

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 12317/14

Plaintiff:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

AND

First Defendant :

PETER CHARLES DRAKE

AND

Second Defendant:

LISA MAREE DARCY

AND

Third Defendant:

EGHARD VAN DER HOVEN

AND

Fourth Defendant:

FRANCENE MAREE MULDER

AND

Fifth Defendant:

JOHN FRANCIS O'SULLIVAN

AND

Sixth Defendant:

SIMON JEREMY TICKNER

AND

Seventh Defendant:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461

AND

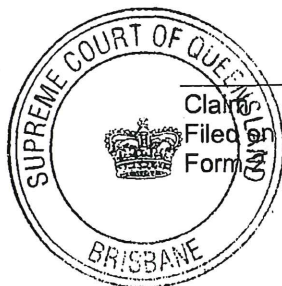
Eighth Defendants:

KORDA MENTHA PTY LTD ACN 100 169 391 AND CALIBRE CAPITAL PTY LTD ABN 66 108 318 985 IN THEIR CAPACITY AS JOINT AND SEVERAL TRUSTEES OF THE LM MANAGED PERFORMANCE FUND

CLAIM

The plaintiff claims:

1. As against each of the first, second, third, fourth, fifth, sixth and seventh defendants:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that each defendant pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;



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Level 11, 111 Eagle Street
BRISBANE QLD 4000
Tel No.: 07 3231 1666
Fax No: 07 3229 5850
SCZ:JSO:201401822

(b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of \$15,546,147.85 from 8 September 2011 until the date of judgment; and

(c) Costs.

2. As against the seventh and eighth defendants a declaration that:

- (a) The seventh defendant is entitled to be indemnified out of the assets of the LM Managed Performance Fund in respect of the liability of the seventh defendant to the plaintiff in these proceedings;
- (b) The seventh defendant has a lien or charge over the assets and undertakings of the LM Managed Performance Fund in respect of the liability of the seventh defendant to the plaintiff in these proceedings;
- (c) The plaintiff is entitled to be subrogated to the rights of the seventh defendant in respect of the assets of the LM Managed Performance Fund.

3. Such further or other orders as this Court deems fit.

The plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry on 19 December 2014:

Registrar:



To the defendants:

TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff's address for service shown in this claim as soon as possible.

Address of Registry: 415 George Street, Brisbane Qld 4000

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

If you object that these proceedings have not been commenced in the correct district of the Court, that objection must be included in your Notice of Intention to Defend.

PARTICULARS OF THE PLAINTIFF:

Name: LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208
461 AS RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND ARSN 089 343 288

Plaintiff's residential
or business address:

c/- David Whyte, BDO
Level 10
12 Creek Street
BRISBANE QLD 4000

Plaintiff's solicitors name:
and firm name:

Scott Couper
Gadens Lawyers

Solicitor's business address:

Level 11
111 Eagle Street
BRISBANE QLD 4000

Address for service:

Level 11
111 Eagle Street
BRISBANE QLD 4000

Telephone: 07 3231 1666
Fax: 07 3229 5850

Signed:



Description:

Solicitor for the plaintiff

Dated:

19 December 2014

Claim is to be served on:

The First Defendant, Second Defendant, Third Defendant,
Fourth Defendant, Fifth Defendnat, Sixth Defendant, Seventh
Defendant and Eighth Defendants

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER:

Plaintiff: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

First Defendant: **PETER CHARLES DRAKE**

AND

Second Defendant: **LISA MAREE DARCY**

AND

Third Defendant: **EGHARD VAN DER HOVEN**

AND

Fourth Defendant: **FRANCENE MAREE MULDER**

AND

Fifth Defendant: **JOHN FRANCIS O'SULLIVAN**

AND

Sixth Defendant: **SIMON JEREMY TICKNER**

AND

Seventh Defendant: **LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461**

AND

Eighth Defendants: **KORDA MENTHA PTY LTD ACN 100 169 391 AND CALIBRE CAPITAL PTY LTD ABN 66 108 318 985 IN THEIR CAPACITY AS JOINT AND SEVERAL TRUSTEES OF THE LM MANAGED PERFORMANCE FUND**

STATEMENT OF CLAIM

This claim in this proceeding is made in reliance on the following facts:

Parties and roles

1. The seventh defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 077 208 461 (**LMIM**):

Statement of claim
Filed on behalf of the Plaintiff
Form 16 Rules 22, 146

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- (a) is and was at all material times a company duly incorporated and capable of suing in its own name;
 - (b) is and was at all material times the Responsible Entity (**RE**) of the LM First Mortgage Income Fund ARSN 089 343 288 (**FMIF**);
 - (c) was, until order of this Honourable Court on 12 April 2013 (**LM Order**), trustee of the trust named The LM Managed Performance Fund (**MPF**);
 - (d) was placed into voluntary administration on 19 March 2013 and John Park and Ginette Muller of FTI Consulting were appointed voluntary administrators;
 - (e) had receivers and managers, Joseph Hayes and Anthony Connelly of McGrathNicol, appointed to certain of its property held in its capacity as RE of FMIF on 11 July 2013 by Deutsche Bank AG (**Deutsche**);
 - (f) was placed into liquidation on 1 August 2013 following a resolution of its creditors that it be placed into liquidation and that John Park and Ginette Muller be appointed liquidators (**Liquidators**).
2. At all material times each of the first to sixth defendants was a director of LMIM.
3. By Order of this Honourable Court dated 21 August 2013 (**FMIF Order**), David Whyte (**Receiver**), Partner of BDO Business Recovery & Insolvency (Qld) Pty Ltd:
- (a) was appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution (**Appointment**);
 - (b) was appointed as receiver of the property of the FMIF;
 - (c) has, in relation to the property of FMIF for which he is appointed receiver, the powers set out in s 420 of the *Corporations Act 2001* (Cth) (**Act**); and
 - (d) without derogating in any way from the Appointment or the Receiver's powers pursuant to the FMIF Order, was authorised to, inter alia:
 - (i) take all steps necessary to ensure the realisation of property of FMIF held by LMIM as RE of the FMIF by exercising any legal right of LMIM as RE of the FMIF in relation to the property including but not limited to:
 - (A) providing instructions to solicitors, valuers, estate agents or other consultants as are necessary to negotiate or finalise the sale of the property;
 - (B) providing a response as appropriate to matters raised by receivers of property of LMIM as RE of the FMIF to which receivers have been appointed;
 - (C) dealing with any creditors with security over the property of the FMIF including in order to obtain releases of security as is necessary to ensure the completion of the sale of the property;
 - (D) appointing receivers, entering into possession as mortgagee or exercising any power of sale; and
 - (E) executing contracts, transfers or releases or any such other documents as are required to carry out any of the above;
 - (ii) bring, defend or maintain any proceedings on behalf of FMIF in the name of LMIM as is necessary for the winding up of the FMIF in accordance with clause 16 of its constitution, including the execution of documents as required and providing instructions to solicitors in respect of all matters in relation to the

conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions;

(e) is entitled to bring and does bring these proceedings in the name of LMIM as RE of the FMIF.

4. Further, by the LM Order, LMIM was removed as trustee of the MPF and the Eighth Defendants, Korda Mentha Pty Ltd ACN 100 169 391 and Calibre Capital Pty Ltd ABN 66 108 318 985, were appointed joint and several trustees of the MPF.

Bellpac loans

5. On or about 10 March 2003, Permanent Trustee Australia Limited as custodian of LMIM as RE of the FMIF (**PTAL**) entered into a loan agreement with Bellpac (**FMIF Bellpac Loan Agreement**).
6. Pursuant to the FMIF Bellpac Loan Agreement, PTAL agreed to advance and did advance the sum of \$16M to Bellpac (**FMIF Bellpac Loan**).
7. As security for the FMIF Bellpac Loan, Bellpac granted to:
- (a) a first registered mortgage (**PTAL Mortgage**) over land known as "Balgownie No 1 Colliery Wollongong" in the state of New South Wales (**Property**); and
 - (b) a registered charge over Bellpac (**PTAL Charge**).
8. Between December 2003 and July 2008, the FMIF Bellpac Loan Agreement was varied.
9. On or about 23 June 2006 LMIM as trustee for the MPF entered into a loan agreement with Bellpac (**MPF Bellpac Loan Agreement**).
10. Pursuant to the MPF Bellpac Loan Agreement, LMIM as trustee for the MPF agreed to advance and did advance the sum of \$6M to Bellpac (**MPF Bellpac Loan**).
11. As security for the MPF Bellpac Loan, Bellpac granted to LMIM as trustee for the MPF:
- (a) a registered mortgage over the Property (which was registered as the third registered mortgage) (**MPF Mortgage**); and
 - (b) a registered charge over Bellpac (**MPF Charge**).
12. On or about 23 June 2006 LMIM as RE of the FMIF, LMIM as trustee for the MPF, GPC No. 11 Pty Ltd, GPC No. 12 Pty Ltd, GPC No. 8 (Bulli) Pty Ltd, Austcorp Project No. 20 Pty Ltd and Bellpac entered into a Deed of Priority (**Deed of Priority**) pursuant to which:
- (a) LMIM as RE for the FMIF was granted first priority to the extent of the Principal Amount of \$33.8M plus Interest, Other Moneys and Enforcement Expenses as those terms are defined therein;
 - (b) LMIM as trustee for the MPF was granted second priority to the extent of the Principal Amount of \$11M plus Interest, Other Moneys and Enforcement Expenses as those terms are defined therein;
 - (c) by clause 8, LMIM as trustee for the MPF was required to provide a release of any security held by it where an asset the subject of any security held by PTAL was sold pursuant to a bona fide sale for approximately fair market value.
13. From in or about March 2006 Bellpac was in default under the FMIF Bellpac loan and PTAL as custodian of LMIM as RE of the FMIF was entitled to exercise rights under the PTAL Mortgage and the PTAL Charge.
14. On or about 6 May 2009 PTAL appointed receivers and managers to Bellpac.

