

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
SWORN ON 9 APRIL 2024**

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.

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Signed: 

Witnessed by: 

AFFIDAVIT:
Form 46, R.431

Filed on behalf of the Applicant

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2. I refer to:
- (a) My affidavit sworn and filed on 29 June 2022 and filed on 5 September 2022 ("**September 2022 Affidavit**") in support of my application for approval of remuneration filed 5 September 2022; and
 - (b) My affidavit sworn 9 April 2024 ("**Finalisation Affidavit**"), in support of an application by me for authority to make a final distribution to FMIF members and other orders to finalise the winding up of the LM First Mortgage Income Fund ("**FMIF**") ("**Finalisation Application**").
3. Now produced and shown to me and marked "**DW-129**" is an indexed paginated bundle of the documents referred to in this Affidavit ("**the Bundle**").

Appointments

Receivership

4. I refer to paragraphs 3 to 8 of my September 2022 Affidavit and paragraphs 21 to 34 of my Finalisation Affidavit in relation to my appointments concerning the FMIF.
5. I also 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.

References

6. Throughout this Affidavit, where I refer to:-
- (a) "BDO", I am referring in a 'short-hand' way to staff at BDO under my supervision;
 - (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.

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7. 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)
AIS	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 AIS, for equitable compensation against LMIM, and for a constructive 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
Finalisation Application	Application of David Whyte for authority to make a final distribution to FMIF members and other orders to finalise the winding up of the FMIF
Finalisation Affidavit	Affidavit of David Whyte sworn 9 April 2024
FMIF	the LM First Mortgage Income Fund ARSN 089 343 288



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Defined Term	Definition
Fourth FTI Remuneration Application	The application filed by Mr Park on 15 February 2022 in Supreme Court of Queensland proceeding 3508/15 seeking payment of remuneration of \$33,071.31 from the FMIF for the period 1 November 2020 to 30 November 2021
Fourth FTI Expenses Application	The application filed by Mr Park and LMIM on 7 March 2022 in Supreme Court of Queensland proceeding 3508/15 seeking payment of expenses of \$50,579.73 from the FMIF.
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 or FMIF	the LM First Mortgage Income Fund ARSN 089 343 288
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.
Liquidator's Proceeding	Supreme Court of Queensland proceeding number 14389/2022
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 (referred to as the Clear Accounts Proceeding in the Finalisation Affidavit)



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Defined Term	Definition
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
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
November 2021 Affidavit	Affidavit of David Whyte filed 2 December 2021 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 2022 to 29 February 2024
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



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Defined Term	Definition
September 2022 Affidavit	Affidavit of David Whyte filed 5 September 2022 in this proceeding (CFI: 529, 530 and 531)
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

Previous Remuneration

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

Remuneration Period	Remuneration Order	Amount of remuneration approved (incl. of GST)	Approximate remuneration per month
8 August 2013 to 31 March 2014	McMurdo J on 28 August 2014	\$702,480.35	\$88,000
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)	\$412,000


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Remuneration Period	Remuneration Order	Amount of remuneration approved (incl. of GST)	Approximate remuneration per month
		\$194,052.10 (controllership)	
1 November 2015 to 30 April 2016	Douglas J on 26 June 2016	\$1,405,155.40 (receivership) \$36,510.65 (controllership)	\$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 (receivership) \$26,155.25 (controllership)	\$218,000
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

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Remuneration Period	Remuneration Order	Amount of remuneration approved (incl. of GST)	Approximate remuneration per month
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
1 May 2021 to 31 October 2021	Callaghan J on 16 December 2021	\$924,169.40 (receivership)	\$154,000
1 November 2021 to 30 April 2022	Bowskill J on 18 October 2022	\$381,555.35 (receivership)	\$64,000

9. I now make an application for approval of my remuneration for work performed in the period from 1 May 2022 to 29 February 2024 ("**Relevant Period**") for acting as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution in the amount of \$1,181,293.30 (inclusive of GST).

Executive Summary

Winding up and asset realisation progress

10. I refer to paragraphs 142 to 152 of my Finalisation Affidavit, which sets out details of the current cash at bank, the distributions paid to investors to date and the estimated final return to investors.
11. The remuneration sought in this application for the Relevant Period equates to about \$53,695.15 per month (inclusive of GST) for the Relevant Period. As compared to my previous approved remuneration, this amount is the lowest monthly average amount for all previous remuneration applications, by a reasonable margin, reflecting that the winding up is coming to an end.

