

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:** Brisbane  
**NUMBER:** 3383 of 2013

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

AND

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

AND

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

AND

**Third Respondent:** **ROGER SHOTTON**

AND

**Intervener:** **AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION**

**AFFIDAVIT OF DAVID WHYTE**

I, **DAVID WHYTE** of Level 10, 12 Creek Street, Brisbane in the State of Queensland,  
Registered Liquidator, state on oath:-

1. I am a Registered Liquidator and a Consultant in the employ of the firm BDO. I am an affiliate member of the Chartered Accountants Australia and New Zealand and a professional member of the Australian Restructuring, Insolvency and Turnaround Association ("ARITA").

Page 1

Signed: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

Witnessed by: 

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

Filed on behalf of the Applicant

02070023-012

TUCKER & COWEN  
Solicitors  
Level 8, 300 George Street  
Brisbane, Qld, 4000.  
Tel: (07) 300 300 00  
Fax: (07) 300 300 33

2. Now produced and shown to me and marked “**DW-126**” is an indexed paginated bundle of the documents referred to in this Affidavit (“**the Bundle**”).

### **Appointments**

#### *Receivership*

3. By Order of this Honourable Court made on 8 August 2013 and later embodied in an Order dated 21 August 2013, I was appointed:-
- (a) pursuant to section 601NF(1) of the Corporations Act 2001 (Cth) (“**the Act**”) to take responsibility for ensuring that the LM First Mortgage Income Fund ARSN 089 343 288 (“**the FMIF**”) is wound up in accordance with its constitution; and
  - (b) pursuant to section 601NF(2) of the Act, as the receiver of the property of the FMIF.
4. I refer to my affidavit sworn and filed on 7 November 2014 (“**November 2014 Affidavit**”). The background to my appointment is relevantly explained by me at paragraphs 12 to 37 of my November 2014 Affidavit.
5. By Order of this Honourable Court made on 17 December 2015 in proceeding 3508/15 (“**Residual Powers Orders**”), I was:-
- (a) Empowered subject to the balance of orders therein, to determine the extent LM Investment Management Ltd (receivers and managers appointed) (in liquidation) (“**LMIM**”) is entitled to be indemnified from the property of the FMIF, in respect of any expense or liability, or claim against, LMIM, in acting as Responsible Entity (“**RE**”) of the FMIF;
  - (b) Authorised, and empowered, to exercise the powers of, and am responsible for, the functions of the RE of the FMIF as set out in Clauses 9, 10 and 22 of the Constitution of the FMIF, in respect of:-
    - (i) The transfer, registration and suspension of units in the FMIF (Clause 9);

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Page 2

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- (ii) Transmission of units (Clause 10); and
  - (iii) Maintaining the Register of Members of the FMIF (Clause 22).
- (c) Directed to apply to the Australian Securities and Investments Commission (“ASIC”) to obtain relief from financial reporting and audit obligations of the FMIF under Part 2M.3 of the Act, herein referred to as the “Residual Powers Orders”.
6. By order of this Honourable Court made on 18 July 2018 in proceeding 3508/15, it was directed that the Liquidators are entitled to claim their further reasonable costs and expenses of carrying out the work they or LMIM are required to do by and under the Residual Powers Orders in connection with the FMIF, not being the subject of a claim already made under the Residual Powers Orders, and to be paid therefore out of the assets of the FMIF, in such amounts as are approved by the Court from time to time.
7. By order of this Honourable Court made on 2 October 2019 in proceeding 3508/15, I was authorised and empowered to make an interim distribution from the property of the FMIF, to members of the FMIF, of up to \$40 million.

*Controllership*

8. On 25 September 2014, Andrew Fielding and I were appointed as agents of The Trust Company (PTAL) Ltd (“PTAL”), in lieu of LMIM, in respect of the securities it holds from the following companies:-
- (a) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296 (“Cameo”);
  - (b) Bridgewater Lake Estate Pty Limited ACN 086 203 787 (“Bridgewater”);
  - (c) OVST Pty Ltd ACN 103 216 771 (“OVST”);
  - (d) Redland Bay Leisure Life Pty Ltd ACN 109 932 916 (“RBLL”);

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Page 3

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(e) Redland Bay Leisure Life Development Pty Ltd ACN 112 002 383 (“**RBLLD**”);

(f) Pinevale Villas Morayfield Pty Ltd ACN 116 192 780 (“**Pinevale**”),

together, referred to in this Affidavit as the “**Controllership Companies**”. In August 2018, PTAL issued notices revoking the appointments of Mr Fielding and I as controllers of Cameo, Bridgewater, OVST, RBLL, RBLLD, and in September of 2018, PTAL issued notices revoking the appointment of Mr Fielding and I as controllers of Pinevale. Each of the Controllership Companies (save for Cameo) are now deregistered.

*References*

9. Throughout this Affidavit, where I refer to:-

(a) “BDO”, I am referring in a ‘short-hand’ way to staff at BDO under my supervision

(b) “my appointment”, I am referring to my role as the person appointed under section 601NF(1) of the Act as person responsible for ensuring the FMIF is wound up in accordance with its constitution;

(c) “BRI” or “BR” I am referring to BDO Business Recovery & Insolvency (Qld) Pty Ltd. On 16 August 2016, BDO Business Recovery and Insolvency (Qld) Pty Ltd changed its name to BDO Business Restructuring Pty Ltd.

10. For ease of reference, I use the following defined terms throughout this Affidavit:-

Defined Term	Definition
the Act	the <i>Corporations Act 2001</i> (Cth)
AIIS	Supreme Court of Queensland Proceeding No. 12716/15 commenced by KordaMentha against LMIM, in relation to a loan made by LMIM as trustee for the MPF to AIIS, for equitable compensation against LMIM, and for a constructive

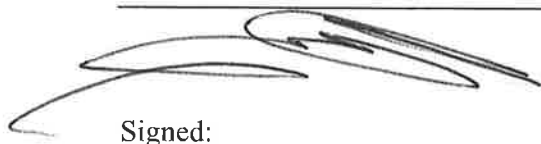
Page 4


  
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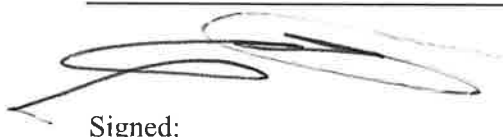
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Defined Term	Definition
	trust and other proprietary relief against assets of the FMIF, which is now discontinued.
ARITA	the Australian Restructuring, Insolvency and Turnaround Association
ASIC	Australian Securities and Investments Commission
Auditors Claim	Supreme Court of Queensland proceeding number 2166 of 2015 against the former auditors of the FMIF
Bellpac	Bellpac Pty Ltd (Receivers and Managers Appointed) (In Liquidation)
Bellpac Liquidator	The Liquidator of Bellpac
BR	BDO Business Restructuring Pty Ltd
Claim against the MPF	Supreme Court of Queensland proceeding number 12317 of 2014 against LMIM, certain former directors of LMIM and the trustees of the MPF
DB	Deutsche Bank AG
DB Receivers	Joseph Hayes and Anthony Connelly
EY	EY also known as Ernst and Young
Feeder Funds	the LM Currency Protected Australian Income Fund, the LM Institutional Currency Protected Australian Income Fund and the LM Wholesale First Mortgage Income Fund
FMIF	the LM First Mortgage Income Fund ARSN 089 343 288
FTI Remuneration Proceeding	Supreme Court of Queensland Proceeding No 3508 of 2015. Various applications have been made in this proceeding including applications by the Liquidator and/or LMIM for approval of remuneration or expenses, and applications seeking declarations or orders in relation to the extent of the powers or functions of the Liquidator and/or Mr Whyte in the winding up of the FMIF
FTI	FTI Consulting
Fund	the LM First Mortgage Income Fund ARSN 089 343 288

  
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<b>Defined Term</b>	<b>Definition</b>
July 2021 Affidavit	Affidavit of David Whyte filed 14 July 2021 in this proceeding
June 2016 Affidavit	Affidavit of David Whyte filed 8 June 2016 in this proceeding
June 2017 Affidavit	Affidavit of David Whyte filed 14 June 2017 in this proceeding
June 2018 Affidavit	Affidavit of David Whyte filed 1 June 2018 in this proceeding
June 2019 Affidavit	Affidavit of David Whyte filed 6 June 2019 in this proceeding
KordaMentha	Trustees of the MPF
Liquidator	John Park as Liquidator of LMIM
Liquidators	John Park and Ginnette Muller, as Liquidators of LMIM. Ms Muller ceased to a Liquidator of LMIM on 17 May 2017.
LMA	LM Administration Pty Ltd (in liquidation)
LMIM	LM Investment Management Ltd (receiver appointed) (in liquidation)
LMIM claim	Supreme Court of Queensland proceeding no.11560/16
March 2021 Affidavit	Affidavit of David Whyte filed 2 March 2021 in this proceeding
May 2020 Affidavit	Affidavit of David Whyte filed 11 May 2020 in this proceeding
MPF	LM Managed Performance Fund
MPF Proceedings	Supreme Court of Queensland Proceedings 8032/14 and 8034/14 commenced by KordaMentha which sought equitable compensation against LMIM and relief over assets of the FMIF by way of subrogation to LMIM's alleged right of indemnity out of assets of the FMIF, but are now discontinued
November 2015 Affidavit	Affidavit of David Whyte filed 24 November 2015 in this proceeding
November 2016 Affidavit	Affidavit of David Whyte filed 18 November 2016 in this proceeding

  
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<b>Defined Term</b>	<b>Definition</b>
November 2017 Affidavit	Affidavit of David Whyte filed 10 November 2017 in this proceeding
November 2018 Affidavit	Affidavit of David Whyte filed 14 November 2018 in this proceeding
November 2019 Affidavit	Affidavit of David Whyte filed 21 November 2019 in this proceeding
PEs	Public Examinations
PTAL	The Trust Company (PTAL) Ltd, the custodian of the FMIF
RE	Responsible Entity
Relevant Period	from 1 May 2021 to 31 October 2021
Residual Powers Orders	Orders made by Jackson J on 17 December 2015, as varied or supplemented by orders made by Jackson J on 18 July 2018 and 2 October 2019
Second FTI Remuneration Application	The application filed by Mr Park on 17 July 2018, in Supreme Court of Queensland Proceeding 3508/15 seeking remuneration as liquidator and administrator of the Responsible Entity LMIM
the Schedule	a schedule of work performed by staff of the Brisbane office of BDO during the Relevant Period in relation to my appointment (in connection with the winding up of the FMIF).
Third FTI Remuneration Application	The application filed by Mr Park on 12 February 2021 in Supreme Court of Queensland proceeding 3508/15 seeking payment of remuneration of \$260,633.12 from the FMIF for the period 1 July 2018 to 31 October 2020
WCL	Wollongong Coal Ltd
\$2M proceeding	Supreme Court of New South Wales proceeding no.2014/332566
\$8M proceeding	Federal Court of Australia at New South Wales proceeding No. 2016/00120239

