

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 11917 of 2015

Applicant

KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE FOR THE LM MANAGED
PERFORMANCE FUND

AND

Respondent

THE MEMBERS OF THE LM MANAGED
PERFORMANCE FUND

THIRD AFFIDAVIT OF JARROD VILLANI

SWORN ON: 19 SEPTEMBER 2016

I, **JARROD VILLANI** of Level 14, 12 Creek Street, Brisbane in the State of Queensland,
chartered accountant, say on oath:

1. I am a Partner and authorised officer of KordaMentha, the accounting firm representing KordaMentha Pty Ltd, the trustee of the LM Managed Performance Fund (**MPF**) (the **Trustee**).
2. I am duly authorised by Mr Korda and Mr Mentha, the directors of the Trustee, to swear this affidavit on behalf of the Trustee.
3. Except where otherwise indicated, I depose to the matters in this affidavit from my own personal knowledge of the facts and circumstances. Where I depose to matters from information and belief, I believe those matters to be true.
4. This affidavit is sworn in support of an application by the Trustee pursuant to section 101 of the *Trusts Act* 1973 (Qld) (**Trusts Act**) for authorisation to charge remuneration

AFFIDAVIT OF JARROD VILLANI
Filed on Behalf of the Applicant

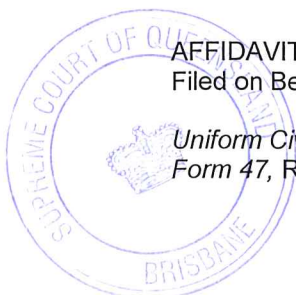
Uniform Civil Procedure Rules 1999
Form 47, Rule 435

Squire Patton Boggs
Address: 1 Macquarie Place, Sydney
NSW 2000
Phone No: (02) 8248 7850
Fax No: (02) 8248 7899

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for its services as Trustee of the MPF for the period between 1 November 2015 and 14 August 2016 (**relevant period**).

5. The total remuneration for which approval is sought in this application is \$479,227.00, excluding GST and excluding disbursements.
6. This is a separate and distinct application to the Originating Application filed in the Supreme Court of Queensland on 24 November 2015, which application sought the court's approval for the Trustee's professional fees for the period from 12 January 2015 to 31 October 2015 (**2015 Fee Application**). The current application, in support of which this affidavit is sworn, relates to the period immediately following that of the 2015 Fee Application.
7. Throughout this affidavit, I make reference to various documents that are contained in a tabbed and paginated bundle of documents exhibited to this affidavit and marked "JV-11" (**the Exhibit**).
8. I also make reference to various documents that are contained in a paginated bundle of documents exhibited to this affidavit and marked "**Confidential Exhibit JV-12**" (**Confidential Exhibit**). These documents are confidential, for the reasons set out at paragraph 12 below, and I request that the court maintain the confidentiality of this exhibit by storing that bundle on the court file in a sealed envelope and not permitting it to be inspected or copied except with the leave of the court.

BACKGROUND

9. The background to the creation of the Fund, including the appointment of the Trustee, is set out in my First Affidavit filed in these proceedings on 2 December 2015 (**First Affidavit**) and its exhibits, JV-1 (**First Exhibit**) and JV-2 (**First Confidential Exhibit**), which I seek leave from the court to rely on. The most salient points in that regard are as follows:

9.1 The MPF was constituted as a unit trust pursuant to a deed dated December 2001 (**Constitution**), which provided that the manager and trustee of the MPF was LM Investment Management Ltd (**LMIM**). A copy of this deed is at pages 1 to 24 of the First Exhibit.

9.2 By order of the Supreme Court of Queensland made on 12 April 2013, LMIM was removed as trustee of the MPF, and the Trustee and Calibre Capital Ltd

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(Calibre) were appointed jointly and severally as trustees of the MPF (new trustees). A copy of these Orders is at pages 146 to 147 of the First Exhibit.

- 9.3 On 5 January 2015, Calibre retired as trustee pursuant to a written notice issued to the members of the MPF, informing them of its intention to retire as trustee effective on 5 January 2015. The Trustee has continued to act as sole trustee of the MPF since Calibre retired. A copy of the notice of intention to retire is at pages 146 to 147 of the First Exhibit.

