMIF on an indemnity basis;
- (b) Liaising with my solicitors in relation to an early mediation to settle the claim;
- (c) Liaising with and assisting my solicitors in relation to providing a response to categories of discovery identified by the solicitors of the CPAIF and the ICPAIF;
- (d) Liaising with my solicitors in relation to an Amended Claim and the filing and serving thereof on 9 January 2018;
- (e) Liaising with my solicitors in relation to the serving of the draft Commercial List application and draft Commercial List Statement on 25 January 2018 on the defendants' solicitors;
- (f) Liaising with my solicitors in relation to Counsel settling and the filing of the Commercial List application and listing statement, and applications under section 59 of the Trust Act and section 500 (2) of the Act;
- (g) Liaising with my solicitors in relation to hearing of the Commercial List, section 59 and section 500 (2) applications on 29 May 2018.

LMIM Claim Supreme Court of Queensland proceeding no.11560/16

90. The background in relation to investigations in regard to the claim is relevantly set out in the Investigation sections at paragraphs 96 and 97 of my June 2017 affidavit and paragraphs 152 to 156 of my November 2017 Affidavit.

Signed:



Witnessed by:



91. The LMIM Claim was commenced by Claim filed on 9 November 2016. It makes allegations of breach of trust and duty against LMIM by:

- (a) causing to be paid, at its direction, management fees from the assets of the FMIF in advance of performing its duties to the FMIF, and did not pay interest to the FMIF in respect of the management fees which were prepaid;
- (b) causing to be paid, at its direction, loan management fees out of property of the FMIF which were not authorised by the Constitution of the FMIF;
- (c) causing to be paid, at its direction, management fees from the assets of the FMIF in amounts which exceeded its entitlement, given the true net fund value for the periods referable to those management fees;
- (d) directing payments from the MPF to the FMIF to be paid to the Feeder Funds, in the absence of any liability due and payable on any other basis.

92. An Amended Claim and Statement of Claim and Consolidated Particulars have been filed and served.

93. The quantum of each of the above claims have not yet been finally determined, although:

- (a) in relation to the claims pertaining to the loan management fees (including in respect of periods prior to the administration of LMIM) the amount claimed is presently up to \$13,720,167 plus interest;
- (b) in relation to the claims pertaining to the payments to the Feeder Funds the claim has been quantified in the amount of \$12,931,836 plus interest.



Signed:

Witnessed by:



94. Subject to any directions that may be made by the Court, if the claims made in this proceeding are successful they may be able to be relied upon as a set-off against claims made by LMIM for indemnity out of assets of the FMIF, including those claims identified through the proof of debt process or claims made by other parties, such as the MPF Trustee, seeking to subrogate to LMIM's alleged rights of indemnity.
95. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with, reviewing, and providing instructions to my solicitors in relation to correspondence to the solicitors for the MPF advising that the MPF may have an interest in these proceedings being defended; and
  - (b) Liaising with my solicitors in relation to the calculation of interest foregone as a result of prepayment of management fees, undertaking the calculations and submitting same to my solicitors and Counsel for comment and review.

*The Trust Company (PTAL) Ltd v Ross Lamb*

96. PTAL obtained a default judgment against Mr Lamb in the Supreme Court of New South Wales for approximately \$3 million, plus interest and costs. Prior to the hearing of the creditors petition, Mr Lamb filed a debtor's petition and was declared bankrupt.
97. The bankrupt and his wife were parties to a Development Agreement. The proceeds of sale of various lots that were developed and sold are held in a solicitor's trust account. The former trustee had been liaising with other parties involved in the development and investigating whether the bankrupt may have an entitlement in respect of the funds held the solicitor's trust account.
98. The former trustee in bankruptcy issued a request to PTAL for funding of recovery action for the benefit of creditors of the bankrupt estate of which

  
Signed:

Witnessed by:



PTAL as custodian of the FMIF is the major creditor. The former trustee was recently replaced with new trustees who are continuing investigations and have requested funding from PTAL.

99. During the Relevant Period, the work of my staff and I in relation to this matter has included:

- (a) Reviewing correspondence and reports from the trustee in bankruptcy and correspondence to the trustee regarding potential claims available to the trustee for the benefit of creditors;
- (b) Liaising with PTAL and my solicitors regarding preparation and lodgement of a proof of debt, including interest calculations and requests for information from the trustee in relation to potential claims available to the trustee for the benefit of creditors;
- (c) Liaising and corresponding with PTAL, my solicitors, and the bankruptcy trustee in relation to my request to replace the trustee.

*Investigations*

100. 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*".

101. This category relates to work undertaken in pursuit of my investigations, which may result in legal proceedings.

102. Generally, once a proceeding is started, time is then recorded and allocated to the "*Assets*" category of work.

103. My investigations, in summary, relate to the following categories of matters:-

- (a) Redemptions and distributions to Class B Unit Holders;
- (b) Investigating the investor register relating to units that were subscribed in foreign currencies.




104. In total, \$35,625.00 (exclusive of GST) in remuneration is sought for approval in respect of the “*Investigations*” category.
105. 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.
106. 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.

*Redemptions and distributions to Class B Unit Holders*

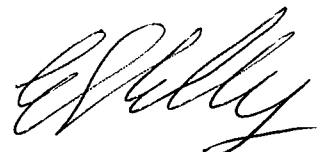
107. The background to these investigations is relevantly set out or referred to in paragraphs 85 to 88 of this Affidavit. As the Amended Claim was filed during the relevant period, details regarding the claim and the investigations undertaken prior to filing the amended claim are included under Assets/Court proceedings above.

*Foreign currency units*

108. During the Relevant Period my staff and I continued to investigate and progress resolution of 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.
109. During the Relevant Period, my staff and I undertook the following work to investigate and progress a resolution of this issue:-
- (a) Liaising with the IT consultants as to the status of commencing the work order, the necessary platform to enable the IT consultant access to the duplicate AX database and conversion data, meeting with new staff members of IT consultant in relation to the work order, liaising with existing IT consultant on preparation of a platform for access to

  
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Witnessed by:



the duplicate AX database and issues experienced in dual access by BDO staff and the IT consultant;

- (b) Further investigations into the transactions recorded in the database regarding the foreign currency investors and including payments of interest or reinvestment of interest payable.

*Trade on*

- 110. Generally, work is considered to be “*Trade-on*” if the work is considered to be incidental to the winding up.
- 111. Work undertaken in relation to trade-on may be recorded in more than one category, however, the work undertaken is only recorded once.
- 112. During the Relevant Period, work attributed to this category included:-
  - (a) Preparation of unaudited management accounts for the half-year ended 31 December 2017;
  - (b) Meeting and corresponding with FTI regarding various outstanding issues to explore the possibility of reaching an agreement in relation to same;
  - (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 investor database. This involved accounting for receipts and payments, reconciling bank accounts and processing month end cash and year end adjustments;
  - (e) Maintenance of the Microsoft AX loan management database, including accounting for payments, reconciling statements and processing month end and year end adjustments;

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Witnessed by:



- (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 2017;
  - (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) Meeting with members of the BDO Audit practice group regarding the preparation of the management accounts for the half-year ended 31 December 2017; and
- (h) Communications with the DB Receivers and their staff regarding the continuing appointment of the DB Receivers and other matters.

113. In total, \$148,845.00 (exclusive of GST) of remuneration is sought for approval in respect of the “*Trade on*” category.

*Management Accounts*

114. During the Relevant Period, my staff and I worked on the preparation of the management accounts for the half year ended 31 December 2017.

115. 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 2017:-

- (a) Reviewing work papers to verify the accuracy of the management accounts;

Signed:



Witnessed by:



- (b) Liaising with the DB Receivers to ascertain amounts that are outstanding at 31 December 2017;
- (c) Preparing a summary of loan reductions and drawdowns to calculate the movement in loans in default;
- (d) Calculating the net assets attributable to unitholders, movement in default loans, receivables and related party transactions;
- (e) Preparing a summary of payable invoices:-
  - (i) either paid after the half year end; or
  - (ii) remaining to be paid; which relate to work incurred during the financial year ending 31 December 2017,to determine the accrued expenses;
- (f) Calculating provisions for the remaining loan accounts or receivable balances and updating the loan spreadsheet;
- (g) 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.
- (h) 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 2017 and 31 December 2017;

Signed:



Witnessed by:



- (i) 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.
- (j) Liaising with the BDO Audit practice group regarding movements in asset values, provisions and default loans between 30 June 2017 and 31 December 2017;
- (k) Reviewing and amending the trial balance in respect to changes required by the BDO Audit practice group;
- (l) Reviewing and amending financial statements in respect to changes required by the BDO Audit practice group;
- (m) Reviewing and considering disclosure requirements with reference to Australian Accounting Standards; and
- (n) Reviewing and amending the management accounts and notes in accordance with Australian Accounting Standards and recommendations by my solicitors.

116. 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.

Signed:

Witnessed by:



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

117. On 16 December 2015, the liquidators of LMIM, Mr Park and Ms Muller, filed a Further Amended Originating Application in Supreme Court Proceeding No. 3508 of 2015 (“**FTI Remuneration Proceeding**”).
118. 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.
119. In total, \$3,098,251.83 (excluding GST) was sought to be approved for payment from the FMIF in the FTI Remuneration Proceeding.
120. On 17 October 2017, judgment with respect to the FTI Remuneration Proceeding was delivered: *Park & Muller (liquidators of LM Investment Management Ltd v Whyte No 2* [2017] QSC 229. As a result of this decision there will be a significant reduction in the amount of the remuneration and expenses claimed by the Liquidators that would be paid from the Fund’s assets. Orders reflecting His Honour’s reasons for judgment were made on 22 November 2017.
121. A dispute arose as to the appropriate treatment for GST purposes (by FTI, LMIM, and the FMIF) of any GST attributable to the work performed by FTI.
122. The liquidators filed an application on 19 December 2017 for further orders against me for payment of the amounts ordered on 22 November 2017 plus GST. That application has been adjourned to a date to be fixed.
123. The amount of \$1,827,205.23 being the remuneration (excluding any amount for GST) for the period to 30 September 2015 as proved by the Court, was paid on 20 December 2017 together with an amount of interest. The additional amounts claimed for GST have not been paid.

  
Signed:

Witnessed by:



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

- (a) Liaising with my solicitors regarding the decision and implications for the Fund, analysis of the judgment and discussing the next steps and the issue of costs of the application with my solicitors;
- (b) Liaising with my solicitors in relation to the additional amounts claimed by the liquidators for GST, including consideration of the appropriate treatment for GST purposes of any GST attributable to the work performed by FTI;
- (c) Liaising with my solicitors in relation to correspondence with the Liquidators and negotiations with the liquidators as to the quantum of costs payable to the liquidators under orders made by the Court;
- (d) Liaising with and instructing my solicitors in relation to the application filed by the liquidators on 19 December 2017, including negotiations with the liquidators;
- (e) Liaising with and providing instructions to my solicitors in relation to a proposed settlement agreement with the liquidators dealing with quantum of a costs order, and other outstanding issues, including reviewing draft correspondence and draft settlement agreement;

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

125. 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.
126. The background to this proceeding is detailed in paragraphs 112 to 124 of my November 2017 affidavit.
127. On 22 November 2017, orders were made reflecting His Honour's reasons for judgment delivered on 17 October 2017.



128. The amount of \$44,158 was paid to the liquidators on 20 December 2017 pursuant to the orders.
129. During the Relevant Period, the work of my staff and I has included:
- (a) Liaising with my solicitors in relation to correspondence with the liquidators and negotiations with the liquidators as to the quantum of costs payable to the liquidators under orders made by the Court.
130. I expect to receive further indemnity claims during the course of my appointment.

*Creditors*

131. I am seeking approval for remuneration in the order of \$249,480.00 (exclusive of GST) in respect of work that is categorised as "*Creditors*".
132. 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) Investigation of and ascertaining the potential claims by LMIM (by its Liquidators) for indemnity against the FMIF;
  - (e) Communications with the MPF in relation to the MPF Proceedings.

*Reports to Members*

133. 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-94" is a copy of the twentieth report to members; and
- (b) "DW-95" is a copy of the twenty-first 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.

134. During the Relevant Period my staff and I were required to undertake tasks for the purposes of reporting to members of the FMIF, including:

- (a) Drafting and reviewing the reports to members;
- (b) Preparing material summarising my remuneration for inclusion in the report;
- (c) Updating the asset realisation summary;
- (d) 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;
- (g) Considering and calculating the updated unit price; and
- (h) For my twenty-first report, setting out the actions taken in the prior 6 months period and proposed to be undertaken in the next 12 months period.

*Contact with members in respect of reports to members*

135. 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;

Signed:



Witnessed by:



- (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.

136. 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 unit holding 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.


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

#### *AX Database*

138. 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

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Witnessed by:

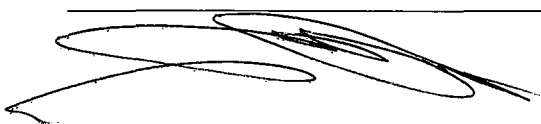


(c) Generating reports to attend to members' unit balance enquiries.

139. 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.
140. 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.

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

141. On 27 August 2014, KordaMentha filed two proceedings, namely, proceeding 8032 of 2014, and 8034 of 2014. These proceedings were brought against LMIM. The claim relates to two loans allegedly assigned from the FMIF to the MPF on 28 August 2008. The relief sought in these proceedings includes equitable compensation against LMIM and claims against the assets of the FMIF in the total sum of about \$24.1 million, plus interest.
142. Further steps taken in this proceeding are summarised in paragraphs 86 to 97 of my November 2015 Affidavit, paragraphs 161 to 164 of my June 2016 Affidavit, paragraphs 148 to 150 of my November 2016 Affidavit, paragraphs 140 to 142 of my June 2017 Affidavit and paragraphs 149 and 150 of my November 2017 Affidavit.
143. 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.
144. On 16 December 2016, the proceedings were adjourned to a date to be fixed.

  
Signed:

Witnessed by: 

145. During the Relevant Period, my staff and I have undertaken the following work in respect of the MPF Proceedings:-

- (a) Liaising with my solicitors and providing instructions in relation to correspondence to the plaintiff's solicitors regarding my requests for further and better particulars, a proposed timetable to progress the proceedings and to re-list the proceedings for further review by the Court and security for costs;
- (b) Search for, review and provide to my solicitors, documents relevant to the defence of the proceeding; and
- (c) Liaising with and instructing my solicitors in regard to writing to the plaintiff's solicitors to propose a timetable for the future conduct of the proceeding, and having the matter relisted for a review.

146. On 1 May 2018, the solicitors for the plaintiff advised that the plaintiff intends to apply to Court for directions that it would be justified in discontinuing these proceedings. The application for directions by the trustee of the MPF is listed for hearing on 7 June 2018.

#### ***Administration***

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

148. 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.

149. In total, \$40,176.00 (exclusive of GST) of remuneration is sought for approval in respect of the "*Administration*" category.

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

*Applications for approval of remuneration*

151. For the purposes of my remuneration application filed on 10 November 2017, work was undertaken in respect of the preparation of my affidavit and distribution of notices to the members of the FMIF. My staff and I were required to liaise with, and provide instructions to, my solicitors in respect of that application and my affidavit.

*Job management*

152. 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 2017;
- (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.

Signed:



Witnessed by:



153. 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*

154. 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.
155. Regularly during the Relevant Period enquiries were fielded from members regarding changes to their details.
156. 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.
157. 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.
158. 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 or correspondence. However, time for carrying out each task is only recorded once.

Signed:



Witnessed by:



*General*

159. 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.

160. 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.

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

*Controllerships*

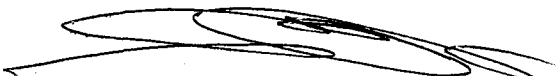
162. In my application of 15 September 2014, I undertook to the Court that I would seek the approval for my remuneration in relation to my controllership appointments.

*Work performed in the relevant period in relation to controllership appointments*

163. Exhibited hereto and marked:-

- (a) "**DW-96**" 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-97**" is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Pinevale;

Signed:



Witnessed by:



- (c) “DW-98” is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of RBLL;
- (d) “DW-99” 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-100” 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-101” 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**”).

- 164. 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.
- 165. All work performed in relation to my controllership role was performed by members of the BDO BR team and BDO Tax 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.

Signed:



Witnessed by:



166. 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	26.4	10,102.00
Administration	9.2	2,446.50
<b>Total</b>	<b>35.6</b>	<b>12,548.50</b>
GST		<b>1,254.85</b>
<b>Total Claim</b>		<b>13,803.35</b>

Pinevale Villas Morayfield Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	0.3	135.00
Administration	3.7	832.50
<b>Total</b>	<b>4.0</b>	<b>967.50</b>
GST		<b>96.75</b>
<b>Total Claim</b>		<b>1,064.25</b>

Redland Bay Leisure Life Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	1.0	425.00
Administration	5.1	1,105.50
<b>Total</b>	<b>6.1</b>	<b>1,530.50</b>
GST		<b>153.05</b>
<b>Total Claim</b>		<b>1,683.55</b>

  
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Witnessed by:



Cameo Estates Lifestyle Villages (Launceston) Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	1.9	735.00
Administration	5.2	1,205.50
Total	<b>7.1</b>	<b>1,940.50</b>
GST		<b>194.05</b>
Total Claim		<b>2,134.55</b>

Bridgewater Lake Estate Pty Limited		
Category/Area	Total hours	Amount (net of GST)
Trade on	1.8	760.50
Administration	4.6	1,228.50
Total	<b>6.4</b>	<b>1,989.00</b>
GST		<b>198.90</b>
Total Claim		<b>2,187.90</b>

Redland Bay Leisure Life Development Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	1.6	630.00
Administration	3.0	673.00
Total	<b>4.6</b>	<b>1,303.00</b>
GST		<b>130.30</b>
Total Claim		<b>1,433.30</b>

167. 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.

Signed:

Witnessed by:




168. 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; and
- (d) Reviewing outstanding matters and statutory requirements to finalise the controllerships.

*Write-offs & reductions*

169. 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 \$23,366.00 (includes controllerships write offs).

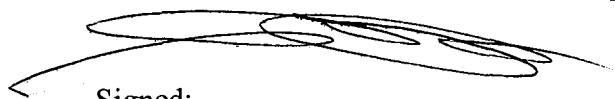
170. The amount of the reduction represents, in summary, the value of work which I considered, while appropriate to be performed, was not directly connected to, or in furtherance of, my appointment (for example discussions and correspondence with investors of other LMIM investment funds).

**Remuneration approval**

*Winding up*

171. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$1,041,907.90 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.

Signed:



Witnessed by:



172. I respectfully request this Honourable Court to make orders that my remuneration in relation to my receivership appointment for the relevant period be fixed in the amount of \$1,041,907.90 inclusive of GST.

173. 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.

*Controllership*


174. Given the nature and volume of the work involved as canvassed above, I believe that the sum of \$22,306.90 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.

175. 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 \$22,306.90 inclusive of GST.

176. 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

177. 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.

  
Signed:

Witnessed by: 

178. 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 31 May 2018 at Brisbane in the presence of:



**Deponent**



**Solicitor**

**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**

**INDEX OF EXHIBITS**

<b>No.</b>	<b>Description</b>	<b>Date</b>	<b>Page No.</b>
DW-91	Hourly charge out rate schedules of the BDO practice groups across that applied during the Relevant Period	Various	1 – 4
DW-92	Breakdown of time charged by BDO employees pursuant to both of the	Various	5 – 16

<b>No.</b>	<b>Description</b>	<b>Date</b>	<b>Page No.</b>
	appointments as Receiver and Controller		
DW-93	Schedule of Work performed by staff of BDO during the relevant period	Various	17 – 413
DW-94	Twentieth Report to Members	21.12.2017	414 – 437
DW-95	Twenty-first Report to Members	29.03.2018	438 – 467
DW-96	Schedule of work performed by BDO staff in the Relevant Period in relation to my appointment in respect of Bridgewater	Various	468 – 469
DW-97	Schedule of work performed by BDO staff in the Relevant Period in relation to my appointment in respect of Pinevale	Various	470
DW-98	Schedule of work performed by BDO staff in the Relevant Period in relation to my appointment in respect of RBLL	Various	471 – 472
DW-99	Schedule of work performed by BDO staff in the Relevant Period in relation to my appointment in respect of Cameo	Various	473 – 475
DW-100	Schedule of work performed by BDO staff in the Relevant Period in relation to my appointment in respect of OVST	Various	476 – 487
DW-101	Schedule of work performed by BDO staff in the Relevant Period in relation to my appointment in respect of RBLLD	Various	488 – 489