

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3383/13

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

I, **MILLICENT KATHRYN RUSSELL** of Level 18, 300 Queen Street, Brisbane in the State of Queensland, solicitor, state on oath:

1. I am a solicitor of this Honourable Court, employed by Russells, solicitors for the First Respondent ("LMIM") instructed by Mr John Park, the liquidator of LMIM ("**the Liquidator**"). I have the day to day conduct of this matter under the supervision of the Managing Partner, Mr Stephen Russell.
2. Now produced and shown to me and marked "**MKR-01**" is an indexed, paginated bundle

Page 1

Deponent

Taken by

AFFIDAVIT OF MILLICENT KATHRYN RUSSELL

Filed on behalf of the First Respondent, LM Investment Management Ltd (in liq) on its own account and as responsible entity of two members of the LM First Mortgage Income Fund
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Russells
Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: MKR:20141556

of documents which I shall refer to in my affidavit. References in square brackets are references to page numbers in “MKR-01”.

3. On 22 June 2020, I emailed a letter to Tucker & Cowen, the solicitors for Mr David Whyte, the receiver of the First Respondent. Pages [1] to [13] are a true copy of that letter.
4. On 23 June 2020, I received an email letter from Tucker & Cowen. Pages [14] to [16] are a true copy of the letter from Tucker & Cowen.
5. On 24 June 2020, I visited the website maintained by Mr Whyte for the First Respondent (www.lmfimf.com) and downloaded a copy of a document that comprises:-
 - (a) A letter from Mr Whyte to investors dated 26 September 2019; and
 - (b) A document described in that letter as “the unaudited accounts for the [LM First Mortgage Income] Fund for the year ending 30 June 2019” (the document is also entitled “Report for the year ended 30 June 2019”).

True copies of the letter and the unaudited accounts I downloaded are at pages [17] to [41].

6. I refer to the documents which begin at exhibit page 212 of the first affidavit of Mr Whyte (CFI [460]) – a letter dated 31 March 2020 and the accompanying “Report for the half-year ended 31 December 2019”. I note that:-
 - (a) Mr Whyte refers, in his letter of 31 March 2020 to the document as “the unaudited accounts for the Fund for the half-year ending 31 December 2019”;
 - (b) The document is also described, at paragraph 240 of Mr Whyte’s affidavit and in the Certificate of Exhibit as “Financial statements of the FMIF for the financial half year ending 31 December 2019”.
7. For these reasons, I understand that that the accounts exhibited to this my affidavit are the “financial statements” of the FMIF, referred to in the Schedule of Work exhibited to the affidavit of Mr Whyte filed 11 May 2020 (CFI [460]).

Text searchable Schedule Of Work

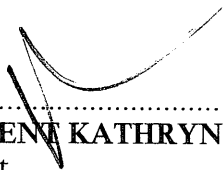
8. I have caused to be prepared a text searchable, Microsoft word document that reproduces the text in the documents printed at pages 1 to 172 of the documents exhibited to Mr Whyte’s said affidavit (CFI [460]) and marked DW-121. A USB containing that

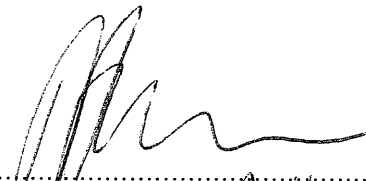
document is filed with my affidavit. I have checked the document; I believe it is a reproduction of those pages of the said exhibit.

Proposed Referees

9. Mr Paul Vincent is the founding partner of Vincents Chartered Accountants. He informs me and I believe that he consents to appointment as a referee in this matter. Following receipt of Mr Whyte's second affidavit, I have spoken to Mr Nick Combis, a partner of Vincents Chartered Accountants. He is a registered liquidator. He also informs me and I believe that he too consents to appointment as a referee in this matter and he will send me a copy of his curriculum vitae by 25 June 2020.
10. Pages [42] to [47] are a true copy of Mr Vincent's curriculum vitae.
11. I am instructed by Mr Park that he does not particularly favour either Mr Combis or Mr Vincent. Pursuant to his instructions, I and others in my firm – Mr Russell in particular – are seeking further consents from appropriately senior and qualified liquidators. The winding-up of the group of funds and companies in the LM group has involved many external administrators; and several liquidators have declined to consent to appointment on various bases. Enquiries in that regard continue.
12. All the facts and circumstances herein 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 in this my affidavit.

Sworn by the **MILLICENT KATHRYN RUSSELL** on 24 June 2020 at Brisbane
in the presence of:


.....
MILLICENT KATHRYN RUSSELL
Deponent


.....
Name: **Ian Anthony Pissone**
Lawyer/Commissioner for Declarations/JP

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3383/13

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**

CERTIFICATE OF EXHIBIT

Exhibit "MKR-01" to the affidavit of **MILLICENT KATHRYN RUSSELL** sworn on 24 June 2020.

.....
MILLICENT KATHRYN RUSSELL
Deponent

.....
Name: *Ian Anthony Russo*
Lawyer/Commissioner for Declarations/JP

CERTIFICATE OF EXHIBIT

Filed on behalf of the Respondent, LM Investment Management Ltd (in liq) on its own account and as responsible entity of two members of the LM First Mortgage Income Fund

Russells

Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: MKR:20141556

Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3383/13

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
TO AFFIDAVIT OF MILLICENT KATHRYN RUSSELL**

EXHIBIT NO.	DESCRIPTION	DATE	PAGE NO.
1.	Email letter from Russells to Tucker & Cowen	22.06.2020	1 - 13
2.	Email letter from Tucker & Cowen to Russells	23.06.2020	14 - 16
3.	Letter to Investors and FMIF Financial Statements for the year ending 30 June 2019	26.09.2019	17 - 41
4.	Curriculum vitae of Mr Vincent		42 - 47

INDEX OF EXHIBITS

Filed on behalf of the Respondent, LM Investment Management Ltd (in liq) on its own account and as responsible entity of two members of the LM First Mortgage Income Fund
Uniform Civil Procedure Rules 1999

Russells

Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: MKR:20141556

Sarsha McKendrick

From: Millie Russell
Sent: Monday, 22 June 2020 8:15 AM
To: David Schwarz; Alex Nase
Cc: Stephen Russell
Subject: Bruce & Anor v LMIM & Ors - BS 3383 of 2013 - Matter: 20141556
Attachments: 2738853 Draft Order on Receiver's Remuneration Application.docx; Schedule to letter to Tucker & Cowen.pdf; 2749523 Letter to Tucker Cowen re Appn 02.07.2020.pdf

Dear Colleagues

Please see the attached correspondence.

Yours faithfully

RUSSELLS

Millie Russell
Senior Associate

Direct 07 3004 8832
Mobile 0409 153 692
MRussell@RussellsLaw.com.au

Liability limited by a scheme approved under professional standards legislation

Brisbane
Postal - GPO Box 1462, Brisbane QLD 4001 / Street - Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone 07 3004 3388 / Facsimile 07 3004 3399 / ABN 38 332 732 534
RussellsLaw.com.au

RUSSELLS

22 June 2020

Our Ref: SCR:MKR:20141556

Tucker & Cowen
GPO Box 345
BRISBANE 4001

By Email: dschwarz@tuckercowen.com.au
By Email: anase@tuckercowen.com.au

Dear Colleagues

**Bruce & Anor v LM Investment Management Limited & Ors –
Supreme Court Proceeding No. 3383 of 2013
Application by Mr Whyte for Remuneration**

Following receipt of Mr Whyte's supplementary affidavit, we are instructed to invite him to consent to the orders which accompany this letter.

The material filed by Mr Whyte in support of his application for approval of his remuneration raises a number of matters of principle as well as a raft of more detailed factual issues. The liquidator is conscious of the commercial confidence which attends some of these issues and, as you know – but which your client seems unwilling to accept – LMIM's commercial interests are not only aligned with those of the other members of the FMIF but are interests held by persons for whom Mr Whyte, with all due respect, should be anxious to preserve and enhance. They are the interests of beneficiaries of a trust; Mr Whyte is managing the winding-up of that trust.

We hasten to add that we do not say that critically and we do not intend to infer that Mr Whyte has, in the course of the present application, acted in any way improperly.

On the contrary, it is appropriate to record our, the liquidator's and LMIM's gratitude to Mr Whyte and to you and to Mr Couper of Gadens for our confidential and without prejudice conference on 4 June 2020.

There are six matters of principle that remain to be addressed in the present application.

The *first matter of principle* is the question of proportionality. As you know, before assessing the reasonableness of remuneration to be awarded to an external administrator, there is, at least as a general proposition, an anterior question; namely, if the relevant work plan underpinning the actual time spent by the external administrator or the allocation of personnel at the requisite level of seniority is disproportionate to the nature, importance and complexity of the task and the benefit to be achieved from the task, then it might be said that the time spent on the task was not reasonably spent. A detailed consideration of the material filed by Mr Whyte in support of the present application leaves our client in the position in which this anterior question cannot be satisfactorily answered.

Liability limited by a scheme approved under professional standards legislation

For example, Mr Whyte's more recent affidavit shows that of the total remuneration claimed (\$989,373.55 including GST), he attributes only \$319,000 (in round figures, excluding GST) to the litigation; so that the balance of \$580,000 is attributed to work that was not done for the litigation.

This work is summarised in subparagraphs 22(g) to (m) of his first affidavit. As a broad proposition, the material does not explain why over \$500,000 is claimed for what is essentially clerical work.

Secondly, in relation to the litigation, the great majority of the remuneration claimed for this work is in respect of the EY proceeding. If \$200 million is a realistic upper limit to this claim, then obviously, that would be *prima facie* a factor that ought to be taken into account when deciding the work plan and the seniority of persons to do the work. (We express no view, in this open letter, as to whether that is a realistic upper limit.)

However, the timesheets do not permit an answer to the question of what was the work plan underpinning the actual time spent and whether the selection of personnel in terms of seniority and expense was proportionate to the tasks themselves (that is, leaving aside the benefit or upper limit of the benefit to be achieved from these tasks). We will say a little more about that below.

The other points on this topic – in relation to the nature, importance and complexity of the tasks of this non-litigious work - are as follows (adopting Mr Whyte's summary of these tasks in paragraph 22 of his first affidavit).

22(g) Applying to extend financial reporting and audit relief granted by ASIC

This was attended to by solicitors and, given that we have commenced the eighth year of this administration, was a simple and straight-forward task.

22(h) Complying with the conditions of the ASIC relief and financial reporting and audit requirements

These conditions are standard and unchanged. In short, the Receiver was to publish the class order on the website, publish a quarterly report to members and otherwise keep proper accounts of his administration.