Updates to Investors

10. At regular intervals from the date of their appointment until the date Calibre retired as trustee, the new trustees provided written investor updates to the members of the MPF, having issued 13 updates to members between their appointment in April 2013 and the end of 2014.
11. The investor updates provide the members with information about the activities that have been carried out in the management of the MPF and the progress of the realisation of the trust's assets. The updates are generally sent directly to members, although a number of these updates have also been sent to financial advisors acting for members.
12. Some of the updates contain commercially sensitive and confidential information relating to realisation of assets of the MPF and both actual and foreshadowed litigation, and were accordingly sent to members via email only. As disclosure of some of the information contained in the confidential updates may prejudice asset realisations and commenced or potential litigation, those documents have been included in the Confidential Exhibit, as referred to in paragraph 8.
13. The non-confidential updates to members were sent to members by email (at the email addresses they provided to LMIM and/or the new trustees) and were also made available for download on the website maintained for the MPF at the address <http://www.kordamentha.com/creditor-information/australia/109>.
14. The Trustee has continued to issue regular updates since Calibre retired, having issued three updates in its own right since Calibre's retirement in January 2015, itemised as follows:

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Update No.	Date of Issue of Update	Location of Update
Update 14	20 January 2015	Pages 124 to 132 of the First Confidential Exhibit
Detailed narrations for Update 14 to Investors	20 January 2015	Pages 133 to 142 of First Confidential Exhibit
Update 15	3 December 2015	Pages 1 to 19 of Confidential Exhibit
Update 16	23 May 2016	Pages 20 to 27 of Confidential Exhibit

15. As I deposed in my First Affidavit, until about May 2015, I believed that the email mailing list held by the Trustee contained an email address for each of the Fund's 4500 members (which in some cases is the email address for the member's financial advisor).
16. I discovered, while preparing for another court application, that the mailing list did not contain email addresses for 10 members. The Trustee subsequently obtained email addresses for each of these 10 members and those email addresses were added to the mailing list for future updates. Since obtaining the email addresses for each of these 10 members, we emailed those members to notify them of the relevant information available on our website and inviting them to visit this website and access the investor updates and other related content.

Basis for Payment of Remuneration

17. Clauses 17.3 – 17.5 of the Constitution set out the entitlements of the trustee of the MPF to be paid management and other fees. For full details of the basis for that entitlement under the Constitution, I rely on my First Affidavit at paragraphs 29 to 33.
18. No management fees have been paid pursuant to clauses 17.3, 17.4 or 17.5 of the Constitution since the new trustees were appointed on 12 April 2013.
19. For the period from the new trustees' appointment on 12 April 2013 until 11 January 2015 (i.e. just after Calibre's retirement on 5 January 2015), remuneration was paid pursuant to a service agreement, which is explained in considerable further detail in paragraphs 21 to 30 below.

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20. As set out above, on 5 January 2015 Calibre retired from its role as new trustee. Shortly thereafter, the Trustee took the decision to seek court approval for the fees it had incurred subsequent to Calibre's retirement and proceeded to file the Originating Application on 24 November 2015 to obtain approval for the fees it had incurred between 12 January 2015 and 31 October 2015.

REMUNERATION UNDER THE SERVICE AGREEMENT (PERIOD PRIOR TO 12 JANUARY 2015)

21. The present application seeks approval of remuneration for the period from 1 November 2015 to 14 August 2016. The Trustee does not propose to rely on the service agreement for this remuneration, and this application therefore relies instead on the court's power under s 101 of the Trusts Act to approve a trustee's remuneration.
22. Accordingly, this section of this affidavit is included by way of background information, to provide full context to the background to this application.
23. On or about 3 July 2013, the new trustees entered into a service agreement with KordaMentha Pty Ltd as trustee for the KordaMentha Unit Trust (**KMUT**) (**service agreement**). A copy of the service agreement is at pages 171 to 175 of the First Exhibit.
24. Under the service agreement KMUT was to perform professional services in connection with the MPF. Clause 6 of the service agreement provides for the new trustees to pay remuneration to KMUT on the basis of the hourly rates for the staff of KMUT who carry out the services (the rates are set out in Schedule 2 of the service agreement).
25. The new trustees disclosed the existence of the service agreement and the basis upon which remuneration was to be paid in Update 9 to members (see pages 27 to 54 of the First Confidential Exhibit) Update 9 also included a copy of the 'LM Managed Performance Fund Fees and Expenses Policy Manual July 2013', which explained to the members that the new trustees did not propose to rely on the remuneration provisions under the MPF's Constitution and instead proposed to pay remuneration under the service agreement at KMUT's ordinary professional rates. Update 9 was issued to investors before any remuneration was paid under the service agreement.