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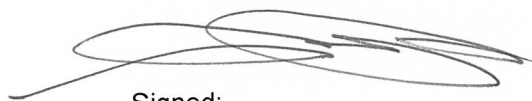


12. The total of my remuneration approved to date is \$20,901,097.25 (inclusive of controllership remuneration and GST). The expenses (primarily legal expenses) incurred by me in carrying out the terms of my appointment, are included in the receipts and payments accounts and financial statements referred to in paragraphs 128 to 136(g) herein.

All Court Proceedings

13. A summary of various court proceedings (including matters 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:-

Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>Bruce v LM Investment Management Ltd (in liq.) in its capacity as responsible entity of the LM First Mortgage Income Fund & Ors.</p> <p>Supreme Court of Queensland Proceeding No. 3383/13 ("Bruce Proceeding")</p>	<p>This is the proceeding in which I was appointed and winding up orders made.</p> <p>Various interlocutory applications have been made in the proceeding including applications for approval of my remuneration, and applications for judicial advice.</p>	<p>Trade On and Administration</p>
<p>LM Investment Management Ltd (in liq.) in its capacity as responsible entity for the LM First Mortgage Income Fund (Receivers & Managers Appointed) (Receiver Appointed) v EY (formerly known as Ernst & Young) (a firm) & Ors., ("Auditors Claim")</p> <p>Supreme Court of Queensland Proceeding No. 2166/15</p>	<p>Claim by LMIM as RE of the FMIF against the auditors (EY) and two partners of EY for misleading and deceptive conduct and professional negligence</p>	<p>Assets</p>


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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<p>John Richard Park and Ginette Dawn Muller as liquidators of LM Investment Management Ltd (in liq.) (Receivers and Managers Appointed) the responsible entity of the LM First Mortgage Income Fund & Anor. v David Whyte as the person appointed to supervise the winding up of the LM First Mortgage Income Fund</p> <p>Supreme Court of Queensland Proceeding No. 3508/2015</p> <p>("FTI Remuneration Proceeding")</p>	<p>Application by Mr Park, Ms Muller, and LMIM for directions as to how the FMIF is to be wound up and as to the extent of their powers, functions, and duties.</p> <p>By Further Amended Originating Application filed on 16 December 2015, Mr Park and Ms Muller sought remuneration and expenses as the liquidators (and as administrators) of the Responsible Entity LMIM.</p> <p>By further Application filed 20 May 2016 pursuant to the Orders of Jackson J made 12 December 2015, 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</p>	<p>Trade On and Investigations</p>

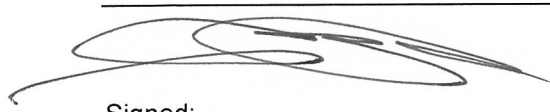
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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
	<p>FMIF ("Dual Appointment Application").</p> <p>By application filed on 1 February 2019, I sought orders authorising me to make an interim distribution to FMIF members of up to \$40 million and declarations as to the proper entitlements of members holding "Class C" units in the FMIF ("Authority Application").</p> <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 ("EY Expenses Application"), and LMIM's legal costs relating to the Claim against the MPF ("Bellpac Expenses Application").</p> <p>By application filed on 12 February 2021, Mr Park sought payment of further remuneration of \$260,633.12 from the FMIF ("Third FTI Remuneration Application").</p> <p>By application filed on 15 February 2022, Mr Park sought payment of further remuneration of \$33,071.31 from the FMIF ("Fourth FTI Expenses Application").</p> <p>By application filed on 7 March 2022, Mr Park and LMIM sought payment of legal costs of \$50,579.73 from the FMIF</p>	