15. On or about 30 July 2009 voluntary administrators were appointed to Bellpac.
16. On or about 3 September 2009, Bellpac was placed into liquidation following a resolution of its creditors.

Bellpac sale of the Property to Gujarat

17. On or about 22 September 2004 Bellpac and GPC Equipment Pty Ltd (**GPC**) and Gujarat NRE Coking Coal Limited (formerly Gujarat NRE Minerals Limited)(**Gujarat**), Bounty Industries Australia Pty Limited (**Bounty**) and Coalfields (NSW) Pty Limited (**Coalfields**) entered into a Land and Asset Sale Agreement (**LASA**) pursuant to which Bellpac agreed to sell to Gujarat and Coalfields certain assets including, inter alia, the Property.
18. In addition to the LASA, Bellpac and GPC and Gujarat and Coalfields entered into certain other agreements on or about 3 December 2004 which, inter alia, amended the LASA (**2004 Agreements**).
19. A dispute arose between Bellpac and Gujarat as to the parties' rights, obligations and liabilities under the LASA and the 2004 Agreements (**Dispute**).
20. In 2007 and 2008 Bellpac and Gujarat executed settlement deeds (**Settlement Deeds**) in order to resolve the Dispute.
21. In 2009, a dispute arose between LMIM, PTAL and Bellpac and Gujarat and Coalfields as to the parties' rights, obligations and liabilities under and as a consequence of the LASA, the 2004 Agreements and the Settlement Deeds (**2009 Dispute**).
22. Legal proceedings were commenced by:
 - (a) Gujarat against Bellpac in or about May 2009 (**Gujarat proceedings**);
 - (b) LMIM, PTAL and Bellpac against Gujarat in or about July 2009 with further defendants, including Coalfields, Bounty and GPC, joined in or about November 2009 (**Bellpac proceedings**);
 - (c) by Coalfields against Bellpac and Gujarat by cross-claim in the Gujarat proceedings (**Coalfields cross-claim**),together (the **Proceedings**).

Funding of the Proceedings

23. In or about July 2009 the first to sixth defendants formed the view that LMIM as RE of the FMIF was not in a position to fund the Proceedings.
24. From in or about July 2009, as registered mortgagee of the Property with second priority under the Deed of Priority, LMIM as trustee of the MPF:
 - (a) funded the Proceedings as second mortgagee in an amount of not more than \$1,380,431.51; and
 - (b) drew down such funding against the MPF Bellpac Loan.

Mediation Heads of Agreement

25. In or about November 2010, a non-binding Heads of Agreement recording Agreement in Principle was executed in the course of a mediation between the parties to the Proceedings (**Mediation Heads of Agreement**).
26. Pursuant to the Mediation Heads of Agreement:

- (a) the Property was to be sold to Gujarat or its nominee by either the liquidator of LMIM (with mortgagees' consent) or via a mortgagee sale for an amount up to \$65.5M as follows:
 - (i) \$15.5M to be paid by:
 - (A) An instalment of \$1M within 1 month; and
 - (B) \$14.5M within 6 months;
 - (ii) Vendor finance for \$46-50M (to be updated on amortisation);
- (b) LMIM was to pay \$1.3M to Coalfields (NSW) Pty Limited ACN 111 369 110 to secure its release of certain caveats over the Property;
- (c) LMIM was to be granted an option to purchase a half share in the Property for \$15M in certain circumstances.