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26. KMUT provided services to the new trustees in connection with the administration of the MPF, and was paid remuneration under the services agreement for these services out of the assets of the MPF.
27. The new trustees relied upon the service agreement as the basis for all the remuneration they received for the period from their appointment on 12 April 2013 to 12 January 2015. As noted above, the present application does not seek any orders in relation to remuneration for this period.
28. Remuneration was paid under the service agreement to the new trustees at regular intervals. Before each payment was made, the new trustees summarised the relevant details of the remuneration proposed to be paid in an update they sent to investors. The updates disclosing the new trustees' remuneration are included in the Confidential Exhibit to this affidavit as follows (excluding disbursements):

Update in which Remuneration Disclosed	Period of Remuneration	Quantum of remuneration sought in period (excluding GST)	Location of relevant fee schedule
Update 9	12 April 2013 to 31 May 2013	\$874,337	Page 34 of the First Confidential Exhibit
Update 10	1 July 2013 to 28 July 2013.	\$567,899	Page 64 of the First Confidential Exhibit
Update 11	29 July 2013 to 3 November 2013	\$583,793	Pages 92 to 93 of the First Confidential Exhibit
Update 12	4 November 2013 to 2 March 2014	\$329,045	Page 107 of the First Confidential Exhibit
Update 13	3 March 2014 to 20 July 2014	\$298,242	Pages 116 of the First Confidential Exhibit
Update 14	21 July 2014 to 11 January 2015	\$265,359.50	Page 130 of the First Confidential Exhibit

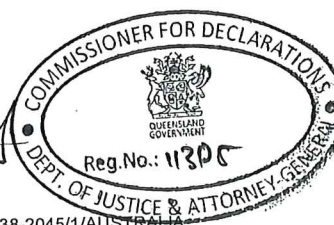
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29. All of the remuneration set out in the updates to members (as summarised in the table at paragraph 28 above) has been paid pursuant to the service agreement.
30. While some members have made general complaints about the costs of the management of the MPF in the context of their general dissatisfaction with the losses they have sustained through their investment in the MPF, there have been no formal objections made to the remuneration that has been paid to the KMUT as disclosed in the updates discussed above at paragraph 28.

REMUNERATION APPLICATION APPROVED BY COURT IN DECEMBER 2015

31. Save for the matters set out below in relation to substituted service, the following section of this affidavit is also included by way of background information, to provide full context to the background to this application.
32. On 5 January 2015 Calibre's retirement as co-trustee of the MPF took effect, and the Trustee became the sole trustee of the MPF. The last remuneration paid under the service agreement was for the period ending 11 January 2015, as is set out in paragraph 28 above.
33. Following Calibre's retirement, I was concerned as to whether the service agreement remained valid and whether it was still appropriate to pay remuneration under it. I therefore decided not to take any steps to pay further remuneration after Calibre retired, without legal advice. On or about 19 May 2015 I requested legal advice from my solicitors Squire Patton Boggs as to the effect Calibre's retirement had on the service agreement. After receiving that advice, the Trustee decided to seek Court approval for the Trustee's remuneration for the period from 12 January 2015 to 31 October 2015.
34. I accordingly instructed Squire Patton Boggs to seek the Court's approval for the Trustee's remuneration for the period from 12 January 2015 to 31 October 2015 (the **2015 Fee Application**, as earlier defined). Squire Patton Boggs proceeded to file an Originating Application on 24 November 2015, which became proceeding 11917 of 2015. As identified at paragraph 5 above, the total remuneration for which approval was sought in the 2015 Fee Application was \$666,522.00 (excluding GST), which comprised:

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- 34.1 \$448,006.00, being the total professional fees, excluding GST (or an amount of \$492,806.60 inclusive of GST), accrued during the period 12 January 2015 to 30 June 2015; and
- 34.2 \$218,516.00, being the total professional fees, excluding GST (or an amount of \$240,367.60 inclusive of GST), accrued during the period 1 July 2015 to 31 October 2015.
35. In Update 15 to Investors, issued on 3 December 2015, the Trustee disclosed:
- 35.1 The quantum of fees and disbursements paid to the Trustee under the service agreement for the period from 12 January 2015 to 31 October 2015; and
- 35.2 That the 2015 Fee Application was being prepared for the purpose of obtaining approval for the Trustee's fees subsequent to 1 November 2015.

As referred to above, Update 15 to Investors is included at pages 1 to 19 of the Confidential Exhibit.