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



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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
<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, settlement negotiations continued which culminated in a settlement being reached on 1 September 2021</p>	<p>Assets</p>
<p>LM Investment Management Ltd (Receivers and Managers appointed) (in Liquidation) as responsible entity for the LM First Mortgage Income Fund (Receiver Appointed) v LM Investment Management Ltd (Receivers and Managers appointed)(in Liquidation)</p> <p>Supreme Court of Queensland Proceeding No.11560/16</p> <p>("LMIM claim")</p>	<p>Claim against LMIM in relation to payments LMIM caused to be made from the property of the FMIF which were not authorised by the constitution or the Act and material losses suffered by the FMIF by reason of breaches of duty by LMIM. This claim is stayed until further order.</p>	<p>Assets</p>
<p>LM Investment Management Limited (in liquidation) & Ors v David Whyte as receiver of LM Investment Management Limited (receivers & managers appointed) (in liquidation) as responsible entity of the LM First Mortgage Income Fund</p> <p>Supreme Court of Queensland Proceeding No.14389/22</p>	<p>Proceeding by LMIM, in its own capacity, as RE of the FMIF and the Feeder Funds (which Mr Park caused LMIM to commence), against me seeking, inter alia, orders or directions to prevent payment of costs orders made in favour of the director defendants in proceeding BS12317/14 from property of the FMIF .</p>	<p>Trade On</p>



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Title, Court & No.	Description of proceeding	Remuneration category in the Relevant Period
("Liquidator Proceeding")		

Summary of work in the Relevant Period

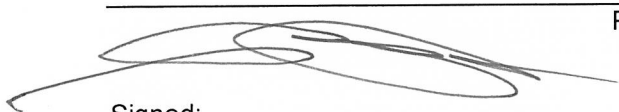
14. By way of short summary, my staff and I have undertaken the following work in the Relevant Period, that I considered necessary for the winding up of the FMIF:-

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

- (i) providing instructions to my solicitors in respect of the conduct of the proceeding;
- (ii) attending a mediation of the proceeding, which resulted in a settlement of the claim;
- (iii) providing instructions to my solicitors in respect of an application for judicial advice in relation to the settlement;

(b) In relation to Supreme Court of Queensland Proceeding 3383/13 ("**Bruce Proceeding**"), work to progress my 17th application for approval of remuneration relating to the period 1 November 2021 to 30 April 2022, including:

- (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 18 October 2022;



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- (c) In relation to Supreme Court of Queensland Proceeding 14389/22 (“**Liquidator’s Proceeding**”), work to defend the proceeding commenced by LMIM, in its own capacity and as RE of each of the Fund, the LM Institutional Currency Protected Australian Income Fund and the LM Currency Protected Australian Income Fund, including:
- (i) providing instructions to my solicitors in relation to the conduct of the proceeding;
 - (ii) participating in two mediations (one held on 21 March 2023 and a second mediation held on 30 October 2023);
 - (iii) a detailed review of documents in relation to the matter in order to provide detailed instructions to my solicitors;
 - (iv) providing detailed instructions and documents to my solicitors in relation to preparation of a Defence and Counterclaim;
- (d) Complying with the conditions of the ASIC relief from financial reporting and audit requirements and preparing and submitting three further applications to ASIC to extend this relief;
- (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.

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- (f) Preparation of unit price calculation as at 30 June 2022, 31 December 2022 and 30 June 2023;
 - (g) Preparation of management accounts for the year ended 30 June 2022, half year ending 31 December 2022, year ended 30 June 2023;
 - (h) Preparation of reports to members issued in June 2022, September 2022, December 2022, March 2023, June 2023, September 2023 and December 2023; and
 - (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.
15. The above summary of work undertaken by my staff and me is detailed further in my Affidavit below.

Status of the FMIF assets

16. All real property assets have now been sold.
17. All of the major legal proceedings involving the FMIF have now been determined or resolved, subject to the proposed discontinuance of the LMIM Claim (which is referred to in the Finalisation Affidavit as the "Clear Accounts Proceeding") as referred to in paragraphs 65 to 68 below.

Status of the DB Receivers

18. I refer to paragraphs 21 and 22 of my June 2018 Affidavit for background in relation to this issue.
19. On 10 December 2018, Joseph Hayes and Anthony Connelly, (the "DB Receivers") retired.

Distribution

20. 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

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justified entering into and performing, the deed of settlement entered into with respect to the Feeder Fund Proceeding (“**Judicial Advice Application**”).

21. 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 the Authority Application.
22. On 2 October 2019, the Court authorised me to make an interim distribution of up to \$40 million.
23. 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

24. As part of the winding up process, I have reduced the costs of managing the FMIF.
25. 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.
26. The current 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

27. 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;

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- (d) risk of personal liability being incurred under agreements entered into with residents of the retirement villages;
- (e) the number and complexity of issues in the period from 2008 to 2013 requiring my various investigations;
- (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.