  
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*Previous Remuneration*

11. I have made fifteen previous applications for approval of my remuneration:-

<b>Remuneration Period</b>	<b>Remuneration Order</b>	<b>Amount of remuneration approved (incl. of GST)</b>	<b>Approximate remuneration per month</b>
8 August 2013 to 31 March 2014	McMurdo J on 28 August 2014	\$702,480.35	\$88,000
1 April 2014 to 30 September 2014	Mullins J on 27 November 2014	\$1,005,948.35 (receivership) \$7,000.95 (controllership)	\$169,000
1 October 2014 to 30 April 2015	Jackson J on 23 June 2015	\$1,761,911.25 (receivership) \$442,214.30 (controllership)	\$315,000
1 May 2015 to 31 October 2015	Martin J on 11 December 2015	\$2,279,205.50 (receivership) \$194,052.10 (controllership)	\$412,000
1 November 2015 to 30 April 2016	Douglas J on 26 June 2016	\$1,405,155.40 (receivership) \$36,510.65 (controllership)	\$240,000
1 May 2016 to 31 October 2016	Daubney J on 2 December 2016	\$1,119,991.40 (receivership) \$13,385.35 (controllership)	\$189,000
1 November 2016 to 30 April 2017	Mullins J on 30 June 2017	\$897,580.20 (receivership) \$12,314.50 (controllership)	\$152,000
1 May 2017 to 31 October 2017	Applegarth J on 30 November 2017	\$1,280,897.20	\$218,000

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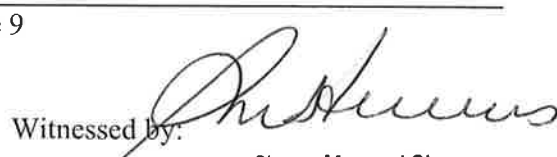
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Remuneration Period	Remuneration Order	Amount of remuneration approved (incl. of GST)	Approximate remuneration per month
		(receivership) \$26,155.25 (controllership)	
1 November 2017 to 30 April 2018	Boddice J on 21 June 2018	\$1,041,907.90 (receivership) \$22,306.90 (controllership)	\$177,000
1 May 2018 to 31 October 2018	Mullins J on 29 November 2018	\$1,946,635.35 (receivership) \$20,902.75 (controllership)	\$328,000
1 November 2018 to 30 April 2019	Mullins J on 2 July 2019	\$1,248,853.10 (receivership)	\$208,000
1 May 2019 to 31 October 2019	Mullins J on 17 December 2019	\$652,328.05 (receivership)	\$109,000
1 November 2019 to 30 April 2020	Callaghan J on 15 October 2020	\$989,373.55 (receivership)	\$165,000
1 May 2020 to 31 October 2020	Callaghan J on 26 March 2021	\$1,104,433.00 (receivership)	\$184,000
1 November 2020 to 30 April 2021	Callaghan J on 13 August 2021	\$1,383,829.15 (receivership)	\$231,000

12. I now make an application for approval of my remuneration for work performed in the period from 1 May 2021 to 31 October 2021 (“**Relevant Period**”) for acting as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution in the amount of \$924,169.40 (inclusive of GST).

  
Signed:

  
Witnessed by:  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
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## Executive Summary

### *Winding up and asset realisation progress*

13. Cash at bank as at 30 June 2021 was approximately \$27.506 million.
14. The remuneration sought in this application for the Relevant Period equates to about \$154,028.23 per month (inclusive of GST) for the Relevant Period.
15. On or about 30 September 2021, I informed members, in a report to members, of an estimated unit price of 4 cents per unit as at 30 June 2021. This estimate does not take into account or include any allowance for future recoveries from legal proceedings, any allowance for claims against the assets of the Fund and the costs to finalise the winding up of the FMIF. Depending on the results of those claims, the cents in the dollar returnable to members is likely to improve.
16. Between 16 and 23 October 2019, an interim distribution of 6.5 cents per unit in the FMIF (approximately \$32 million in total, before taking into account amounts withheld from distributions to the Feeder Funds), was paid to members of the FMIF.
17. Following the making of the interim distribution, the FMIF's cash at bank was \$38,906,794.92 as at 31 October 2019.
18. The total estimated return to members as at 30 June 2021 (including the interim distribution paid in October 2019) is 4 cents per unit.

### *Summary of Benefits to FMIF*

19. The benefits obtained, or received by the FMIF to date as a result of work undertaken by BDO include (but are not limited to) the following:-

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
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Description of benefit	Approximate or estimated quantum of benefit, gross of fees or expenses of my receivership (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Reference
Net Proceeds of sale of retirement village assets held by FMIF as security for loans to borrowers, which were sold by BDO	Approximately \$40 million – see note 1 below.	Paragraphs 58 to 61 of June 2019 Affidavit
Discontinuance of MPF proceedings in which I was joined as Second Defendant to defend claims made against FMIF assets	Amount claimed by plaintiff against FMIF assets approximately \$24 million plus interest and costs	Paragraphs 200 to 204 of May 2020 Affidavit
Discontinuance of AIFS proceeding	Amount claimed by plaintiff against FMIF assets approximately \$3.9 million plus interest and costs	Paragraphs 205 to 209 of May 2020 Affidavit
Amount of remuneration sought from FMIF but not approved on First remuneration application by the Liquidators, which was opposed by Mr Whyte	Approximately \$1.3 million (excluding any GST) – See Note 2 below	Paragraphs 146 to 153 of May 2020 Affidavit
Recovery of funds from a borrower to whom the FMIF had advanced funds, as a result of negotiations undertaken by BDO	\$7.5 million	N/A
Recovery received by FMIF from proceedings against quantity surveyor, conducted by BDO alleging professional negligence in respect of certifying works on a	\$2.39 million plus costs	Paragraphs 17(a), 92 to 94 of June 2016 Affidavit

  
Signed:

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

Description of benefit	Approximate or estimated quantum of benefit, gross of fees or expenses of my receivership (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Reference
completed commercial development		
Amount of expenses sought but not approved on FTI Indemnity Application which was opposed by Mr Whyte	\$366,536 – See Note 3 below.	Paragraph 166 of May 2020 Affidavit
Estimated costs savings to the FMIF to date as a result of successful applications by Mr Whyte to ASIC for financial reporting and audit relief	Costs savings in auditor’s fees alone estimate to be about \$140,000 - \$343,000 plus FTI’s remuneration and expenses had they been involved in the process - See Note 4 below	Paragraph 144 of May 2020 Affidavit
Total Amounts paid to FMIF by AIF ASPF, CPAIF and ICPAIF, as a result of Terms of Agreement between Mr Whyte, the Liquidators and LMIM	\$389,063.95	Paragraph 153 of May 2020 Affidavit, and paragraph 129 of my March 2021 Affidavit
Amount of remuneration sought from FMIF but not approved on Second FTI Remuneration Application by the Liquidator, which was opposed by Mr Whyte in part	\$348,692.87 – see Note 5 below	Paragraph 155 of May 2020 Affidavit
Recoveries to date in relation to the proceedings against the Feeder Funds	\$4,131,535.74 withheld from the interim distribution to the Feeder Funds of 6.5 cents per unit – see Note 6 below.	98 to 111 of May 2020 Affidavit

  
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Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106


Description of benefit	Approximate or estimated quantum of benefit, gross of fees or expenses of my receivership (funds received by FMIF, estimated costs savings, or face value of claim discontinued or dismissed)	Reference
Distribution received in November 2019 from the Bellpac Liquidator from the proceeds of the \$2M proceeding	\$1 million	Paragraph 100 of March 2021 Affidavit
Further distribution received from the Bellpac Liquidator in November 2020	\$2.5 million	Paragraph 106 of this Affidavit
Further distribution received from the Bellpac Liquidator in March 2021	\$250,000	Paragraph 106 of this Affidavit

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

Note 2 – this figure does not take into account additional remuneration or legal costs incurred by me as a result of opposing the application, nor any future costs savings on future remuneration applications by the Liquidator that may result from His Honour approving the apportionment of work referable to all of the funds (category 2 remuneration), as between the various funds that LMIM is or was responsible entity or trustee of, in a manner more favourable to the FMIF than was proposed by the Liquidators. The Liquidator's costs fixed in the sum of \$230,889.50 were ordered to be paid out of the FMIF.

Note 3 – this figure does not take into account additional remuneration or legal costs incurred by me as a result of opposing the application. The Liquidator's costs fixed in the sum of \$266,084.31 were ordered to be paid out of the FMIF.

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

Note 5 - this figure does not take into account additional remuneration or legal costs incurred by me, or any additional costs incurred by the Liquidator and paid out of the FMIF, as a result of my opposing part of the Application, nor any future costs savings to FMIF members as a result of His Honour ruling that corporate remuneration is not recoverable from the FMIF.

Note 6 – the settlement of the Feeder Fund Proceeding is expected to affect the return to the Feeder Funds (negatively) and other members of the FMIF (positively).

20. The total of my remuneration approved to date is \$19,595,372.50 (inclusive of controllership remuneration and GST). The expenses (primarily legal expenses) incurred by me in carrying out the terms of my appointment, are included in the receipts and payments accounts and financial statements referred to in paragraphs 179 to 187 herein.


*All Court Proceedings*

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

<b>Title, Court &amp; No.</b>	<b>Description of proceeding</b>	<b>Remuneration category in the Relevant Period</b>
Bruce v LM Investment Management Ltd (in liq.) in its capacity as responsible entity of the LM First Mortgage Income Fund & Ors.	This is the proceeding in which I was appointed and winding up orders made.  Various interlocutory applications have been made in the proceeding including	Trade On and Administration


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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
Supreme Court of Queensland Proceeding No. 3383/13 (“ <b>Bruce Proceeding</b> ”)	applications for approval of my remuneration, and applications for judicial advice.	
LM Investment Management Ltd (in liq.) in its capacity as responsible entity for the LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed) v EY (formerly known as Ernst & Young) (a firm) & Ors., (“ <b>Auditors Claim</b> ”)  Supreme Court of Queensland Proceeding No. 2166/15	Claim by LMIM as RE of the FMIF against the auditors (EY) and two partners of EY for misleading and deceptive conduct and professional negligence	Assets
John Richard Park and Ginette Dawn Muller as liquidators of LM Investment Management Ltd (in liq.) (Receivers and Managers Appointed) the responsible entity of the LM First Mortgage Income Fund & Anor. v David Whyte as the person appointed to supervise the winding up of the LM First Mortgage Income Fund	Application by Mr Park, Ms Muller, and LMIM for directions as to how the FMIF is to be wound up and as to the extent of their powers, functions, and duties.  By Further Amended Originating Application filed on 16 December 2015, Mr Park and Ms Muller sought remuneration and expenses as the liquidators (and as administrators) of the Responsible Entity LMIM.	Trade On and Investigations

  
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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>Supreme Court of Queensland Proceeding No. 3508/2015</p> <p><b>(“FTI Remuneration Proceeding”)</b></p>	<p>By further Application filed 20 May 2016 pursuant to the Orders of Jackson J made 12 December 2015, Mr Park and Ms Muller sought an indemnity from the FMIF for expenses incurred by the Responsible Entity.</p> <p>By application filed 19 December 2017, Mr Park and Ms Muller sought further orders against me for payment of the amounts ordered on 22 November 2017.</p> <p>By application filed on 17 July 2018, Mr Park sought approval of remuneration as liquidator and as administrator, of the Responsible Entity LMIM.</p> <p>By application filed on 10 October 2018, Mr Park sought directions in relation to the dual appointments of Mr Park and I in relation to the winding up of the FMIF (“<b>Dual Appointment Application</b>”).</p> <p>By application filed on 1 February 2019, I sought orders authorising me to make an interim distribution to FMIF members of up to \$40 million and declarations as to the proper entitlements of members holding “Class C” units in the FMIF (“<b>Authority Application</b>”).</p>	