Substituted Service of Previous Fee Application

36. The Originating Application filed on 24 November 2015 also sought orders from the Court that the materials in support of the application be permitted to be served by way of substituted service. Specifically, the Court ordered that the application documents would be deemed to have been effectively served on the Fund's approximately 4500 members, five days after the Applicants:
- 36.1 Made the application materials available online on the page dedicated to the LM MPF on KordaMentha's website; and
- 36.2 Either sent an email to all members of the Fund at their last known email addresses notifying them of the Court documents and their availability on KordaMentha's website, or where an undeliverable message was received and a postal address held for that member, sent a copy of the notice by prepaid post;

(the **Substituted Service Orders**). A copy of the Substituted Service Orders are at pages 1 to 2 of the Exhibit.

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37. The Substituted Service Orders included a provision permitting any further applications the Trustee might file for approval of its remuneration to be served by way of substituted service. At the hearing of the primary application on 17 December 2015, the Court varied paragraph 1(d) of the Substituted Service Orders, to permit substituted service of "any further applications and supporting affidavits" the Trustee might file for approval of its remuneration.
38. In the present application, the Trustee relies on the Substituted Service Orders and on the Orders of Justice Martin made on 17 December 2015 in these proceedings, as referred to above, permitting substituted service of any further applications made by the Trustee for approval of its remuneration.
39. In the context of the 2015 Fee Application, I directed Stacey Clisby, an Associate Director of KordaMentha working under my direct supervision, to take steps to effect substituted service of the 2015 Fee Application materials. In that regard, I refer to the affidavit of Stacey Clisby sworn 16 December 2016 (and filed in these proceedings on 17 December 2016) and the accompanying Exhibit SC-1.
40. The Queensland Supreme Court approved the application on 17 December 2016 and made orders approving remuneration in a total amount of \$733,174.20 (including GST), a copy of which Orders are at page 3 of the Exhibit. The Trustee proceeded to make payment of its fees from the assets of the MPF in reliance on the court's approval.

REMUNERATION SOUGHT UNDER CURRENT APPLICATION

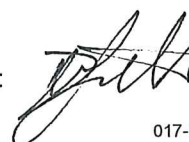
41. A written overview of the key work performed by the Trustee for the period from 1 November 2015 to 30 June 2016 is at page 4 of the Exhibit. Similarly, the key work performed by the Trustee during the period from 1 July 2016 to and including 14 August 2016 is set out in the summary at page 5 of the Exhibit.
42. The schedule which is at page 6 of the Exhibit gives an overview of the quantum of remuneration claimed by the Trustee for the period from 1 November 2015 to 30 June 2016 (**Schedule A**). The schedule which is at page 7 of the Exhibit gives an overview of the quantum of remuneration claimed by the Trustee for the period from 1 July 2016 to and including 14 August 2016 (**Schedule B**). Schedules A and B (the **Schedules**) identify the following:

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- 42.1 each individual who carried out work during the relevant period;
- 42.2 their position within KordaMentha;
- 42.3 their hourly charge out rate;
- 42.4 the hours of work they performed in total, for each of the weeks during the relevant period;
- 42.5 their total hours of work; and
- 42.6 the total remuneration charged in respect of their work.
43. The Schedules also contain information about disbursements that were incurred by the Trustee during the relevant periods, although those disbursements are not the subject of the present application.
44. In my view all of the tasks detailed in this affidavit were necessary for the proper administration of the MPF, in order to maximise realisations and recover funds for the benefit of the members.
45. My staff and I record time on a daily basis, in six minute units. When recording our time, we also enter a description of the tasks undertaken in an electronic system. Each time entry is allocated to one of the five following categories:
- 45.1 Administration and risk management;
- 45.2 Assets;
- 45.3 Investors;
- 45.4 Investigations; and
- 45.5 Fund trading.
46. 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 investors could have been recorded under either the Administration category or the Investors category. However, each task is only recorded once, and the time for carrying out each task has only been recorded once.

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47. I have reviewed the narrations for all the work claimed in the present application on a line-by-line basis. From my knowledge of the work carried out 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.
48. The partners of KordaMentha are members of the Australian Restructuring Insolvency and Turnaround Association (**ARITA**), and they follow the ARITA Code of Professional Practice for Insolvency Practitioners (**ARITA Code**) in relation to the insolvency appointments they undertake.
49. The Trustee has adopted the ARITA Code as a guide to the performance of the duties involved in administering the MPF. At pages 8 to 37 of the Exhibit is a true and correct copy of sections 14 to 16 of the Third Edition of the ARITA Code of Professional Practice (which came into effect on 1 January 2014) with respect to a practitioner's claim for remuneration.
50. I confirm that the Trustee has followed the ARITA Code of Professional Practice in administering the MPF. As to the hourly charge out rates for the Trustee, I can say from my own knowledge and experience that these rates are commensurate with the fees charged by other insolvency practitioners.
51. Immediately below is a summary of the amounts claimed in respect of work undertaken in each of the five categories identified in paragraph 45 above. At paragraphs 52 to 73 I set out more specific details of the work my staff and I performed during the relevant period by reference to those five categories.