28. 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 work required in this Relevant Period in relation to the Auditor's Claim, including preparation for and participating in a mediation which resulted in settlement of the claim;
- (b) the work required in this Relevant Period in relation to the Liquidator's Proceeding as detailed in paragraph 14(c) above;
- (c) 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.

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Time recording

29. 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.
30. The partners of BDO Business Restructuring Pty Ltd (“**BR**”) are members of ARITA, and follow the ARITA Statement of Best Practice – Remuneration.
31. Each task and the time for carrying out each task, is only recorded once.

Teams assisting

32. 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.
33. 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, for the business restructuring practice group which I am a part of, on and from 1 July 2023, and for the audit practice group, on and from 1 January 2023 and 1 January 2024 as set out in those schedules. I note that, as the person appointed by the Court, my time has been charged at the rate of a Partner/Appointee.

Audit

34. During the Relevant Period, the Audit team at BDO has assisted me by assisting with the review and completion of the management accounts for the year ended 30 June 2022, half year ending 31 December 2022, year ended 30 June 2023.
35. Given the expertise required to perform this work, I believe it was necessary for the Audit team to assist me with the above matters.

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Categories of work

36. 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.
37. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with members of the FMIF could be recorded under either Administration or Creditors. However, each task is only recorded once, and the time for carrying out each task is only recorded once.
38. 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.
39. At pages 5 to 178 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.
40. 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

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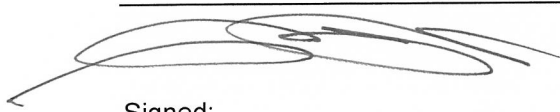
time it took and the amount charged. A summary of the tasks undertaken, time taken and amount charged is detailed below:-

Category/area	Total hours	Amount (\$)
Assets	49.6	32,034.00
Trade on	638.5	328,686.50
Creditors	2,134.5	652,039.00
Dividend	10.5	4,275.00
Administration	253	55,203.50
Total (exclusive of GST)	3,089.1	1,073,903.00
GST		107,390.30
Total claim (inclusive of GST)		1,181,293.30

41. The Schedule reflects the fact that I delegated to members of my staff the performance of a number of tasks and activities in the winding up. This is in accordance with my usual practices. I delegated work so that the level of experience of the person responsible for particular work reflected, and was appropriate to, the nature of the work. For example, throughout the winding up, I have endeavoured to ensure that the least complex of the required work is done by junior members of my staff at lower charge-out rates than senior members of my staff and me.

42. I refer in particular to the average hourly rates for work undertaken in the Relevant Period (as set out within the breakdown of the remuneration 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 \$348.00 per hour (excluding GST);



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- (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 \$646.00 per hour (excluding GST);
 - (c) Tasks of somewhat less complexity were delegated to junior staff members, such as work relating to Creditors and Administration, which had average rates of \$305.00 and \$218.00 per hour (excluding GST) respectively;
 - (d) Each of the average rates referred to above is significantly less than the rates charged by Partners of BDO, being \$690.00 per hour (excluding GST) during the Relevant Period.
43. The entries in the Schedule reflect BDO's scale of insolvency and other hourly charge out rates.
44. 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.
45. 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.
46. The tasks detailed in the Schedule were carried out in furtherance of my appointment under s 601NF(1) of the Act to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution.

Assets

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


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- (b) Court proceedings, including:-
 - (i) Progressing the Auditors Claim to resolution;
 - (ii) The litigation and other matters associated with the realisation of bonds held in WCL by Bellpac;

49. In total, \$32,034 (exclusive of GST) of remuneration is sought for approval in the Relevant Period in respect of the "Assets" category.

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

51. Most of the remuneration in this Category in this Relevant Period, related to the Auditor's Proceeding.

Court Proceedings

52. Generally, work in respect of court proceedings that have been initiated by me is now attributed to the "Assets" category, having formerly been charged to the "Investigations" category of work. The reason for this move is to reflect that the investigation aspect of the work has for the most part come to an end and that the court proceedings filed are treated as what is considered to be an asset of the FMIF.