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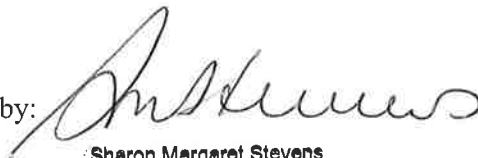
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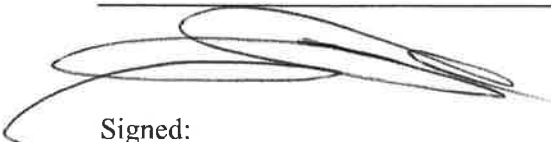
Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
	<p>By applications filed 24 January 2020, the Liquidator and LMIM sought approval of LMIM's legal costs relating to the Auditor's Claim and considering a proof of debt lodged by EY ("<b>EY Expenses Application</b>"), and LMIM's legal costs relating to the Claim against the MPF ("<b>Bellpac Expenses Application</b>").</p> <p>By application filed on 12 February 2021, Mr Park sought payment of further remuneration of \$260,633.12 from the FMIF ("<b>Third FTI Remuneration Application</b>").</p>	
<p>LM Investment Management Ltd v Drake &amp; Ors.</p> <p>Supreme Court of Queensland Proceeding No. 12317/14 (first instance proceeding), 14258/19 (appeal proceeding) and 1146/20 (judicial advice proceeding)</p> <p>("Claim against the MPF")</p>	<p>Claim against the MPF Trustee, LMIM and certain former directors in respect of a loss suffered by the FMIF as a result of an amount paid to the MPF in the Bellpac litigation matter. In November 2019 Justice Jackson delivered judgment dismissing this claim. I filed a notice of appeal and sought judicial advice (which was declined) regarding whether to pursue the appeal. The appeal has been discontinued.</p>	<p>Assets</p>

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>Supreme Court of New South Wales Proceeding No. 2014/332566</p> <p>("2m proceeding")</p>	<p>Claim with respect to \$2 million of bonds issued by Wollongong Coal Ltd to Bellpac, where the FMIF holds a first ranking security over the assets of Bellpac.</p>	<p>Assets</p>
<p>Federal Court of Australia at New South Wales Proceeding No. 2016/00120239</p> <p>("8m proceeding")</p>	<p>Claim against Wollongong Coal by Bellpac Pty Ltd Liquidator with respect to non-conversion of \$8 million of bonds to shares, where the FMIF holds a first ranking security over the assets of Bellpac.</p>	<p>Assets</p>
<p>PTAL and LM Investment Management Ltd v Coulter Developments Pty Ltd &amp; Ors</p> <p>Supreme Court of Western Australia Proceeding No. 2403/2014</p>	<p>Claim against Borrowers and Guarantors for \$13.8 million plus interest and costs.</p>	<p>Assets</p>
<p>The Trust Company (PTAL) Ltd v Ross Lamb</p> <p>Federal Circuit Court SYG2097/2016 (claim against guarantor)</p> <p>Federal Court Proceeding No NSD643/2019 (public examination)</p>	<p>Creditors Petition against Guarantor. The Guarantor has been made bankrupt. PTAL as custodian of the FMIF has funded the bankruptcy Trustees to undertake a public examination and any agreed recovery proceedings. Mediations between the Trustee and the relevant parties took place, and thereafter,</p>	<p>Assets</p>

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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
	settlement negotiations continued which culminated in a settlement being reached on 1 September 2021	
LM Investment Management Ltd (Receivers and Managers appointed) (in Liquidation) as responsible entity for the LM First Mortgage Income Fund (Receiver Appointed) v LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation)  Supreme Court of Queensland Proceeding No.11560/16  ("LMIM claim")	Claim against LMIM in relation to payments LMIM caused to be made from the property of the FMIF which were not authorised by the constitution or the Act and material losses suffered by the FMIF by reason of breaches of duty by LMIM. This claim is stayed until further order.	Assets

*Summary of work in the Relevant Period*

22. By way of short summary, my staff and I have undertaken the following work in the Relevant Period, that I considered necessary for the winding up of the FMIF

(a) In relation to Supreme Court of Queensland proceeding numbered 2166/15 against the former auditors of the FMIF ("**Auditors Claim**"), the significant work included, the following:

- (i) reviewing various correspondence received from my solicitors;
- (ii) reviewing correspondence received from the solicitors for the defendants’;
- (iii) liaising with solicitors in relation to discovery, searching for, locating and review of documents in a number of categories, in

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QLD 95108


order to complete further disclosure in accordance with the Document Plan. I am informed by Mr Scott Couper (**Mr Couper**) of Gadens, the solicitors for the Plaintiff in the Auditor's Claim, and believe, that the reason for the further disclosure made during this period is a mixture of both requests for further disclosure from EY and further disclosure necessitated by the completion of the valuation and loss expert reports;

- (iv) Reviewed disclosure statements in respect of further tranches of disclosure;
- (v) arrange access for EY to an electronic database of financial records, as part of the disclosure process;
- (vi) Locate, review and provide documents to my solicitors to assist with briefs to experts and preparation of expert reports;
- (vii) Reviewed and provided comments on twenty nine retrospective valuations of properties charged to the Fund, covering up to nine valuation dates for the purposes of a loss and damage report. The assets valued in these reports included six retirement villages, completed residential and commercial properties, part completed properties and land;
- (viii) Reviewed and provided comments on three additional supplementary valuation reports to assist with loss and damages claim;
- (ix) Reviewed and provided comments on financial statements auditor supplementary expert report in relation to updating the impairment of twenty three loans and taking into account the retrospective valuations.;
- (x) Reviewed and provided comments on expert report in relation to how investors would have acted differently in relation to their

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Page 20

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COMMISSIONER OF DECLARATIONS  
QLD 95106

investments, if different levels of impairments had been reported by EY;

- (xi) Reviewed and provided comments on expert report in relation to ASIC's likely response to alternative reported levels of impairments;
- (xii) Reviewed and provided comments on expert report on how a Responsible Entity would have reacted to the alternative reported levels of impairments and how that would have effected the conduct of an earlier winding up of the Fund;
- (xiii) Prepared expert report on how a Receiver of the Fund would have disposed of the assets of the Fund in an earlier winding up;
- (xiv) Prepared a report and swore an affidavit in relation to how certain costs and expenses of the Fund were incurred and paid to assist the expert witness in the preparation of their calculations of loss and damage;
- (xv) Reviewed and provided comments on expert report in relation to the calculation of loss and damage. The loss and damage calculations are complex because of the various elements of the claim including assessment of revised management fees to take into account increased level of impairments (and reduced level of funds under management), assessment of the earlier realisation of properties charged to the Fund for twenty three loans taking into account the retrospective valuations, calculating the effect of related party transactions that would not have taken place and accounting for the Feeder Fund settlement, calculating the earlier repayment of the secured creditor, reduced interest and other costs and loss of return to members of an earlier distribution of capital;
- (xvi) Providing instructions to my solicitors with respect to and assisting my solicitors to prepare a Reply to the Defendants Defence to the 8<sup>th</sup> Further Amended Statement of Claim;

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COMMISSIONER OF DECLARATIONS  
QLD 95106

(xvii) Providing instructions to my solicitors with respect to a number of commercial list reviews.

The quantum of the claim in this proceeding has been calculated in the loss and damages expert's report at up to \$249.6 million.

I am informed by Mr Couper and believe, that the purpose of Gadens requesting that BDO comment on the various reports as referred to above is to check the accuracy of factual assumptions and to assist Gadens to instruct and confer with experts, in circumstances where BDO have a deep and detailed knowledge of the relevant issues. I am further informed by Mr Couper and believe that, given the sheer volume of documentary evidence in this matter, in circumstances where Gadens do not have access to the directors and employees of LMIM, it is necessary for BDO to assist in obtaining relevant documentary evidence requested by experts when same was not originally briefed to them.

- (b) In relation to Supreme Court of Queensland Proceeding BS3508/15 ("**FTI Remuneration Proceeding**"), work has been performed in relation to the Third FTI Remuneration including:
- (i) swearing an affidavit of service;
  - (ii) providing instructions to my solicitors with respect to correspondence with the Liquidator's solicitors;
  - (iii) reviewing the orders made by the Court;
  - (iv) arranging payment of remuneration to the Liquidator and agreeing upon the quantum of the Liquidator's costs payable out of the FMIF;
- (c) In relation to Supreme Court of Queensland Proceeding 3383/13 ("**Bruce Proceeding**"), work to progress my 15<sup>th</sup> application for approval of remuneration relating to the period 1 November 2020 to 30 April 2021, including:

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Page 22

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Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (i) assisting with preparation of, reviewing and swearing my Affidavit in support of the application;
  - (ii) preparing or reviewing and swearing a number of other affidavits in support of the application;
  - (iii) providing instructions to my solicitors in relation to the conduct of the application;
  - (iv) attending the hearing of the application on 13 August 2021;
- (d) Complying with the conditions of the ASIC relief from financial reporting and audit requirements;
- (e) reprocessing returned interim capital distributions paid in October 2019 in the amount of 6.5 cents per unit to FMIF members, which involved:
- (i) corresponding with investors regarding the distribution paid in October 2019;
  - (ii) updating investors bank account details in the Fund's database to reprocess the distributions that returned;
  - (iii) reprocessing the distributions for any returned distributions from inactive bank account details;
  - (iv) providing instructions and information to PTAL to reprocess distributions;
  - (v) creating payment files to reprocess the distributions to the member's nominated bank account.
- (f) Preparation of unit price calculation as at 30 June 2021;
- (g) Preparation of management accounts for the year ending 30 June 2021;
- (h) Preparation of reports to members issued in June 2021 and September 2021; and

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Page 23



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Witnessed by:



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COMMISSIONER OF DECLARATIONS  
QLD 95106

- (i) Work undertaking the investor management function for over 4,600 members, including answering queries on the winding up of the FMIF and maintaining the investor database, including any change in details or transfer of units.

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

*Status of the FMIF assets*

- 24. All real property assets have now been sold.
- 25. There remains one major legal proceeding on foot – the Auditor’s Claim - that must be determined or resolved, before the winding up can be completed.
- 26. I am working towards resolving the main issues in the winding up, as soon as is reasonably possible.

*Status of the DB Receivers*

- 27. I refer to paragraphs 21 and 22 of my June 2018 Affidavit for background in relation to this issue.
- 28. On 10 December 2018, Joseph Hayes and Anthony Connelly, (the “**DB Receivers**”) retired.

*Distribution*

- 29. Following the retirement of the DB Receivers, on 1 February 2019, I applied to Court for authority to make an interim distribution to FMIF members of up to \$40 million (“**Authority Application**”), and in a separate application, for judicial advice that I am justified entering into and performing, the deed of settlement entered into with respect to the Feeder Fund Proceeding (“**Judicial Advice Application**”).
- 30. On 22 May 2019, the Court directed that I am justified in making an interim distribution of 6.5 cents per unit in the FMIF, if I am authorised to do so in on the Authority Application.

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QLD 95106



31. On 2 October 2019, the Court authorised me to make an interim distribution of up to \$40 million.
32. Between 16 October 2019 and 23 October 2019, an interim distribution of 6.5 cents per unit in the FMIF, was paid to members.

#### **Reduction in costs**

33. As part of the winding up process, I have reduced the costs of managing the FMIF.
34. Prior to the appointment of Mr Park and Ms Muller as administrators in March 2013, the management fees charged by LMIM as RE of the FMIF averaged \$14 million per annum, for the five years ended 30 June 2012.
35. The current and ongoing costs of managing the FMIF are the remuneration and expenses of myself and my staff, and amounts to be paid to the liquidator of LMIM for remuneration or expenses.