Category	Fees sought to be recovered for period 1 November 2016 to 30 June 2016	Fees sought to be recovered for period 1 July 2016 to 14 August 2016	TOTAL FOR CATEGORY (GST exclusive)
Administration and Risk Management	\$237,530.50	\$27,863.50	\$265,394.00
Assets	\$42,148.00	\$594.50	\$42,742.50

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Investors	\$73,202.50	\$1,765.50	\$74,968.00
Statutory Compliance and Investigations	\$20,940.50	\$1,588.50	\$22,529.00
Fund Trading	\$71,943.50	\$1,650.00	\$73,593.50
TOTAL (excluding disbursements, excluding GST)	\$445,765.00	\$33,461.50	\$479,226.50

Administration and risk management

52. The total amount of remuneration claimed for this category is \$265,394.00. A schedule setting out each time entry allocated to this category between 1 November 2015 and 30 June 2016 is at pages 38 to 48 of the Exhibit. A schedule setting out every time entry allocated to this category between 1 July 2016 to and including 14 August 2016 is at page 67 of the Exhibit.
53. These schedules include a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
54. There are a number of litigated matters, which the Trustee is conducting on behalf of the MPF. In general terms, the Trustee has charged fees for:
- 54.1 Attending with and instructing two sets of lawyers, being Minter Ellison and Squire Patton Boggs, in a number of ongoing proceedings (including giving instructions, seeking advice, discussing strategy and overall litigation position);
- 54.2 Reviewing legal correspondence and communications regarding ongoing litigation and matter strategy;
- 54.3 Reviewing and finalising affidavit materials, statements of claim and other evidence;

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54.4 Assisting with preparation of data sets of documents to be disclosed in the context of ongoing litigation.

Existing Litigation

55. There are four existing legal proceedings in respect of which the Trustee has continued to undertake work during the relevant period. These four matters are as follows:

55.1 Bellpac / Action by Receiver of the FMIF – proceeding BS12317/2014 in the Supreme Court of Queensland (QSC).

- (a) In these proceedings the Trustee is the 8th defendant, in its capacity as trustee of the MPF.
- (b) The claim relates to a dispute arising from the realisation of various properties that were subject to securities held by LMIM on behalf of the MPF and on behalf of another fund controlled by LMIM. Part of the proceeds from the realisation of the property were paid to the MPF as a fee for funding the litigation that realised the property. The payment of this funding fee is now in dispute. All of the relevant transactions occurred before the new trustees were appointed in April 2013.
- (c) Before the relevant period, the Trustee undertook the following work in respect of this matter:
 - (1) applied for and obtained directions pursuant to s 96 of the Trusts Act that it was justified in defending the claim;
 - (2) prepared and filed a defence on behalf of the MPF; and
 - (3) investigated the possibility of obtaining litigation funding for the defence of the claim.
- (d) During the relevant period, the Trustee primarily undertook the following tasks in connection with the Bellpac proceedings:
 - (1) Liaising with its solicitors Minter Ellison in respect of a proposal to resolve claim by way of mediation;

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- (2) Discussing/formulating a mediation strategy with its solicitors Minter Ellison and reviewing relevant materials ahead of the mediation;
 - (3) Attendance at a mediation of the proceeding on 12 July 2016, and participation in ongoing negotiations following the mediation; and
 - (4) Making the appropriate disclosures to investors ahead of and subsequent to the mediation of the proceeding.
- (e) The mediation was unsuccessful and these proceedings are still ongoing.

55.2 Peregrine Beach - proceeding BS8792/2013 in the QSC.

- (a) This claim relates to a transaction that occurred before the new trustees were appointed. LMIM originally provided funding for the development of this project on behalf of the MPF in 2010. In 2012, LMIM entered into a deed of priority and subordination which affected the MPF's rights in respect of its existing securities. This claim alleges that LMIM breached its duties as trustee by entering into that deed.
- (b) Prior to the relevant period, the new trustees obtained directions pursuant to s.96 of the *Trusts Act* that they were justified in pursuing this claim.
- (c) Prior to the relevant period, the following matters occurred in this proceeding:
 - (1) The claim and statement of claim were amended and served;
 - (2) The defendant, LMIM as responsible entity of another fund, filed and served a defence;
 - (3) A negotiated settlement with the liquidators of LMIM was agreed; and
 - (4) The Trustee sought and obtained approval from the Court in relation to the settlement, pursuant to s.96 of the *Trusts Act*.

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- (d) During the relevant period, my team undertook a limited amount of work in respect of this proceeding. That work principally related to liaising with Minter Ellison regarding the logistics of settlement of the proceeding, and attending to notifying investors of the details and implications of the settlement that was reached.

55.3 Barly Wood – proceeding BS8032/14 in the QSC.

- (a) This claim also relates to a transaction that occurred before the new trustees were appointed. At a time when LMIM was trustee of the MPF and also responsible entity of another fund, it caused a loan provided by that other fund to be assigned to the MPF. The basis of the claim is that LMIM breached its duties as trustee of the MPF, by causing the loan to be assigned to the MPF.
- (b) Prior to the relevant period, the Trustee obtained litigation funding from IMF Bentham to pursue the claim. On this basis, the Trustee made an application for approval under section 96 of the *Trusts Act*. On 26 August 2015, Justice Daubney gave judgment on an application the Trustee brought under s.96, and directed that the Trustee would be justified in prosecuting this claim, together with the Lifestyle claim (explained in paragraph 55.4 below).
- (c) Notably, during the relevant period, the Receiver of the FMIF applied to be added as the second defendant to this proceeding, which the Court ordered should occur (LMIM is the first defendant to the proceeding). Subsequently, in August 2016, the Receiver of the FMIF filed an application to strike out the proceeding. The Trustee was accordingly required to undertake tasks related to defending the application to dismiss this claim.
- (d) During the relevant period, the work principally undertaken by the Trustee in connection with the Barly Wood proceeding involved:
- (1) Preparation and providing instructions to its solicitors Minter Ellison to defend the strike out application made by the defendants to the proceeding, who sought to have Fund's claim struck out (as referred to above);

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- (2) Attendance at the hearing of the strike out application on behalf of the Fund;
 - (3) Reviewing and considering amended pleadings, including second and third amended statements of claim in order to clarify aspects of the claim which were the subject of dispute by the receiver appointed to the FMIF; and
 - (4) Considering the scope for a counter claim to be filed in the proceedings, in consultation with Minter Ellison.
- (e) Judgment has since been delivered in the strike-out application, which was unsuccessful.

55.4 Lifestyle – proceeding BS8034/14 in the Supreme Court of Queensland.

- (a) This claim is similar to the Barly Wood claim. It relates to a different loan, but the relevant loan was assigned from another fund to the MPF as part of the same transaction as the Barly Wood loan. Again, the Trustee contends that LMIM breached its duties as trustee of the MPF, by causing the Lifestyle loan to be assigned to the MPF.
- (b) During the relevant period, the Trustee obtained litigation funding from IMF Bentham to pursue the claim. On this basis, the Trustee made an application for approval under section 96 of the *Trusts Act*. As set out in paragraph 55.3(b) above, on 26 August 2015 Justice Daubney gave judgment pursuant to s 96 directing that the Trustee would be justified in prosecuting this claim.
- (c) During the relevant period, the work principally undertaken by the Trustee in connection with the Lifestyle proceeding was very similar to that undertaken in respect of the Barly Wood proceeding. As with the Barly Wood proceeding, the receiver appointed to the FMIF applied to strike out the proceeding. Accordingly, the Trustee was required to undertake tasks related to defending the application to dismiss this claim. This work included:
 - (1) Preparing and providing instructions to its solicitors Minter Ellison to defend the strike out application;

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- (2) Attendance at the hearing of the strike out application on behalf of the Fund;
 - (3) Reviewing and considering amended pleadings, including second and third amended statements of claim in order to clarify aspects of the claim which were the subject of dispute by the receiver appointed to the FMIF; and
 - (4) Considering, in consultation with Minter Ellison, the scope for a counterclaim to be pursued in the proceedings.
- (d) Judgment has since been delivered in the strike-out application, which was unsuccessful.