Auditors Claim - Supreme Court of Queensland Proceeding 2166/15

53. 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, 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 paragraphs 71 to 79 of my July 2021 Affidavit and paragraphs 71 to 77 of my December 2021 affidavit, and paragraphs 71 to 79 of my September 2022 Affidavit set out the steps in the proceeding up to 24 June 2022.

54. I also refer to paragraphs 66 to 74 of my Finalisation Affidavit which sets out further background to the proceeding and steps taken in the proceeding after 24 June 2022.

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55. During the Relevant Period, the Plaintiff:
- (a) attended a mediation on 31 May 2022 which resulted in a confidential settlement, subject to judicial advice that I was justified in causing the plaintiff to settle the proceeding;
 - (b) prepared for review hearings and produced affidavit material in preparation;
 - (c) was served with an independent expert report by the Defendant;
 - (d) filed a 10th further Amended Statement of Claim and Amended Reply to the Defence to the Eighth Further Amended Statement of Claim;
 - (e) prepared for court review hearings;
 - (f) sought and obtained judicial advice that I was justified in causing the plaintiff to settle the proceedings on the terms agreed.
56. At pages 179 to 186 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 April 2024, which lists the court documents filed in the proceeding.
57. During the Relevant Period, the work of my staff and I included:
- (a) The work with respect to the Auditors Claim detailed in paragraphs 14(a) of this Affidavit;
 - (b) Reviewing various correspondence received from my solicitors;
 - (c) Reviewing correspondence received from the solicitors for the Defendants;
 - (d) Preparing for and providing my solicitors with instructions in relation to review hearings;
 - (e) Providing instructions to my solicitors in relation to the preparation and filing of amended pleadings;
 - (f) Reviewing brief to mediator;
 - (g) Reviewing expert reports;

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- (h) Reviewing draft deed of settlement and providing instructions regarding same;
- (i) Providing instructions in relation to and attending hearing of application seeking judicial advice in relation to the settlement.

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

- 58. I refer to paragraphs 51 to 65 of my Finalisation Affidavit in relation to the Claim against the MPF and the Liquidator's Proceeding.
- 59. The background to the Claim against the MPF is also 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, paragraphs 89 to 91 of my July 2021 Affidavit and paragraphs 80 to 83 of my September 2022 Affidavit.
- 60. During this Relevant Period, the work performed by BDO staff and myself in relation to the Claim against the MPF has, included the following:
 - (a) Reviewing invoices and other documents regarding the amounts claimed under the costs orders;
 - (b) Negotiating a settlement of the quantum of the costs orders with the director defendants;
 - (c) Providing instructions to my solicitors in relation to the settlement of the quantum of the costs orders with the director defendants; and
 - (d) Following dismissal of the Liquidator's Proceeding, arranging payment of the costs to the director defendants.

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Federal Court of New South New Wales Proceeding 2016/00120239

61. I refer to paragraphs 84 to 89 of my September 2022 Affidavit in relation to the \$2M proceeding and the \$8M proceeding and paragraphs 90 to 96 of my September 2022 Affidavit in relation to this proceeding.
62. An update in relation to the current status (as at the time of the relevant report) of this matter was provided to investors at:-
- (a) paragraph 2.1.3 of my report to investors dated 30 June 2022; and
 - (b) paragraph 3.1.3 of my report to investors dated 30 September 2022;
63. During this Relevant Period, a further distribution of \$250,000 was paid by the Bellpac liquidator on 18 May 2022 and \$45,485.77 on 5 July 2022 following the receipt of the proceeds from the compulsory acquisition of the shares.
64. During the Relevant Period, the work of my staff and I has included:-
- (a) Liaising with the Bellpac liquidator regarding the timing and payment of the interim and final distributions; and
 - (b) Liaising with the Bellpac liquidator regarding the finalisation of the Winding Up of Bellpac.

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

65. 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.
66. This proceeding is currently stayed for the time being for the reasons given in paragraphs 104 and 105 of my March 2021 Affidavit.
67. No work was performed in relation to this proceeding during this Relevant Period.
68. In the Finalisation Application, a direction is sought that I am justified discontinuing this proceeding.

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The Trust Company (PTAL) Ltd v Ross Lamb

69. I refer to paragraphs 96 to 104 of my Finalisation Affidavit which sets out some background to, and the status of this Proceeding.
70. As set out in paragraphs 103 and 104 of my Finalisation Affidavit, final distributions were received from the trustee of the bankrupt estate on 22 November 2022 and 10 January 2023.
71. 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 regarding the progression of the tax objection; and
 - (b) receipt of \$810,000 on 22 November 2022 and \$66,850 on 10 January 2023.

