

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: **RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**

AND

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

AND

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

AND

Third Respondent: **ROGER SHOTTON**

AND

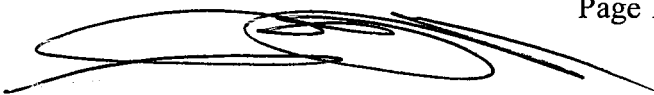
Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION**

AFFIDAVIT OF DAVID WHYTE

I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland,
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

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Signed: 

Witnessed by: 

AFFIDAVIT:
Form 46, R.431

TUCKER & COWEN
Solicitors
Level 15
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Brisbane, Qld, 4000.
Tele: (07) 300 300 00
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Filed on behalf of the Applicant

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**”).

2. Now produced and shown to me and marked “**DW-102**” is an indexed paginated bundle of the documents referred to in this Affidavit (“**the Bundle**”).

Appointments

Receivership

3. 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.
4. I refer to my affidavit sworn and filed on 7 November 2014 (“**November 2014 Affidavit**”). The background to my appointment is relevantly explained by me at paragraphs 12 to 37 of my November 2014 Affidavit.
5. By Order of this Honourable Court made on 17 December 2015, I was:-
 - (a) Empowered subject to the balance of orders therein, to determine the extent LM Investment Management Ltd (receivers and managers appointed) (in liquidation) (“**LMIM**”) is entitled to be indemnified from the property of the FMIF, in respect of any expense or liability, or

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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

- 6. 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**”. PTAL recently revoked our appointments as controllers as detailed in paragraphs 200 and 201 below.

References

7. 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;

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(e) "my appointments", I am referring to both my roles as mentioned at paragraphs 7(b) and (c) above;

8. 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)	3(a)
AIIS	Supreme Court of Queensland Proceeding No. 12716/15 commenced by KordaMentha 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, which is now discontinued.	18(h), 173
ARITA	the Australian Restructuring, Insolvency and Turnaround Association (formerly known as the Insolvency Practitioners Association of Australia)	1
ASIC	Australian Securities and Investments Commission	5(c)
Auditors Claim	Supreme Court of Queensland proceeding number 3166 of 2015 against the former auditors of the FMIF	18(a)
Bellpac	Bellpac Pty Ltd (Receivers and Managers Appointed) (In Liquidation)	17
BR	BDO Business Restructuring Pty Ltd	7(d)
Bridgewater	Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786	6(b)
Cameo	Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and	6(a)

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Defined Term	Definition	Paragraph No.
	Managers Appointed) (Controllers Appointed) ACN 098 955 296	
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	18(e)
Controllership Companies	Cameo, Bridgewater, OVST, RBLL, RBLLD and Pinevale	6
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.	194
DB	Deutsche Bank AG	18(l)
DB Receivers	Joseph Hayes and Anthony Connelly	23
EY	EY also known as Ernst and Young	17
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	14, 88
Feeder Fund Claim	Supreme Court proceeding 13534 of 2016 against LMIM and the Feeder Funds.	18(b)
FMIF	the LM First Mortgage Income Fund ARSN 089 343 288	3(a)
FMIF assets	Assets over which the FMIF has held security for loans advanced by the FMIF	18(d)
FTI Remuneration Proceeding	Further Amended Originating Application filed in Supreme Court of Queensland proceeding 3508 of 2015	129
FTI	FTI Consulting	129
Fund	the LM First Mortgage Income Fund ARSN 089 343 288	3(a)

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Defined Term	Definition	Paragraph No.
June 2016 Affidavit	Affidavit of David Whyte filed 8 June 2016 in this proceeding	64
June 2017 Affidavit	Affidavit of David Whyte filed 14 June 2017 in this proceeding	64
June 2018 Affidavit	Affidavit of David Whyte filed 1 June 2018 in this proceeding	64
KordaMentha	Trustees of the MPF	30(g), 166
LMA	LM Administration Pty Ltd (in liquidation)	30(f)
LMIM	LM Investment Management Ltd (receivers and managers appointed)(in liquidation)	5(a)
LMIM claim	Supreme Court of Queensland proceeding no.11560/16	18(c)
MPF	LM Managed Performance Fund	18(e)
MPF Proceedings	Supreme Court of Queensland Proceedings 8032/14 and 8034/14 commenced by KordaMentha which sought equitable compensation against LMIM and relief over assets of the FMIF by way of subrogation to LMIM's alleged right of indemnity out of assets of the FMIF, but are now discontinued	18(d), 166
November 2015 Affidavit	Affidavit of David Whyte filed 24 November 2015 in this proceeding	64
November 2016 Affidavit	Affidavit of David Whyte filed 18 November 2016 in this proceeding	64
November 2017 Affidavit	Affidavit of David Whyte filed 10 November 2017 in this proceeding	64
OVST	OVST Pty Ltd (Controllers Appointed) (In Liquidation) ACN 103 216 771	6(c)
PEs	Public Examinations	64
Pinevale	Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780	6(f)

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Defined Term	Definition	Paragraph No.
PTAL	The Trust Company (PTAL) Ltd	6
RE	Responsible Entity	5(a)
Relevant Period	from 1 May 2018 to 31 October 2018	10(a)
Residual Powers Orders	Orders made by Jackson J on 17 December 2015, as varied or supplemented by orders made by Jackson J dated 18 July 2018	5(c)
R BLL	Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916	6(d)
R BLLD	Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383	6(e)
Second FTI Remuneration Application	The application filed on 17 July 2018, in Supreme Court of Queensland Proceeding 3508/15 seeking remuneration and out-of-pocket expenses of the liquidators (and as administrators) of the Responsible Entity LMIM	137
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).	46
WCL	Wollongong Coal Ltd	18(g)
\$2M proceeding	Supreme Court of New South Wales proceeding no.2014/332566	79
\$8M proceeding	Federal Court of Australia at New South Wales proceeding No. 2016/00120239	83

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Previous Remuneration

9. I have made nine 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)	\$218,000.00

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Remuneration Period	Remuneration Order	Amount of remuneration approved (incl. of GST)	Approximate remuneration per month
		\$26,155.25 (controllership)	
1 November 2017 to 30 April 2018	Boddice J on 21 June 2018	\$1,041,907.90 (receivership) \$22,306.90 (controllership)	\$177,000.00

10. 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 up in accordance with its constitution in the amount of \$1,946,635.35 (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 \$20,902.75 (inclusive of GST).

11. 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

- 12. Cash at bank as at 31 October 2018 was \$68,053,155.16
- 13. The remuneration sought in this application for the Relevant Period of about \$324,439.20 per month is higher than the amount sought in my most recent

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remuneration application primarily because of the scope and complexity of work required in relation to the Auditors Claim and also in relation to the Claim against the MPF and the Feeder Fund Claim, in this Relevant Period, as detailed in paragraph 18 of this Affidavit.

14. On or about 28 September 2018, I informed members, in a report to members, of an estimated return (based largely on the quantum of real property assets realised) of between 12.6 cents and 14 cents in the dollar as at 30 June 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 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.
15. My remuneration in the Relevant Period predominantly relates to prosecuting the substantial Court proceedings I have initiated to recover money for the benefit of the FMIF.

Summary of Benefits to FMIF

16. The benefits obtained, or received by the FMIF to date as a result of work undertaken by BDO include (but are not limited to) the following (gross of fees and expenses of my receivership and not including interest accrued on funds received):-

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Description of benefit	Approximate or estimated quantum of benefit (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Paragraph No.
Net Proceeds of sale of retirement village assets held by FMIF as security for loans to borrowers, which were sold by BDO	Approximately \$40 million – see note 1 below.	58 to 61
Discontinuance of MPF proceedings in which I was joined as Second Defendant to defend claims made against FMIF assets	Amount claimed by plaintiff against FMIF assets approximately \$24 million plus interest and costs	166 to 172
Discontinuance of AIIS proceeding	Amount claimed by plaintiff against FMIF assets approximately \$3.9 million plus interest and costs	173 to 177
Amount of remuneration sought from FMIF but not approved on First remuneration application by the Liquidators, which was opposed by Mr Whyte	Approximately \$1.3 million (excluding any GST) – See Note 2 below	129 to 136
Recovery of funds from a borrower to whom the FMIF had advanced funds, as a result of negotiations undertaken by BDO	\$7.5 million	N/A
Recovery received by FMIF from proceedings against quantity surveyor, conducted by BDO alleging professional negligence in respect of	\$3 million	104 to 108



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Description of benefit	Approximate or estimated quantum of benefit (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Paragraph No.
certifying works on a completed commercial development		
Amount of expenses sought but not approved on FTI Indemnity Application which was opposed by Mr Whyte	\$366,536 – See Note 3 below.	140 to 151
Estimated costs savings to the FMIF to date as a result of successful applications by Mr Whyte to ASIC for financial reporting and audit relief	Costs savings in auditor’s fees alone estimate to be about \$140,000 - \$343,000 plus FTI’s remuneration and expenses had they been involved in the process - See Note 4 below	124 to 128
Amount paid to FMIF by AIF and ASPF following entry into Terms of Agreement between Mr Whyte and FTI	\$212,700.83	136
Amount paid by Western Union pursuant to Deed of Settlement with Mr Whyte	\$66,055.31	N/A

Note 1 – The amount received from the sale of the retirement village assets was about \$10 million above the value of the retirement village assets, as assessed in professional valuations obtained by BDO prior to the sales.

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Note 2 – this figure does not take into account additional remuneration or legal costs incurred as a result of opposing the application, nor any future costs savings on future remuneration applications by the Liquidator that may result from His Honour approving the apportionment of work referable to all of the funds (category 2 remuneration), as between the various funds that LMIM is or was responsible entity or trustee of, in a manner more favourable to the FMIF than was proposed by the Liquidators.

Note 3 – this figure does not take into account additional remuneration or legal costs incurred as a result of opposing the application. Further, it was held that, by reason of the clear accounts rule, LMIM’s entitlement to indemnity for some of the amounts claimed cannot be determined until after the LMIM Claim is heard and determined. See paragraph 146 below for further details.

Note 4 - this figure does not take into account costs savings in relation to the additional Liquidators or Receivers remuneration that would be associated with complying with the relevant financial reporting and audit obligations

All Court Proceedings

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

Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
Bruce v LM Investment Management Ltd (in liq.) in its capacity as responsible entity of the LM First	This is the proceeding in which I was appointed and winding up orders made.	Trade On and Administration

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>Mortgage Income Fund & Ors.</p> <p>Supreme Court of Queensland Proceeding No. 3383/13</p>	<p>Various interlocutory applications have been made in the proceeding including applications for approval of remuneration, applications for orders in relation to books and records, and application for directions in relation to the appointment of myself and Mr Fielding as controllers of the retirement villages, in place of LMIM.</p>	
<p>LM Investment Management Ltd (in liq.) in its capacity as responsible entity for the LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed) v EY (formerly known as Ernst & Young) (a firm) & Ors., (“Auditors Claim”)</p> <p>Supreme Court of Queensland Proceeding No. 2166/15</p>	<p>Claim by LMIM as RE of the FMIF against the auditors (EY) and two partners of EY for misleading and deceptive conduct and professional negligence</p>	<p>Assets</p>
<p>KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund v LM Investment</p>	<p>Claim by MPF Trustee against LMIM, arising out of the assignment of KPG and Lifestyle loans from LMIM as</p>	<p>Creditors</p>



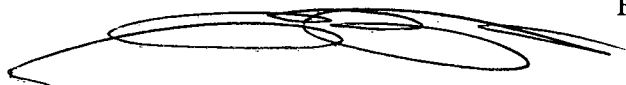
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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>Management Ltd (Receivers & Managers Appointed) (in liq.) & Anor.</p> <p>Supreme Court of Queensland Proceedings Nos. 8032/14 and 8034/14</p> <p>(“MPF Proceedings”)</p>	<p>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 was joined as a Defendant.</p> <p>These proceedings were discontinued by the plaintiff on 7 June 2018.</p>	
<p>KordaMentha Pty Ltd in its capacity as trustee of the LM Managed Performance Fund v LM Investment Management Ltd (Receivers & 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 alleged that LMIM atf</p>	<p>Creditors</p>



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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>(“AIIS Proceeding”)</p>	<p>the FMIF received certain interest payments on a loan facility that it had provided to AIIS from LMIM as trustee of the MPF, with knowledge that the payments were made by LMIM as trustee of the MPF in breach of trust.</p> <p>This proceeding was discontinued by the plaintiff on 10 August 2018.</p>	
<p>John Richard Park and Ginette Dawn Muller as liquidators of LM Investment Management Ltd (in liq.) (Receivers and Managers Appointed) the responsible entity of the LM First Mortgage Income Fund & 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>(“FTI Remuneration Proceeding”)</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</p>	<p>Trade On and Investigations</p>

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
	<p>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> <p>By application filed on 17 July 2018, seeking remuneration and out-of-pocket expenses of the liquidators (and as administrators) of the Responsible Entity LMIM</p> <p>By application filed on 10 October 2018, seeking directions in relation to the dual appointments of Mr Park and I in relation to the winding up of the FMIF.</p>	
<p>LM Investment Management Ltd v Drake & Ors.</p> <p>Supreme Court of Queensland Proceeding No. 12317/2014</p>	<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.</p>	<p>Assets</p>

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>("Claim against the MPF")</p>		
<p>Supreme Court of New South Wales Proceeding No. 2014/332566</p> <p>("\$2m proceeding")</p>	<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.</p>	<p>Assets</p>
<p>Federal Court of Australia at New South Wales Proceeding No. 2016/00120239</p> <p>("\$8m proceeding")</p>	<p>Claim against Wollongong Coal by Bellpac Pty Ltd Liquidator with respect to non-conversion of \$8 million of bonds to shares, where the FMIF holds a first ranking security over the assets of Bellpac.</p>	<p>Assets</p>
<p>PTAL and LM Investment Management Ltd v Coulter Developments Pty Ltd & Ors</p> <p>Supreme Court of Western Australia Proceeding No. 2403/2014</p>	<p>Claim against Borrowers and Guarantors for \$13.8 million plus interest and costs</p>	<p>Assets</p>
<p>The Trust Company (PTAL) Ltd v Ross Lamb</p>	<p>Creditors Petition against Guarantor. The Guarantor has been made bankrupt.</p>	<p>Assets</p>

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
Federal Circuit Court SYG2097/2016		
<p>LM Investment Management Ltd (Receivers and Managers appointed) (in Liquidation) as responsible entity for the LM First Mortgage Income Fund (Receiver Appointed) v LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation) as responsible entity for the LM Currency Protected Australian Income Fund (Receiver Appointed) & Ors</p> <p>Supreme Court of Queensland Proceeding No. 13534/16</p> <p>(“Feeder Fund claim”)</p>	<p>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</p>	<p>Assets</p>
<p>LM Investment Management Ltd (Receivers and Managers appointed) (in Liquidation) as responsible entity for the LM First Mortgage Income Fund (Receiver Appointed) v LM Investment Management Ltd</p>	<p>Claim against LMIM in relation to payments LMIM caused to be made from the property of the FMIF which were not authorised by the constitution or the Act and material losses suffered by the FMIF by reason of breaches of duty by LMIM.</p>	<p>Assets</p>

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
(Receivers and Managers appointed)(in Liquidation) Supreme Court of Queensland Proceeding No.11560/16 ("LMIM claim")		

Summary of work in the Relevant Period

18. By way of short summary, I have undertaken the following work in the Relevant Period, that I considered necessary for the winding up of the FMIF
- (a) In relation to Supreme Court of Queensland proceeding numbered 2166/15 against the former auditors of the FMIF, the significant work included, the following:
 - (i) completing and providing comprehensive further instructions and analysis in respect of 23 significant loans advanced by the Fund and representing approximately 70% of the Fund loan book at 30 June 2008, for each six monthly period from 30 June 2008 to 30 June 2012 the subject of the Auditors Claim, together with supporting Fund documentation, and in relation to the alleged breaches of contract and duty by the auditors, including ongoing review of relevant electronic accounting records in my possession in relation to Compliance and Financial audits and reviews conducted and identifying alleged contraventions of audit and accounting standards in substantiation of allegations raised in the statement of claim.

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(ii) completing and providing a detailed and comprehensive loan book schedule for all Fund loans and across the nine audit or review periods from 30 June 2008 to 30 June 2012 the subject of the Auditors Claim, together with supporting Fund documentation. For each audit period and each loan, identifying the sector classification, locality, loan type, the default status, when a loan was being monitored prior to going into default, controllership or mortgagee in possession status, where impairment was recognised, where bad debts were written off, valuation details and history, where update valuations in accordance with the Fund's compliance policies were required but not obtained, the assessed valuations adopted by the auditor, the unit value and current book debt. The 30 June 2008 loan book schedule comprises 65 loans and reduces to 28 loans in the 30 June 2012 schedule.

(iii) Providing instructions and assisting my solicitors and Counsel necessary to enable a response to be prepared to the request for particulars served on 19 June 2018, which consisted of over 400 separate requests. Responses to a significant number of the separate requests necessitated extensive analysis of the 23 loans referred to above and the FMIF loan book in general, as well as identification, review, analysis and provision to my solicitors of a considerable amount of Fund documentation in respect of specific requests contained within the request for particulars.

The quantum of the claim is for in excess of \$200 million ("**Auditors Claim**");

(b) In relation to Supreme Court of Queensland proceeding numbered 13534/16 against LMIM and the Feeder Funds, the significant work

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included providing instructions in relation to, searching for, and identifying large quantities of relevant Fund documents required to be provided in accordance with orders of the Court dated 13 June 2018 and in order to enable responses to be provided to further requests for information and documents received from other parties prior to the mediation. 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 ("**Feeder Fund Claim**");

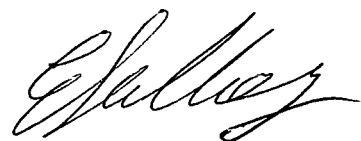
- (c) In relation to Supreme Court of Queensland proceeding numbered 11560/16 against LMIM, the significant work included reviewing and swearing a detailed affidavit in support of an application for directions, leave to proceed and to stay the proceeding until further order. The quantum of the claim is yet to be finalised, but includes claims for the aggregate amounts of approximately \$13.7 million and \$12.9 million plus interest ("**LMIM claim**");
- (d) In relation to Supreme Court of Queensland proceedings numbered 8032/14 and 8034/14 against LMIM and myself as court appointed receiver of the FMIF, in which claims for relief were made against assets of the FMIF ("**MPF Proceedings**"), the significant work included reviewing material in relation to an application by the plaintiff for directions to discontinue the proceedings, reviewing and providing instructions to my solicitors in relation to various correspondence with the plaintiff concerning issues relating to the discontinuance of the proceeding, providing instructions to my solicitors in relation to offers to settle the quantum of various outstanding costs orders and the steps to be taken to recover costs from the plaintiff. The quantum of the



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claims against FMIF assets was approximately \$24 million plus interest. These proceedings have now been discontinued by the plaintiff;

- (e) In relation to 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 (“**Claim against the MPF**”). The significant work included making additional substantial disclosure in the proceedings which involved a significant interrogation of the FMIF’s books and records, identifying, reviewing and providing a considerable quantity of relevant documents in respect of the repayment of the loan to the MPF and assigned debt receivables.
- (f) Liaising with 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) Liaising with and providing instructions to my solicitors in regard to the application by the plaintiff for directions to discontinue the AIIIS Proceedings and issues relating thereto;
- (i) Providing instructions to my solicitors in relation to finalisation of 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 and taking or instructing my solicitors to take, various steps to carry out the terms of that agreement;

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- (j) Complying with the obligations pursuant to the relief from ASIC from financial reporting and audit requirements;
 - (k) Continuing investigations of the migration of the Composer investor management database to the AX database, and the units acquired in the FMIF in foreign currencies prior to my appointment;
 - (l) Continuing to liaise with stakeholders regarding the retirement of the receivers appointed by the secured creditor Deutsche Bank AG (“DB”);
 - (m) Preparation of unit price calculation as at 30 June 2018;
 - (n) Preparation of management accounts for the year ending 30 June 2018;
 - (o) Preparation of reports to members issued in June 2018 and September 2018; and
 - (p) 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.
19. The above, very brief, summary of work undertaken by my staff and me is detailed further in my affidavit below.

Status of the FMIF assets

20. All real property assets have now been sold.
21. There remain various legal proceedings on foot that must be determined or resolved, before the winding up can be completed. I am working towards resolving the main issues in the winding up, hopefully within the next six months.

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Status of the DB Receivers

22. I refer to paragraphs 21 and 22 of my June 2018 Affidavit for background in relation to this issue.
23. During the Relevant Period, I have had ongoing discussions and correspondence with Joseph Hayes and Anthony Connelly, (the “**DB Receivers**”) as to the DB Receivers’ proposed retirement.
24. Based on those discussions and correspondence, I remain confident that the DB Receivers will retire shortly.


Distribution

25. 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. 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

26. As part of the winding up process, and in conjunction with the DB Receivers, I have reduced the costs of managing the FMIF.
27. 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.
28. The current costs of managing the FMIF are the costs of myself (by my appointments), the DB Receivers, and amounts to be paid to the liquidators of LMIM for remuneration or expenses.

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29. Despite the amount of remuneration sought for this Relevant Period being higher than the amount sought in the previous application for the reasons given in paragraph 13, the remuneration has shown a general downward trend, for the most part, because all hard property assets have been realised, and I am, for the most part, now progressing claims on behalf of the FMIF, seeking to recover substantial funds for the benefit of FMIF members. 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

30. 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 in progress, including claims made to recover funds for the benefit of members of the FMIF and claims made against assets of the FMIF;
 - (d) risk of personal liability being incurred under agreements entered into with residents of the retirement villages;
 - (e) the number and complexity of issues in the period from 2008 to 2013 requiring my various investigations;

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- (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 (which were recently discontinued); 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.
31. 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 extensive, detailed and complex work required in this relevant period in relation to the Auditors Claim, the Feeder Fund Claim and the Claim against the MPF as detailed in paragraph 18 above;
 - (b) The filing of an application by the Liquidator seeking payment of further remuneration from the FMIF, which was heard during the Relevant Period – see paragraphs 137 to 138 of this Affidavit for further details; and
 - (c) The filing of an application by the Liquidator seeking directions in relation to the dual appointments to wind up the FMIF – see paragraphs 152 to 154 of this Affidavit for further details.

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32. Given the complexity of many of the litigation matters, and particularly the technical expertise required for prosecuting the Auditors Claim, it has been necessary to maintain the engagement of staff at a senior level with higher charge out rates. Two audit partners, Mr Clark Jarrold and Mr Craig Jenkins together with other senior personnel (Ms Julie Pagcu and Mr Arthur Taylor) have been extensively involved in the litigation 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 relation to litigation matters and working on and assisting in finalising the detailed notes for 23 loans and responding to Counsel's requests for Fund documentation and other instructions to facilitate preparation of a response to the requests for particulars.

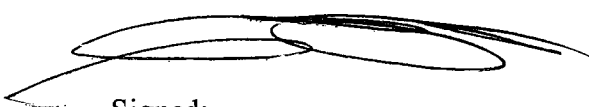
Time recording

33. 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.
34. The partners of BDO Business Restructuring Pty Ltd ("BR") are members of ARITA, and follow the ARITA Statement of Best Practice – Remuneration.
35. Each task and the time for carrying out each task, is only recorded once.

Teams assisting

36. 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 practice groups. I set out generally below, the function of each practice group and their assistance to me in the Relevant Period.

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37. 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.

At pages 1 to 4 of the Bundle are copies of the hourly charge out rate schedules of the BDO practice groups that applied during the Relevant Period.

Audit

38. During the Relevant Period, the Audit team at BDO has assisted me by:-
- (a) 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;
 - (b) Preparing detailed and substantial reports for 23 significant loans advanced by the Fund representing approximately 70% of the Fund loan book at 30 June 2008, together with supporting documentation, in relation to the contraventions alleged in the Auditors Claim, including ongoing review of relevant electronic accounting records in my possession relating to Compliance and Financial audits and reviews conducted, for the six monthly periods from 30 June 2008 to 30 June 2012 the subject of the Auditors Claim, and identifying alleged contraventions of audit and accounting standards in substantiation of allegations raised to assist with the prosecution of the Auditors Claim, liaising with BDO Corporate Finance and Tax Consultants where required, and providing detailed instructions and analysis to assist in

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preparation of a response to the request for further and better particulars of the statement of claim dated 19 June 2018;

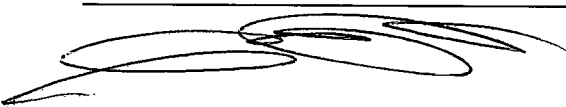
- (c) Providing extensive detailed supporting documentation, assessments and analyses to assist Counsel responding to the request for further particulars served on 19 June 2018; and
- (d) Assisting with the review and completion of the management accounts for the year ended 30 June 2018.

39. Given the expertise required to perform this work, I believe it was necessary for the Audit team to assist me with the above matters.

Corporate Finance

40. 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, appropriateness and methodology adopted in discounted cash flow development feasibilities used to support the valuation assessments of various loans and the auditor's impairment determinations from time to time across the audit periods under consideration, to assist with the finalisation of the detailed loan reports and the response to the requests for particulars served 19 June 2018.
- (b) 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.


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Tax

41. During the Relevant Period, the Tax team at BDO has assisted me in my roles by advising on the GST position relating to Mr Park's second application to Court for approval of remuneration and in finalising the controllerships.
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.

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. At pages 5 to 13 of the Bundle is a breakdown of time charged by BDO employees pursuant to both of my appointments and tables in respect of

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“Disbursements” charged against either my appointment, or my controllership appointment (per each respective Controllershship Company). These are office expenses that BDO has incurred. I do not seek approval in this application for these expenses.

- 46. At pages 14 to 405 of the Bundle 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.
- 47. The Schedule shows a description of each task undertaken, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged. A summary of the tasks undertaken, time taken and amount charged is detailed below:-

Category/area	Total hours	Amount (\$)
Assets	3,000.1	\$1,347,816.00
Investigations	88.7	\$19,973.50
Trade on	261.0	\$117,779.50
Creditors	766.6	\$206,237.00
Administration	243.5	\$77,862.50
Total (exclusive of GST)	4,359.9	\$1,769,668.50
GST		\$176,966.85
Total claim (inclusive of GST)		\$1,946,635.35

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48. 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.
49. The entries in the Schedule reflect BDO's scale of insolvency and other hourly charge out rates.
50. 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.
51. 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.
52. 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

53. In the Relevant Period, my staff and I have undertaken various tasks and activities that can be described as falling within the category "*Assets*".
54. Generally, work attributed to this category includes tasks in respect of:
 - (a) Advancing claims against guarantors; and

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- (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”).

55. In total, \$1,347,816.00 (exclusive of GST) of remuneration is sought for approval in the Relevant Period in respect of the “*Assets*” category.

56. I set out below the extent of work undertaken in respect of “*Assets*”.

57. During the Relevant Period, insofar as I was exercising powers conferred on me in relation to the property of the FMIF, I was doing so with the consent and agreement of the DB Receivers.

Retirement Villages

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

59. The work undertaken by BDO to realise the retirement village assets was extensive. The work undertaken and the complexities associated with the

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realisations of these assets is detailed in affidavits sworn by me in support of previous applications for approval of remuneration.

60. All of the retirement village assets have been realised. The net proceeds of sale of the retirement village assets of approximately \$40 million has been paid into FMIF bank accounts. The work undertaken during the Relevant Period were tasks to finalise the retirement village controllerships including tax compliance and liaising with the liquidators of the various companies, liaising with my solicitors and PTAL in relation to revocation of the controllership appointments, and lodging the required notifications and returns with ASIC upon the ending of the controllership appointments.
61. All of this work was necessary for the winding up of the FMIF in accordance with its constitution.

Court Proceedings

62. 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.
63. In this Affidavit, where estimated timeframes for the resolution or determination of legal proceedings are given, it is important to note that the actual timeframes may vary depending upon a range of factors usual for litigation matters, some of which are not within my control, for example, the conduct of the other parties to the litigation.

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Auditors Claim - Supreme Court of Queensland Proceeding 2166/15

64. 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, and paragraphs 66 and 68 of my June 2018 affidavit set out the steps in the proceeding to the period ending 31 May 2018.
65. The quantum of the loss claimed in the Auditors Claim is at its highest in excess of \$200 million.
66. This matter is on the commercial list before Justice Jackson.
67. The most recent directions made by His Honour are that the plaintiff is to file a sixth further amended statement of claim by 9 November 2018, the defendant is to file a defence to the sixth further amended statement by 14 December 2018, the plaintiff is to file any reply by 21 January 2019 and the proceeding is listed for review on 4 February 2019.
68. At pages 406 to 407 of the Bundle is a copy of the directions made on 8 October 2018 by Jackson J.
69. The parties have had recent discussions regarding undertaking an early mediation of the matter. I am informed by Mr Scott Couper of Gadens, my solicitor in the matter, and believe that he is presently discussing such a proposal with the solicitors for the defendants. If such a mediation were to take place, it would take place in the first quarter of 2019. Accordingly, if the mediation is successful, the matter may settle within the first quarter of 2019. If the matter does not proceed to mediation, or mediation is not successful, the matter is likely to take between 18 months and two years for the proceeding to be determined or resolved.

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70. During the Relevant Period, the work of my staff and I included the following:-
- (a) The work with respect to the Auditors claim detailed in paragraph 18 of this Affidavit;
 - (b) Liaising with and instructing my solicitors in regard to seeking the Auditor's consent to a grant of leave to file an Amended Claim and a timetable for future conduct of the matter, attending at the hearing of my application for leave to file an Amended Claim, and providing instructions in respect of the filing of an amended version of the Statement of Claim, in response to the Court's order to strike out one paragraph of the statement of claim with leave to re-plead;
 - (c) Liaising with, instructing and providing assistance to Counsel in relation to accounting and auditing standards as applicable to the relevant allegations pleaded in the claim.

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

71. 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.
72. 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.
73. The background to the Claim against the MPF is set out in my November 2015 Affidavit at paragraphs 102 to 105, and details of steps taken in the proceeding appear at paragraphs 106 to 119 therein, paragraph 80 of my June 2016 Affidavit, paragraph 81 of my November 2016 affidavit, paragraph 77 of my

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June 2017 affidavit, paragraph 75 of my November 2017 affidavit, and paragraphs 73 of my June 2018 affidavit.

74. Since that time, the following progress has been made in the proceeding itself:-

- (a) At the commencement of June 2018, the plaintiff served on the defendants the first draft of its proposed trial bundle. At this time, the defendants were advised that the proposed trial bundle was subject to change once further disclosure had been made.
- (b) At or around the same time, the defendants made request that a further review of the hardcopy LMIM records in my possession be undertaken and that additional disclosure be undertaken given that the matters in issue in the proceedings had by that time become more refined with the service of replies to all parties' defences.
- (c) Subsequently, I instructed my solicitors to complete this review process and assist BDO in conducting extensive key word searches of the LMIM servers for the purposes of providing further disclosure in relation to:
 - (i) the matters raised by the defendants concerning a need for a further review of previously reviewed hardcopy documents; and
 - (ii) the assigned loans and debt management fee receivable.
- (d) In June and July 2018 this extensive review process was undertaken and it was agreed at this time between all the parties that further directions should be sought from Jackson J relating to establishing a timetable for the delivery of further disclosure, the delivery of an amended draft trial bundle incorporating documents relevant to the



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assigned loans and debt management fee receivable allegation and for the future exchange of affidavits of evidence in preparation for trial.

- (e) The form of the directions were largely agreed to in the first two weeks of August by way of considerable negotiations being undertaken by my solicitors, my counsel and that of the defendants.
- (f) Directions were made on 16 August 2018 by Jackson J establishing a timetable of steps to be undertaken over the remainder of 2018 and into early 2019 with a view to preparing the matter for trial in early/mid 2019. At pages 408 to 410 of the Bundle is a copy of the directions by Jackson J.
- (g) This has included the requirement for the plaintiff to make further disclosure in the proceedings described above and to otherwise complete and provide a draft trial bundle.
- (h) A draft trial bundle was served on 13 September 2018 of in excess of 700 documents. As at the date of swearing this affidavit, negotiations continue with the defendants in relation to the preparation of a consolidated trial bundle which incorporates documents proposed by other defendants.

75. Only BDO staff in the BR practice group have worked (on my instruction) on the Claim against the MPF.

76. This matter is on the commercial list before Jackson J. The most recent directions made by His Honour include steps for the parties to take for the remainder of 2018 including the preparation of witness affidavits and a draft trial plan.

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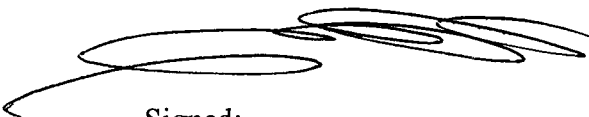
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77. I am informed by Mr Scott Couper of Gadens, my solicitors in this matter, and believe, that they estimate that this proceeding is likely to be listed for a trial to take place in about March/April 2019 subject to among other things, the availability of trial dates, which could take between 2 – 4 weeks.
78. 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 making further discovery and negotiating the terms of the consent order agreed between the parties prior to the hearing before Jackson J on 16 August 2018;
 - (b) Assisting my solicitors and Counsel in preparation for the hearing on 16 August 2018 before Jackson J;
 - (c) Assisting with interrogating LM FMIF's books and records including an extensive key word search undertaken to locate all documents relevant to the assigned loans and debt management fee receivables allegations such that further disclosure could be undertaken in accordance with Jackson J's orders of 16 August 2018;
 - (d) Liaising and assisting my solicitors and my counsel in respect of the preparation of a draft trial bundle including assisting with the location and identification of key documents disclosed in the proceedings and the initial preparation of a consolidated trial bundle incorporating the various defendants' proposed documents. The contents of the consolidated trial bundle remains the subject of ongoing negotiations between the parties as of the date I swear this affidavit; and
 - (e) Liaising with, reviewing advices from and providing instructions to my solicitors in relation to the future conduct of the proceeding generally,

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including the steps required to prepare the matter for trial in early/mid 2019. This included regular case management meetings with my solicitors by telephone.

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

79. 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, paragraph 83 of my June 2017 Affidavit, paragraph 81 of my November 2017 affidavit and paragraphs 76 to 79 of my June 2018 affidavit.
80. The claim was successfully prosecuted by the liquidator of Bellpac for whom judgment was given. I consider that the FMIF is entitled as first ranking secured creditor to the funds recovered from the \$2 million bonds (after costs). However, the MPF Trustee has made a claim to about \$678,336 of these funds.
81. 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.
82. During the Relevant Period, the work of my staff and I has included liaising directly with the Liquidator regarding the request for payment of the Liquidator’s fees and legal fees incurred from the bonds proceeds.

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

83. Paragraph 135 of my November 2015 Affidavit sets out the background to the Federal Court of Australia at New South Wales Proceeding No.

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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 paragraph 85 of my June 2017 Affidavit, paragraph 86 of my November 2017 affidavit and paragraphs 80 to 84 of my June 2018 affidavit.

84. In summary, judgment 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

85. 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. The sunset date to complete the conditions precedent in the HOA has been extended on a number of occasions. The Liquidator has entered into a further agreement with WCL, extending the Sunset Date to 21 December 2018. Subject to those conditions precedent being satisfied, certain payments are to be made to settle the claim made by the Liquidator, by 21 December 2018.

86. 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 expert reports and shareholder approval.
- (b) Liaising with the Liquidator in relation to WCL not meeting the extended sunset date in the HOA to enable more time to prepare and finalise expert reports requested for the shareholders to approve the HOA with Bellpac. Reviewing correspondence between the Liquidator and WCL in relation to negotiations on the agreement to the extension.

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- (c) Liaising with the Liquidator in relation to WCL failing to meet the various extended sunset dates in the HOA, agitating for the Liquidator to progress the court hearing to obtaining judgement against WCL, and assenting to the further agreement entered into.

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

87. 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, paragraph 90 of my November 2017 affidavit, and paragraphs 85 to 89 of my June 2018 affidavit.
88. 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.
89. This proceeding is on the commercial list before Jackson J.
90. At pages 411 to 418 of the Bundle is a copy of the directions made on 13 June 2018 and 4 September by Jackson J.
91. A mediation has been ordered and took place on 5 and 6 November 2018 before former Supreme Court Justice the Honourable Richard Chesterman AO RFD QC. I note that settlement negotiations of the Feeder Fund Claim are nearing completion.

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92. I am informed by Mr Scott Couper of Gadens, my solicitors in this matter, and believe if this matter was to fail to settle and instead proceeds to trial, that the trial would likely take place in about late 2019 to early 2020.
93. During the Relevant Period, the work of my staff and I has included:
- (a) The work with respect to the Feeder Fund Claim detailed in paragraph 18 of this Affidavit;
 - (b) Liaising with my solicitors in respect of the preparations needed for the hearing of the application under section 59 of the Trusts Act and section 500(2) of the Act which was heard on 13 June 2018 before his Honour Justice Jackson, including compiling affidavit material for my affidavit sworn in support of those applications. This process involved myself, my staff and my solicitors undertaking extensive reviews of the Fund documents in order to ascertain whether units in the FMIF were held on a custodial basis by another entity, namely the Permanent Trustee Australia Limited. As consequence of these investigations, it was determined that the units in the FMIF purportedly held by Trilogy Funds Management Limited as RE of the WFMIF (being one of the Feeder Funds) were actually held by the Trust Company Limited (**TCL**). TCL were subsequently joined to the Feeder Fund Proceeding by order of Jackson J on 13 June 2018;
 - (c) Liaising with my solicitors following the Orders made by Justice Jackson on 13 June 2018 in relation to providing further documents to the representatives of the Feeder Funds and filing an Amended Claim and Second Further Amended Statement of Claim in accordance with the Orders. This process included an extensive search of Feeder Fund documents as permitted by the Orders of Jackson J as I had been previously precluded from performing this review by an undertaken

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given to the Court in proceedings No 3383 of 2013 not to interrogate the LMIM servers in my possession for 'Non-Fund' information';

- (d) Liaising with my solicitors in respect of a court ordered mediation which was originally scheduled to occur prior to 28 September 2018. After correspondence and communication with the solicitors for the defendants, the Honourable Richard Chesterman AO RFD QC was selected as mediator. After this selection, it became evident that the parties were not able to participate in mediation prior to 28 September 2018;
- (e) Arranging for the re-scheduling of the mediation by way of seeking the Orders of Jackson J that the mediation be postponed until 5 and 6 November 2018;
- (f) Assisting with the preparation for the mediation, including collating a considerable number of Fund documents from the LM FMIF books and records in order to prepare the brief to the mediator in advance of the mediation. This coincided with my solicitors preparing extensive correspondence to the defendants in the Feeder Fund claim in an effort to explain in a fulsome manner the basis of the plaintiff's claim with supporting documents so as to provide an opportunity for open discussion about the merits of the plaintiff's claim in advance of the mediation;
- (g) Assisting my solicitors in the two weeks prior to the mediation, with negotiations related to the contents of the mediator's brief. The contents of the mediator's brief was eventually agreed upon and ran to 5 lever arch volumes and in excess of 70 separate documents and ledgers;
- (h) Instructing my solicitors in relation to a proposed attendance by representatives of EY in the Auditor Proceeding at the mediation;

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- (i) Instructing my solicitors in relation to a proposed attendance by representatives of LMIM at the mediation;
- (j) By way of completeness, the mediation was conducted on 5 and 6 November 2018 and discussions are ongoing with a view to settlement;
- (k) Liaising with my solicitors regarding further extensive documentation requested by the defendants. Interrogating the database to locate the relevant documentation and reviewing, analysing and providing the documentation to our solicitors and the defendants.

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

94. 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, paragraphs 152 to 156 of my November 2017 affidavit and paragraphs 90 to 95 of my June 2018 affidavit.
95. 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;

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- (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.
96. An Amended Claim and Statement of Claim and Consolidated Particulars have been filed and served.
97. 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.
98. 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, seeking to subrogate to LMIM's alleged rights of indemnity.
99. I applied to the Court for directions under section 59 of the Trusts Act (1973) (QLD) in relation to how the differing interests of the parties (LMIM as RE of the FMIF, and LMIM in its personal capacity) are to be represented in the proceedings, for leave to proceed under Section 500 of the Act and a stay of the proceeding until further order.

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100. A stay was sought because, particularly following the discontinuance of the claims brought by the MPF Trustee, until completion of the process under the Residual Powers Orders with respect to the Liquidators calling for proofs of debt in the liquidation of LMIM and notifying me of any debts owing to or claims made by creditors in respect of which LMIM claims indemnity from the FMIF, and me adjudicating upon any such debts or claims is completed, the extent to which it is necessary to proceed with the claims made in this proceeding will not be clear. I do not want to incur the costs of proceeding with parts of this claim that it may not ultimately be necessary or beneficial to the FMIF Members to pursue, in order to establish claims of sufficient quantum to set-off (by operation of the clear accounts rule) against claims made against the Fund by LMIM, or by creditors seeking to subrogate to LMIM's alleged rights of indemnity.
101. On 25 July 2018, the Court directed that I represent the interests of LMIM as RE of the FMIF, that Mr Park represent the interests of LMIM in its own capacity, granted leave to proceed with this claim and ordered that the claim be stayed until further order.
102. I am informed by Alex Nase, of Tucker and Cowen, my solicitors in this proceeding, and believe that, he estimates that, from when any order is made lifting the stay, if only the claims made in relation to pre-paid management fees and loan management fees were proceeded with, and if the claim is defended, it is likely to take about 18 months for this proceeding to be resolved or determined.
103. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with, reviewing correspondence from and providing instructions to my solicitors in relation the application referred to in

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paragraph 99 of this Affidavit and issues relating thereto, and the evidence required in support of the application; and

- (b) The work with respect to this proceeding detailed in paragraph 18 above.

The Trust Company (PTAL) Ltd v Ross Lamb

104. 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.
105. The bankrupt and his wife were parties to a Development Agreement. The proceeds of sale of 11 lots owned by the bankrupt and his wife (in some cases, with another party) that were developed and sold are held in a solicitor's trust account. There is approximately \$12 million in the 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 in the solicitor's trust account.
106. 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 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. I have instructed PTAL as custodian of the FMIF to enter into a Deed of Indemnity to fund a public examination under the Bankruptcy Act 1966 (Cth) to further investigate the claims available to the Trustee and any relevant recovery proceedings.


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107. The Trustees of the bankrupt estate of Mr Ross Lamb are Mr David Clout and Ms Patrica Talty, of David Clout and Associates. I am informed by Mr David Clout, of David Clout and Associates, and believe that:

- (a) The Trustees' investigations are ongoing;
- (b) There have been informal discussions with the bankrupt regarding a possible proposal under s 73 of the Bankruptcy Act;
- (c) It is estimated that:
 - (i) a public examination, if proceeded with, will take approximately 2 to 3 months to complete;
 - (ii) any agreed recovery proceeding will take approximately 12 to 18 months to prosecute to a determination.

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

- (a) Reviewing information and analysis as to potential claims;
- (b) Reviewing correspondence and reports from the Trustee in bankruptcy and liaising with the Trustee to obtain current status updates;
- (c) Liaising with my solicitors in relation to the negotiation of a draft Deed of Indemnity to the Trustee to pursue a Public Examination of the Bankrupt and related parties in order to investigate and recover voidable transactions for the benefit of the Fund; and
- (d) Responding to requests for documents relevant to the proposed recovery action from the trustee.

Investigations

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109. 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*".
110. This category relates to work undertaken in pursuit of my investigations, which may result in legal proceedings.
111. Generally, once a proceeding is started, time is then recorded and allocated to the "*Assets*" category of work.
112. My investigations, in summary, relate to investigating the investor register relating to units that were subscribed in foreign currencies.
113. In total, \$19,973.50 (exclusive of GST) in remuneration is sought for approval in respect of the "*Investigations*" category.
114. 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.
115. 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.

Foreign currency units

116. Investigations undertaken by BDO have identified some issues with the recording of the units when LMIM transferred the member records of the FMIF to a new database in 2010 as the units are shown in foreign currency rather than AUD, although the relevant AUD amount is also recorded in the database. This information is being reconciled to the position stated in the Constitution and the PDS to determine if the database needs to be corrected.

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Trade on

117. Generally, work is considered to be “*Trade-on*” if the work is considered to be incidental to the winding up.
118. Work undertaken in relation to trade-on may be recorded in more than one category, however, the work undertaken is only recorded once.
119. During the Relevant Period, work attributed to this category included:-
- (a) Preparation of unaudited management accounts for the year ended 30 June 2018;
 - (b) Reviewing and approving the payment of expenses and issuing payment requisitions and supporting documentation to the DB Receivers for review and final approval;
 - (c) 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;
 - (d) Maintenance of the Microsoft AX loan management database, including accounting for payments, reconciling statements and processing month end and year end adjustments;
 - (e) Conducting internal meetings to discuss job management issues including:-
 - (i) Maintenance of accounts and preparation of the management accounts for the year ended 30 June 2018;
 - (ii) Status of litigation matters and work to be done to progress same;

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- (iii) Investor issues including content for my regular reports to members, status of investigations, creditor claims and my application for approval of remuneration.
 - (f) Meeting with members of the BDO Audit practice group regarding the preparation of the management accounts for the year ended 30 June 2018; and
 - (g) Communications with the DB Receivers and their staff regarding the proposed retirement of the DB Receivers and other matters.
120. In total, \$117,779.50 (exclusive of GST) of remuneration is sought for approval in respect of the "Trade on" category.

Management Accounts

121. During the Relevant Period, my staff and I worked on the preparation of the management accounts for the half year ended 30 June 2018.
122. During the Relevant Period, my staff and I have undertaken the following tasks in respect of completing the management accounts for the year ended 30 June 2018:-
- (a) Reviewing work papers to verify the accuracy of the management accounts;
 - (b) Liaising with the DB Receivers to ascertain amounts that are outstanding at 30 June 2018;
 - (c) Preparing a summary of loan reductions 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;


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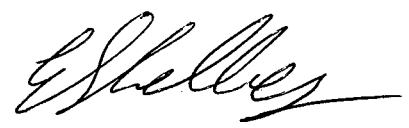
- (e) Preparing a summary of payable invoices:-
 - (i) either paid after the year end; or
 - (ii) remaining to be paid, which relate to work incurred during the financial year ending 30 June 2018.
- (f) to determine the accrued expenses;
- (g) Calculating provisions for the remaining loan accounts or receivable balances and updating the loan spreadsheet;
- (h) 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.
- (i) Preparing work papers to support the notes to the accounts, including, but not limited to, the movement in impairments as between the periods 31 December 2017 and 30 June 2018;
- (j) Preparing the management accounts for distribution to members, which includes:-
 - (i) A statement of comprehensive income;
 - (ii) A statement of financial position;



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- (iii) A statement of changes in net assets attributable to unitholders;
and
- (iv) Notes to the accounts.

- (k) Liaising with the BDO Audit practice group regarding movements in asset values, provisions and default loans between 31 December 2017 and 30 June 2018

- (l) Reviewing and amending the trial balance in respect to changes required by the BDO Audit practice group;

- (m) Reviewing and amending financial statements in respect to changes required by the BDO Audit practice group;

- (n) Reviewing and considering disclosure requirements with reference to Australian Accounting Standards; and

- (o) Reviewing and amending the management accounts and notes in accordance with Australian Accounting Standards and recommendations by my solicitors.

123. 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.

Application to ASIC for financial reporting and audit relief

124. Under the 17 December 2015 orders, I was directed to apply on behalf of the FMIF to ASIC for relief from compliance with financial reporting and audit obligations in Part 2M.3 and s 601HG of the Corporations Act.

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125. I made such an application, and on 29 September 2016, the Australian Securities and Investments Commission (“ASIC”) issued ASIC Instrument 16-0959, granting the FMIF a deferral of its obligations to comply with the relevant financial reporting and audit obligations until 16 May 2018, subject to compliance with certain conditions of the relief.
126. On 8 December 2017, I applied to further extend this relief, and on 15 March 2018, ASIC issued ASIC Instrument 18-0166, extending the said deferral of financial reporting and audit obligations to 16 March 2020. At pages 419 to 420 of the Bundle is a copy of this Instrument of Relief.
127. The last audit of the FMIF, which was for the 2012 financial year, cost in excess of \$500,000.
128. I am informed by Mr Craig Jenkins, a BDO audit partner, who audits several managed investment schemes, and believe, that the auditor’s fees for an audit would be between \$20,000 and \$50,000 for each financial year, up to about December 2015. The auditor’s fees for each half yearly audit review required by section 302 of the Act is estimated to be between 50% and 70% of the cost of an annual audit, up to about December 2015. The BDO audit partner estimates that, from about December 2015, an auditor’s fees would be about \$12,500 to \$20,000 for each yearly audit, and between 50% and 70% of that for each half yearly audit. However, the auditor’s fees for undertaking only one audit at the completion of the winding up (which would cover the entire period of the winding up) as required under the FMIF’s constitution would be about \$60,000. These figures do not include insolvency practitioner’s fees to instruct auditors and provide documents or explanations to auditors, or the costs of complying with other aspects of the financial reporting and audit obligations. There are therefore significant costs savings, in auditor’s fees alone, if only one audit is undertaken at the completion of the winding up.



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

129. 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**”).
130. 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.
131. In total, \$3,098,251.83 (excluding GST) was sought to be approved for payment from the FMIF in the FTI Remuneration Proceeding. Of that amount, a total of \$1,827,205.23 was approved to be paid from property of the FMIF (including remuneration and a small amount of out-of-pocket expenses).
132. 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. Orders reflecting His Honour’s reasons for judgment were made on 22 November 2017.
133. 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.
134. 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 (“**Payment Application**”).
135. The amount of \$1,827,205.23 being the remuneration (excluding any amount for GST) for the period to 30 September 2015 as approved 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.

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136. During the Relevant Period, following entry into a Terms of Agreement between Mr Park, Ms Muller, LMIM and myself:
- (a) The Payment Application was dismissed, by consent, with no order as to costs;
 - (b) orders were made by consent fixing the quantum of the Liquidators costs of the First Remuneration Application payable out of the FMIF;
 - (c) the sum of \$212,700.83 was paid to the FMIF by the LM Australian Income Fund (AIF) and the LM Australian Structures Products Fund (ASPF), to reimburse the FMIF for amounts paid from the FMIF, at LMIM's request, to LMA for services rendered and operating expenses incurred for the period from 26 July 2013 to 23 December 2014 for the benefit of LMIM in its capacity as responsible entity of the AIF and the ASPF.

Second FTI Remuneration Application

137. On 17 July 2018, Mr Park of FTI, who is now the sole Liquidator of LMIM, filed an application in the Court seeking payment of remuneration of approximately \$743,889.89 inclusive of GST from property of the FMIF, relating to various periods between 19 March 2013 and 30 June 2018 ("**Second FTI Remuneration Application**"). I opposed certain parts of the application. The application was heard on 6 September 2018 and 3 October 2018.
138. Judgment is reserved on the Second FTI Remuneration Application
139. During the Relevant Period, the work of my staff and I has included:
- (a) Reconciling or attempting to reconcile amounts claimed by FTI in this applications against prior applications;

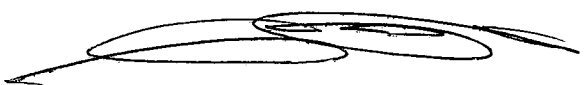
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- (b) Reviewing the application and lengthy Affidavits relied upon by the Liquidator in support of the application;
- (c) various conferences with my solicitors and/or Counsel to provide detailed instructions in relation to various aspects of the application;
- (d) providing the necessary instructions to external service providers to issue the required notice to members of the FMIF of the application;
- (e) reviewing and providing instructions to my solicitors in relation to various correspondence to the Liquidator's solicitors concerning the application, including detailed correspondence requesting further information relating to the application and asking that aspects of the application be reconsidered;
- (f) reviewing various correspondence from the Liquidator's solicitors in relation to the application;
- (g) reviewing various advices and correspondence from my solicitors in relation to the application;
- (h) reviewing and swearing detailed affidavits in response to the application and affidavit of service;
- (i) further consideration of GST issues relating to the application;
- (j) reviewing and suggesting changes to draft submissions settled by Counsel as to GST and submissions as to other aspects of the remuneration application, including whether LMIM corporate remuneration is recoverable from FMIF;
- (k) attending at the hearing of the application on 6 September 2018 to provide instructions to my solicitors during the course of the hearing;



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- (l) providing instructions to my solicitors in relation to and reviewing a report from my solicitors regarding the further hearing of the remuneration application on 3 October 2018;
- (m) reviewing correspondence from the Liquidator's solicitors proposing a regime to agree quantum of costs of application post the hearing on 3 October 2018 and providing instructions to my solicitors in relation to a detailed reply to such correspondence.

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

- 140. 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.
- 141. The background to this proceeding is detailed in paragraphs 112 to 124 of my November 2017 affidavit.
- 142. Pursuant to the 17 December 2015 Orders, Mr Park and Ms Muller submitted two claims for indemnity for expenses to me, \$241,453.54 and \$375,499.78 against the assets of the Fund.
- 143. The first claim of \$241,453.54 related to legal costs incurred in relation to the appeal of the decision appointing me as receiver to wind up the Fund. I rejected this claim in full.
- 144. In respect of the second claim, I accepted and paid \$84,954.41 (\$93,449.85 less GST of \$8,495.44) ("**Accepted Claim**"), rejected \$169,243.26 and deferred \$5,473.59 pending the judgement to be handed down in relation to FTI's remuneration application.

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Witnessed by:



145. On 20 May 2016, Mr Park and Ms Muller filed an application seeking orders that they be indemnified from property of the FMIF for expenses in the total sum of \$410,694.84.
146. On 17 October 2017, His Honour delivered reasons for judgment. His Honour found that the legal costs of the appeal in 8895 of 2013 of \$263,127.13 and costs of assessment of those costs in the sum of \$9,068.68 cannot be paid out of the property of the FMIF, that the Liquidators are entitled to direct indemnity out of the FMIF for various amounts totalling \$44,158, and that the clear accounts rule operates to suspend LMIM's claimed right to payment from the assets of the FMIF until the resolution of the claim made in the proceeding 11560/16 ("the LMIM Claim") and that LMIM's indemnity claims, to the extent that they are otherwise maintainable, should not be finally resolved until the LMIM Claim is resolved.
147. On 22 November 2017, orders were made reflecting His Honour's reasons for judgment delivered on 17 October 2017.
148. The amount of \$44,158 was paid to the liquidators on 20 December 2017 pursuant to the orders.
149. During the Relevant Period, orders were made by consent fixing the quantum of the Liquidators costs of the Indemnity Application payable out of the FMIF.
150. During the Relevant Period, the work of my staff and I has included:
 - (a) reviewing correspondence relating to and providing instructions to my solicitors in relation to a request received from the Liquidator's solicitors for payment of a further invoice from their Counsel.
151. I expect to receive further indemnity claims during the course of my appointment.



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Witnessed by:



Further application by FTI for directions - Supreme Court of Queensland proceeding 3505 of 2015

152. On 3 October 2018, FTI sought and obtained directions regarding, inter alia, notifying members of the FMIF of a proposed application by Mr Park for directions in relation to the “dual appointments” of Mr Park and myself, in relation to the winding up of the FMIF.
153. On 10 October 2018, Mr Park filed an application seeking directions in relation to the dual appointments to wind up the FMIF including directions to the general effect that:
- (a) My appointment continues only in relation to certain specified legal proceedings and Mr Park take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution;
 - (b) That the Liquidator is directed to act as contradictor to the Breach of Trust Proceeding (SC 11560/2016) and the Feeder Fund Proceeding (SC 13534/16);
 - (c) That the Liquidator and Receiver each submit budgets of remuneration and expenses to the conclusion of the winding up, that the Remuneration of the Liquidator and the Receiver be fixed or determined on the hearing of the application in the amount of 50% of the amount stated in the relevant budget and paid during the course of the winding, with all other remuneration and expenses of the Liquidator and the Receiver to be deferred and sought at the conclusion of the winding up at which time the amounts stated in the budgets can be reduced, increased or stay the same.

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Witnessed by:



154. At pages 421 to 428 of the Bundle is a copy of this application. The application is returnable for procedural directions only on 19 November 2018 and provisionally listed for final hearing on 10 December 2018

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

- (a) reviewing various detailed correspondence from the Liquidator's solicitors in relation to the proposed application and providing instructions to my solicitors in relation to various detailed correspondence concerning the application, including a proposal to appoint me as special purpose Liquidator;
- (b) various without prejudice meetings with the Liquidator and our legal representatives in relation to the proposed application;
- (c) preparation for such without prejudice meetings including various discussions or conferences with my legal representatives;
- (d) reviewing position papers;
- (e) reviewing various advices and correspondence from my solicitors in relation to the application;
- (f) reviewing the directions made by the Court on 3 October 2018 and the application;
- (g) various telephone discussions and conferences with my solicitors in relation to the application, including attending a meeting with my solicitors and Counsel.

Creditors

156. I am seeking approval for remuneration in the order of \$206,237.00 (exclusive of GST) in respect of work that is categorised as "Creditors".

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Witnessed by:



157. Generally, work attributed to this category includes or has included:-
- (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

158. 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. At pages:-
- (a) 429 to 450 of the Bundle is a copy of the twenty-second report to members; and
 - (b) 451 to 472 of the Bundle is a copy of the twenty-third 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.

159. 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;

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Witnessed by:



- (b) Preparing material summarising my remuneration for inclusion in the report;
- (c) Liaising with my solicitors in relation to my reports to members and updating litigation matters in the reports;
- (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-third 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

160. In addition to the reports to members set out above, my staff and I have also been contacted by email and telephone by members of the FMIF and their financial advisors. This contact required responses regarding:-

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

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Witnessed by:



161. 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.
162. 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

163. During the Relevant Period my staff and I were required to continue to maintain the Microsoft AX investor management database. This included work:-
- (a) Updating investor details;
 - (b) Transferring units as requested or as directed by executors of deceased estates; and
 - (c) Generating reports to attend to members' unit balance enquiries.
164. 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.
165. 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

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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

166. 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 included equitable compensation against LMIM and claims against the assets of the FMIF in the total sum of about \$24.1 million, plus interest.
167. 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 paragraphs 149 and 150 of my November 2017 Affidavit and paragraphs 141 to 144 of my June 2018 affidavit.
168. I formed the view that it was 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 was joined as a Defendant to those proceedings.
169. The plaintiff applied to Court for directions that it would be justified in discontinuing these proceedings and on 7 June 2018, the Court directed it would be. Notices of discontinuance have been filed in the Court.

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170. Costs orders made in my favour upon the discontinuance of the proceeding and costs orders made against me with respect to a strike out application, are yet to be agreed or assessed (“**Outstanding Costs Orders**”).
171. I am informed by Alex Nase, of Tucker and Cowen, my solicitors in these proceedings, and believe, that, if the quantum of costs payable under the outstanding costs orders is not agreed, the costs assessment process, once commenced is estimated to take about 3 to 6 months.
172. During the Relevant Period, my staff and I have undertaken the following work in respect of the MPF Proceedings:-
- (a) Liaising with and providing instructions to my solicitors in relation to applications made by the MPF for directions to discontinue the proceedings, reviewing the statement of facts relied upon in support of the application for directions, reviewing advices provided by my solicitors in respect of issues relating to the discontinuance of the proceedings, and providing instructions to my solicitors in respect of various correspondence to the plaintiff’s solicitors concerning the application for directions to discontinue the proceeding;
 - (b) Liaising with, reviewing correspondence from and providing instructions to my solicitors in relation to various without prejudice offers to settle the quantum of the outstanding costs orders and correspondence with the plaintiff’s solicitors in relation to costs issues;
 - (c) Reviewing advices from and providing instructions to my solicitors in relation to the steps to be taken to quantify and recover costs.



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Witnessed by:



AIIS Proceeding - Supreme Court of Queensland Proceeding No. 12716/15

173. This proceeding was a claim by the MPF Trustee against LMIM, in relation to a loan made by LMIM as trustee for the MPF to AIIS, for equitable compensation against LMIM in the sum of approximately \$16.82 million, and for a constructive trust and other proprietary relief against assets of the FMIF in the sum of approximately \$3.9 million.
174. The claims for proprietary relief alleged that LMIM at the FMIF received certain interest payments on a loan facility that it had provided to AIIS from LMIM as trustee of the MPF, with knowledge that the payments were made by LMIM as trustee of the MPF in breach of trust.
175. The plaintiff applied to Court for directions that it would be justified in discontinuing this proceeding and was given such directions.
176. This proceeding was discontinued by the plaintiff on 10 August 2018.
177. During the Relevant Period, the work of my staff and I has included:
- (a) Reviewing and providing instructions to my solicitors to send various correspondence to be plaintiff requesting that it progress or discontinue the proceeding, a detailed letter outlining potential defences and issues relating to the claim, and correspondence threatening to apply to Court for orders that I be joined as a defendant to defend claims made against FMIF assets, in response to which the plaintiff's solicitors informed my solicitors that the plaintiff intended to apply to Court for directions to discontinue the action;
 - (b) reviewing the statement of facts and affidavits relied upon by the plaintiff in support of the application for directions to discontinue the proceeding;

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Witnessed by:



- (c) Reviewing advices provided by my solicitors in relation to the application for directions to discontinue the proceedings and issues relating to the discontinuance;
- (d) Providing instructions to my solicitors in relation to correspondence to the plaintiff's solicitors in relation to the application to discontinue the proceeding.

Administration

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

179. 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. The tasks of copying, mailing and uploading reports to members to the FMIF is outsourced to external providers who perform such work at bulk rates.

180. In total, \$77,862.50 (exclusive of GST) of remuneration is sought for approval in respect of the "Administration" category.

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

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Applications for approval of remuneration

182. For the purposes of my remuneration application filed on 1 June 2018, work was undertaken in respect of the preparation of my detailed supporting affidavit and arranging 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. In accordance with my usual practice during this administration, the tasks of copying, mailing and uploading reports to members to the FMIF is outsourced to external providers who perform such work at bulk rates.

Job management

183. 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 30 June 2018;
- (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.

184. 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.

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Witnessed by:



Investor relations and communications

185. 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 court proceedings to recover funds for the benefit of members and the expected return to members.
186. Regularly during the Relevant Period enquiries were fielded from members regarding changes to their details.
187. For the purposes of member communications, including my two reports to members exhibited to this affidavit, my staff and I have been required to prepare and collate relevant material, including:-
- (a) information concerning the status of the various legal proceedings;
 - (b) Updates as to the estimated value of the FMIF and estimated return to members; and
 - (c) “work in progress” and remuneration reports.
188. 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.
189. 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.

General

190. In addition to the above specific matters, my staff and I also conducted the following ongoing tasks and activities in the Relevant Period:-

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Witnessed by:



- (a) Preparation of and lodgement of receipts and payments accounts with ASIC (Form 524); and
- (b) Attending to general file administration including filing and archiving books and records.

191. 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.

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

Controllerships

193. 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

194. At pages:-

- (a) 473 to 475 of the Bundle is a schedule of work performed by BDO staff during the Relevant Period in relation to my controllership appointment in respect of Bridgewater;
- (b) 476 to 477 of the Bundle is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Pinevale;
- (c) 478 to 479 of the Bundle is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of RBLL;

- (d) 480 to 481 of the Bundle is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of Cameo;
- (e) 482 to 484 of the Bundle is a schedule of work performed by BDO staff in the Relevant Period in relation to my controllership appointment in respect of OVST;
- (f) 485 to 486 of the Bundle 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").

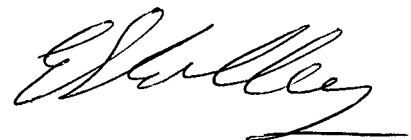
- 195. The Controllership Schedules show a description of each task undertaken, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged. As was the case in relation to tasks undertaken in relation to my appointment, 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.
- 196. 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.
- 197. 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:

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Witnessed by:



OVST Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade On	6.0	\$2,102.00
Administration	6.7	\$1,663.00
Total	12.7	\$3,765.00
GST		\$376.50
Total Claim		\$4,141.50

Pinevale Villas Morayfield Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	11.2	\$3,099.50
Administration	6.9	\$1,961.50
Total	18.1	\$5,061.00
GST		\$506.10
Total Claim		\$5,567.10

Redland Bay Leisure Life Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	2.1	\$927.50
Administration	8.0	\$1,863.00
Total	10.1	\$2,790.50
GST		\$279.05
Total Claim		\$3,069.55



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Witnessed by:



Cameo Estates Lifestyle Villages (Launceston) Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	0.5	\$138.00
Administration	6.4	\$1,375.00
Total	6.9	\$1,513.00
GST		\$151.30
Total Claim		\$1,664.30

Bridgewater Lake Estate Pty Limited		
Category/Area	Total hours	Amount (net of GST)
Trade on	6.0	\$2,080.00
Administration	9.9	\$2,359.50
Total	15.9	\$4,439.50
GST		\$443.95
Total Claim		\$4,883.45

Redland Bay Leisure Life Development Pty Ltd		
Category/Area	Total hours	Amount (net of GST)
Trade on	1.7	\$354.00
Administration	4.4	\$1,079.50
Total	6.1	\$1,433.50
GST		\$143.35
Total Claim		\$1,576.85



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Witnessed by:



198. 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.
199. 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.
200. On or about 14 August 2018, PTAL issued notices revoking the appointments of Mr Fielding and I as controllers of Bridgewater Lake Estate Pty Ltd, Redland Bay Leisure Life Pty Ltd, Redland Bay Leisure Life Development Pty Ltd, OVST Pty Ltd, Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (All in Liquidation), on and from 15 August 2018.
201. On or about 21 September 2018, PTAL issued notices revoking the appointment of Mr Fielding and I as controllers of Pinevale Villas Morayfield Pty Ltd (In Liquidation), on and from 22 September 2018.
202. At pages 487 to 493 of the Bundle is a copy of the said notices of termination.

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Write-offs & reductions

203. 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 \$19,513.80 excluding GST (includes controllerships write offs).
204. 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

205. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$1,946,635.5 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.
206. 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 \$1,946,635.5 inclusive of GST.
207. 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

208. Given the nature and volume of the work involved as canvassed above, I believe that the sum of \$20,902.75 inclusive of GST, represents a fair and

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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.

209. 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 \$20,902.75 inclusive of GST.

Statements of Receipts and Payments

210. Copies of the statements of receipts and payments lodged by the DB Receivers with the Australian Securities and Investments Commission with respect to the winding up of the FMIF, appear at the following pages of the Bundle:

- (a) Pages 494 to 506 – Receipts and payments account for the period 11 July 2013 to 10 January 2014;
- (b) Pages 507 to 520 – Receipts and payments account for the period 11 January 2014 to 10 July 2014;
- (c) Pages 521 to 536 – Receipts and payments account for the period 11 July 2014 to 10 January 2015;
- (d) Pages 537 to 568 – Receipts and payments account for the period 11 January 2015 to 10 July 2015;
- (e) Pages 569 to 583 – Receipts and payments account for the period 11 July 2015 to 10 January 2016;
- (f) Pages 584 to 597 – Receipts and payments account for the period 11 January 2016 to 10 July 2016;
- (g) Pages 598 to 610 – Receipts and payments account for the period 11 July 2016 to 10 January 2017;

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Witnessed by:



- (h) Pages 611 to 622 – Receipts and payments account for the period 11 January 2017 to 10 July 2017;
- (i) Pages 623 to 632 – Receipts and payments account for the period 11 July 2017 to 10 January 2018;
- (j) Pages 633 to 640 – Receipts and payments account for the period 11 January 2018 to 10 July 2018;

211. I also lodge my own statements of receipts and payments with ASIC, but such statements of receipts and payments only contain limited information including as to my remuneration and disbursements, because the DB Receivers control the bank accounts of the FMIF.

Financials Reports

212. Copies of the financial statements of the FMIF prepared by BDO during the winding up, appear at the following pages of the Bundle:

- (a) Pages 641 to 665 - Financial statements of the FMIF for the year ending 30 June 2014;
- (b) Pages 666 to 688 - Financial statements of the FMIF for the year ending 30 June 2015;
- (c) Pages 689 to 711 - Financial statements of the FMIF for the year ending 30 June 2016;
- (d) Pages 712 to 736 - Financial statements of the FMIF for the year ending 30 June 2017;
- (e) Pages 737 to 762 - Financial statements of the FMIF for the year ending 30 June 2018;

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Witnessed by:



213. These financial statements include details of the remuneration, disbursements and legal fees of the DB Receivers, myself, and the Liquidators in the winding up of the FMIF.

Legal professional privilege

214. 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.

215. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

Sworn by **DAVID WHYTE** on the
at *Brisbane* in the presence of:

13 day of November 2018



Deponent



Solicitor/~~A Justice of the Peace~~

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit. *(If required: see R.433(1))*]

[who certifies that the affidavit was read in the presence of the deponent who seemed to understand it, and signified that that person made the affidavit, but was physically incapable of signing it. *(If required: see R.433(2))*]

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

No.	DW-102	Date	Page No.
1.	Hourly charge out rate schedules of the BDO practice groups across that applied during the Relevant Period	Various	1 – 4
2.	Breakdown of time charged by BDO employees pursuant to both of the appointments as Receiver and Controller, including disbursements charge against either my appointment or my controllership appointment	Various	5 – 13
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