Other or Potential Litigation

56. During the relevant period, the Trustee engaged in significant work related to investigating and pursuing various additional or potential claims on behalf of the Fund, as well as facilitating the making of various administrative applications:

56.1 Auditor Action - during the relevant period, the Trustee considered the scope of and prospects of success of a potential claim against the auditors, Williams Partners Independent Audit Specialists (**WPIAS**), in respect of their provision of audit services to the Fund in 2011 and 2012. The work undertaken by the Trustee in that regard has included:

- (1) an in depth review of the services provided by WPIAS in their 2011 and 2012 audit reviews, including reviewing file notes and data relied upon by the auditor;
- (2) reviewing correspondence exchanged between the auditor and LM staff in the context of conducting the relevant audits; and
- (3) liaising with its solicitors Squire Patton Boggs to discuss the next steps for progressing this claim.

56.2 Prepaid Management Fees Claim – the Trustee has worked with Minter Ellison during the relevant period to finalise a statement of claim for a potential breach of trust claim against LM Administration Pty Ltd (**LMA**), the former service

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provider of LMIM. The claim relates to prepaid management fees in an amount of \$12.3 million, which LMIM caused the Fund to pay to LMA before administrators were appointed to both LMIM and LMA.

- 56.3 Application for Trustee's Management Fees – this includes work on the 2015 Fee Application (that is, the previous application for approval of remuneration for the period from 12 January 2015 to 31 October 2015), including attending with Squire Patton Boggs in November and December 2015 to provide instructions in relation to the 2015 Fee Application. Order 3 of the Orders made by Justice Martin on 17 December 2015 in these proceedings (at page 3 of the Exhibit), authorises the payment of the Trustee's costs of filing the 2015 Fee Application from the assets of the Fund.

Assets

57. The total amount of remuneration claimed for this category is \$42,742.50 exclusive of GST. A schedule setting out every time entry allocated to this category between 1 November 2015 and 30 June 2016 is at pages 49 to 53 of the Exhibit. A schedule setting out every time entry allocated to this category between 1 July 2016 and 14 August 2016 is at page 67 of the Exhibit. These schedules include a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
58. By the beginning of the relevant period, the majority of the assets of the MPF had been realised. The only remaining asset concerned a property at Lygon Street, Melbourne (**Lygon Street**), over which the MPF holds a second registered mortgage. The MPF's loan, in respect of which this mortgage was a security, funded a property development project.
59. The development had not been significantly progressed at the time that the Trustee was appointed. However, as disclosed in Update 15 to Members, the Trustee determined that the best opportunity for a full recovery of the monies loaned by the MPF (being approximately \$0.9 million) was to assist in ensuring that the development was funded through to completion. Currently more than 30 of the 40 residential lots have sold and settled, and the borrower has advised the Trustee that nearly all of the remaining lots are now under contract. The Fund's security also extends to two retail lots which the borrower is presently marketing for sale.

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60. The work undertaken during the relevant period has principally consisted of overseeing settlement of the Lygon Street property, including reviewing contracts, settlement statements and correspondence related to the realisation of the security properties. The Trustee has also charged time in this category for reviewing demands made to the guarantor of the loan (thereby seeking to recover the monies advanced by the MPF), and providing instructions to Minter Ellison in respect of these demands.

Investors

61. The total amount of remuneration claimed for this category is \$74,968.00 exclusive of GST. A schedule setting out every time entry allocated to this category between 1 November 2015 and 30 June 2016 is at pages 54 to 58 of the Exhibit. A schedule setting out every time entry allocated to this category between 1 July 2016 and 14 August 2016 is at page 68 of the Exhibit.
62. As noted elsewhere in this affidavit, there are approximately 4500 members of the MPF. As such, during the relevant period my staff and I have been required to attend to answering an extensive number of investor enquiries, and issuing investor communications to keep investors updated on the process of winding up the Fund. This has included updating investors on the progress of realising the assets of the Fund and providing current projections on the expected return to investors.
63. During the relevant period, the specific tasks my staff and I have undertaken in this category include:
- 63.1 Responding to investor queries in the "LM inbox", which is a long-standing email account established as a channel for investor enquiries;
- 63.2 Preparing and drafting correspondence to investors, including preparing mass information updates that were provided to all members online and via mail outs;
- 63.3 Considering and responding to correspondence from the LM Investor Victim Centre (LMIVC), an investor group. The Trustee has received many enquiries from the LMIVC during 2016, largely in relation to the winding up of the Fund and avenues for and prospects of recovery; and
- 63.4 Occasionally updating investor details, where required.

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64. As part of attending to communications with members of the MPF, my staff and I have been required to regularly collate relevant material for inclusion in letters to investors and Trustee's reports to members, as well as attending to the issuing of these reports to each investor. I consider that these tasks are essential to keeping investors properly informed as to the progress of the winding up of the MPF.
65. As is the case for other categories, work undertaken in relation to communications with investors may be recorded in more than one category. However, time for carrying out each task has only been recorded once.

66. The total amount of remuneration claimed for this category is \$22,529.00. This amount is considerably less than the fees charged to this category in the two quarters prior to 1 November 2016, which reflects the fact that a comprehensive overview of the books and records of the Fund was undertaken before the relevant period, which allowed the Trustee to gain an understanding of the operation of the Fund to permit its administration according to best practice.
67. A schedule setting out every time entry allocated to this category between 1 November 2015 and 30 June 2016 is at pages 59 to 62 of the Exhibit. A schedule setting out every time entry allocated to this category between 1 July 2016 and 14 August 2016 is at page 68 of the Exhibit. These schedules include a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
68. To a limited extent this category has been used to record time spent in reviewing the MPF's books and records, although most time recorded in this category relates to preparing and lodging income tax returns and BAS returns. BAS returns are prepared on a monthly basis, and the fees charged to this category accordingly include work undertaken to prepare and lodge the Fund's BAS statement for each month from October 2015 to June 2016, inclusive.
69. This category has also been used to record time spent on general accounting tasks connected with the MPF, including processing payments and receipts, attending to bank account reconciliations, amending financial records for the 2013 to 2015 financial

Edward B.

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years and processing receipts and payments into our accounting system, Insol, in accordance with the Trustee's statutory obligations under the Corporations Act.

Trade on

70. The total amount of remuneration claimed for this category is \$73,593.50. A schedule setting out every time entry allocated to this category between 1 November 2015 and 30 June 2016 is at pages 63 to 66 of the Exhibit. A schedule setting out every time entry allocated to this category between 1 July 2016 and 14 August 2016 is at page 68 of the Exhibit. These schedules includes a description of each task undertaken, the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
71. The remuneration claimed in this application includes work my staff and I undertook in respect of the administration of the MPF and carrying out the winding up of the MPF, which I would describe as 'trade-on' or 'fund trading'. In a general sense, time charged to this category relates to work undertaken in identifying the carrying value of loan assets of the Fund (being the original value of the loan assets less the accumulated amount of any asset impairments), and managing the cashflow of the Fund.
72. More specifically, this category includes time spent on tasks associated with the management of the loan accounts of the MPF during the relevant period, including:
- 72.1 Reviewing loan accounting balances to determine appropriate provisions and write-offs, and the appropriate timing of same;
- 72.2 Reviewing management accounts of the Fund for the 2012 to 2015 financial years and making any amendments, as required;
- 72.3 Reviewing current and forecast cash flows;
- 72.4 Considering and analysing the impact of a claim on behalf of investors that related to withholding tax paid to the Australian Taxation Office for unitholder distributions in the period from July 2011 to March 2013;
- 72.5 Weekly cash reconciliation; and
- 72.6 Considering accounts payable and preparing invoices for payment.

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73. All of the tasks falling under the five identified categories and set out in paragraphs 52 to 72 above, were, in my view, necessary for the proper administration and winding up of the Trust in order to maximise realisations and recover funds for the benefit of members.

Status of the administration of the MPF

74. Since the new trustees were appointed, the majority of the security held for the MPF's loan book has been realised. The only remaining security property is the Lygon Street property, as discussed above.
75. The Trustee has been, and continues to be, involved in complex litigation on behalf of the MPF with a variety of other parties.
76. Given the complexities involved in the administration of the MPF, and the length of the period for which fees are sought to be recovered, I believe that the remuneration sought of \$479,227.00 (exclusive of GST) for professional fees (across all five categories) represents a fair and reasonable claim for remuneration. I also believe that the work undertaken to which the remuneration relates was necessary for the proper conduct of the administration and winding up of the MPF.
77. I respectfully request that this Honourable Court make orders that my remuneration for the period 1 November 2015 to 30 June 2016 be approved and determined in the amount of \$479,227.00 (exclusive of GST).
78. Whilst this is the second application we have made to the Court to recover our professional fees, as the winding of the MPF is ongoing there will likely be a need for further applications for approval of remuneration. In particular, multiple proceedings are still ongoing (see paragraph 55 above) and various tasks will need to continue to be undertaken in order for the winding up to be completed as required by the Court orders.
79. I estimate that it will take at least 12 - 14 months further to complete the necessary work to wind up the MPF, although I am hopeful that the majority of the litigated claims will be resolved in a shorter timeframe.

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Sworn by JARROD VILLANI

On 19 September 2016

at Brisbane, Queensland, in the presence of:



Signed



Commissioner for Declarations



Sworn:



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