Trade on

72. Generally, work is considered to be "*Trade-on*" if the work is considered to be incidental to the winding up.
73. Work undertaken in relation to trade-on may be recorded in more than one category, however, the work undertaken is only recorded once.
74. During the Relevant Period, work attributed to this category included:-
- (a) work related to the Liquidator's Proceeding, as set out in paragraph 84 of this affidavit;
 - (b) preparation of unaudited management accounts for the financial year ended 30 June 2022, half year ending 31 December 2022, and year ended 30 June 2023;
 - (c) reviewing and processing payments of expenses;
 - (d) maintenance of the Microsoft AX investor database. This involved accounting for receipts and payments, reconciling bank accounts and processing month end cash and year-end adjustments;

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- (e) maintenance of the Microsoft AX loan management database, including accounting for payments, reconciling statements and processing month end and year-end adjustments;
- (f) conducting internal meetings to discuss job management issues including:-
 - (i) maintenance of accounts and preparation of the management accounts for the financial year ended 30 June 2022, half year ending 31 December 2022, and year ended 30 June 2023;
 - (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.
- (g) meeting with members of the BDO Audit practice group regarding the preparation of the management accounts for the financial year ended 30 June 2022, half year ending 31 December 2022, and year ended 30 June 2023.

75. In total, \$328,686.50 (exclusive of GST) of remuneration is sought for approval in respect of the "Trade on" category during the Relevant Period.

Management Accounts

76. During the Relevant Period, my staff and I have undertaken the following tasks in respect of completing the management accounts for the periods set out in paragraph 14(g) above:-
- (a) Reviewing work papers to verify the accuracy of the management accounts;
 - (b) Ascertaining amounts that are outstanding at the relevant date;
 - (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:-

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- (i) either paid after the year end; or
- (ii) remaining to be paid, which relate to work incurred during the relevant financial year or half year ,
to determine the accrued expenses;
- (f) Calculating provisions for the remaining loan accounts or receivable balances and updating the loan spreadsheet;
- (g) Preparing a trial balance, and processing the:-
 - (i) accrued expense journals;
 - (ii) impairments journals;
 - (iii) bank transaction journals;
 - (iv) write off journals; and
 - (v) relevant expenses and income journals.
- (h) Preparing work papers to support the notes to the accounts, including, but not limited to, the movement in impairments as between the relevant accounting periods;
- (i) Preparing the management accounts for distribution to members, which includes:-
 - (i) a statement of comprehensive income;
 - (ii) a statement of financial position;
 - (iii) a statement of changes in net assets attributable to unitholders; and
 - (iv) notes to the accounts.
- (j) Liaising with the BDO Audit practice group regarding movements in asset values, provisions and default loans between the relevant accounting periods;

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- (k) Reviewing and amending the trial balance in respect to changes required by the BDO Audit practice group;
- (l) Reviewing and amending financial statements in respect to changes required by the BDO Audit practice group;
- (m) Reviewing and considering disclosure requirements with reference to Australian Accounting Standards; and
- (n) Reviewing and amending the management accounts and notes in accordance with Australian Accounting Standards and recommendations by my solicitors.

77. This work was, in my opinion, necessary for the winding up of the FMIF in accordance with its constitution. By undertaking this work, I am able to provide ongoing financial accounts to members and avoid incurring ongoing audit fees during the winding up.

Application to ASIC for financial reporting and audit relief

78. 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.

79. I refer to paragraphs 136 to 139 of my Finalisation Affidavit which contains details of three further applications to ASIC made during this Relevant Period.

80. The work performed in the Relevant Period with respect to the ASIC relief, included the work detailed in paragraph 14(d).

Liquidator's Proceeding

81. Mr Park caused LMIM to commence the Liquidator's Proceeding on 17 November 2022.

82. In the Originating Application, LMIM in its own capacity, as RE of the FMIF, and as RE of the Feeder Funds, sought a declaration that LMIM was not entitled to pay the costs orders made in favour of the director defendants in relation to the Claim against the MPF (referred to in paragraphs 58 to 64 above) from the property of the FMIF, an injunction restraining me from paying the costs from the FMIF and an order that I pay the costs orders personally.