27. The parties continued to negotiate a settlement of the Proceedings between November 2010 and June 2011.

Settlement of the LMIM Bellpac proceedings

28. On or about 21 June 2011:

- (a) LMIM in its capacity as RE for FMIF, PTAL, Bellpac, Gujarat and Southbulli Holdings Pty Limited (**Southbulli**) executed a Deed of Release pursuant to which the parties agreed to settle all of their disputes, including the disputes in the Proceedings and to regulate their relationship (**Deed of Release**);
- (b) simultaneously with the execution of the Deed of Release, PTAL, LMIM in its capacity as RE for FMIF, Bellpac, Gujarat, Southbulli and Coalfields executed a Deed of Settlement and Release pursuant to which these parties agreed to settle their differences in respect of the Proceedings (**Deed of Settlement and Release**); and
- (c) PTAL, as mortgagee exercising power of sale under the PTAL Mortgage, entered into a contract to sell the Property to Gujarat for a purchase price of \$10M exclusive of GST (**Gujarat Contract**).

29. By clause 7 of the Deed of Release Gujarat was obliged to pay to PTAL the settlement sum of \$35.5M exclusive of GST by way of bank cheque simultaneously with the execution and delivery of that deed.

30. By clause 2 of the Deed of Settlement and Release:

- (a) PTAL was to pay to Coalfields the sum of \$1.3M by bank cheque simultaneously with the execution and delivery of that deed;
- (b) the sum of \$1.3M was to be held in trust until completion of the Gujarat Contract; and
- (c) if the Gujarat Contract was terminated the sum of \$1.3M, together with any accretions thereon, was to be refunded in full to PTAL.

Deed Poll

31. On or about 21 June 2011, a Deed Poll was executed by the first to sixth defendants as directors of LMIM.

32. The Deed Poll provided, inter alia, that:

- (a) "**Settlement Proposals** means the Bellpac Settlement and the Proceeds Split";

- (b) *"Proceeds Split means the proposal between FMIF and MPF under which it is proposed to split the proceeds that it has recovered from the litigation in the ratio of 65% of the proceeds to the FMIF and 35% of the proceeds to MPF";*
 - (c) *"Bellpac Settlement means the principal agreement that has been reached between LM and Gujarat pursuant to which LM will inter alia sell the Bellpac Land to Gujarat and settle the litigation with Gujarat for a total consideration of \$45.5 Million and the RE will pay \$1.3m to Coalfields to secure the withdrawal of certain caveats";*
 - (d) *"The FMIF and the MPF did not enter into any formal agreement to split the proceeds recovered by the litigation however it was the understanding of LM's directors that it was appropriate for MPF's contribution to be recognised by providing MPF with a share of any proceeds recovered by the litigation";*
 - (e) *"after giving full and comprehensive consideration to all of the relevant issues, the directors have concluded ..." inter alia:*
 - (i) *"there is a need for the FMIF RE to reach agreement with the MPF trustee about sharing the litigation settlement proceeds with the MPF because the overall settlement cannot occur without the agreement of the MPF trustee";*
 - (ii) *"LM as trustee of MPF will comply with its general law fiduciary duties as a trustee if it agrees to the Settlement Proposals pursuant to which MPF will be obliged to release its security over the Bellpac Land".*
33. Contrary to the matters set out in the Deed Poll referred to in paragraph 32(d) above the first to sixth defendants:
- (a) did not in fact have an understanding that it was appropriate for MPF's contribution to the funding of the LMIM Bellpac proceedings to be recognised by providing MPF with a share of any proceeds recovered by the litigation;
 - (b) had an expectation that if LMIM and PTAL were successful in the Proceedings and the Property was developed by LMIM as RE for the FMIF then:
 - (i) the amount owed under the FMIF Bellpac loan would be repaid in full; and
 - (ii) the amount owed under the MPF Bellpac loan would be repaid in part and possibly in full.
34. Contrary to the matters set out in the Deed Poll referred to in paragraph 32(e) above:
- (a) in circumstances where:
 - (i) pursuant to the Gujarat Contract, PTAL sold the Property to Gujarat as mortgagee exercising power of sale; and
 - (ii) in any event the Deed of Priority contains the terms pleaded in paragraph 12 above,

LMIM as trustee of the MPF could not have prevented the sale of the Property to Gujarat under the Gujarat Contract by refusing to provide a release of the MPF Mortgage over the Property; and
 - (b) there was no necessity for LMIM as RE of FMIF to reach agreement with LMIM as trustee of the MPF about sharing the amounts payable to PTAL under the Deed of Release or the Gujarat Contract because:
 - (i) LMIM as trustee of the MPF was not a party to the Deed of Release nor the Gujarat Contract;

- (ii) the agreement of LMIM as trustee of the MPF was not required in order for LMIM as RE of the FMIF or PTAL to perform their obligations under the Deed of Release and the Gujarat Contract.

Payment to MPF of monies payable to FMIF by Gujarat under Gujarat Contract and Deed of Release

- 35. LMIM as trustee of the MPF received the sum of \$15,546,147.85 (**Settlement payment**) from the proceeds payable to PTAL as custodian of LMIM as RE of the FMIF pursuant to the terms of the:
 - (a) Gujarat Contract; and
 - (b) Deed of Release.
- 36. LMIM directed that the Settlement payment be made to LMIM as trustee of the MPF from the amounts payable to LMIM as RE of the FMIF and PTAL pursuant to the terms of the:
 - (a) Gujarat Contract; and
 - (b) Deed of Release.
- 37. LMIM as trustee of the MPF had no entitlement to payment of the Settlement payment:
 - (a) in circumstances where:
 - (i) PTAL sold the Property as mortgagee in possession under the PTAL Mortgage; and
 - (ii) PTAL was, as at 22 June 2011, owed the sum of \$52,480,469.12 by Bellpac comprising the Principal Amount, Interest, Other Moneys and Enforcement Expenses (as those terms are defined in the Deed of Priority); and
 - (b) by reason of the matters pleaded in paragraphs 33 and 34 above.

Contraventions of s 180, 181 and 182 of the Corporations Act

- 38. At all material times in their capacity as directors of LMIM, the first to sixth defendants owed duties to LMIM under:
 - (a) section 180(1) of the Act and at general law to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in LMIM's circumstances, and occupied the office held by, and had the same responsibilities within LMIM as the first, second, third, fourth, fifth and sixth defendants respectively;
 - (b) section 181(1) of the Act and at general law to exercise their powers and discharge their duties in good faith and in the best interests of LMIM and for a proper purpose;
 - (c) section 182(1) of the Act and at general law not to improperly use their position to gain an advantage for themselves or someone else, or to cause detriment to LMIM.
- 39. In the premises pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-37 above the first to sixth defendants:
 - (a) failed to exercise their powers and discharge their duties with a reasonable degree of care and diligence;
 - (b) did not act in good faith and in the best interests of LMIM, or for a proper purpose;
 - (c) improperly used their position as directors of LMIM to gain an advantage for the MPF;

(d) in the premises, acted in breach of the duties pleaded in paragraph 38 above.

40. In the premises, the first to sixth defendants are liable to pay to the plaintiff compensation under s 1317H of the Act or damages at general law in the amount of the Settlement payment.

LMIM's involvement in contraventions by directors

41. LMIM knew of the matters pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-37 above.

Particulars

LMIM's knowledge arises by reason of its position as former trustee of the MPF and by virtue of the knowledge of the first to sixth defendants being directors of LMIM as former trustee of the MPF.

42. By reason of the matters pleaded in paragraphs 1(b), 1(c), 2, 5-13, 17-37 and 41 above LMIM was involved in the contraventions of the duties pleaded in paragraph 39 above.
43. In the premises LMIM is liable to pay to the plaintiff under s 1317H of the Act compensation in the amount of the Settlement payment.

Contravention of s 601FD of the Corporations Act

44. At all material times in their capacity as officers of LMIM as RE of the FMIF, the first to sixth defendants owed duties under:
- (a) section 601FD(1)(b) of the Act to exercise the degree of care and diligence that a reasonable person would exercise were they in the position of the first, second, third, fourth, fifth and sixth defendants respectively;
 - (b) section 601FD(1)(c) of the Act to act in the best interests of members of the FMIF and, if there is a conflict between the members' interests and the interests of the RE, give priority to the members' interests;
 - (c) section 601FD(1)(e) not to make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the member of the FMIF.
45. In the premises pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-37 above the first to sixth defendants:
- (a) failed to exercise the degree of care and diligence that a reasonable person would exercise were they in the position of the first, second, third, fourth, fifth and sixth defendants respectively;
 - (b) did not act in the best interests of the members of the FMIF and give priority to the interests of the members of the FMIF;
 - (c) improperly used their position as officers of the RE of FMIF to gain an advantage for the MPF;
 - (d) in the premises, acted in breach of the duties pleaded in paragraph 44 above.
46. In the premises, the first to sixth defendants are liable to pay to the plaintiff compensation under s 1317H of the Act or damages at general law in the amount of the Settlement payment.

LMIM's involvement in contraventions by officers

47. LMIM knew of the matters pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-37 above.

Particulars

LMIM's knowledge arises by reason of its position as former trustee of the MPF and by virtue of the knowledge of the first to sixth defendants being directors of LMIM as former trustee of the MPF.

48. By reason of the matters pleaded in paragraphs 1(b), 1(c), 2, 5-13 and 17-37 and 47 above LMIM was involved in the contraventions of the duties pleaded in paragraph 45 above.
49. In the premises, LMIM is liable to pay to the plaintiff under s 1317H of the Act compensation in the amount of the Settlement payment.

Rights of LMIM as former trustee of the MPF and the Plaintiff's right of subrogation

50. As former trustee of the MPF LMIM has a right of indemnity out of the assets of the MPF with respect to any liability of LMIM in these proceedings.
51. Any right of indemnity of LMIM as former trustee of the MPF operates as an equitable lien over the assets of the MPF.
52. The eighth defendants hold the assets of the MPF subject to any right of indemnity and lien of LMIM over those assets.
53. LMIM is insolvent.
54. By reason of the matters pleaded in paragraphs 50 to 53 above, the plaintiff is entitled to be subrogated to LMIM's right of indemnity and lien to the extent of LMIM's liability in these proceedings.

The Plaintiff claims the following relief:

1. As against the first defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the first defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of \$15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.
2. As against the second defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the second defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of \$15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.
3. As against the third defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the third defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of \$15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.

4. As against the fourth defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the fourth defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of 15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.
5. As against the fifth defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the fifth defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of 15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.
6. As against the sixth defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the sixth defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of \$15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.
7. As against the seventh defendant:
 - (a) An order under s 1317H of the *Corporations Act 2001* (Cth) that the seventh defendant, pay to the plaintiff compensation or damages in an amount of \$15,546,147.85;
 - (b) Interest under s 58 of the *Civil Proceedings Act 2011* (Qld) on the amount of 15,546,147.85 from 8 September 2011 until the date of judgment; and
 - (c) Costs.
8. As against the seventh and eighth defendants a declaration that:
 - (a) The seventh defendant is entitled to be indemnified out of the assets of the MPF in respect of the liability of the seventh defendant to the plaintiff in these proceedings;
 - (b) The seventh defendant has a lien or charge over the assets and undertakings of the MPF in respect of the liability of the seventh defendant to the plaintiff in these proceedings;
 - (c) The plaintiff is entitled to be subrogated to the rights of the seventh defendant in respect of the assets of the MPF.

This pleading was settled by Ms Madelaine Luchich of Junior Counsel.

Signed:



Description: Solicitors for the Plaintiff

Dated: 19 December 2014

NOTICE AS TO DEFENCE

Your Defence must be attached to your Notice of Intention to Defend.

*Service and Execution of Process Act 1992***NOTICE TO DEFENDANT**

PLEASE READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY CAREFULLY

**IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL
ADVICE AS SOON AS POSSIBLE**

Attached to this notice is a Claim and Statement of Claim ("the attached process") issued out of the Supreme Court of Queensland at Brisbane.

Service of the attached process outside Queensland is authorised by the *Service and Execution of Process Act 1992*.

YOUR RIGHTS

If a court of a State or Territory other than Queensland is the appropriate court to determine the claim against you set out in the attached process, you may be able to apply to the Supreme Court in Queensland to have the proceeding transferred to another Supreme Court, or another superior court.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

CONTESTING THIS CLAIM

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

If you want to contest this claim, you must also file a Notice of Intention to Defend and Defence in the Supreme Court of Queensland at Brisbane. You have only 28 days after receiving the attached process to do so.

The Notice of Intention to Defend must contain an address in Australia where documents can be left for you or sent to you.