#### **Complexities**

36. Some of the overarching factors which have contributed to the complexity of the winding up of the FMIF include:-
  - (a) the fact that there are over 4,600 members of the FMIF, both in Australia and internationally, and the responsibility to communicate with each of those members as to the progress of the winding up, to respond to member queries and maintain and update the register of members;
  - (b) the number and type of properties held as security for the various loans made by the FMIF;
  - (c) the complexity of litigation, including claims made to recover funds for the benefit of members of the FMIF and claims made against assets of the FMIF;
  - (d) risk of personal liability being incurred under agreements entered into with residents of the retirement villages;

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Page 25

  
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Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (e) the number and complexity of issues in the period from 2008 to 2013 requiring my various investigations;
  - (f) the complex inter-relationship between LMIM, LMIM as RE of the FMIF, and LM Administration Pty Ltd (in liquidation) (“LMA”);
  - (g) the complex inter-relationship between the FMIF and other funds of which LMIM is RE, including claims against the FMIF by KordaMentha (which were discontinued in 2018); and
  - (h) the need to liaise with a number of other appointees, including the DB Receivers, the liquidators of LMIM, the liquidator of LMA, the Receivers of the LM Currency Protected Australian Income Fund and the LM Institutional Currency Protected Australian Income Fund and the RE of the LM Wholesale First Mortgage Income Fund.
37. In addition to the overall complexities, certain other issues have arisen or continued to require attention, in the Relevant Period which have added to the complexity of the winding up, and contributed to the time taken, and remuneration sought, including:-
- (a) The extensive, detailed and complex work required in this Relevant Period in relation to the Auditors Claim as detailed in paragraph 22(a) above;
  - (b) The extensive and detailed work required to maintain the FMIF register of members and undertake the investor management function for over 4,600 investors, including maintaining and updating the register of members, responding to member queries and reprocessing interim distributions payments for investors whose payments were returned.
38. Given the complexity of many of the litigation matters, and particularly the technical expertise required for prosecuting the Auditors Claim, it has been necessary to maintain the engagement of staff at a senior level with higher charge out rates. Two audit partners, Mr Clark Jarrold and Mr Craig Jenkins together with other senior personnel (Ms Julie Pagcu and Mr Arthur Taylor) have been involved in the litigation matters.

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Witnessed by:

  
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COMMISSIONER OF DECLARATIONS  
QLD 95106

**Time recording**

39. My staff and I record our time on a daily basis. We enter our time in six minute units, and we enter the details of the time spent and the description of the tasks undertaken in an electronic system. My staff and I review these time entries on a periodic basis and, when necessary, entries are written off.
40. The partners of BDO Business Restructuring Pty Ltd (“BR”) are members of ARITA, and follow the ARITA Statement of Best Practice – Remuneration.
41. Each task and the time for carrying out each task, is only recorded once.

**Teams assisting**

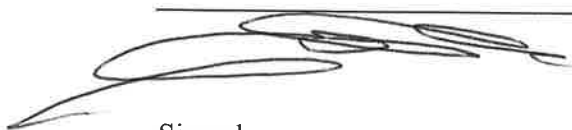
42. Staff from other practice areas of BDO, in addition to members of the BR practice area, assist me in my receivership role. During the Relevant Period, the Audit division has assisted me. I set out generally below, the function of the Audit division and their assistance to me in the Relevant Period.
43. Given the complexities and nuances of this particular winding up, I considered that it was necessary to involve the assistance of these persons, given the specialist knowledge they possess with regard to particular areas. For example, I sought specialist knowledge regarding the audit and accounting issues arising in preparation of the Auditors Claim. The assistance of these teams was necessary for the purposes of the winding up.

At pages 1 to 2 of the Bundle are copies of the hourly charge out rate schedules of the BDO practice groups that applied during the Relevant Period. BDO’s rates increased marginally on and from 1 January 2021, as set out in those schedules. I note that, as the person appointed by the Court (as explained in paragraphs 3 to 7 above) my time has been charged at the rate of a Partner/Appointee.

*Audit*

44. During the Relevant Period, the Audit team at BDO has assisted me by:-

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Signed:

Page 27

Witnessed by:



Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (a) attending conferences with solicitors and counsel in relation to expert evidence in the Auditors Claim proceeding;
- (b) providing assistance in relation to documents to be considered by experts in the Auditors Claim proceeding;
- (c) attending and preparing for conferences with valuation experts and providing information for briefing same;
- (d) Assisting with the review and completion of the management accounts for the year ended 30 June 2021;
- (e) reviewing expert reports, including expert report on retrospective valuations, supplementary expert report from the financial statement auditor expert, and the loss and damage expert report.

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

**Categories of work**

46. During the Relevant Period, my staff and I have undertaken tasks which broadly fall within the following five categories:-

- (a) Assets;
- (b) Trade on;
- (c) Creditors;
- (d) Dividend; and
- (e) Administration.

47. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with members of the FMIF could be recorded under

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either Administration or Creditors. However, each task is only recorded once, and the time for carrying out each task is only recorded once.


48. At pages 3 to 4 of the Bundle is a breakdown of time charged by BDO employees pursuant to my appointment (in connection with the winding up of the FMIF) and a table in respect of "Disbursements" charged against my appointment. These disbursements are office expenses that BDO has incurred. I do not seek approval in this application for these expenses.
49. At pages 5 to 98 of the Bundle is a schedule of work performed by staff of BDO during the Relevant Period ("the **Schedule**") in relation to my appointment (in connection with the winding up of the FMIF). The charges in the Schedule exclude GST.
50. The Schedule shows a description of each task undertaken, the name and position of the person who performed the task, the date the task was undertaken, the length of time it took and the amount charged. A summary of the tasks undertaken, time taken and amount charged is detailed below:-

<b>Category/area</b>	<b>Total hours</b>	<b>Amount (\$)</b>
Assets	1,122.4	592,077.00
Trade on	107.2	39,860.00
Creditors	488.6	144,550.50
Dividend	7.9	2,251.50
Administration	166.5	61,415.00
<b>Total (exclusive of GST)</b>	<b>1,892.6</b>	<b>840,154.00</b>
GST		84,015.40
<b>Total claim (inclusive of GST)</b>		<b>924,169.40</b>

Page 29

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Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

51. The Schedule reflects the fact that I delegated to members of my staff the performance of a number of tasks and activities in the winding up. This is in accordance with my usual practices. I delegated work so that the level of experience of the person responsible for particular work reflected, and was appropriate to, the nature of the work. For example, throughout the winding up, I have endeavoured to ensure that the least complex of the required work is done by junior members of my staff at lower charge-out rates than senior members of my staff and I.
52. I refer in particular to the average hourly rates for work undertaken in the Relevant Period, as set out within the breakdown of time (the Remuneration Report appearing at page 3 of the Bundle) and I note that the level of efficiency of delegation of work is illustrated by the following:
- (a) The average hourly rate charged for all work performed during the Relevant Period was \$444.00 per hour (excluding GST);
  - (b) Work performed in categories with higher average hourly rates was work that involved issues of complexity and high importance; for example, the work relating to Assets (which included the complex litigation mentioned above) was undertaken by staff with an average rate of \$528.00 per hour (excluding GST);
  - (c) Tasks of somewhat less complexity were delegated to junior staff members, such as work relating to Creditors, which had an average rate of \$296.00 per hour (excluding GST);
  - (d) Each of the average rates referred to above is significantly less than the rates charged by Partners of BDO, being \$635.00 per hour (excluding GST).
53. The entries in the Schedule reflect BDO's scale of insolvency and other hourly charge out rates.

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COMMISSIONER OF DECLARATIONS  
QLD 95106

54. From my knowledge of the work carried out in relation to the winding up and my supervision of the tasks undertaken, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.
55. In order to further assist the Court, I set out below explanations as to why the tasks detailed in the Schedule were undertaken, and why these tasks were necessary for the proper administration of the winding up of the FMIF.
56. The tasks detailed in the Schedule were carried out in furtherance of my appointment under s 601NF(1) of the Act to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution.

*Breakdown of remuneration by proceeding*


57. I have caused the narrations of work performed by me and staff of BDO to be reviewed, for this Relevant Period, to determine the approximate amount of remuneration relating to each legal proceeding or dispute that is on foot.
58. A summary of each of the relevant legal proceedings, and the approximate amount of Remuneration attributable to that proceeding in the Relevant Period, is as follows:

	Assets (\$) exc GST	Administrati on (\$) exc GST	Trade On (\$) exc GST	Creditors (\$) exc GST	Dividend (\$) exc GST	Total (\$) exc GST
Auditors Claim	585,276.00	2,153.50	190.50	1,036.00	-	<b>588,656.00</b>
Bellpac Bonds	190.50	-	-	-	-	<b>190.50</b>
Ross Lamb	3,372.00	-	-	-	-	<b>3,372.00</b>
<b>Total</b>	<b>588,838.50</b>	<b>2,153.50</b>	<b>190.50</b>	<b>1,036.00</b>	<b>-</b>	<b>592,218.50</b>

59. At the following pages of the Bundle is a copy of a schedule which sets out the descriptions of work performed by me and BDO staff and the amount of remuneration sought relating to each of the following matters, in the Relevant Period:

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COMMISSIONER OF DECLARATIONS  
QLD 95106

- (a) At pages 99 to 131 – the Auditor’s Claim - \$588,656.00 (excluding GST);
  - (b) At page 132 – The Bellpac Proceedings (the \$2m proceeding and/or the \$8m proceeding) - \$190.50 (excluding GST);
  - (c) At page 133– the Ross Lamb bankruptcy - \$3,372.00 (excluding GST);
60. The balance of my remuneration for the Relevant Period, relates to administrative aspects of the winding up. At pages 134 to 196 of the Bundle is a copy of the schedule setting out the remaining work performed. This schedule includes work performed with respect to applications for approval of remuneration.

*Assets*

61. In the Relevant Period, my staff and I have undertaken various tasks and activities that can be described as falling within the category “*Assets*”.
62. Generally, work attributed to this category includes tasks in respect of:-
- (a) Advancing claims against guarantors; and
  - (b) Court proceedings, including:-
    - (i) Pursuing the Auditors Claim;
    - (ii) The litigation associated with the realisation of bonds held in WCL by Bellpac;
63. In total, \$592,077.90 (exclusive of GST) of remuneration is sought for approval in the Relevant Period in respect of the “*Assets*” category.
64. I set out below the extent of work undertaken in respect of “*Assets*”.

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Page 32

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Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106



*Court Proceedings*

65. Generally, work in respect of court proceedings that have been initiated by me is now attributed to the "Assets" category, having formerly been charged to the "Investigations" category of work. The reason for this move is to reflect that the investigation aspect of the work has for the most part come to an end and that the court proceedings filed are treated as what is considered to be an asset of the FMIF.
66. In this Affidavit, where estimated timeframes for the resolution or determination of legal proceedings are given, it is important to note that the actual timeframes may vary depending upon a range of factors usual for litigation matters, some of which are not within my control, for example, the conduct of the other parties to the litigation and the availability of trial dates.

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

67. Paragraphs 158 to 168 of my November 2015 Affidavit, set out the background to the Public Examinations ("PEs"), and paragraphs 104 to 111 of my June 2016 Affidavit, paragraph 74 of my November 2016 Affidavit, paragraph 70 of my June 2017 Affidavit, paragraph 68 of my November 2017 Affidavit, paragraphs 66 and 68 of my June 2018 Affidavit, paragraphs 67 to 70 of my November 2018 Affidavit, paragraphs 67 to 72 of my June 2019 Affidavit, and paragraphs 65 to 79 of my November 2019 Affidavit paragraphs 67 to 77 of my May 2020 Affidavit, paragraphs 70 to 76 of my March 2021 Affidavit and paragraphs 71 to 79 of my July 2021 Affidavit set out the steps in the proceeding up to 30 April 2021.
68. The quantum of the loss claimed in the Auditors Claim has been calculated by the loss and damage expert report recently filed and served at up to \$249.6 million.
69. This matter is on the commercial list before Justice Dalton.
70. Substantial progress was made progressing the Auditor's Claim in the Relevant Period.
71. During the Relevant Period, the Plaintiff:

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Page 33

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Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (a) delivered a substantial number of expert reports, including twenty nine retrospective valuations reports at up to nine different valuation dates, three additional supplementary valuation reports and the other expert witness reports as outlined at paragraph 22(a) above. Many of these experts reports are of considerable scope and complexity. At pages 197 to 203 of the Bundle is a copy of a File summary search for the Auditor's Claim, obtained from the Queensland Court's website on 3 November 2021, which lists the court documents filed in the proceeding.
- (b) completed substantial additional disclosure in accordance with a Document Plan. A total of approximately 450,000 documents have been disclosed in six tranches by the plaintiff in the case (including further tranches of disclosure during the Relevant Period, of approximately 330,000 documents in total) and 6,500 documents by the defendants;

72. On 7 June 2021, in a review of the Auditor Claim, Justice Dalton made orders that:

- (a) The Plaintiff file and serve a Reply by 25 June 2021. The Reply was filed and served on 1 July 2021;
- (b) The Plaintiff give any remaining disclosure by 25 June 2021. The further disclosure was made on 24 June 2021;
- (c) By 30 June 2021 the Plaintiff file and serve the balance of its expert retrospective valuation reports. These reports were filed and served progressively throughout June 2021, save for one report filed and served on 6 July 2021. Three supplementary reports were filed and served on 22 July 2021;
- (d) By 30 June 2021 the Plaintiff file and serve the expert report of Mr Weston as to the behaviour of investors and their advisers. This report

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Page 34

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Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

was filed and served on 29 June 2021. A supplementary report of Mr Weston was filed and served on 27 July 2021;


- (e) By 30 June 2021 the Plaintiff file and serve the expert report of KordaMentha as to any matters other than their assessment of loss and damage. This report was served on 30 June 2021 and filed on 1 July 2021;
- (f) On or before 30 July 2021 the Plaintiff file and serve the expert report of Mr Brian Morris as to his calculation of the true impairment of the Fund's loans. This report was filed and served on 23 July 2021;
- (g) On or before 30 July 2021 the Plaintiff file and serve any expert reports as to the management of the Funds portfolio by LMIM or a receiver. The reports of Mr Seeto were delivered by 30 July 2021 and my report was filed and served on 30 July 2021;
- (h) On or before 30 July 2021, the Plaintiff file and serve the balance of its lay or expert evidence (except as to loss and damage). An affidavit from me and the balance of the Plaintiff's lay evidence was filed and served on 30 July 2021. An additional expert report from Dr Pamela Hanrahan was served on 2 August 2021 and filed on 3 August 2021;
- (i) As to the expert evidence of KordaMentha as to the assessment of loss and damage, reports were to be filed and served on 30 September 2021 and 26 November 2021. The filing and service of those reports were delayed.

73. On 21 July 2021, Justice Dalton made orders that the appendices to Mr Seeto's report be delivered by 13 August 2021 and his report be filed and served by 13 August 2021. Mr Seeto's report was delayed.

74. On 13 August 2021, Justice Dalton made orders that Mr Seeto's evidence be filed and served by 18 August 2021. Mr Seeto's report was filed and served on

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Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

18 August 2021. The Defendants were ordered to serve any valuation reports of expert witnesses and any lay evidence on which they intend to rely by 13 December 2021.


75. On 8 October 2021, Justice Dalton made orders on the papers extending the time for the plaintiff to file and serve KordaMentha's report as to loss and damage based on counterfactual assumptions commencing from 1 July 2009, and any further lay evidence on which the report is based, to be filed by 1 November 2021. This has been complied with.
76. Further, orders were made by Justice Dalton on 8 October 2021 extending the time for the plaintiff to deliver KordaMentha's report as to loss and damage based on counterfactual assumptions commencing from any further and subsequent dates, and any further lay evidence on which the report is based, to be delivered by 24 December 2021. Assuming the dates under these orders are met by the Plaintiff, the Plaintiff would have completed disclosure, and delivered the expert reports and lay evidence which it intends to rely upon at trial by 24 December 2021.
77. The Defendants were also granted further time to deliver any expert valuation reports and lay evidence by 28 February 2021. At pages 204 to 205 of the Bundle is a copy of the orders made by Dalton J on 8 October 2021.
78. The matter is listed for further review by the court on 15 February 2022.
79. I am informed by Mr Couper and believe that the likely orders that will be sought by the Plaintiff to be timetabled at the next review in February 2022 will relate to orders for the delivery of the balance of the Defendant's evidence, the Plaintiff's reply evidence and potentially for expert conclaves.
80. In paragraph 82 of my affidavit sworn on 31 May 2021 and filed on 14 July 2021, I deposed that I anticipated that the Auditor's Claim will go to trial in the first half of 2022.
81. I no longer hold this expectation.

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Page 36

Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95108

82. I am informed by Mr Couper and believe that the Plaintiff's estimate when the matter will go to trial has changed for three primary reasons. First, all of the Plaintiff's evidence has taken longer than anticipated to finalise. The valuation evidence was delayed by between one and two months because of problems with the availability of the experts in the first half of this calendar year. The causation evidence was delayed by around a further month because the Plaintiff's funds management expert, Mr Seeto, required more time than he had anticipated to form and document his opinions. The loss and damage evidence was delayed by around two further months because of complexities associated with modelling the cash flows of the Fund. Second, the disclosure process was more burdensome and time consuming than the Plaintiff had originally anticipated because of the sheer volume of material and the manner in which the material was stored and organised by LMIM. Third, in the event, and despite the Court's expectations, the Defendants did not proactively start preparing their evidence until recently. In the circumstances, they sought and were granted additional time to first prepare their valuation evidence, and despite our expectations, no orders have yet been made by the Court at this time, as to the balance of the Defendants' expert and lay evidence.

83. I am informed by Mr Couper and believe that:

- (a) at reviews before her Honour, there is typically some discussion of anticipated trial dates;
- (b) Initially, it was hoped by the Plaintiff's legal representatives that the matter would be listed in the first half of 2022. In light of the delays with the evidence, that is no longer on the table;
- (c) The Defendants have indicated that their Senior Counsel is unavailable in the second half of 2022. In the view of the Plaintiff's legal team it would be unrealistic to expect that the parties would be ready in time for a trial in 2022.

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Page 37

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Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

84. I am presently unable to provide any firm estimate of when the Auditor's Claim will go to trial. I am informed by Mr Couper, and believe, that, in his view, a high level outline of the main steps which would need to be taken before the Auditor's claim is ready for trial, is as follows:

- (a) The Plaintiff needs to amend its pleadings and particulars to properly reflect the evidence that has now been served;
- (b) the Defendants needs to file and serve all of their expert and lay evidence;
- (c) The Plaintiff needs to consider that evidence, and file and serve any evidence in reply, as required;
- (d) The parties' respective experts need to conclave and prepare joint reports;
- (e) The parties need to take the usual pre-trial steps, including dealing with objections to evidence, opening submissions, trial books, etc.

85. The timeframe for the completion of these steps is uncertain as it will depend upon, among other things, whether each of the parties deliver their evidence or take other required steps within the timeframes directed by the Court, and the timeframes set by the Court for the taking of various steps at commercial list reviews.

86. The timing of any trial will also depend upon the availability of trial dates. Inquiries have not yet been made of the Associate of Dalton J (the commercial list judge supervising the matter) as to the availability of trial dates.


87. I am informed by Mr Couper and believe, that:

- (a) the issue of trial dates has been the subject of an ongoing discussion with Dalton J at commercial list reviews;

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Page 38


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Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (b) These proceedings are a matter that Her Honour is actively managing.
88. I am working to ensure the EY proceeding will be ready for trial as soon as is reasonably possible in the circumstances, as are my legal representatives.
89. I am informed by Mr Couper and believe, that:
- (a) my legal representatives present best, rough estimate is that the trial will take around twelve weeks. Before the Plaintiff has seen the Defendants' evidence, it is very difficult to come up with any concrete or realistic estimate for the duration of the trial;
- (b) This time estimate is dependent on (among other things) what evidence the Defendant puts on and, critically, the extent to which the defendant ultimately seeks to challenge the expert valuation evidence of the Plaintiff.
90. I am informed by Mr Couper and believe, that:
- (a) the Plaintiff's legal representatives expect the Defendants to adduce valuation evidence, the orders provide for such. They have explicitly said that they intend to do so, and the current directions provide for them to do so;
- (b) However, the hope of the Plaintiff's legal representatives is that, following an exchange of reports and expert conclaves, the valuers will be able to reach a workable consensus on the valuation issues. The 12 week trial estimate assumes this occurs.
91. The valuation evidence is extensive. The Plaintiff has delivered valuation evidence over 28 different assets. I am informed by Mr Couper and believe, that if every valuation was disputed by the Defendants, and on a very conservative assumption of 1 days' court time per asset, the length of the trial increases by almost 6 weeks. That is why the Plaintiff's legal representatives will be endeavouring as much as possible to confine disputes around valuation

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COMMISSIONER OF DECLARATIONS  
QLD 95106

evidence through exchange of reports and expert conclaves. Indeed, the Plaintiff's legal representatives will be endeavouring as much as possible to confine disputes around all the expert evidence through exchange of reports and expert conclaves.

92. During the Relevant Period, the work of my staff and I included the work with respect to the Auditors Claim detailed in paragraph 22(a) of this Affidavit.

*Claim against the MPF – Queensland Supreme Court proceeding 12317 of 2014, Judicial Advice Application proceeding 1146 of 2020 and Appeal numbered 14258 of 2019 in the Court of Appeal, Queensland*

93. This claim against LMIM, various former directors of LMIM and the MPF, as filed, sought \$15,546,147.85, plus interest (calculated from 2011). Whilst the claim was brought in the name of LMIM, pursuant to the orders of Justice Jackson on 21 July 2015, the interests of LMIM as the responsible entity of the FMIF are being represented by me. This claim was unsuccessful.

94. The background to the Claim against the MPF is set out in my November 2015 Affidavit at paragraphs 102 to 105, and details of steps taken in the proceedings appear at paragraphs 106 to 119 therein, paragraph 80 of my June 2016 Affidavit, paragraph 81 of my November 2016 Affidavit, paragraph 77 of my June 2017 Affidavit, paragraph 75 of my November 2017 Affidavit, paragraph 73 of my June 2018 Affidavit, paragraph 74 of my November 2018 Affidavit, paragraphs 80 to 81 of my June 2019 Affidavit, paragraph 84 of my November 2019 Affidavit, paragraphs 84 to 89 of my May 2020 Affidavit and paragraphs 89 to 91 of my July 2021 Affidavit.

95. The current status of this matter remains as set out in paragraph 91 of my July 2021 Affidavit and paragraph 2.1.1 of my report to investors issued 30 September 2021 (which appears at page 219 of the Bundle).

96. No remuneration is claimed with respect to work undertaken in relation to this matter in this Relevant Period.

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Page 40

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QLD 05106



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

97. Paragraphs 126 to 133 of my November 2015 Affidavit set out the background in Federal Court of Australia at New South Wales proceeding 2014/332566 (“**\$2M proceeding**”). Reference to this proceeding is also made at paragraph 88 of my June 2016 Affidavit, paragraph 87 of my November 2016 Affidavit, paragraph 83 of my June 2017 Affidavit, paragraph 81 of my November 2017 Affidavit, paragraphs 76 to 79 of my June 2018 Affidavit and paragraphs 83 to 86 of my June 2019 Affidavit.
98. The claim was successfully prosecuted by the Bellpac Liquidator for whom judgment was given. I consider that the FMIF is entitled as first ranking secured creditor to the funds ultimately recovered by the Bellpac Liquidator from these actions (after costs).
99. The net proceeds of the \$2 million bonds settlement were received by the Bellpac liquidator, and part of these funds have been utilised to fund the recovery of the \$8 million of WCL convertible bonds.
100. A distribution of \$1 million was received by the FMIF from the Bellpac liquidator in November of 2019.

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

101. Paragraph 135 of my November 2015 Affidavit sets out the background to the Federal Court of Australia at New South Wales Proceeding No. NSD1488/2015 (“**\$8M proceeding**”). Reference to this proceeding is also made at paragraph 90 of my June 2016 Affidavit, paragraphs 90 and 91 of my November 2016 Affidavit paragraph 85 of my June 2017 Affidavit, paragraph 86 of my November 2017 Affidavit and paragraphs 80 to 84 of my June 2018 Affidavit.
102. In summary, judgment in these proceedings was given in favour of the Liquidator of Bellpac and the defendant’s appeal and application to the High Court for special leave were not successful.

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QLD 95106

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

103. This proceeding concerns a claim brought by the Bellpac Liquidator against WCL seeking orders requiring WCL to convert the bonds to shares. I consider that the FMIF, as first ranking creditor, will be entitled to the funds received from this proceeding (after costs).
104. The Bellpac Liquidator entered into a Heads of Agreement (“**HOA**”) with WCL to settle this proceeding. It was a condition precedent to the settlement that WCL obtain shareholder approval of the settlement. The time for satisfying that condition precedent was extended, a number of times, ultimately to 31 October 2020.
105. As this condition precedent was not going to be satisfied by 31 October 2020, further settlement negotiations took place, which resulted in a Deed of Settlement being entered into on 30 October 2020, which was subject to creditor approval.
106. On 18 November 2020, creditors approved a revised version of this Deed of Settlement resulting in a distribution of \$2.5 million to the FMIF on 27 November 2020, and, a further distribution of \$250,000 to the FMIF on 11 March 2021.
107. During the Relevant Period, the work of my staff and I has included considering and obtaining legal advice regarding a proposal for the shares in WCL owned by Bellpac (over which the FMIF holds security) to be assigned to the FMIF

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

108. A summary of the claims made in this proceeding, the key steps taken in this proceeding, and an estimate of the timeframe for resolution or determination of this proceeding (if the orders made by the Court staying this proceeding on 25 July 2018 are lifted) is set out in paragraphs 99 to 107 of my March 2021 Affidavit.
109. This proceeding remains stayed for the time being for the reasons given in paragraphs 104 and 105 of my March 2021 Affidavit.

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Page 42

Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

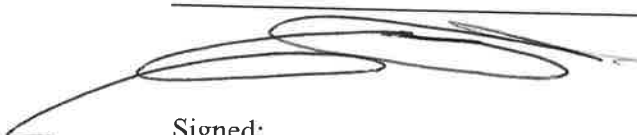
110. No work was performed in relation to this proceeding during this Relevant Period.

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

111. PTAL obtained a default judgment against Mr Lamb in the Supreme Court of New South Wales for approximately \$3 million, plus interest and costs. Prior to the hearing of the creditors petition, Mr Lamb filed a debtor's petition and was declared bankrupt.
112. The bankrupt and his wife were parties to a Development Agreement. The proceeds of sale of 11 lots owned by the bankrupt and his wife (in some cases, with another party) that were developed and sold were paid into a solicitor's trust account. The former trustee had been liaising with other parties involved in the development and investigating whether the bankrupt may have an entitlement in respect of the funds held in the solicitor's trust account.
113. The former trustee in bankruptcy issued a request to PTAL for funding of recovery action for the benefit of creditors of the bankrupt estate of which PTAL as custodian of the FMIF is a major creditor. The former trustee was replaced with new trustees on 14 May 2018.
114. On my instructions, in December of 2018, PTAL as custodian of the FMIF entered into a Deed of Indemnity to fund a public examination under the Bankruptcy Act 1966 (Cth) to further investigate the claims available to the Trustee and any relevant recovery proceedings.
115. The Trustee of the bankrupt estate is Mr David Clout (**Mr Clout**) of David Clout and Associates. I am informed by Mr Clout, and believe that:
- (a) The examinations were held in the Federal Court on 7, 12, 13, 18 and 19 November 2019;
  - (b) Following the examinations, the Trustee issued letters of demand to various parties and has received requests from those parties to mediate the Trustee's claims;

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Page 43

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (c) mediations with relevant parties were held in May and September of 2020 and thereafter, settlement negotiations continued. These negotiations culminated in a settlement being reached on 1 September 2021;
  - (d) he estimates that the gross return to the bankrupt estate from the settlement will be between \$2,882,181 and \$3,832,181, depending upon the outcome of a taxation objection lodged by the party making the settlement payment to the Trustee;
  - (e) he estimates that the net return to the bankrupt estate after deducting realisations charge under the Bankruptcy (Estate Charges) Act 1997, repayment of the funding provided by the FMIF, and the current and former Trustee's unpaid remuneration and expenses, will be approximately \$1,004,711 to \$1,964,161, not including allowances for the Trustee's future remuneration and expenses, or any taxation liabilities arising from the settlement;
116. Under the Deed of Indemnity, the Trustee is required to make an application to Court seeking an order giving PTAL as custodian of the FMIF, a priority over other creditors. The amount payable to the FMIF from the bankrupt estate will depend upon the outcome of this application
117. During the Relevant Period, the work of my staff and I in relation to this matter has included:
- (a) Reviewing reports or updates from the Trustee;
  - (b) Liaising with the Trustee in relation to the settlement negotiations;
  - (c) Considering and providing instructions to PTAL as custodian of the FMIF, in relation to whether to consent to the settlement;
  - (d) Preparing and lodging a proof of the debt owing to PTAL as custodian of the FMIF.

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Page 44

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Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

*Trade on*

118. Generally, work is considered to be “*Trade-on*” if the work is considered to be incidental to the winding up.
119. Work undertaken in relation to trade-on may be recorded in more than one category, however, the work undertaken is only recorded once.
120. During the Relevant Period, work attributed to this category included:-
- (a) Preparation of unaudited management accounts for the financial year ended 30 June 2021;
  - (b) Reviewing and processing payments of expenses;
  - (c) Maintenance of the Microsoft AX investor database. This involved accounting for receipts and payments, reconciling bank accounts and processing month end cash and year-end adjustments;
  - (d) Maintenance of the Microsoft AX loan management database, including accounting for payments, reconciling statements and processing month end and year-end adjustments;
  - (e) Conducting internal meetings to discuss job management issues including:-
    - (i) Maintenance of accounts and preparation of the management accounts for the financial year ended 30 June 2021;
    - (ii) Status of litigation matters and work to be done to progress same; and
    - (iii) Investor issues including content for my regular reports to members, status of investigations, creditor claims and my application for approval of remuneration.
  - (f) Meeting with members of the BDO Audit practice group regarding the preparation of the management accounts for the financial year ended 30 June 2021.

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Page 45

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

121. In total, \$39,860.00 (exclusive of GST) of remuneration is sought for approval in respect of the "Trade on" category.


*Management Accounts*

122. During the Relevant Period, my staff and I have undertaken the following tasks in respect of completing the management accounts for the financial year ended 30 June 2021:-

- (a) Reviewing work papers to verify the accuracy of the management accounts;
- (b) ascertaining amounts that are outstanding at 30 June 2021;
- (c) Preparing a summary of loan reductions to calculate the movement in loans in default;
- (d) Calculating the net assets attributable to unitholders, movement in default loans, receivables and related party transactions;
- (e) Preparing a summary of payable invoices:-
  - (i) either paid after the year end; or
  - (ii) remaining to be paid, which relate to work incurred during the financial year ending 30 June 2021;
- (f) to determine the accrued expenses;
- (g) Calculating provisions for the remaining loan accounts or receivable balances and updating the loan spreadsheet;
- (h) Preparing a trial balance, and processing the:-
  - (i) Accrued expense journals;
  - (ii) Impairments journals;
  - (iii) Bank transaction journals;

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Page 46

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (iv) Write off journals; and
- (v) Relevant expenses and income journals.
- (i) Preparing work papers to support the notes to the accounts, including, but not limited to, the movement in impairments as between the periods 30 June 2020 and 30 June 2021;
- (j) Preparing the management accounts for distribution to members, which includes:-
  - (i) A statement of comprehensive income;
  - (ii) A statement of financial position;
  - (iii) A statement of changes in net assets attributable to unitholders; and
  - (iv) Notes to the accounts.
- (k) Liaising with the BDO Audit practice group regarding movements in asset values, provisions and default loans between 30 June 2020 and 30 June 2021;
- (l) Reviewing and amending the trial balance in respect to changes required by the BDO Audit practice group;
- (m) Reviewing and amending financial statements in respect to changes required by the BDO Audit practice group;
- (n) Reviewing and considering disclosure requirements with reference to Australian Accounting Standards; and
- (o) Reviewing and amending the management accounts and notes in accordance with Australian Accounting Standards and recommendations by my solicitors.


123. This work was, in my opinion, necessary for the winding up of the FMIF in accordance with its constitution. By undertaking this work, I am able to

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Page 47

Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95108

provide ongoing financial accounts to members and avoid incurring ongoing audit fees during the winding up.

*Application to ASIC for financial reporting and audit relief*

124. Under the Residual Powers Orders, I was directed to apply on behalf of the FMIF to ASIC for relief from compliance with financial reporting and audit obligations in Part 2M.3 and s 601HG of the Corporations Act.
125. I made such an application, and on 29 September 2016, ASIC issued ASIC Instrument 16-0959, granting the FMIF a deferral of its obligations to comply with the relevant financial reporting and audit obligations until 16 May 2018, subject to compliance with certain conditions of the relief.
126. I have applied to extend this relief, and ASIC has extended this relief, on two occasions. Most recently, on 3 March 2020, ASIC issued ASIC Instrument 20-0166, extending the deferral of the FMIF's financial reporting and audit obligations to 16 March 2022.
127. At pages 206 to 207 of the Bundle is a copy of this Instrument of Relief.
128. There have been considerable costs savings to the FMIF, as a result of the financial reporting and audit relief granted by ASIC, as detailed in paragraph 144 of my May 2020 Affidavit.
129. The work performed in the Relevant Period with respect to the ASIC relief, included complying with the conditions of the relief, including by ensuring that every second report to investors contains the financial and other information required by the conditions of the relief.


**Supreme Court of Queensland proceeding 3508 of 2015**

130. In this proceeding, the Liquidator/s or LMIM have made, and I have been the respondent to, various applications for payment of the Liquidator/s remuneration or expenses from the FMIF, the Liquidator/s have made two applications for directions as to the respective functions or powers of the Liquidator/s and I in relation to the winding up of the FMIF, and I have applied to Court for directions in relation to the making of an interim distribution to

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Page 48

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106



FMIF members, as detailed in paragraphs 146 to 172 and 179 to 189 of my May 2020 Affidavit.

*Third Application by Liquidator for Approval of Remuneration*

131. On 12 February 2021, Mr Park filed an application in the Court seeking approval and payment from the FMIF of his remuneration for the period 1 July 2018 to 31 October 2020 in the sum of \$260,633.12 (including GST), made up of:


- (a) Category 1 remuneration (remuneration that is specifically referable to the FMIF) of \$182,661.60 (including GST); and
- (b) Category 2 Remuneration (remuneration that relates to all of the funds of which LMIM is the Responsible Entity and that is apportioned between the relevant funds) of \$77,971.52 (including GST).

**(“Third FTI Remuneration Application”)**

132. The application also sought approval of Mr Park’s remuneration as Liquidator of LMIM and payment of remuneration from certain other funds managed by LMIM.
133. The application was heard on 31 May 2021. I did not appear. The Court approved the payment to Mr Park of remuneration of \$243,236.90 (including GST) from property of the FMIF for the period 1 July 2018 to 31 October 2020, made up of Category 1 remuneration of \$170,809.20 (including GST) and Category 2 remuneration of \$72,427.70 (including GST).
134. During the Relevant Period, work was performed with respect to the Third FTI Remuneration Application, as detailed in paragraph 22(b) above.
135. I expect to receive, or be given notice of, further claims by the Liquidator for payment of remuneration or indemnity for expenses from the FMIF during the course of my appointment.

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QLD 95106

### **Creditor Indemnity Claims**

136. The background to this matter, the Creditor Indemnity Claims received to date and my decision in relation to and the current status of those Creditor Indemnity Claims, is summarised in paragraphs 174 to 178 of my May 2020 Affidavit.
137. No work was performed in relation to Creditor Indemnity Claims during this Relevant Period.

### *Creditors*

138. I am seeking approval for remuneration in the order of \$144,550.50 (exclusive of GST) in respect of work that is categorised as "Creditors".
139. Generally, work attributed to this category includes or has included:-
- (a) Preparing reports to members;
  - (b) Attending to queries from members in relation to the reports to members;
  - (c) Maintaining and updating the AX investor management database;
  - (d) Corresponding with investors regarding the interim distribution, returned payments and reprocessing distributions after updating members details; and
  - (e) work in relation to claims by LMIM (by its Liquidators) for indemnity against the FMIF.
140. I consider that all of this work was necessary for the winding up of the FMIF in accordance with its constitution and the orders relating to my appointment.


### *Reports to Members*

141. During the Relevant Period, I published on the FMIF website two reports to members of the FMIF updating them as to the ongoing winding up of the FMIF. At pages:-

Page 50

Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95108

- (a) 208 to 217 of the Bundle is a copy of my 34th report to members; and
- (b) 218 to 233 of the Bundle is a copy of my 35th report to members.

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

142. As noted in my 35<sup>th</sup> report to investors issued on 30 September 2021 (on page 3 of the report, which appears at pages 220 of the Bundle):

- (a) The timing of the trial of the Auditors Claim, is subject to a number of variables, some of which are not within my control, including whether the Defendants deliver their expert evidence within the timeframes directed by the Court and the availability of trial dates;
- (b) Inquiries of the Court as to the availability of trial dates, will be made at the appropriate time.

143. In this report to investors, I refrained from giving any estimate as to when the Auditor's Claim will go to trial, because at this stage, for the reasons detailed in paragraphs 85 and 86 above, any estimate would be a preliminary estimate only and subject to a number of variables that could significantly impact when the claim will go the trial.

144. On page 12 of my 35<sup>th</sup> report to investors (which appears at page 229 of the Bundle), I say that:


*The completion of the winding up of the Fund will largely be dependent on the finalisation of the EY proceedings. I am required by the conditions of the ASIC relief to make an estimate of the expected time to complete the winding up. My best estimate of the timing to complete the winding up on the available information is between nine months (if a settlement is reached with EY pre-trial) and if the trial proceeds it will depend on a number of matters including the dates for the trial and time to hand down judgement. It could be further delayed if an appeal was lodged.*

*There are a number of variables, including some highlighted above, which may affect the timing taken for completion of the winding up. The main variable is the timeframe for resolution or determination of the EY Proceeding. In this regard, I note that timing for the trial of the EY*

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Page 51

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

*proceeding is presently uncertain because trial dates have not yet been allocated and may depend on a number of factors, many of which are not within my control, including those identified in section 2.1.2 above.*

145. Since my 35<sup>th</sup> report to investors was issued, there have, unfortunately, been further delays in the delivery of the expert evidence of the Plaintiff's loss and damage expert and the reviews scheduled for 2 and 15 December 2021, were vacated and the next review is now scheduled to be held on 15 February 2022.
146. I draw to the Court's attention that, in light of these delays, the nine month estimate given in my 35<sup>th</sup> report to investors for the timeframe to complete the winding up if a settlement is reached with the Defendants pre-trial (which was intended to be the lower end of the amount of time it might take to complete the winding up) is no longer realistic and will need to be revised or withdrawn in my next report to investors., I did not give any estimate in this report of the timeframe to complete the winding up in the event that the EY Proceedings goes to trial because I consider that is subject to too many variables to give any firm estimate at this stage.
147. During the Relevant Period my staff and I were required to undertake tasks for the purposes of reporting to members of the FMIF, including:
- (a) Drafting and reviewing the reports to members;
  - (b) Preparing material summarising my remuneration for inclusion in the report;
  - (c) Liaising with my solicitors in relation to my reports to members;
  - (d) Updating the status of litigation matters;
  - (e) Reconciling the cash at bank and the loan balances;
  - (f) Considering and calculating the updated estimated return to members;
  - (g) Considering and calculating the updated unit price; and
  - (h) For my 35<sup>th</sup> report, setting out the actions taken in the relevant 6 months period and proposed to be undertaken in the next 12-month period.

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Page 52

Signed:

Witnessed by:



Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106


*Contact with members in respect of reports to members*

148. In addition to the reports to members set out above, my staff and I have also been contacted during the Relevant Period, by email and telephone by members of the FMIF and their financial advisors. This contact required responses regarding:-
- (a) The status of the receivership and the winding up of the FMIF;
  - (b) Updating contact details;
  - (c) Confirming unit balances and distributions paid prior to my appointment;
  - (d) The transfer of units and the documentation required to effect same;
  - (e) Queries arising from the reports to members regarding the receivership; and
  - (f) Queries in relation to the interim distribution.
149. During the Relevant Period my staff and I have also liaised with the beneficiaries and/or trustees of deceased members' estates. Where appropriate we have liaised with the beneficiaries, trustees and/or their solicitors/advisors to effect a transfer of the unit holding at the request of the investor's estate. My staff and I were required to undertake tasks including considering the request for a transfer of units, reviewing the documentation provided in support of such request, and processing such transfers.
150. Work undertaken in relation to communications with members is sometimes also recorded in the "Administration" category of work depending on the context of the call or correspondence, and the work required following that communication. However, time for carrying out any task is only recorded once.

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Page 53

Signed: 

Witnessed by: 

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COMMISSIONER OF DECLARATIONS  
QLD 95108

*AX Database*

151. During the Relevant Period my staff and I were required to continue to maintain the Microsoft AX investor management database. This included work:-
- (a) Updating investor details;
  - (b) Transferring units as requested or as directed by executors of deceased estates; and
  - (c) Generating reports to attend to members' unit balance enquiries.
152. The AX Database is where the Register of Members is kept and maintained. In accordance with the Residual Powers Orders, this is a duty charged to me.
153. I consider that it is necessary for the proper administration of the winding up to keep the investors properly informed as to the progress of the winding up of the FMIF, and to try to minimise the number of direct inquiries from members of the FMIF requesting the same information.

*Dividend*


154. During the course of the winding up, my staff and I have undertaken various tasks that can be described as falling within the category "*Dividend*".
155. This category relates to work undertaken in pursuit of my interim capital distribution to investors in the amount of 6.5 cents per unit as per the Court order dated 2 October 2019.
156. In total, \$2,251.50 (exclusive of GST) in remuneration is sought for approval in respect of the "*Dividend*" category.
157. The work in the Relevant Period in this category relates primarily to returned payments and reprocessing of the interim capital distribution to certain investors in the amount of 6.5 cents per unit, made in accordance with the Court's orders between 16 and 23 October 2019 and is detailed in paragraph 22(e) of this Affidavit.

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Page 54

Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

158. All of this work was necessary for the winding up of the FMIF in accordance with its constitution.

*Administration*

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

160. Generally, work attributed to this category includes:-

- (a) Work my staff and I undertook that was necessary for the proper and efficient administration of the winding up;
- (b) Ensuring proper accounts and records were maintained;
- (c) Preparing applications for approval of my remuneration; and
- (d) Residual administrative functions in respect of preparing reports to members, such as organising for copying, mailing and uploading to the FMIF website. The tasks of copying, mailing and uploading reports to members to the FMIF is outsourced to external providers who perform such work at bulk rates.

161. In total, \$61,415.00 (exclusive of GST) of remuneration is sought for approval in respect of the "Administration" category.

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

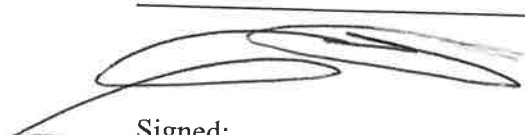
*Applications for approval of remuneration*

163. For the purposes of my remuneration application filed on 14 July 2021, work was undertaken in the Relevant Period, including:


- (a) the work detailed in paragraph 22(c);
- (b) arranging distribution of notice of the application to the members of the FMIF. In accordance with my usual practice during this administration, the tasks of copying, mailing and uploading reports to

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Page 55

  
Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

members to the FMIF is outsourced to external providers who perform such work at bulk rates.

*Job management*

164. In the Relevant Period, my staff and I have conducted internal meetings and discussions in order to discuss:-

- (a) The progression of the job;
- (b) Maintenance of the accounts and preparation of the management accounts for the financial year ended 30 June 2021;
- (c) Investor issues and content for my regular reports to members;
- (d) Status of the various investigations, claims and court proceedings;
- (e) Status of creditor claims; and
- (f) Coordinating my application for approval of my remuneration.


165. I consider that such tasks are necessary for the proper administration of the winding up and to ensure the winding up is conducted in an efficient manner. These meetings also allow me to delegate tasks in accordance with the complexity of the work to be undertaken, and my staff's individual charge out rates.

*Investor relations and communications*

166. During the Relevant Period, my staff and I have attended to answering member enquiries both by telephone and in person. Members are updated as to the progress of the winding up, including the status of court proceedings to recover funds for the benefit of members and the expected return to members.

167. Regularly during the Relevant Period enquiries were fielded from members regarding changes to their details.

  
Signed:

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106



168. For the purposes of member communications, including my two reports to members exhibited to this Affidavit, during the Relevant Period, my staff and I have been required to prepare and collate relevant material, including:-

- (a) information concerning the status of legal proceedings;
- (b) Updates as to the estimated value of the FMIF and estimated return to members; and
- (c) "work in progress" and remuneration reports.

169. I consider that these tasks are necessary to keep members of the FMIF properly informed as to the progress of the winding up of the FMIF.

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

*General*

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

- (a) Attending to general file administration including filing and archiving books and records.

172. I consider that each of these tasks was necessary for the proper administration of the winding up so as to keep accurate records of my work, progress of the winding up of the FMIF, and keeping members informed and up to date.

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


*Write-offs & reductions*

174. I have conducted a detailed review of all time charged by BDO staff in the Relevant Period. I have reduced the amount of remuneration sought by \$10,857.00 excluding GST.

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Page 57

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

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

**Remuneration approval**

*Winding up*

176. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$924,169.40 inclusive of GST, represents a fair and reasonable amount for remuneration for the Relevant Period and that the work undertaken to which the remuneration relates was necessary for the proper conduct of the winding up of the FMIF pursuant to the Orders.
177. I respectfully request this Honourable Court to make orders that my remuneration in relation to my receivership appointment for the Relevant Period be fixed in the amount of \$924,169.40 inclusive of GST.
178. As the winding up of the FMIF is ongoing, there will be a need for further applications for approval of remuneration. These will be made on a regular basis.

*Statements of Receipts and Payments*

179. Full details of all receipts and payments during the course of the winding up of the FMIF are provided in statements of receipts and payments lodged by the DB Receivers, or myself, with ASIC.
180. I have lodged my own statements of receipts and payments with ASIC as required during the course of the winding up, but prior to the retirement of the DB Receivers, and the transfer of control of the bank accounts of the FMIF to me, my statements of receipts and payments only contained limited information including my remuneration and disbursements
181. Copies of statements of receipts and payments lodged by the DB Receivers with the Australian Securities and Investments Commission with respect to the winding up of the FMIF, appear at:

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Page 58

Signed:


Witnessed by:


  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (a) the following pages of the exhibits to my November 2018 Affidavit:
- (i) Pages 494 to 506 – Receipts and payments account for the period 11 July 2013 to 10 January 2014;
  - (ii) Pages 507 to 520 – Receipts and payments account for the period 11 January 2014 to 10 July 2014;
  - (iii) Pages 521 to 536 – Receipts and payments account for the period 11 July 2014 to 10 January 2015;
  - (iv) Pages 537 to 568 – Receipts and payments account for the period 11 January 2015 to 10 July 2015;
  - (v) Pages 569 to 583 – Receipts and payments account for the period 11 July 2015 to 10 January 2016;
  - (vi) Pages 584 to 597 – Receipts and payments account for the period 11 January 2016 to 10 July 2016;
  - (vii) Pages 598 to 610 – Receipts and payments account for the period 11 July 2016 to 10 January 2017;
  - (viii) Pages 611 to 622 – Receipts and payments account for the period 11 January 2017 to 10 July 2017;
  - (ix) Pages 623 to 632 – Receipts and payments account for the period 11 July 2017 to 10 January 2018; and
  - (x) Pages 633 to 640 – Receipts and payments account for the period 11 January 2018 to 10 July 2018;
- (b) The following pages of the exhibits to my July 2021 Affidavit:
- (i) Pages 488 to 498 – Form 5603 End of Administration Return dated 10 January 2019 for the period 11 July 2018 to 10 December 2018;

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Page 59

Signed: 

Witnessed by: 


Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

- (ii) Pages 514 to 516 Form 492 Request for Correction dated 7 February 2019 for the period 11 December 2019 to 14 December 2019
182. Copies of the following documents lodged by me with ASIC appear within the exhibits to my July 2021 Affidavit:
- (a) Pages 499 to 513 - Form 5602 Annual Administration Return dated 4 November 2019 for the period 8 August 2018 to 7 August 2019
  - (b) Pages 517 625 - Form 5602 Annual Administration Return dated 4 November 2020 for the period 8 August 2019 to 7 August 2020.
183. At pages 234 to 249 of the Bundle is a copy of the Form 5602 Annual Administration Return dated 28 October 2021 lodged by me for the 12 month period ended 7 August 2021.
184. A summary of receipts and payments:
- (a) For the period 15 December 2018 (when I took over operation of the Fund's bank accounts), until 30 April 2019, appears at paragraph 227 of my June 2019 Affidavit;
  - (b) for the period from 1 May 2019 until 31 October 2019, appears at paragraph 232 of my November 2019 Affidavit;
  - (c) for the period 1 November 2019 to 30 April 2020, appears at paragraph 238 of my May 2020 Affidavit;
  - (d) for the period 1 May 2020 to 31 October 2020, appears at paragraph 187 of my March 2021 Affidavit;
  - (e) for the period 1 November 2020 to 30 April 2021, appear at paragraph 178 of my July 2021 Affidavit.

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Page 60

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 85106

185. A summary of the receipts and payments for the period 1 May 2021 to 31 October 2021, appears hereunder:

Description	Amount (\$)
<b>Receipts</b>	
Interest	88,624.53
GST Received	433,075.71
Cost Order - proceedings 2166/2015	20,000.00
<b>Total receipts</b>	<b>541,700.24</b>
<b>Payments</b>	
Bank charges	(90.00)
Custodian fees	(16,664.00)
Receivers fees and disbursements	(1,387,611.78)
Legal fees and disbursements	(5,066,424.46)
Liquidators' fees	(243,236.90)
Cost Order - Remuneration Application	(15,768.77)
IT expenses	(64,285.15)
Printing and stationary	(11,231.96)
Record management and storage	(7,125.82)
Other expenses	(0.41)
<b>Total payments</b>	<b>(6,812,439.25)</b>
<b>Net receipts (payments)</b>	<b>(6,270,739.01)</b>

*Financial Reports*

186. Copies of the following financial statements of the FMIF prepared by BDO during the winding up, appear:

(a) At the following pages of the exhibits to my November 2018 Affidavit:

Signed: 

Witnessed by: 

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106


- (i) Pages 641 to 665 - Financial statements of the FMIF for the year ending 30 June 2014;
  - (ii) Pages 666 to 688 - Financial statements of the FMIF for the year ending 30 June 2015;
  - (iii) Pages 689 to 711 - Financial statements of the FMIF for the year ending 30 June 2016;
  - (iv) Pages 712 to 736 - Financial statements of the FMIF for the year ending 30 June 2017; and
  - (v) Pages 737 to 762 - Financial statements of the FMIF for the year ending 30 June 2018;
- (b) At pages 170 to 195 of the exhibits to my June 2019 Affidavit – financial statements of the FMIF for the half-year ending 31 December 2018;
  - (c) At pages 207 to 231 of the exhibits to my November 2019 Affidavit - financial statements of the FMIF for the financial year ending 30 June 2019;
  - (d) At pages 212 to 237 of the exhibits to my May 2020 Affidavit - financial statements of the FMIF for the financial half year ending 31 December 2019;
  - (e) At pages 628-654 of the exhibits to my March 2021 Affidavit - financial statements of the FMIF for the financial year ending 30 June 2020;
  - (f) At pages 627 to 651 of the exhibits to my July 2021 Affidavit - financial statements of the FMIF for the financial half year ending 31 December 2020.

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Page 62

Signed:

Witnessed by:

  
Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

187. At pages 250 to 275 of the Bundle is a copy of the financial statements of the FMIF for the financial year ending 30 June 2021.
188. These financial statements include details of the remuneration, disbursements and legal fees of the DB Receivers, myself, and the Liquidators in the winding up of the FMIF.

*Legal professional privilege*

189. In this Affidavit, I have referred to dealings with solicitors and Counsel in order to explain work undertaken for which I seek to be remunerated. I do not intend, in doing so, to waive any legal professional privilege that may attach to communications between me and my solicitors and Counsel.
190. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

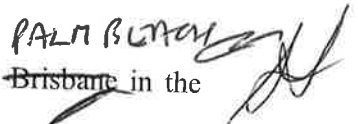
Sworn by **DAVID WHYTE** on the 8<sup>th</sup> day of November 2021 at ~~Brisbane~~ in the presence of:



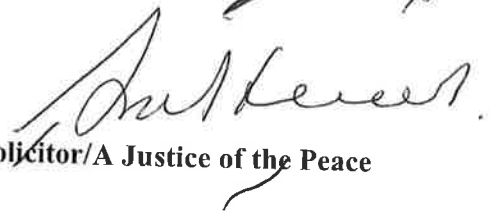
A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

**Deponent**

*PALM BURTON*



A handwritten signature in black ink, appearing to be 'PALM BURTON' with a stylized flourish at the end.



A handwritten signature in black ink, appearing to be 'Sharon Margaret Stevens' with a long horizontal stroke at the bottom.

**Solicitor/A Justice of the Peace**

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

**SUPREME COURT OF QUEENSLAND**

**REGISTRY:** Brisbane  
**NUMBER:** 3383 of 2013

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

AND

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

AND

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

AND

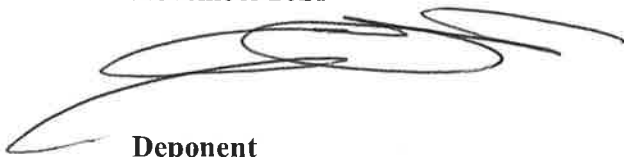
**Third Respondent:** **ROGER SHOTTON**

AND

**Intervener:** **AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION**

**CERTIFICATE OF EXHIBIT**

Exhibit "**DW-126**" to the Affidavit of **DAVID WHYTE** sworn this 8th day of  
November 2021



**Deponent**



**Solicitor/Justice of the Peace**

Sharon Margaret Stevens  
COMMISSIONER OF DECLARATIONS  
QLD 95106

**CERTIFICATE OF EXHIBIT:**  
Form 47, R.435

Filed on behalf of the Applicant

02070023-012

TUCKER & COWEN  
Solicitors  
Level 8, 300 George Street  
Brisbane, Qld, 4000  
Tel: (07) 300 300 00  
Fax: (07) 300 300 33



**SUPREME COURT OF QUEENSLAND**

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

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**AND**

**Third Respondent:** **ROGER SHOTTON**

**AND**

**Intervener:** **AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION**

**INDEX OF EXHIBITS**

<b>No.</b>	<b>DW-126</b>	<b>Date</b>	<b>Page No.</b>
1.	Hourly charge out rate schedules of the BDO practice groups across that applied during the Relevant Period	Various	1, 2
2.	Breakdown of time charged by BDO employees, including disbursements charged against my appointment	Various	3 – 4
3.	Schedule of Work performed by staff of BDO during the Relevant Period	Various	5 – 98
4.	Schedule of work performed – the Auditor's Claim	Undated	99 – 131
5.	Schedule of work performed – the Bellpac bonds proceedings	Undated	132

<b>No.</b>	<b>DW-126</b>	<b>Date</b>	<b>Page No.</b>
6.	Schedule of work performed – the Ross Lamb bankruptcy	Undated	133
7.	Schedule of work performed – administrative and non-litigious work	Undated	134 – 196
8.	File summary search for Auditor's Claim	3.11.2021	197 – 203
9.	Orders of Justice Dalton made in proceedings 2166/15	8.10.2021	204 – 205
10.	ASIC Instrument 20-0166	03.03.2020	206 – 207
11.	34th Report to Members	30.6.2021	208 – 217
12.	35th Report to Members	30.9.2021	218 – 233
13.	Form 5602 Annual administration return for period 8.8.2020 to 7.8.2021	28.10.2021	234 – 249
14.	Financial statements of the FMIF for the financial year ending 30 June 2021	30.9.2021	250 - 275