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83. I refer to paragraphs 62 to 65 of my Finalisation Affidavit which sets out a summary of the key steps taken in this proceeding.
84. During the Relevant Period, the work of my staff and I in relation to this proceeding has included:
- (a) the work referred to in paragraph 14(c) above;
 - (b) Reviewing the originating application, supporting affidavits, and a request for subpoena filed in November 2022;
 - (c) Reviewing the Liquidator's statement of claim;
 - (d) Providing instructions to my solicitors in relation to a strike out application;
 - (e) providing instructions in relation to court reviews;
 - (f) liaising with and meeting with my solicitors and counsel in relation to these Proceedings;
 - (g) instructions to my solicitors in relation to settlement discussions and consent orders dismissing the proceeding.
85. At pages 187 to 190 of the Bundle is a schedule detailing the remuneration claimed in relation to the Liquidator Proceeding of \$174,395.00 (excluding GST).

Supreme Court of Queensland proceeding 3508 of 2015

86. 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 FMIF members, as detailed in paragraphs 146 to 172 and 179 to 189 of my May 2020 Affidavit and paragraphs 119 to 123 of my September 2022 Affidavit.

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Fourth Application by Liquidator for Approval of Remuneration and Fourth Application for Approval of Expenses

87. During this Relevant Period, the Fourth FTI Remuneration Application and the Fourth FTI Expenses Application were heard on 6 May 2022. I did not appear. The Court approved Mr Park's applications.
88. During the Relevant Period, work performed with respect to the Fourth FTI Remuneration Application and Fourth FTI Expenses Application, included:-
- (a) Corresponding with my solicitors in relation to and providing instructions in relation to the costs claimed by the Applicants and agreeing consent orders for the fixing of the amount of costs payable to the Applicants out of the FMIF; and
 - (b) Arranging payment of remuneration, expenses and costs from the assets of the FMIF in accordance with orders.

Creditor Indemnity Claims

89. 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.
90. During the Relevant Period, there was correspondence between my solicitors, the solicitors for the Liquidator and the solicitors for EY in relation to the Creditor Indemnity Claims, as set out in paragraphs 118 to 126 of my Finalisation Affidavit.
91. These claims have now been resolved.

Creditors

92. I am seeking approval for remuneration for the Relevant Period in the sum of \$652,039.00 (exclusive of GST) in respect of work that is categorised as "Creditors".
93. 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;

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- (c) maintaining and updating the AX investor management database; and
 - (d) corresponding with investors regarding the interim distribution, returned payments and reprocessing distributions after updating members details.
94. During the Relevant Period, the work performed by BDO staff and myself, in this Category included the work described in paragraphs 93 and 96 to 103.
95. 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

96. During the Relevant Period, I published on the FMIF website seven reports to members of the FMIF updating them as to the ongoing winding up of the FMIF. At pages:-
- (a) 191 to 199 of the Bundle is a copy of my 38th report to members;
 - (b) 200 to 218 of the Bundle is a copy of my 39th report to members;
 - (c) 219 to 227 of the Bundle is a copy of my 40th report to members;
 - (d) 228 to 242 of the Bundle is a copy of my 41st report to members;
 - (e) 243 to 251 of the Bundle is a copy of my 42nd report to members;
 - (f) 252 to 265 of the Bundle is a copy of my 43rd report to members; and
 - (g) 266 to 274 of the Bundle is a copy of my 44th 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.

97. 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;

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- (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 every second report, setting out the actions taken in the relevant 6 months period and proposed to be undertaken in the next 12-month period, as required by the conditions of the ASIC relief from financial reporting and audit obligations.

Contact with members in respect of reports to members

98. 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.

99. 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.

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

AX Database

101. 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.

102. 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.

103. 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

104. 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*".

105. This category relates to work undertaken in order to carry out and finalise interim capital distribution to investors in the amount of 6.5 cents per unit as per the Court order dated 2 October 2019.

106. In total, \$4,275.00 (exclusive of GST) in remuneration is sought for approval in respect of the "*Dividend*" category during the Relevant Period.

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107. 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, and is detailed in paragraph 14(e) of this Affidavit.

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

Administration

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

110. 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.

111. In total, \$55,203.50 (exclusive of GST) of remuneration is sought for approval in respect of the "Administration" category during the Relevant Period.