22(i) Corresponding with investors and [dealing with returned interim capital distributions]

This is routine and either purely clerical or low level work.

22(j) Preparation of unit price calculation as at 31 December 2019

No assets were sold during the period. This is a simple calculation, essentially dividing the cash on hand by the number of units on issue.

22(k) Preparation of the management accounts for the year ending 31 December 2019

This task would be routine and simply a matter of extracting a trial balance, making any necessary journal entries and then printing a profit and loss statement and a balance sheet or statement of financial position. Preparation of management accounts would occupy a matter of hours; a day at the most.

22(l) Preparation of reports to members issued in December 2019 and March 2020

These reports are 15 pages and 19 pages, respectively. They also follow a standard format which has been in place for many years.

22(m) Work undertaking the investor management function for over 4,500 members, including answering queries ... maintaining the investor database, including any change in details or transfer of units.

Since the only business of the FMIF is now the litigation, these are essentially clerical tasks. Aside from transmissions on death, we cannot see any active transfers and registration would in any event be essentially clerical.

All in all, it is difficult to see how a claim for remuneration of over \$580,000 is proportionate to the nature, importance or complexity of any of these tasks. The timesheets obscure the answer to this question of proportionality in relation to these tasks.

The *second point of principle* that has emerged from all of Mr Whyte's material is the question of proportionality in relation to the benefit to be achieved from the tasks. This question is two-fold; one in relation to the litigation; the other in relation to the non-litigious tasks.

As for non-litigious tasks, there is no financial benefit against which the tasks may be measured. The unproductive costs of these tasks highlight the importance of success in the litigation. It is not apparent that Mr Whyte has factored these ongoing (and large) administration costs into the litigation.

As for the litigation, the material does not yield up a ready answer to the question of whether the remuneration claimed is in proportion either to the benefits to be achieved or that were achieved from the litigation six pieces of litigation.

For present purposes, of course, what is past is past. This question of proportionality is difficult to assess in relation to the two major pieces of litigation outstanding, namely the appeal in the Bellpac Director Proceedings and the EY Proceedings.

Obviously, in the regrettable eventuality that the appeal fails, the remuneration and expenses devoted prior to 1 November 2019 will not have been in proportion to the result – no funds will have been yielded by the litigation and there will be claims by the defendants against LMIM presumably for payment of the adverse costs orders means of a subrogation to LMIM's right of indemnity against the FMIF. That is a question yet to be resolved.

The same applies to the EY Proceedings, although apparently in a greater order of magnitude. (Again, in this open letter, we express no view as to the remuneration and costs estimates that Mr Whyte has now provided.)

This leads to the *third point of principle*, namely the right of indemnity of LMIM to the scheme property of the FMIF in respect of these two remaining pieces of litigation; and the claim by Mr Whyte for both remuneration and for indemnity for expenses in respect of these two outstanding pieces of litigation.

Our client saw, in the submissions made to Justice Callaghan on the application for judicial advice in respect of the Bellpac Director Proceedings Appeal, a contention that the order of Justice Dalton was sufficient authority for the commencement of these proceedings and, it seems, that given the terms of her Honour's order, it was unnecessary for either Mr Whyte or LMIM to seek judicial advice as to whether he and it were *justified* in commencing that litigation and applying scheme property to his remuneration and LMIM's expenses otherwise including prosecuting the litigation.

Our client disagrees.

Indeed, our client is puzzled by the proposition, in the table in paragraph 59 of Mr Whyte's more recent affidavit, that he may wish to spend (from scheme property) \$200,000 on an application for judicial advice, which seems to us to be inconsistent with the proposition we have just mentioned, namely that because of the terms of Justice Dalton's order, judicial advice was unnecessary. As we have said, we disagree.

Following this point, a *fourth point of principle* emerges, which is that Mr Whyte's position as most recently expressed in his second affidavit appears, with all due respect, to confuse authority to litigate with justification to expend trust money on litigation. The short point is that even if Justice Dalton's order authorised the institution of the Bellpac Director Proceedings and appeal and the EY Proceedings, that is quite a different question from whether judicial advice should have been sought that LMIM was (at the suit of Mr Whyte) *justified* in commencing and prosecuting those proceedings; and in expending the Fund's property for that purpose. No judge of the court has examined the latter question.

This raises the *fifth point of principle*, namely that at least in the most recent affidavit, Mr Whyte appears, with all due respect, to conflate authority to litigate with approval of the current remuneration claim. For reasons just expressed, our client takes the view that these are two distinct questions and that assuming the order of Justice Dalton authorised the litigation for which Mr Whyte seeks remuneration, the question of indemnity is a different one.

The present application is not an appropriate vehicle on which to determine such a potentially serious and complex question. The question is what is to be done; obviously the Court will not expect Mr Whyte to act unremunerated; nor, however, should a remuneration application be treated as a *Beddoe* application. Recent experience in the current *Beddoe* application for the appeal in the Bellpac Director Proceeding teaches us that an application of that kind in relation to the EY Proceeding might be complex and time-consuming.

Finally, there is a *sixth point of principle*; namely that, at least as a general proposition, applications for remuneration by a court appointed receiver or an external administrator otherwise obliged to seek the court's approval, are not dealt with by the court on a line by line basis. However, that is not an inflexible rule and, if the circumstances justify it, the court of course has the power to undertake a more detailed enquiry.

Our client regrets that it feels obliged to contend, in the interests of the members of the FMIF, the CPAIF and the ICPAIF, that the current application justifies a closer examination of the claims for remuneration than the broad brush approach usually adopted. In addition to all of the reasons set out above, our client contends that this closer examination is justified by the uninformative and repetitive nature of many of the entries in the timesheets which underpin this application.

We note that Mr Whyte has deposed that he carefully examined the claim before presenting it to the court and that his careful examination produced an exclusion of only \$1,663.00 from the fees otherwise recorded on the BDO timesheets.

In the time sheets exhibited to Mr Whyte's first affidavit, there are hundreds of entries which, in our client's respectful contention, justify the conclusion that a closer analysis than would usually be required is not only justified but necessary in the present application. The schedule to this letter extracts the more prominent of these; but there are many others.

This is so, *a fortiori*, since this problem previously arose before Justice Mullins, Mr Collins – himself a partner of BDO – conducted a review of the claim and identified the very same problems (indeed not only the same problem but, in one respect, also the same staff member – Ms Pagcu). Despite the unsatisfactory state of Ms Pagcu's timesheets, she has persisted in this regrettable practice. Mr Collins' most recent affidavit (if admissible) does not reveal whether he has reviewed this concern again.

In our client's view, this problem is exacerbated by the uninformative categorisation of tasks which Mr Whyte has adopted. This administration was never a "trade on" but since all the assets were sold years ago, the persistence in the ARITA categories is unhelpful. That this is the case is demonstrated by the fact that we and our client were unable to identify how much time was spent on the EY Proceeding – or all of the litigation in general – as opposed to the other tasks for which Mr Whyte seeks remuneration.

Now that Mr Whyte has done this, it has exposed a surprising imbalance. One would have expected that the two active pieces of litigation would account for the lion's share of the remuneration claim; yet the opposite is the case. And the timesheets do not explain why over \$500,000 is claimed for the tasks, on the nature of which we have commented above.

In all of the circumstances, the issue concerning the final outcome of the receivership is one which looms larger now than it ever has. Given the matters of principle that we have identified in this letter, our client suggests that a *Letten* order should be made and, as you will no doubt appreciate, the form of the order that we suggested some time ago, and which we have now refined with the benefit of Mr Whyte's second affidavit, is based on that case; the revised draft accompanies this letter.

Further, in all of the circumstances, our client cannot accept that either the FMIF or the CPAIF or the ICPAIF should have to bear the costs of a contested application about these matters. None of the members of these funds should have to pay you, us and the senior and junior counsel involved to prepare and defend a detailed attack on Mr Whyte's claim for remuneration – or, perish the thought, his cross-examination. Professional comity can be served along with the interests of the members of these funds by our respective clients and indeed our respective firms co-operating in agreeing to submit Mr Whyte's claim to the detailed scrutiny of an appropriately qualified professional who can act as a referee and report to the court.

Certainly a Supreme Court judge should not be saddled with such a task.

A consent order along these lines would also spare these parties from further dispute and friction which should be avoided.

All in all, our client, by the liquidator, contends that principle, economy and efficiency will be served by an order in the terms attached.

We look forward to hearing from you.

Yours faithfully



Millie Russell
Senior Associate

Direct 07 3004 8832
Mobile 0409 153 692
MRussell@RussellsLaw.com.au

20141556/2749166

SCHEDULE

Name	Date	Time	Cost (\$)	Detail	Comment
Julie Pagcu	11.11.19	1.60	720.00	Checking sorted EY work papers per reporting period as requested by our solicitors	This entry is meaningless and is repeated hundreds of times
George Lethbridge	19.11.19	1.90	522.50	Scanned 15 documents and saved to files and database, sent off documents to required investor via email or post.	This entry is meaningless and is repeated hundreds of times
George Lethbridge	6.11.19	0.20	55.00	Phone call from an investor seeking information on the interim distribution and the winding up of the Fund.	This entry is meaningless and is repeated hundreds of times
Ryan Whyte	19.02.20	0.90	247.50	Cont. Preparation of the management accounts for the FMIF for the half year ending 31 December 2019, Export information from the accounting systems and enter the transactions during the period.	This attendance is repeated excessively
Ryan Whyte	2.12.19	2.10	577.50	Cont. Locate and review documentation in relation to the cash outflows, loan statements, sales information and other relevant information in relation to 13 sample loans of the FMIF to provide to the experts for review. RE claim against the	This entry is meaningless and is repeated hundreds of times
Jordan Devery	24.04.20	0.80	180.00	Deliver EY laptop to Julie Pagcu's house to enable her review of the documents in GAMx inclusion in files sent to Gadens & experts. RE Claim against former auditors	This time costed attendance indicates inappropriate extravagance

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 (ADMINISTRATORS APPOINTED) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND

AND

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

AND

Third Respondent: ROGER SHOTTON

AND

Intervener: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

ORDER

Before: Justice Callaghan
Date: June 2020
Initiating document: Application filed 11 May 2020 (CFI [459])

UPON THE UNDERTAKINGS OF THE APPLICANT RECEIVER DAVID WHYTE (“the Receiver”) and of BDO AUSTRALIA LIMITED ACN 050 110 275, and of BDO BUSINESS RESTRUCTURING PTY LTD ACN 134 036 507, by their counsel, to

ORDER

Filed on behalf of the Respondent, LM Investment Management Ltd (in liq) on its own account and as responsible entity of two members of the LM First Mortgage Income Fund

Russells
Level 18
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
Fax: 07 3004 8899

deposit to the bank account of the Scheme Property of the LM First Mortgage Income Fund ARSN 089 343 288 from which monies are hereafter paid to them pursuant to this order, any sum later found to have been overpaid to them (after this date):

THE ORDER OF THE COURT BY CONSENT IS THAT:-

1. The Receiver is, subject to any later order, authorised to withdraw from the Scheme Property of the LM First Mortgage Income Fund ARSN 089 343 288 the sum of \$840,967.52, on account of his claim for remuneration for the period from 1 November 2019 to 30 April 2020.

(a) deliver to the other parties appearing today a report setting out:-

- (i) his best estimate of the remuneration, legal costs and other expenses (respectively) likely to be incurred in respect of each of the court proceedings referred to in the Table in para [21] of the Receiver's affidavit filed herein on 11 May 2020 (CFI [460]) ("the Receiver's Affidavit"), including a range if appropriate; and
- (ii) his best estimate of the time likely needed to resolve each such proceeding, including a range if appropriate;
- (iii) his best estimate of the likely amount of adverse costs orders in the event that each such proceeding fails; and
- (iv) his current assessment of a realistic worst-case scenario, updated from his previous evidence referred to by Justice Jackson in *LM Investment Management Limited & Anor v Whyte* [2019] QSC 233 at [83], [90]; and

(b) deliver such report to the Associate to Justice Callaghan, together with an envelope marked:

"Confidential Report of David Whyte: Not to be opened save in accordance with an order of a Judge of this Honourable Court.

By order of Justice Callaghan made on 27 May 2020";

2. The report of the Receiver shall, on determination of this Application, be placed into the said envelope, sealed, placed on the court file and shall not to opened, save in accordance with an order of a Judge of this Honourable Court.

3. The parties who receive such report from the Receiver shall, subject to further order, keep the same confidential and they shall not further publish the same, save to their solicitors and counsel in this proceeding.

4. Pursuant to rule 501 of the *Uniform Civil Procedure Rules 1999* (Qld), the Court refers the questions in the Schedule to Nick Combis and Paul James Vincent as a referees.

5. The respondent, LM Investment Management Ltd (in liq) on its own account and as responsible entity of two members of the LM First Mortgage Income Fund (“the Respondent”) shall forthwith deliver to the referees:-

- (a) this Order; and
- (b) the Application;
- (c) the Receiver’s Affidavit;
- (d) the Receiver’s further affidavit filed on 11 June 2020; and
- (e) the Receiver’s report, served pursuant to subparagraph 1(a) hereof.

6. The Receiver and the Respondent shall extend all reasonable cooperation and assistance to the referees, including to provide to them any further documents or information they may request in writing from time to time.

7. The referees shall report to the Court:-

- (a) as near as practicable in the form of an expert’s report, governed by Division 3 of Part 5 of the *Uniform Civil Procedure Rules 1999* (Qld), which, to avoid doubt, shall apply to the referee’s report as though it was a report made pursuant to an order under UCPR 429I;
- (b) as soon as reasonably practicable, by providing their report to the Registrar and copies to the parties who have appeared today.

8. The application is adjourned to a date to be fixed by Justice Callaghan, to be brought on by any party appearing today, after receipt of the referees' report, giving not less than seven days' notice in writing to his Honour's Associate and to the other parties.

9. The Respondent shall, in the first instance, bear and pay the costs of the referees.

10. The costs of and incidental to the Application, including the costs of the referees' report as between the parties, are reserved.

Signed:

Registrar

SCHEDULE

QUESTIONS REFERRED TO NICK COMBIS AND PAUL JAMES VINCENT AS REFEREES

1. Look at:-
 - (a) the affidavit of David Whyte (“the Receiver”), filed herein on 11 May 2020 (CFI [460]) (“the Receiver’s First Affidavit”); and
 - (b) the affidavit of David Whyte (“the Receiver”), filed herein on 12 June 2020 (CFI [465], [466]) (“the Receiver’s Second Affidavit”);
 - (c) the report of the Receiver, dated [*insert date*];

2. What is your opinion as to the overall reasonableness of the amount of remuneration sought by Mr Whyte (namely the sum of \$316,167.50, per paragraph 90 of the Receiver’s Second Affidavit), for work in respect of legal proceedings including:-
 - (a) Were staff of appropriate seniority allocated in proportion to the nature, importance and complexity of the tasks undertaken;
 - (b) Was the work undertaken with reasonable efficiency; and
 - (c) Was the time taken for such tasks reasonable?

3. What is your opinion as to the overall reasonableness of the amount of remuneration sought by Mr Whyte (namely the sum of \$580,263.00), for other work (namely the work in subparagraphs 22(g) to (m) of the Receiver’s First Affidavit) including:-
 - (a) Were staff of appropriate seniority allocated in proportion to the nature, importance and complexity of the tasks undertaken;
 - (b) Was the work undertaken with reasonable efficiency; and
 - (c) Was the time taken for such tasks reasonable?

4. Would the assessment of the reasonableness of the claims by the Receiver for approval of his remuneration be simpler and more efficient under any and if so which of the following methods:-

- (a) The systems presently used by the Receiver; or
- (b) If he and other BDO Personnel were to record their time by reference to the individual pieces of litigation and the categories of work in subparagraphs 22(g) to (m) of the Receiver's First Affidavit, with a reasonably informative summary of the work done; or
- (c) Some other and if so what systems?

Sarsha McKendrick

From: Alex Nase <anase@tuckercowen.com.au>
Sent: Tuesday, 23 June 2020 1:06 PM
To: Millie Russell; David Schwarz
Cc: Stephen Russell
Subject: RE: Bruce & Anor v LMIM & Ors - BS 3383 of 2013 - Matter: 20141556
Attachments: Letter to Russells Lawyers (TCS01853675).pdf

Dear Colleagues,

Please see attached letter.

regards

Alex Nase
Special Counsel

E: anase@tuckercowen.com.au
D: 07 3210 0500 M: 0420 386 195 F: 07 300 300 00 F: 07 300 300 00
Level 15, 15 Adelaide Street, Brisbane, QLD 4000
TCS Solicitors Pty Ltd. - ACN 610 321 509

Tucker&CowenSolicitors.

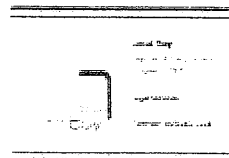
Leading Litigation & Dispute Resolution and Insolvency & Reconstruction Lawyers (Qld)
2012 to 2019, First Tier for Insolvency (Qld) again in 2019 - Doyle's Guide

Best Lawyers® International 2013 -2020 - Justin Marschke for Litigation, Regulatory and
Alternative Dispute Resolution 2020

Member of MSI Global Alliance and Local Buy pre-approved



Independent legal & accounting firms



Individuals are not licensed by a scheme approved under Professional Standards Legislation

From: Millie Russell <MRussell@russellslaw.com.au>
Sent: Monday, 22 June 2020 8:15 AM
To: David Schwarz <dschwarz@tuckercowen.com.au>; Alex Nase <anase@tuckercowen.com.au>
Cc: Stephen Russell <srussell@russellslaw.com.au>
Subject: Bruce & Anor v LMIM & Ors - BS 3383 of 2013 - Matter: 20141556

Dear Colleagues

Please see the attached correspondence.

Yours faithfully

RUSSELLS

Millie Russell
Senior Associate

Direct 07 3004 8832
Mobile 0409 153 692
MRussell@RussellsLaw.com.au

Liability limited by a scheme approved under professional standards legislation

Brisbane
Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 13, 300 Queen Street, Brisbane QLD 4000
Telephone 07 3004 8888 / Facsimile 07 3004 8899 / ABN 38 392 782 534
RussellsLaw.com.au

This email has been scanned by the Symantec Email Security cloud service.
For more information please visit <http://www.symanteccloud.com>

Tucker & Cowen Solicitors.

TCS Solicitors Pty. Ltd. / ACN 610 321 509

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone: 07 300 300 00 / Facsimile: 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz / Mr Nase
Your reference: Mr Russell / Ms Russell

23 June 2020

Principals.
Richard Cowen.
David Schwarz.
Justin Marschke.

Consultant.
David Tucker.

Special Counsel.
Alex Nase.
Ben Shaw.

Senior Associates.
Emily Anderson.

Associates.
Scott Homsey.
Paul Amit.

Russells Lawyers
Level 18
300 Queen Street
Brisbane Qld 4000

Email: rsussell@russellslaw.com.au
mrussell@russellslaw.com.au

Dear Colleagues

**Bruce & Anor. –v– LM Investment Management Limited & Ors.; Queensland Supreme Court Proceeding No. BS3383/2013
Application by David Whyte for Remuneration – LM First Mortgage Income Fund (Receiver Appointed) (“FMIIF”)**

We refer to our client’s Application for approval of remuneration filed 11 May 2020 (“the Application”) which is listed for hearing before Justice Callaghan on 2 July 2020, and to your letter dated 22 June 2020.

Our client does not consent to the draft Orders enclosed with your letter.

Our client will be proceeding with the Application on 2 July 2020.

We note that under the Orders made by His Honour on 27 May 2020, any affidavits relied upon by your client are due to be filed and served by this Wednesday, 24 June 2020.

Yours faithfully



Alex Nase
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au
Direct Line: (07) 3210 3503

Individual liability limited by a scheme approved under Professional Standards Legislation.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVER APPOINTED)
ABN: 66 482 247 488**

Report for the year ended 30 June 2019

Disclaimer

The 30 June 2019 financial statements were compiled by BDO Business Restructuring Pty Ltd but we did not audit those financial statements and, accordingly, express no opinion or other form of assurance on them.

**LM FIRST MORTGAGE INCOME FUND
(RECEIVER APPOINTED)
ABN: 66 482 247 488**

Financial Statements for the year ended 30 June 2019

CONTENTS

Statement of comprehensive income	3
Statement of financial position	4
Statement of changes in net assets attributable to unitholders	5
Statement of cash flows	6
Notes to the financial statements for the year ended 30 June 2019	7

The Responsible Entity of LM First Mortgage Income Fund (Receiver Appointed) is LM Investment Management Limited (ABN 68 077 208 461) (in Liquidation) (Receivers and Managers Appointed).

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

STATEMENT OF COMPREHENSIVE INCOME

For the year ended 30 June 2019

	Note	30 June 2019 \$	30 June 2018 \$
<i>Income</i>			
Interest revenue - cash assets	12	945,883	1,508,456
Other Income	3 (a)	144,972	1,687,695
		1,090,855	3,196,151
<i>Expenses</i>			
Custodian fees & legal fees	9	21,500	(113,573)
Net Impairment losses on mortgage loans	6 (a)	(17,897)	614,117
Adjustment on foreign exchange accounts		(130)	(4,129)
Other expenses	4	7,868,696	4,625,299
<i>Total expenses excluding distributions to unitholders</i>		7,872,169	5,121,714
<i>Net profit (loss) before distributions to unitholders</i>		(6,781,314)	(1,925,563)
Distributions paid/payable to unitholders		-	-
<i>Net profit (loss) after distributions to unitholders</i>		(6,781,314)	(1,925,563)
Other comprehensive income		-	-
<i>Net profit (loss) after distributions to unitholders</i>		(6,781,314)	(1,925,563)
Income tax expense		-	-
<i>Changes in net assets attributable to unitholders after income tax expense</i>		(6,781,314)	(1,925,563)

The Statement of Comprehensive Income is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

STATEMENT OF FINANCIAL POSITION

As at 30 June 2019

	Note	30 June 2019	30 June 2018
ASSETS		\$	\$
Cash and cash equivalents	11	63,940,278	70,194,328
Receivables	10	90,769	469,030
Loans & Receivables	6	60,000	44,235
TOTAL ASSETS		64,091,047	70,707,593
LIABILITIES			
Payables	7	2,615,911	2,451,143
Distributions payable	3 (b)	1,372,036	1,372,036
Total liabilities excluding net assets attributable to unitholders		3,987,947	3,823,179
NET ASSETS		60,103,100	66,884,414
Represented by:			
Net assets attributable to unitholders	5	60,103,100	66,884,414
(calculated in accordance with IFRS)			

The Statement of Financial Position is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)
STATEMENT OF CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS
For the year ended 30 June 2019

	Note	30 June 2019 \$	30 June 2018 \$
TOTAL			
Opening balance		66,884,414	68,809,977
Units issued during the year	5	-	-
Units redeemed during the year	5	-	-
Units issued on reinvestment of distributions		-	-
Changes in net assets attributable to unitholders		(6,781,314)	(1,925,563)
Closing Balance		60,103,100	66,884,414

The Statement of Changes in Net Assets Attributable to Unitholders is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

STATEMENT OF CASH FLOWS

For the year ended 30 June 2019

	Note	30 June 2019	30 June 2018
		\$	\$
Cash flows from operating activities			
Interest and distributions received		945,883	1,508,456
Other operating expenses		(7,580,325)	(7,252,721)
GST and withholding tax (paid)/received		378,260	(118,005)
Net cash inflow/(outflow) from operating activities	11 (b)	(6,256,182)	(5,862,270)
Cash flows from investing activities			
Payments for secured mortgage loans	6 (b)	(82,750)	(117,090)
Receipts from settled mortgage loans	6 (b)	84,882	3,078,905
Net cash inflow/(outflow) from investing activities		2,132	2,961,815
Cash flows from financing activities			
			-
Net increase/(decrease) in cash and cash equivalents		(6,254,050)	(2,131,613)
Cash and cash equivalents at beginning of year		70,194,328	73,094,783
Cash and cash equivalents at end of year	11 (a)	63,940,278	70,194,328

The Statement of Cashflows is to be read in conjunction with the notes to the financial statements.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

1. CORPORATE INFORMATION

During the period March 2013 to August 2013, a series of insolvency events occurred in respect of both the Fund and the Responsible Entity for the Fund, these are detailed in the table below:

Date	Appointment
19 March 2013	John Park and Ginette Muller of FTI Consulting appointed as Administrators of LM Investment Management Ltd ("LMIM") being the Responsible Entity for the Fund.
11 July 2013	Joseph Hayes and Anthony Connelly of McGrathNicol appointed as Receivers and Managers of LMIM as the Responsible Entity of LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) ('LMFMIF', 'Scheme' or the 'Fund') by Deutsche Bank. On 10 December 2018, Mr Hayes and Mr Connelly retired.
1 August 2013	John Park and Ginette Muller of FTI Consulting appointed as liquidators of LMIM. On 17 May 2017, Ms Muller ceased to be Liquidator.
8 August 2013	David Whyte of BDO appointed by the Court as Receiver of the assets of the Fund and as the person responsible for ensuring the Fund is wound up in accordance with its Constitution.

The Scheme is an Australian registered Scheme, constituted on 13 April 1999.

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all periods presented, unless otherwise stated in the following text.

(a) Basis of accounting

This financial report has been prepared in accordance with the Scheme Constitution, the recognition and measurement requirements of the Australian Accounting Standards and other authoritative pronouncements of the Australian Accounting Standards Board. The financial report has also been prepared on a historical cost basis, except for financial assets and financial liabilities held at fair value through profit or loss, that have been measured at fair value.

The Statement of financial position is presented in decreasing order of liquidity and does not distinguish between current and non-current items. The amount expected to be recovered or settled within twelve months in relation to the balances cannot be reliably determined.

The financial report is presented in Australian Dollars (\$).

Statement of compliance

The financial statements have been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards as issued by the Australian Accounting Standards Board and International Financial Reporting Standards as issued by the International Accounting Standards Board except for AASB 9, *Financial Instruments*. The Scheme has not adopted AASB 9 for this financial report given its wind up status, there was no benefit from doing so.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(a) Basis of accounting (Continued)

Status of investment in fund

During the 2009 year, the Responsible Entity closed the Scheme to new investors and suspended withdrawals subject to certain exceptions. Redemptions were suspended at this time, per the Constitution, as the Responsible Entity considered the suspension of the withdrawals to be in the best interest of the members of the Scheme.

The Scheme is now in the process of being formally wound up with redemptions and hardship provisions remaining suspended.

Liquidation Basis

Previous financial statements have been prepared on a going concern basis.

The financial statements for the periods ended 30 June 2013 onwards have not been prepared on a going concern basis due to the appointment of Administrators to the Responsible Entity for the Fund on 19 March 2013 and subsequently Liquidators on 1 August 2013 and the appointment of Receivers and Managers and Court Appointed Receiver and person responsible for ensuring it is wound up in accordance with its Constitution as detailed in Note 1. Accordingly, the financial statements for those periods have been prepared on a liquidation basis.

(b) New accounting standards and interpretations

Australian Accounting Standards and Interpretations that have recently been issued or amended but are not yet effective have not been adopted by the Scheme for the reporting period. The impact of these standards and interpretations are not expected to have a material impact on the Scheme have not been included.

(c) Significant accounting judgements, estimates and assumptions

In the process of applying accounting policies, judgements and estimations have been made which have had an impact on the amounts recognised in the accounts. The key estimates and assumptions that have a significant risk of causing material adjustment to the carrying amounts of certain assets and liabilities within the next annual reporting period are:

Allowance for impairment loss on loans and receivables

The Scheme determines whether loans are impaired on an ongoing basis. Individually assessed provisions are raised where there is objective evidence of impairment, where the Scheme does not expect to receive all of the cash flows contractually due. Individually assessed provisions are made against individual facilities.

(d) Cash and cash equivalents

Cash and cash equivalents includes cash in hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. For the purposes of the Statement of cash flows, cash and cash equivalents as defined above, net of outstanding bank overdrafts.

(e) Distribution income

Distribution income is recognised when the Scheme's right to receive income is established.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(f) Interest income

Interest income is recognised as the interest accrues using the effective interest rate method, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset. Interest ceases to be recognised when a loan is in default and the principal is impaired.

(g) Default management fees

Income from default management fees is recognised in line with the executed agreement with the borrower when an event of default occurs.

(h) Changes in the fair value of investments

Gains or losses on investments held for trading are calculated as the difference between the fair value at sale, or at year end, and the fair value at the previous valuation point. This includes both realised and unrealised gains and losses.

(i) Fees, commissions and other expenses

Except where included in the effective interest calculation (for financial instruments carried at amortised cost), fees and commissions are recognised on an accrual basis. Audit and compliance fees are included with 'other expenses' and are recorded on an accrual basis.

(j) Financial instruments

Financial instruments in the scope of *AASB 139 Financial Instruments* are classified as either financial assets or financial liabilities at fair value through profit or loss, loans and receivables, held-to-maturity investments, available-for-sale investments or other financial liabilities as appropriate.

When financial assets are recognised initially, they are measured at fair value, plus, in the case of investments not at fair value through profit or loss, directly attributable transactions costs. The Scheme determines the classification of its financial assets at initial recognition.

All regular way purchases and sales of financial assets are recognised on the trade date i.e. the date that the Scheme commits to purchase the asset. Regular way purchases or sales are purchases or sales of financial assets under contracts that require delivery of the assets within the period established generally by regulation or convention in the marketplace.

i. Loans and receivables

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are initially measured at fair value including transaction costs directly attributable to the financial asset. After initial recognition, loans and receivables are carried at amortised cost using the effective interest method. Gains and losses are recognised in profit or loss when receivables are derecognised or impaired, as well as through the amortisation process.

Loans and receivables are assessed for impairment at each reporting period. An allowance is made for credit losses when there is objective evidence that the Scheme will not be able to collect the loans and receivables. Impairment losses are written off when identified. Losses expected as a result of future events are not recognised. If a provision for impairment

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(j) Financial instruments

has been recognised in relation to the loan, write-offs for bad debts are made against the provision. If no provision for impairment has previously been recognised, write-offs for bad debts are recognised as an expense in the statement of comprehensive income.

A provision is made of loans in arrears where the collectability of the debts is considered doubtful by estimation of expected losses in relation to loan portfolios where specific identification is impracticable.

The components of impaired assets are as follows:

“Loans in arrears” are loans and advances for which there is reasonable doubt that the Scheme will be able to collect all amounts of principal and interest in accordance with the terms of the agreement.

“Assets acquired through the enforcement of security” are assets acquired in full or partial settlement of a loan or similar facility through the enforcement of security arrangements.

When it is determined that interest is not recoverable on certain impaired loans, the interest is suspended and not brought into income. Should the analysis of the collectability subsequently change the interest will be brought into income at the time it is determined to be collectable.

(k) Payables

Payables are carried at amortised costs and represent liabilities for goods and services provided to the Scheme prior to the end of the financial year and half year that are unpaid and arise when the Scheme becomes obliged to make future payments in respect of the purchases of these goods and services.

The distribution amount payable to investors as at the reporting date is a carried forward balance from a period prior to the appointment of the Court Appointed Receiver. This balance is recognised separately on the statement of financial position as unitholders are presently entitled, subject to verification and any directions made by the Court, to the distributable income as at 30 June 2014 under the Scheme’s constitution. Further investigation into the distributions payable is currently being undertaken.

(l) Increase/decrease in net assets attributable to unitholders

Non-distributable income is transferred directly to net assets attributable to unitholders and may consist of unrealised changes in the net fair value of investments, accrued income not yet assessable, expenses accrued for which are not yet deductible, net capital losses and tax free or tax deferred income. Net capital gains on the realisation of any investments (including any adjustments for tax deferred income previously taken directly to net assets attributable to unitholders) and accrued income not yet assessable will be included in the determination of distributable income in the same year in which it becomes assessable for tax. Excess and undistributed income is also transferred directly to net assets attributable to unitholders.

(m) Distributions

The return to investors is currently estimated at 12.6 cents per unit. This is before taking into account future costs and recoveries from legal proceedings on foot. Mr Whyte believes the final return to investors will be higher than the current estimate.

Mr Whyte applied to the Court for authorisation to make an interim distribution to investors, which is a condition precedent to the settlement of the proceedings against the Feeder Funds of the Fund (**Distribution Application**). Mr Whyte also applied

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(m) Distributions (Continued)

to the Court for judicial advice in relation to a settlement of the proceedings against the Feeder Funds (**Judicial Advice Application**), which was another condition precedent to the settlement. The two applications were heard in Court on 13 March 2019 and on 2 and 3 May 2019 with the decisions reserved. The Court has now handed down its decision in respect of the Judicial Advice Application. Mr Whyte was successful in obtaining judicial advice from the Court that he was justified in settling the proceedings against the Feeder Funds and in causing the Fund to perform the settlement. However, the Distribution Application remains reserved by the Court. Accordingly, Mr Whyte awaits the decision to confirm that he has the authority to make the interim distribution. If Mr Whyte is given that authority, then he will make a distribution of 6.5 cents in the dollar within 21 days of the decision being handed down.

(n) Goods and services tax (GST)

The GST incurred on the costs of various services provided to the Responsible Entity by third parties such as audit fees, custodial services and investment management fees have been passed onto the Scheme. The Scheme qualifies for Reduced Input Tax Credits (RITC's) at a rate of 55%.

Investment management fees, custodial fees and other expenses have been recognised in the statement of comprehensive income net of the amount of GST recoverable from the Australian Taxation Office (ATO). Accounts payable are inclusive of GST. The net amount of GST recoverable from the ATO is included in the statement of cash flows on a gross basis.

The GST component of cash flows arising from investing and financing activities recoverable or payable to the ATO is classified as an operating cash flow.

(o) Applications and redemptions

Applications received for units in the Scheme are recorded when units are issued in the Scheme. Redemptions from the Scheme are recorded when the cancellation of units redeemed occurs. Unit redemption prices are determined by reference to the net assets of the Scheme divided by the number of units on issue.

Applications received in foreign currency denominations are initially recorded in the functional currency by applying the exchange rates ruling at the date of the transaction. Foreign currency denominated unitholder funds are translated into the Schemes functional currency at balance date, using the spot rate prevailing at that date. Gains and losses arising from foreign exchange translation are recorded in the Statement of Comprehensive Income in the period in which they arise.

(p) Taxation

Under current legislation, the Scheme is not subject to income tax provided the distributable income of the Scheme is fully distributed either by way of cash or reinvestment (i.e. unitholders are presently entitled to the income of the Scheme).

(q) Interest-bearing loans and borrowings

All loans and borrowings are initially recognised at cost, being the fair value of the consideration received net of issue costs associated with the borrowing. After initial recognition, interest-bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. Amortised cost is calculated by taking into account any issue costs, and any discount or premium on settlement.

(r) Foreign currency translations

The Scheme's transactions in foreign currencies previously comprised applications and withdrawals of foreign currency unitholder funds and payment of distributions. Transactions in foreign currencies were initially recorded in the functional

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(r) Foreign currency translations (Continued)

currency by applying the exchange rates ruling at the date of the transaction. Monetary assets and liabilities denominated in foreign currencies are retranslated at the rate of exchange prevailing at the balance sheet date, and exchange rate gains and losses are recognised in the statement of comprehensive income.

In relation to the total investor units, a discrepancy between the units recorded in the investor register and the units recorded in the audited and management accounts for the 2012 financial year has been identified. Investigations indicate that the discrepancy relates to the Fund's migration to a new financial database in 2010 whereby the units of investors who subscribed in a foreign currency were incorrectly recorded in the foreign currency equivalent amount, and not in the AUD equivalent amount in accordance with the PDS and Constitution. An application has been made by Mr Whyte to the Court seeking directions to determine the amounts to be distributed to the foreign currency investors and judgment is reserved.

(s) Determination of fair value

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

The fair value for financial instruments not traded in an active market is determined using appropriate valuation techniques. Valuation techniques include: using recent arm's length market transactions; reference to the current market value of another instrument that is substantially the same; discounted cash flow analysis and option pricing models making as much use of available and supportable market data as possible.

(t) Estimated net asset amount per unit available to investors

The estimated amount of net assets available to investors are subject to the uncertainties indicated in this financial report.

The net assets of the fund and number of units on issue at the end of each of the periods is detailed in the table below:

	30 June 2019	30 June 2018
Estimated net amount of assets available to investors as at the period end (\$)	60,103,100	66,884,414
Total investor units (# of units) *	478,100,386	478,100,386
Estimated net asset amount per unit available to investors as at the period end (cents in the dollar)**	0.126	0.140

* Unit #'s

In previous financial statements prepared by David Whyte, unrealised foreign exchange transactions relating to the units denominated in foreign currencies were included in the accounts as this practice was undertaken in the audited financial accounts prior to year ended 30 June 2013. The results of these transactions were notionally recorded in the financial accounts as an adjustment to the total number of investor units in accordance with accounting standards. Given the discrepancy identified as detailed in Note 2(r) above in regard to the units of investors who subscribed in a foreign currency, having obtained legal advice, Mr Whyte has decided that no further notional adjustments to the unit numbers ought to be made in the financial accounts, until directions from the Court have been obtained. Accordingly, the total investor unit numbers has been notionally restated above as at the balance at 30 June 2016.

** Estimated return to investors

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

2. BASIS OF PREPARATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

(t) Estimated net asset amount per unit available to investors

The estimated net asset amount per unit available to investors as set out above is subject to the resolution of a number of ongoing proceedings, including the resolution of a claim against the Feeder Funds. The actual net asset amount per unit available to investors is currently uncertain and an update will be provided in due course. Please refer to Note 13 below for further details regarding the claim.

The Feeder Funds are the LM Currency Protected Australian Income Fund (CPAIF), the LM Institutional Currency Protected Australian Income Fund (ICPAIF) and the LM Wholesale First Mortgage Income Fund (WMIF). The Feeder Funds are Class B investors and currently comprise approximately 48% of the total unitholding in the FMIF.

The claim is for declarations that the FMIF is entitled to withhold from distributions or payments otherwise payable to the Feeder Funds an amount in excess of \$55 million (for redemptions paid to the Feeder Funds when the FMIF suspended redemptions to all other investors, apart from genuine approved hardship cases), as adjusted for the amount which the Feeder Funds would otherwise have been entitled as pleaded in the statement of claim. The claim seeks a declaration cancelling approximately 35 million units issued to the Feeder Funds (which were a consequence of re-investment of distributions made to the Feeder Funds) which were issued after the FMIF suspended distributions to other investors.

A settlement in respect of this claim was entered into in November 2018. That settlement is subject to a number of conditions precedent, which have not yet all been satisfied. Mr Whyte awaits the decision of the Supreme Court in respect of the Distribution Application (discussed at (m) above).

3. INCOME AND DISTRIBUTIONS TO UNITHOLDERS

(a) Other Income

The other income amount of \$144,972 predominantly relates to adjustments to the Fund's accrued expenses that were reported and expensed in prior periods during the Receivership.

(b) Distributions Payable

The distributions payable balance of \$1,372,036 relates to distributions that appear to have been declared prior to the date of the Court Receiver's appointment which were not paid, or have not cleared or were returned unclaimed. These liabilities have not been verified and Court approval or directions may be required before any payment is made.

I am required to retain certain funds to meet the liabilities of the Fund, including contingent claims that may arise from the auditor claim and Bellpac litigation.

I am also required to seek, and have sought, the authority of the Court before proceeding with the next distribution.

There have been no distributions to unitholders for the year ended 30 June 2019 or for the years ending 30 June 2018, 30 June 2017, 30 June 2016 and 30 June 2015.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

4. OTHER EXPENSES

	30 June 2019	30 June 2018
Other Expenses	\$	\$
Receivers and Managers' fees and outlays (McGrathNicol)	(6,252)	239,310
Court Appointed Receiver's fees & outlays (BDO) *	2,859,142	2,239,050
Legal Fees	3,978,764	1,876,102
Payment to MPF	937,500	-
Other expenses	99,542	270,837
Total	7,868,696	4,625,299

*Denotes expenses which are subject to approval by the court.

Court Appointed Receiver's fees & outlays (BDO)

	30 June 2019	30 June 2018
The Court Appointed Receiver's fees & outlays are represented by the following amounts:	\$	\$
Court Appointed Receiver's investigations, litigation and other non-operating costs	1,972,808	1,007,573
Operating Costs of the Fund	886,334	1,231,477
Total	2,859,142	2,239,050

The Court Appointed Receiver's investigations and other non-operating costs include time costs in relation to the claim against the former auditors of the Fund, and other litigation matters which include claims against the MPF, LMIM and its directors and the claim against the Feeder Funds.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS

Movements in the net assets attributable to unitholders during the year were as follows:

Net assets attributable to unitholders	30 June 2019	30 June 2018
	\$	\$
Class A		
Opening balance	245,679,110	245,679,110
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	245,679,110	245,679,110
Class B		
Opening balance	220,196,311	220,196,311
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Closing balance	220,196,311	220,196,311
Class C		
Opening balance	12,224,964	12,224,964
Units issued during the year	-	-
Units redeemed during the year	-	-
Units issued upon reinvestment of distributions	-	-
Foreign exchange (gain)/loss on investor funds	-	-
Closing balance	12,224,964	12,224,964
Cumulative movement in changes in net assets	(417,997,285)	(411,215,971)
Net assets attributable to unitholders	60,103,100	66,884,414

Class A

Class A consists of unitholders who are entitled to receive the declared distribution rate. There are a number of subclasses attached to class A. These consist of the following products with varying terms:

- 1) Flexi Account investment option
- 2) Fixed Term investment option
- 3) LM Savings Plan investment option

Class B

Class B consists of related Scheme unitholders.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

5. CHANGES IN NET ASSETS ATTRIBUTABLE TO UNITHOLDERS (continued)

Class C

Class C consists of unitholders who have invested in foreign currencies and are entitled to receive the declared distribution rate.

Subject to the comments relating to the status of the Scheme in note 2(t) above, unitholders are entitled to one vote per unit at unitholders' meetings and as the Scheme is being wound up, unitholders rank after creditors and are equally entitled to the proceeds of the winding up procedure.

6. LOANS AND RECEIVABLES

	30 June 2019	30 June 2018
	\$	\$
Secured mortgage loans	6,118,055	6,102,290
Provision for impairment	(6,058,055)	(6,058,055)
	<u>60,000</u>	<u>44,235</u>

Loans and receivables are initially measured at the fair value including transaction costs and subsequently measured at amortised cost after initial recognition. Loans and Receivables are assessed for impairment at each reporting date. Where impairment indicators exist, the recoverable amount of the loan will be determined and compared to its carrying amount to determine whether any impairment losses exist. Impairment losses are recognised when the recoverable amount under the individual loan is less than the carrying amount of that loan.

Material uncertainty regarding recoverability of Loans and Receivables

For loans in default, an impairment indicator arises which requires the recoverable amount of that loan to be determined. The recoverable amount for each individual loan in default has been determined from independent valuations and/or the assets forming the security for the loans. The valuations are based on current market conditions and provide for appropriate exposure to the market and an orderly realisation of assets forming the security for the loans.

In determining the recoverable amounts, there are uncertainties involved in assessing the market values and the ability to realise those market values, particularly where the market is not active. Consequently, it is likely that there may be differences between the amounts at which the Loans and Receivables are recorded at in the financial statements for the period ended 30 June 2018, and the amounts that are actually realised. Such differences may be material. Accordingly, there is a material uncertainty regarding recoverability of Loans and Receivables.

The balance of \$60,000 represents the remaining amount receivable from the settlement of a claim against a guarantor. This amount is due to be received by 1 July 2020.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

(a) Provisions for impairment

The impairment loss expense relating to loans and receivables comprises:

	30 June 2019	30 June 2018
	\$	\$
Opening balance	(6,058,055)	69,076,608
Impairment losses provided for (recoveries) during the period	(17,897)	614,117
Impairment losses realised during the period	17,897	(63,632,670)
Closing balance	<u>6,058,055</u>	<u>6,058,055</u>
Total provision for impairment	<u><u>(6,058,055)</u></u>	<u><u>(6,058,055)</u></u>

(b) Movement in default loans

	30 June 2019	30 June 2018
	\$	\$
Gross default loans opening balance	6,102,290	72,696,775
New and increased default loans	82,750	117,090
Balances written off	17,897	(63,632,670)
Repaid	(84,882)	(3,078,905)
Gross default loans closing balance	<u>6,118,055</u>	<u>6,102,290</u>
Specific provision	(6,058,055)	(6,058,055)
Net default loans	<u><u>60,000</u></u>	<u><u>44,235</u></u>

7. PAYABLES

Payables are carried at cost and represent liabilities for goods and services provided to the Fund prior to the period end but have not yet been paid.

	30 June 2019	30 June 2018
	\$	\$
Accounts payable	2,615,911	2,451,143

Approximately \$1,162,720 of the accounts payable balance relates to FTI's remuneration and expenses claimed from the Fund. See Note 13 FTI litigation for more information.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

8. INTEREST BEARING LOANS AND BORROWINGS

Interest bearing loans and borrowings relates to facilities with external providers. In July 2010, the RE entered into a new facility with an external financier, Deutsche Bank. Deutsche Bank holds a fixed and floating charge over the assets of the Fund.

As indicated in Note 1, McGrathNicol were appointed as Receivers and Managers of the Fund by Deutsche Bank as a result of a default of the finance facility by the Fund for this secured loan.

There has been a progressive sell down of the assets of the Fund, which enabled \$14.1M of the loan to be repaid during the 2013 financial year and \$21.5M between July and December 2013. The facility was repaid in full in January 2014. The Receivers appointed by Deutsche Bank retired on 10 December 2018.

9. RELATED PARTIES

	30 June 2019	30 June 2018
	\$	\$
<i>Custodian</i>		
Custodian's fees paid by the Scheme	21,500	32,274
Custodian's legal fees (refund)	-	(145,847)
Total	21,500	(113,573)

10. RECEIVABLES

	30 June 2019	30 June 2018
	\$	\$
Term deposit interest receivable	-	131,378
GST receivable	90,769	337,652
	90,769	469,030

11. CASH AND CASH EQUIVALENTS

(a) Reconciliation of cash and cash equivalents

For the purposes of the Statement of Financial Position, the cash and cash equivalents comprise of cash at bank and in hand. The cash at bank earns interest at floating rates based on the daily bank deposit rates, however, the majority of the cash balance is invested on term deposit with a bank. The cash at bank figure includes monies held in foreign exchange accounts.

	30 June 2019	30 June 2018
	\$	\$
Cash at bank	63,940,278	70,194,328

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

(b) Reconciliation of change in net assets attributable to unitholders to net cash flows from operating activities

	30 June 2019	30 June 2018
	\$	\$
Change in net assets attributable to unitholders	(6,781,314)	(1,925,563)
<i>Adjustments for:</i>		
Non-cash impairment expense	(17,897)	614,117
Non-cash accrued expense reduction	(144,972)	(1,687,695)
(Gains)/loss on foreign exchange contracts	(130)	(4,129)
(increase)/decrease in other receivables	378,260	(118,005)
Increase/(decrease) in payables	309,871	(2,740,995)
Net cash flows from/(used in) operating activities	(6,256,182)	(5,862,270)

12. INTEREST REVENUE

Interest revenue relates to interest received on funds held in bank accounts.

Interest on loans is suspended and not brought to account when it is considered that the amounts are not ultimately recoverable from the remaining security for the loans.

13. LITIGATION MATTERS

Claim against the former auditors

A public examination (PE) of the former auditors, certain directors, former directors (Directors) and staff of LM Investment Management Limited (In Liquidation) was conducted over a period of 9 days in June 2015 and a further 9 days in October 2015.

Following the PEs, a further amended statement of claim was filed by David Whyte in the Supreme Court of Queensland and served on the former auditors of the Fund on 14 April 2016.

The former auditors' solicitors lodged and served on David Whyte an application and supporting affidavit on 27 April 2016 seeking to strike-out certain parts of the statement of claim. The hearing of the strike out application was adjourned to a date to be fixed by consent to enable appropriate directions to be made for the parties to exchange and file any further affidavit material and written submissions in advance of the hearing of the strike out application.

On 30 May 2016, David Whyte filed an application to place the proceedings on the Court's commercial list. This application was also adjourned to a date to be fixed.

On 2 August 2016, David Whyte filed a second further amended statement of claim. The parties filed submissions and further affidavit evidence as required by the orders and at the hearing of the strike out application and the commercial list application on 15 December 2016, the Court granted the application to place the proceedings on the commercial list and reserved its decision on the strike out application.

The reserved decision from the hearing of the strike out application was handed down on 8 May 2017 and the decision was not appealed. In that decision, the Court declined to strike out all of the parts of the claim that the former auditors sought to strike out. However, it did make orders striking out certain causes of action and orders were made that the statement of claim be amended to delete those causes of action.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

Claim against the former auditors (Continued)

In accordance with the Court's judgment, a further amended statement of claim was filed on 20 November 2017 and served on the former auditors. This statement of claim included further particulars of the loss and damage claimed, which has been calculated (at its highest) in excess of \$200 million.

Further particulars of loss and damage were also served on the auditors on 12 January 2018.

The amended statement of claim filed on 20 November 2017 included a claim for compensation from the former auditors under section 1325 of the Corporations Act. As a consequence, steps were taken to amend the Claim, which required an application for leave to be made to the Court.

On 29 May 2018, the Court made Orders timetabling the filing of the proposed application to amend the Claim, as well as for the auditors to make a request for further and better particulars of the further amended statement of claim filed on 20 November 2017.

A request for further particulars of the further amended statement of claim was received on 19 June 2018. The response to this request was required to be filed and served by 19 October 2018.

Two further amendments to the statement of claim were filed on 5 July 2018 and 7 August 2018.

The Application for leave to amend the Claim was filed on 10 August 2018. The hearing of the application was held on 27 September 2018.

On 8 October 2018 the Court gave judgment, in which it granted the plaintiff leave to file its amended claim, struck out one paragraph of the further amended statement of claim with leave to replead certain paragraphs and otherwise timetabled the ongoing conduct of the proceedings, including the filing of a further amended statement of claim.

In accordance with orders made on 13 November 2018, Mr Whyte caused a 6FASOC to be served on 30 November 2018. He also served a response to the defendants' request for particulars on 3 December 2018 and 18 January 2019.

The parties engaged in a mediation on 4 March 2019. No resolution of the proceedings was reached at that mediation.

The defendants have also now filed and served third parties notices on the Feeder Funds, as well as directors, former directors, former officers and a former in-house counsel of LMIM.

Subsequent orders have been made by the Court timetabling the ongoing conduct of the Proceedings.

In accordance with these orders:

- on 10 June 2019 the defendants applied to be excused from certain pleading requirements under the Court rules in relation to their defence on the basis of a claim for privilege (**Relief Application**);
- on 21 June 2019, the defendants applied for leave to proceed against LMIM under section 500 of the *Corporations Act 2001* (Cth) (**Leave Application**); and
- on 21 June 2019, Mr Whyte applied to be joined to the proceedings constituted by the Third Party Notice filed by the defendants (**Representation Application**).

Each of the Relief Application, the Leave Application and the Representation Application were heard by the Supreme Court on 26 July 2019.

In respect of the Relief Application, an amended application was filed by the defendants and orders have now been made by the Court timetabling the delivery of the defendants' defence and the challenge to any claim for privilege which is made by the defendants in that defence.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

Claim against the former auditors (Continued)

In respect of the Leave Application, judgment has been reserved.

The Representation Application has been adjourned to a date to be fixed.

The Proceedings otherwise remain ongoing.

Wollongong Coal Ltd (WCL) – Convertible Bonds

There are \$8 million in convertible bonds in Wollongong Coal Limited (WCL) which was the subject of a successful application to the Federal Court acknowledging that Bellpac Pty Ltd (In Liquidation) (Bellpac) (under the control of its liquidators) is the true owner.

The defendants appealed the decision, which was unsuccessful, however, on 12 July 2016, the defendants made application for special leave to the High Court of Australia to appeal the decision of the Federal Court. On 10 November 2016, the High Court refused to grant special leave to the defendants, and dismissed their application with costs.

In January 2016, the Bellpac Liquidator applied for the conversion of the bonds to shares. Under the terms of the Bonds, WCL was required to issue the shares within 7 days after the end of January 2016 (Due Date) which it failed to do. Instead WCL issued part of the shares in early February 2016 and the balance of the shares after resolution of its members, in May 2016.

As WCL did not issue the shares as required under the terms of the Bonds, the Bellpac Liquidator brought proceedings against WCL seeking orders requiring WCL to perform its obligation to redeem the Bonds by

- Redeeming all of the Bonds which were not converted by the Due Date; and
- Pay to the Liquidator \$8M or such other amount being the nominal principal value of the unconverted Bonds (those issued in May 2016), plus interest.

The proceedings have been adjourned pending completion of the terms of a binding heads of agreement (HOA) the Bellpac Liquidator entered into with WCL pursuant to which Bellpac will receive cash of \$6.3 million in exchange for the transfer of the shares to WCL or alternatively cancellation of the shares. The remaining HOA condition precedent (Sunset Date) to the settlement with WCL has been extended several times and the Liquidator was successful in negotiating, as part of the agreement to extend the Sunset Date, that WCL will pay interest at 3% p.a. from 2 October 2017 until settlement. The Liquidator last entered into a further agreement with WCL, extending the sunset date to satisfy the conditions precedent to 31 March 2019. To date WCL has paid \$2.5M towards the settlement into their solicitors' trust account, which is to be released upon receiving shareholder approval of the settlement. Discussions are ongoing in relation to extending the Sunset Date beyond 31 March 2019 and the terms to apply to same. To date no further extensions have been granted and no further payments have been made by WCL into their solicitors' trust account.

Proceedings against the MPF, LMIM and the Directors of LMIM

On 17 December 2014, Mr Whyte filed a claim and statement of claim in the Supreme Court of Queensland, against a number of parties, including the directors and former directors of LMIM, LMIM and the MPF Trustee, alleging the FMIF suffered loss as a result of a decision to pay an amount to the MPF in 2011 on settlement of certain litigation. The claim is for \$15.5M plus interest.

The claim was defended by each of the directors and former directors of LMIM, as well as LMIM.

The claim was discontinued as against the MPF Trustee.

A trial of the proceedings was heard in April 2019 and judgment has been reserved.

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

FTI litigation

Mr Park of FTI Consulting is the Liquidator of LMIM.

Remuneration claim

On 16 December 2015, FTI filed a Further Amended Originating Application ("FAOA") seeking a determination of their remuneration as administrators, and liquidators, of LMIM. The FAOA sought payment in the amount of \$3,098,251.83 plus GST (for the period from the date of their appointment as administrators on 19 March 2013 to 30 September 2015) from the assets of the Fund.

The Court handed down its reasons for judgment on 17 October 2017. Orders were made on 22 November 2017 to the effect that FTI be paid a total of \$1,827,205.23 "(plus GST)" for remuneration and out of pocket expenses from property of the Fund. The approved amount of \$1,827,205.23 was paid to FTI in December 2017.

Indemnity Application

Pursuant to Orders made on December 2015 Orders, on 10 and 15 February 2015 Mr Park and Ms Muller submitted two claims for indemnity for expenses from the FMIF to Mr Whyte, in the respective amounts of \$241,453.54 and \$375,499.78.

Mr Whyte rejected the first claim. In respect of the second claim, Mr Whyte accepted and paid \$84,954.41 (\$93,449.85 less GST of \$8,495.44), rejected \$169,243.26 and deferred \$5,473.59. The balance of the second claim was withdrawn.

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

On 17 October 2017, the Court delivered reasons for judgment, holding that the liquidators were entitled to direct indemnity out of the FMIF for various amounts totalling \$44,158, that amounts claimed by the Liquidators in the total sum of \$272,195.81 were not payable out of the FMIF, and that, in relation to the remainder of the claims, that clear accounts rule operated to suspend LMIM's right of indemnity out of the assets of the FMIF until the resolution of the claims made in the LMIM Proceeding (as referred to below).

Second FTI Remuneration Application

On 17 July 2018, Mr Park 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. Mr Whyte opposed certain parts of the application. The application was heard on 6 September 2018 and 3 October 2018.

Judgement is reserved on the Second FTI Remuneration Application.

Creditor Indemnity Claims

If a debt or claim is admitted by the Liquidator in the winding up of LMIM and a claim for indemnity out of the FMIF with respect to such debt or claim is identified (**Creditor Indemnity Claim**), a summary of the process as outlined in the Orders made on 17 December 2015 is as follows:

1. The Liquidator must notify Mr Whyte within 14 days of the Liquidator identifying any claim for indemnity against the assets of the Fund;
2. Within 14 days Mr Whyte may seek further information in relation to the claim;

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

Creditor Indemnity Claims (Continued)

3. Within 30 days of receipt of the claim from the Liquidator or from receipt of further information requested, Mr Whyte is required to, accept the claim, reject the claim, accept part of it and reject part of the claim; and give the Liquidator written notice of the decision;
4. Mr Whyte is required to give the Liquidator written reasons for rejecting any part of a claim within 7 days after giving notice of his decision;
5. Within 28 days of receiving a notice of rejection, the Liquidator may apply to the Court for directions in relation to the rejection and advise the creditor of Mr Whyte's decision and other specified matters.

The Liquidator notified Mr Whyte that he has identified Creditor Indemnity Claims with respect to a proof of debt lodged by Norton Rose for the sum of \$315,601.21 (**Norton Rose Proof**) and a proof of debt lodged by EY in the sum of \$158,896.51 (**First EY Proof**).

Mr Whyte has written to the Liquidator rejecting the Creditor Indemnity Claim made in respect of the claim notified by the Norton Rose Proof. Mr Whyte is awaiting the provision of further information in relation to the First EY Proof before the time period for him to accept or reject that Creditor Indemnity Claims begins to run.

The Liquidator has notified Mr Whyte that he has received a proof of debt lodged by EY for the sum of approximately \$180 million (**Second EY Proof**). That proof asserts that, to the extent that the claims made by LMIM as RE of the FMIF against EY in the claim against the former auditors are successful, EY will suffer loss or damage which is recoverable from LMIM. The Liquidator has not yet notified Mr Whyte of whether or not a Creditor Indemnity Claim has been identified by the Liquidator in respect of the claim notified by the Second EY Proof.

Expenses

The Liquidator's solicitors have notified Mr Whyte's solicitors that the Liquidator intends to claim indemnity from the FMIF (and other funds) for a portion of certain corporate expenses incurred during the administration and Liquidation of LMIM. The precise amount of this claim is not yet known.

Further application by FTI for directions

On 10 October 2018, Mr Park filed an application seeking directions in relation to the dual appointments of Mr Park and Mr Whyte to wind up the FMIF including directions to the effect that:

- Mr Whyte's appointment continues only in relation to certain specific legal proceedings and Mr Park take responsibility for ensuring the FMIF is wound up in accordance with its Constitution;
- That Mr Park is directed to act as contradictor to the LMIM Claim (as defined below) and the Feeder Fund Proceedings;
- That Mr Park and Mr Whyte 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 up, with all other remuneration and expenses of the Liquidator and 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.

The application was heard on 10 December 2018. Judgement is reserved.

LMIM Claim

A statement of claim filed in November 2016 to preserve claims in relation to certain transactions and avoid possible expiry of statutory limitation periods has been served on LMIM. The claims are for various alleged breaches of trust in relation to certain transactions including the prepayment of management fees out of property of the FMIF to LM Administration Pty Ltd, and loan management fees paid to LMIM or its service entity LM Administration Pty Ltd that it is alleged were not authorised by the

LM FIRST MORTGAGE INCOME FUND (RECEIVER APPOINTED)

Notes to the financial statements for the year ended 30 June 2019

LMIM Claim (Continued)

Constitution of the FMIF. On 25 July 2018, the Court granted leave to proceed with this claim and ordered that the claim be stayed until further order. The claim remains stayed until further order.

Claim against Feeder Funds (Class B unitholders)

A statement of claim was filed against the Feeder Funds in December 2016 to preserve certain claims. That statement of claim was amended and formally served on the parties representing the Feeder Funds. The Feeder Funds are the LM Currency Protected Australian Income Fund (CPAIF), the LM Institutional Currency Protected Australian Income Fund (ICPAIF) and the LM Wholesale First Mortgage Income Fund (WMIF). The claim concerns approximately \$55 million of redemptions paid to the Feeder Funds when the Fund had suspended redemptions to other investors (apart from genuine approved hardship cases) and approximately \$19.5M of income distributions made to the Feeder Funds when income distributions to other investors were suspended (and the reinvestment of these distributions). The relief sought in the claim includes declarations to withhold from distributions or payments otherwise payable from the Fund to:

- CPAIF in the sum of \$40,583,109 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the statement of claim;
- ICPAIF in the sum of \$5,044,118.30 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the CPAIF would otherwise have been entitled as referred to in the statement of claim;
- WMIF in the sum of \$9,432,090.76 plus interest, as adjusted for the difference between the sum paid for capital distributions in early to mid-2013 and the amount the WMIF would otherwise have been entitled as referred to in the statement of claim.

The claim if successful, would impact on the return to the Feeder Funds from the winding up of the Fund and, in the case of the CPAIF and ICPAIF, it was expected the claim would exhaust any estimated return (based on the estimated unit value as calculated herein) to those funds (such that they would not be entitled to any distribution from the Fund). In the case of the WMIF, the claim would substantially reduce its entitlement to any distribution.

The parties to the proceedings attended a mediation on 5, 6 and 20 November 2018.

As a consequence of the mediation, a Deed of Settlement has been executed by all parties.

The terms of the deed are confidential and are subject to several conditions precedent, including:

- Mr Whyte, Mr Jahani, Trilogy Funds Management Limited ("Trilogy") and the Trust Company Limited each apply for, and obtain judicial advice to the effect that the relevant party making the application is justified in entering into and performing the deed. The parties have each now made their application for judicial advice. Those applications were heard before Justice Mullins on 2 and 3 May 2019 with judgment reserved;
- orders are made by the Supreme Court of Queensland giving authority for an interim distribution to be made to FMIF members. An application was filed by Mr Whyte seeking such authority on 1 February 2019 and was heard on 13 March 2019 with judgement reserved.

The Court has now handed down its decision in respect of the Judicial Advice Application. Mr Whyte was successful in obtaining judicial advice from the Court that he was justified in settling the proceedings against the Feeder Funds and in causing the Fund to perform the settlement. However, the Distribution Application remains reserved by the Court. Accordingly, Mr Whyte awaits the decision of the Court to satisfy the remaining condition precedents of the settlement and in order to make an interim distribution.

Personal details

Name: Paul James Vincent
Address: Level 34
32 Turbot Street
Brisbane QLD 4000
Phone: +61 416 194545
Date of birth: 6 April 1957
Occupation: Chartered Accountant
Position: Founding Director, Vincents Chartered Accountants



Education

Professional: Professional Year Program, Chartered Accountants Australia and New Zealand (1981)
Graduate, Australian Institute of Company Directors
Business Valuation Accredited Specialist, Chartered Accountants Australia and New Zealand
Forensic Accounting Accredited Specialist, Chartered Accountants Australia and New Zealand
Diploma of Financial Services (RG 146)
Authorised Representative, Vincents Financial Advisory, ABN 40 010 855 991, AFS License No 236608

Tertiary: Bachelor of Business (Accountancy), Queensland Institute of Technology (1978)

Secondary: St Joseph's College
Gregory Terrace, Brisbane
Graduating senior (1974)

Current Memberships and appointments

Feb. 1982 – current: **Fellow** of the Chartered Accountants Australia and New Zealand

May 2010 – current: **Graduate** of the Australian Institute of Company Directors

July 2016 - current: **Professional Conduct Committee** – Chartered Accountants Australia and New Zealand

September 2014 – current: **Assessor**, Business Valuation Specialisation, Chartered Accountants Australia and New Zealand

February 2019 – current: **Assessor** - Macquarie University, Forensic Accounting Specialisation, Chartered Accountants Australia and New Zealand

January 2018 – current: **Professional Standards Scheme Application Members Committee**, Chartered Accountants Australia and New Zealand

November 2015 – current: **Director**, Triumph Investment Group Pty Ltd

July 2012 – current: **Director** - St Margaret's College

July 2013 – current: **Director** - Autism CRC Ltd
Chair - Autism CRC Ltd Finance and Audit Committee

July 2013 – current: **Director** - SST Pty Ltd
Chair - SST Pty Ltd Finance and Audit Committee

July 2005 – current: **Guest Lecturer** – Queensland University of Technology – Masters of Business

January 1982 – current: **Justice of the Peace (Qualified)**

Previous Memberships and appointments

December 2011- June 2016:	Appointed Member Professional Conduct Tribunal – Chartered Accountants Australia and New Zealand
July 2012 – 2016:	Director - St Margaret's School Council Limited Member - St Margaret's School Council Limited Finance Committee
September 2012 – November 2015	Director - City of Brisbane Investment Corporation Pty Ltd Chair - City of Brisbane Investment Corporation Pty Ltd Finance and Audit Committee Member - City of Brisbane Investment Corporation Pty Ltd Investment Review Committee
July 2001 – December 2012:	Steering Committee - <i>International Institute of Forensic Studies, Monash Uni.</i>
Jan. 2001 – December 2012:	Guest Lecturer – Monash University - Graduate Certificate of Forensic Studies
July 2003 – September 2012:	Works and Maintenance Advisory Board - <i>Brisbane City Council</i>
March 2005 – February 2006:	National Committee - <i>Forensic Accounting Special Interest Group (FASIG), ICAA</i>
May 2000 – March 2005:	National Chairman - <i>Forensic Accounting Special Interest Group (FASIG), ICAA</i>
Mar. 1999 – Mar. 2005:	Queensland Chairman - <i>Forensic Accounting Special Interest Group (FASIG), ICAA</i>

Employment history

Dec. 1989 to present:	Founding Director, Vincents Chartered Accountants
Jan. 1979 to Dec. 1989:	KPMG (formerly Hungerfords) <ul style="list-style-type: none">- 3 years audit division- 1 year insolvency division- 2 years management services- 5 years taxation division

Engagement profile

Commercial litigation:

- Assessment of damages in:
 - Trade practices disputes
 - Professional indemnity insurance claims
 - Business interruption claims
 - Retail shop lease disputes
 - Partnership disputes
 - Shareholders disputes
 - Director's breach of duty
 - Building & construction disputes
 - Defamation actions
 - Resumption cases

- Critically examining expert reports and assisting with the defense of the claim
- Assisting Courts, Counsel and solicitors in understanding the damages claim
- Assisting with the trial preparation as it relates to the expert evidence of both plaintiff and defendant
- Valuation of Businesses, Companies and other trading entities for the purpose of providing expert evidence in Courts in a broad range of litigation matters

Criminal matters:

- Evaluating & preparing evidence in prosecuting or defending actions for fraud
- Tracing proceeds of crime
- Financial crime evidence reviews
- Financial investigations
- Unexplained wealth assessments
- Providing evidence in court at criminal trials before a jury

Family law (property matters):

- Valuation of Businesses, Companies and other entities that form part of the matrimonial pool
- Investigations to determine the existence and ownership of assets
- Examination of both simple and complex business structures in order to establish the relevant interests of the parties involved
- Financial Investigations

Professional negligence actions:

- Examining financial records in determining compliance with accounting standards
- Critically examining the conduct of accountants in professional negligence actions
- Quantification of loss resulting from other professional negligence actions
- Corporate governance and directors' breach of duty

Other engagements:

- Assessing Compensation in Resumption Matters by both Claimants and the Resuming Authority
- Assessing Directors duties and determining conduct of directors having regard to their duties
- Assessing Company Officers and their performance and conduct
- Recruiting for Executive roles and assessing suitability of people for roles in organizations
- Valuations for stamp duty purposes, acquisitions and sales
- Valuation of Intellectual Property and other intangible assets
- Appointment as mediator in financial disputes
- Appointment as arbitrator in financial disputes
- Appointment as Trustee for management and orderly distribution of assets
- Engaged by an international sporting body in an arbitration matter before the International Court of Arbitration for Sport, Lausanne, Switzerland
- Taking account – Party Appointed and Court Appointed
- Providing expert evidence in the Commercial and Consumer Tribunal on Gaming Allocation disputes

- Contract dispute engagements including assessment of liquidated damages and delay costs

Engagement History (prior to Forensic Accounting at Vincents)

KPMG 1979 – 1989

Audit division

3 years

- Year end audits of small, medium and publicly listed companies
- Purpose driven due diligence reviews
- Fraud prevention/detection systems analysis
- Review of internal controls of a broad range of business enterprises

Insolvency

1 year

- Ongoing management of a number of major insolvency matters
- Preparing statutory reports for insolvency engagements

Management services

2 years

- Management and profitability reviews for the purpose of operational performance evaluation
- Benchmarking and “best practice” reviews for the purpose of workplace system design
- Developing and maintaining the financial models to establish minimum wholesale prices for a large State Government authority in relation to a particular commodity
- Developing the methodology and reporting framework for a large corporate entity to enable the correct allocation of overheads between internal operating divisions

Taxation and accounting

5 years

- The management of a satellite office of KPMG consisting of predominantly taxation and general accounting clients
- Attending to year end and interim accounting functions for all sizes of business in all types of business structures engaged in a broad range of business activities
- All facets of taxation and general accounting advice for small to medium sized businesses engaged in a broad range of business activities

Presentations and publications

Expert Evidence – QUT Business School

Mock Trial for Masters students 2013, 2014, 2015, 2016, 2017, 2018

Expert Evidence – one day workshop

Chartered Accountants Australia and New Zealand – Business Valuation Conference - Sydney October 2014

The Accountant as an Expert Witness

Chartered Accountants Australia and New Zealand – Forensic Accounting Conference - Sydney October 2014

Resolving Commercial Disputes

ICAA 2013 Business Forum - Sydney 22 May 2013

ICAA 2013 Business Forum - Melbourne 29 May 2013

ICAA 2013 Business Forum - Adelaide 6 June 2013

Expert Evidence – Concept and Skills, one day workshop

ICAA Sydney 30 April 2013

ICAA Brisbane 3 May 2013

Workshop on Forensic Accounting for Fraud Detection

Millennium Hotel KL – Knowledge Group - 11 & 12 September 2012

Expert Evidence – Concept and Skills, one day workshop

ICAA National Business Valuation and Forensic Accounting Conference – March 2011

Understanding and imparting Complex Technical Information in Legal Practice: Working with Experts

Legalwise Seminar – Mandatory CPD - 31 March 2010

Understanding and imparting Complex Technical Information in Legal Practice: Working with Experts

Legalwise Seminar – Mandatory CPD - 8 September 2009

Quantifying and Advising on Damages for Pecuniary Loss

Legalwise Seminar – Focus on Contractual Remedies - March 2009

Workshop on Assessment of Damages in Commercial Disputes

NSW Law Society/NSW College of Law - June 2007 and July 2008

Workshop on Assessment of Damages in Commercial Disputes

Queensland Law Society Symposium - March 2007

Workshop on Forensic Accounting for Fraud Detection

Carlton Conference Centre – Knowledge Group KL 11 & 12 July 2006

Workshop on Damages Cases – HTW v Astonland

Practice & Procedure in Commercial Litigation Queensland - July 2005

Single Experts – From an Experts Perspective

Europe Asia Legal Conference – Positano, Italy - 2005

Quantifying and Advising on damages in a commercial context

Institute of Chartered Accountants CA Forum - 2005

Quantifying and Advising on damages in a commercial context

Commercial Litigation Masterclass Queensland - 2004

Litigation and risk management

ICAA Business Forum - 2004

Fraud Profiling: the role of the forensic accountant

CPA Congress (2003)

Buying and selling businesses: valuation issues

LAMMS Group Pty Ltd (2003)

Forensic accounting: causation, proof & evidence

International Institute of Forensic Studies, Italy (2002)

Forensic accounting: a growing concern

CPA Professional Development Week (2002)

CPA Congress (2002)

Dealing with corruption in an organisation

CPA Financial Controllers Intensive (2001)

GST in the Legal Practice

Australian Plaintiff Lawyers Assn. National Conference (2000)

GST and the personal injuries practice

Queensland Law Society Symposium (2000)

Taking fraud seriously

International Criminal Law Conference, Queensland (1999)

Understanding financial statements

Queensland Law Society (1998 and 1999)

Superannuation: property or financial resource?

Queensland Law Society (1997)

Articles published

Assessing Damages under the Trade Practices Act

Australian Plaintiff Lawyers Association, Plaintiff (Dec. 1999)