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

Applications for approval of remuneration

113. For the purposes of my remuneration application filed on 5 September 2022, work was undertaken in the Relevant Period, including:

- (a) the work detailed in paragraph 14(b);

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

Job management

114. 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 2022, financial half year ending 31 December 2022 and financial year ended 30 June 2023;
- (c) investor issues and content for my regular reports to members;
- (d) status of the various court proceedings;
- (e) status of creditor claims; and
- (f) coordinating my application for approval of my remuneration.

115. 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

116. 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.

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

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118. For the purposes of member communications, including my seven 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.

119. 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.

120. 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

121. 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.

122. 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.

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

Write-offs & reductions

124. 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 \$17,918.50 excluding GST.

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125. 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 – Relevant Period

126. Given the nature and volume of the work involved in this winding up, I believe that the sum of \$1,181,293.30 inclusive of GST for the Relevant Period, 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.

127. I respectfully request this Honourable Court to make orders that my remuneration in relation to my receivership appointment for the Relevant Period be fixed in the amount of \$1,181,293.30 inclusive of GST

Statements of Receipts and Payments

128. 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.

129. 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

130. 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:

(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;

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- (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;
- (ii) Pages 514 to 516 Form 492 Request for Correction dated 7 February 2019 for the period 11 December 2019 to 14 December 2019;

131. 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

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(b) Pages 517 625 - Form 5602 Annual Administration Return dated 4 November 2020 for the period 8 August 2019 to 7 August 2020.

132. At pages 234 to 249 of the Bundle of exhibits to my November 2021 Affidavit 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.

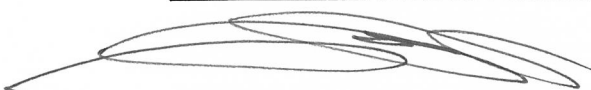
133. The Form 5602 Annual Administration Returns lodged by me for the 12 month periods ended 7 August 2022 and 7 August 2023 appear at pages 275 to 288 and at pages 289 to 304 of the Bundle respectively.

134. 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;
- (f) for the period 1 May 2021 to 31 October 2021, appear at paragraph 185 of my November 2021 Affidavit;
- (g) for the period 1 November 2021 to 30 April 2022, appear at paragraph 168 of my September 2022 Affidavit.

135. A summary of the receipts and payments for the period 1 May 2022 to 29 February 2024 appears hereunder:

Description	Amount (\$)
Receipts	



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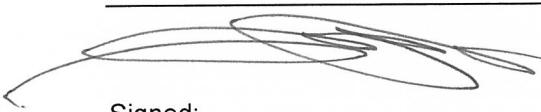
Description	Amount (\$)
Interest	3,422,208.71
Legal Recoveries	40,298,956.49
Bankrupt Estate of Ross Lamb Dividend	876,850.00
Total receipts	44,598,015.20
Payments	
ASIC assessment of relief application	(13,948.00)
Bank charges	(572.10)
Custodian fees	(44,000.00)
Receivers fees and disbursements	(401,582.10)
Creditor Indemnity Claims	(274,209.75)
Legal fees and disbursements	(6,953,449.11)
LMIM (In Liquidation) Liquidators' Fees	(33,071.31)
IT expenses	(211,211.20)
Printing and stationary	(35,247.50)
Record management and storage	(30,651.78)
Reprocess of the First Interim Distribution to investors (6.5 cents per unit)	(896.30)
Total Payments	(7,998,839.15)
Net Receipts (payments)	36,599,176.05

Financial Reports

136. 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:-

- (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;



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- (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;
 - (g) at pages 250 to 275 of the exhibits to my November 2021 Affidavit - financial statements of the FMIF for the financial year ending 30 June 2021;
 - (h) at pages 283 to 263 of the exhibits to my September 2022 Affidavit – financial statements of the FMIF for the financial half year ending 31 December 2021.
137. Copies of the following financial statements of the FMIF prepared by BDO during the winding up, appear at the following pages of the Bundle:-
- (a) at pages 305 to 327 of the Bundle for the financial year ending 30 June 2022;
 - (b) at pages 328 to 349 of the Bundle for the financial half year ending 31 December 2022;
 - (c) at pages 350 to 371 of the Bundle for the financial year ending 30 June 2023;

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Witnessed by:



