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**

FIRST AFFIDAVIT OF JARROD VILLANI

SWORN ON: DECEMBER 2015

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 (**Trustee**), the trustee of the LM Managed Performance Fund (**MPF**).

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

AFFIDAVIT OF JARROD VILLANI
Filed on Behalf of the Applicant

Uniform Civil Procedure Rules 1999
Form 47, Rule 435

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remuneration for its services as Trustee of the MPF for the period between 12 January 2015 and 31 October 2015 (**relevant period**).

5. The total remuneration for which approval is sought in this application is $666,522.00 excluding GST. This amount comprises:

   5.1 $448,006.00, being the total professional fees (excluding GST) accrued during the period 12 January 2015 to 30 June 2015; and

   5.2 $218,516.00, being the total professional fees (excluding GST) accrued during the period 1 July 2015 to 31 October 2015.

6. 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-1"** (**Exhibit JV-1**).

7. 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-2**" (**Confidential Exhibit JV-2**). These documents are confidential and I request that the court maintain the confidentiality of this exhibit by storing the 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

<u>The creation of the MPF</u>

8. The MPF was constituted as a unit trust pursuant to a deed identified as the constitution of the MPF dated December 2001, which provides that the original manager and trustee of the MPF was LM Investment Management Ltd (**LMIM**). A true copy of this deed is at pages 1 to 24 of Exhibit JV-1.

9. The MPF constitution was subsequently amended by a Deed Poll dated 25 November 2009. A copy of the amending deed poll is at pages 25 to 63 of Exhibit JV-1.

10. A Supplemental Deed Poll dated 23 October 2012 further amended the MPF constitution. Based on my review of the books and records of the MPF, this is the

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most recent amendment to the constitution of the MPF. A copy of this deed poll is at pages 64 to 72 of Exhibit JV-1.

11. The books and records of the MPF included a document which consolidated all of the amendments to the constitution (**Constitution**). A copy of this document is at pages 73 to 116 of Exhibit JV-1.

12. The units in the MPF are held by individual members pursuant to the terms of the Constitution (**members**). The original business of the MPF was to use the money contributed by the members to make investments, principally in the form of loans secured by mortgages over real property, and to return the profits made on those investments to the members as distributions on their units. Members were entitled to the return of their principal upon the expiry of the term of their investment.

Insolvency of LMIM and Appointment of the Trustee

13. A copy of an historical company extract of the records maintained by ASIC for LMIM dated 20 November 2015 is at pages 118 to 145 of Exhibit JV-1. As recorded in that search:

    13.1 on 19 March 2013, Ginette Dawn Muller and John Richard Park were appointed voluntary administrators of LMIM; and

    13.2 on 1 August 2013, Ms. Muller and Mr. Park were appointed liquidators of LMIM.

14. Clause 23.1(b)(ii) of the Constitution provides that the Manager must resign if (being a corporation) it becomes an externally-administered body corporate as defined in the *Corporations Act 2001*. LMIM was therefore required to resign after the appointment of voluntary administrators on 19 March 2013.

15. By order of the Supreme Court of Queensland made 12 April 2013 LMIM was removed as trustee of the MPF and the Trustee and Calibre Capital Ltd (**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 Exhibit JV-1.

16. On 23 April 2013 further orders were made vesting all assets of the MPF in the new trustees as joint and several trustees. A copy of these orders is at pages 148 to 149 of Exhibit JV-1.

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17. On 10 February 2014, on the new trustees' application, the Supreme Court of Queensland ordered that the MPF be wound up by the new trustees pursuant to the Constitution. A copy of the amended order of Martin J dated 18 March 2014 is at pages 150 to 151 of Exhibit JV

Retirement of Calibre Capital as Trustee of the MPF

18. On 1 October 2014 Calibre gave written notice to the members of the MPF of its intention to retire as trustee of the MPF effective on 5 January 2015. A copy of that notice is at page 152 of Exhibit JV-1. Clause 23.1(a) of the Constitution required three months' notice to be given.

19. On 5 January 2015 Calibre retired as trustee pursuant to the notice referred to in paragraph 18 above. The Trustee has continued to act as sole trustee of the MPF since Calibre retired.

Updates to Members of the MPF

20. At regular intervals from the date of their appointment until the date Calibre retired as trustee, the new trustees provided written updates to the members of the MPF. The Trustee has issued one further update since Calibre retired. The updates give the members information about the affairs of the trust, including the activities that have been carried out in the management of the MPF and the progress of the realisation of the trust's assets.

21. A number of these updates have also been sent to financial advisors acting for members, rather than to the members themselves.

22. Some of the updates contain commercially sensitive and confidential information relating to realisation of assets of the MPF and both actual and foreshadowed litigation. Some of the information contained in the confidential updates retains its quality of confidentiality, and its disclosure may prejudice negotiations, asset realisations and commenced and potential litigation.

23. 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 also made available for download on the website maintained for the MPF at the address

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http://www.kordamentha.com/creditor-information/australia/109. The confidential updates were only sent to the members by email.

24. There are around 4,500 members in total. Until about May 2015, I believed that the email mailing list held by the Trustee contained an email address for each member (which in some cases is the email address for the member's financial advisor, rather than the member's personal email address). I discovered, while preparing for another court application, that the mailing list did not contain email addresses for 10 members.

25. There are therefore 10 members who may not have received any of the updates sent by email and therefore may not have seen the confidential updates which were not made available on the website unless they requested them directly from the Trustee.

26. I now have email addresses for each of these 10 members. These email addresses have been added to the mailing list for future updates, including notice of the application that this affidavit is intended to support.

27. Since obtaining the email addresses for each of these 10 members, we have emailed them 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. None of these 10 members have requested copies of the confidential updates.

28. The table below sets out details of the updates to members that contained information about the remuneration the new trustees have received since their appointment. For each update, the table shows:

    28.1 the date the update was sent;

    28.2 whether the update was confidential or non-confidential; and

    28.3 whether the update is located in either Exhibit JV-1 or Confidential Exhibit JV-2.

Update	Date	Confidential/non-confidential	Location of copy
Update 1	15 April 2013	Non-confidential	Pages 153 - 154

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			of Exhibit JV-1
Update 2	30 April 2013	Non-confidential	Pages 155 - 159 of Exhibit JV-1
Update 3	1 May 2013	Non-confidential	Pages 160 - 164 of Exhibit JV-1
Update 4	2 May 2013	Non-confidential	Page 165 of Exhibit JV-1
Update 5	7 May 2013	Confidential	Pages 1 - 2 of Confidential Exhibit JV-2- Tab 1
Update 6	13 May 2013	Confidential	Pages 3 - 7 - of Confidential Exhibit "JV-2" - Tab 2
Update 7	17 May 2013	Confidential	Pages 8 – 18 of Confidential Exhibit "JV-2" - Tab 3
Update 8	5 June 2013	Confidential	Pages 19 – 26 of Confidential Exhibit "JV-2" - Tab 4
Update 9	5 July 2013	Confidential	Pages 27 - 54 of Confidential Exhibit "JV-2" - Tab 6
Update 10	16 September 2013	Confidential	Pages 55 - 82 of Confidential

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			Exhibit "JV-2" - Tab 7
Update 11	10 January 2014	Confidential	Pages 83 - 102 of Confidential Exhibit JV-2 – Tab 8
Update 12	9 April 2014	Confidential	Pages 103 - 109 of Confidential Exhibit JV-2
Detailed narrations for Update 12 to Investors	9 April 2014	Non-confidential	Pages 166 to 170 of Exhibit JV-1
Update 13	4 August 2014	Confidential	Pages 110 to 123 of Confidential Exhibit JV-2 Tab 9
Notice to Unitholders	1 October 2014	Non-confidential	Page 153 of Exhibit JV-1
Update 14	20 January 2015	Confidential	Pages 124 to 132 of Confidential Exhibit JV-2
Detailed narrations for Update 14 to Investors	20 January 2015	Confidential	Pages 133 to 142 of Confidential Exhibit JV-2

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BASIS OF PAYMENT OF REMUNERATION

29. Clause 17.3 of the Constitution entitles the trustee of the MPF to be paid a management fee of '*up to 10% per annum of the Net Fund Value in relation to the performance of its duties as detailed in this Constitution and the Law*'.

30. Relevantly:

30.1 The '*Net Fund Value*' is defined in the Constitution as the '*value of the Scheme Property less the Liabilities on the Valuation Date*'.

30.2 The '*Scheme Property*' as defined as the assets of the MPF.

30.3 '*Liabilities*' is defined to mean all liabilities of the Manager/trustee in respect of the MPF or otherwise payable out of the MPF, excluding the liabilities owed to the members as such.

30.4 '*Valuation Date*' means the date which is the last day of each month or any date during each month at the Manager/trustee's discretion or the date on which the Manager/trustee determines there has been a material change in the value of the Scheme Property.

31. Clause 17.4 of the Constitution provides that the Manager/trustee is entitled to fees:

31.1 in relation to the subscription and withdrawal of units in the MPF;

31.2 in relation to the transfer or transmission of units in the MPF;

31.3 in relation to arranging any finance facility in connection with the purchase of any asset of the MPF;

31.4 in relation to due diligence enquiries generally;

31.5 in relation to the sale of real estate or assets of the Scheme Property;

31.6 in relation to the promotion and management of the MPF (payable monthly);

31.7 in relation to the winding-up of the MPF; and

31.8 in relation to the performance of its duties and obligations pursuant to the Law and the Constitution.

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32. No amounts are specified in the Constitution for any of the fees contemplated by clause 17.4.

33. Clause 17.5 of the Constitution provides that the Manager/trustee is entitled to be paid a success fee calculated in relation to a reporting period as the difference between the net profit of the MPF and the 'net distributor' [sic] forecast to be paid to members during that reporting period.

34. 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.

35. For the period from their 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 as explained in paragraphs 37 to 42 below. This application does not seek any orders in relation to the remuneration paid under the service agreement, and I provide details of this period in this affidavit only by way of background.

36. The present application seeks approval of remuneration for the period from 12 January 2015 to 31 October 2015. 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.

REMUNERATION FOR THE PERIOD PRIOR TO 12 JANUARY 2015 – THE SERVICE AGREEMENT

37. 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 Exhibit JV-1.

38. 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, as set out in Schedule 2 of the Service Agreement.

39. The new trustees disclosed the existence of the service agreement and the basis on which remuneration was to be paid to members of the MPF in Update 9 (see pages 27 to 54 of Confidential Exhibit JV-2). Update 9 also included a copy of the

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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 Constitution and instead proposed to pay remuneration under the service agreement at KMUT's ordinary professional rates. As discussed further below at paragraph 42, Update 9 was issued to investors before any remuneration was paid under the service agreement.

40. The manual sets out the charge rates applied by KMUT for the various levels of employees who were expected to carry out work on behalf of the MPF, and also explained that the new trustees proposed to provide regular reports to the members setting out details of the work done on behalf of the MPF, as well as voluntarily complying with the Code of the Insolvency Practitioner Association of Australia (**Code**) in relation to all the remuneration charged under the service agreement, despite the Code not strictly applying to the appointment. As stated at paragraph 59 below, the Code is exhibited to this affidavit at pages 178 to 206 of Exhibit JV-1. The new trustees adopted this course because their role in managing and then winding up the MPF is largely similar to an insolvent administration, and in my view the Code represents a suitable 'best practice' for disclosure and calculation of remuneration in this context. KMUT subsequently provided services to the new trustees in connection with the administration of the MPF, and has been paid remuneration under the services agreement for these services out of the assets of the MPF. This is the only remuneration which has been paid to the Trustee or Calibre in any capacity in connection with the management of the MPF.

41. 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 this remuneration.

42. Remuneration was paid under the service agreement at regular intervals. Before each payment was made, the new trustees included the relevant details of the remuneration proposed to be paid in an update to investors, which included an outline of the work that had been done, the total hours spent on each aspect of the management of the MPF, the total time and fees incurred for each week of the relevant period. These summaries are included in the exhibits to this affidavit as follows:

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42.1 Update 9 at pages 8 to 16 (pages 34 to 42 of Confidential Exhibit JV-2). This update discloses that remuneration in the amount of $874,337 and reimbursements of disbursements in the amount of $14,562.62 (both exclusive of GST) were proposed to be paid to KMUT for the period from 12 April 2013 to 31 May 2013.

42.2 Update 10 at pages 10 to 11 and Appendices A and B (pages 64 to 65 of Confidential Exhibit JV-2). This update discloses that remuneration in the amount of $567,899 and reimbursements of disbursements in the amount of $3,617.61 (both exclusive of GST) were proposed to be paid to KMUT for the period from 1 July 2013 to 28 July 2013.

42.3 Update 11 at pages 10 to 11 and Appendices A and B (pages 92 to 102 of Confidential Exhibit JV-2). This update discloses that remuneration in the amount of $583,793 and reimbursements of disbursements in the amount of $3,617.61 (both exclusive of GST) were proposed to be paid to KMUT for the period from 29 July 2013 to 3 November 2013.

42.4 Update 12 at pages 4 to 5 and Appendix A, plus separate document with detailed narrations (pages 106 to 109of Exhibit JV-1). This update discloses that remuneration in the amount of $329,045 and reimbursements of disbursements in the amount of $1,908.45 (both exclusive of GST) were proposed to be paid to KMUT for the period from 4 November 2013 to 2 March 2014.

42.5 Update 13 at pages 6 to 7 and Appendices A and B (pages 115to 123 of Confidential Exhibit JV-2). This update discloses that remuneration in the amount of $298,242 and reimbursements of disbursements in the amount of $1,036 (both exclusive of GST) were proposed to be paid to KMUT for the period from 3 March 2014 to 20 July 2014.

42.6 Update 14 at page 5 and Appendices A and B (pages 128 to 132 of Confidential Exhibit JV-2) This update discloses that remuneration in the amount of $265,359.50 and reimbursements of disbursements in the amount of $1,542.40 (both exclusive of GST) were proposed to be paid to KMUT for the period from 21 July 2014 to 11 January 2015.

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43. 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 42.1 to 42.6.

44. All of the remuneration set out in the updates to members (as summarised in paragraph 42 above) has been paid. No other remuneration has been paid since the appointment of the new trustees on 12 April 2013.

REMUNERATION FOR THE CURRENT PERIOD

45. 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 42.6 above.

46. The present application seeks the court's approval for the Trustee's remuneration for the relevant period, being from 12 January 2015 to 31 October 2015. I only refer below to matters prior to 12 January 2015 to the extent necessary to give context to the work done during the relevant period.

47. Following Calibre's retirement, I was concerned to check 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 relevant period.

48. As identified above at paragraph 5, the total remuneration for which approval is sought in this application is $666,522.00 excluding GST.

49. The schedule which is at page 176 of Exhibit JV-1 gives a global overview of the remuneration claimed by the Trustee for the period from 12 January 2015 to 30 June 2015 (other than the remuneration claimed for forensic services as set out in paragraphs 85 to 90) (**Schedule 1**). A separate schedule, which is at page 177 of Exhibit JV-1, gives a global overview of all the remuneration claimed by the Trustee

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for the period from 1 July 2015 to 31 October 2015 (**Schedule 2**). These schedules identify:

49.1 each individual who carried out work during the relevant period;

49.2 their position within KordaMentha;

49.3 their hourly charge rate;

49.4 the hours of work they did in total for each of the weeks during the relevant period;

49.5 their total hours of work; and

49.6 the total remuneration charged in respect of their work.

50. Schedule 1 and Schedule 2 also contain information about disbursements that were incurred by the Trustee during the relevant periods. Those disbursements are not the subject of the present application.

51. In order to ensure efficiency of cost, time and resources, where possible during the course of KordaMentha's work as trustee of the MPF I have delegated tasks to employees of KordaMentha in order to ensure compliance with statutory obligations and for accounting and reporting purposes.

52. I have supervised all the work carried out under delegation, to the extent required by each task. Due to the complexity of some of the issues involved in the winding up process I have had to be directly involved in a number of the tasks.

53. 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.

54. My staff and I record 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. Each time entry is allocated to one of six broad categories. These categories are as follows:

54.1 Administration and risk management (Litigation and Legal);

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54.2 Assets;

54.3 Investors;

54.4 Investigations;

54.5 Fund trading; and

54.6 Forensic services.

55. 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 be 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 is only recorded once.

56. 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.

57. 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 in relation to the insolvency appointments they undertake.

58. The Trustee has adopted the ARITA Code of Professional Practice as a guide to the performance of the duties involved in administering the MPF.

59. At pages 178 to 206 of Exhibit JV-1 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.

60. 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.

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61. I now set out details of the work my staff and I performed during the relevant period by reference to the five categories identified in paragraph 54 above.

Administration and risk management (Litigation and Legal)

62. The total amount of remuneration claimed for this category is $360,072.50. A schedule setting out every time entry allocated to this category between 12 January 2015 and 30 June 2015 is at pages 207 to 215 of Exhibit JV-1. A separate schedule setting out every time entry allocated to this category between 1 July 2015 and 31 October 2015 is at pages 228 to 233 of Exhibit JV-1.

63. 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.

64. There are a number of litigated matters which the Trustee is conducting on behalf of the MPF. In general terms, remuneration has been claimed for:

64.1 attending to litigation strategy and matter overview;

64.2 instructing lawyers (giving instructions, taking advice, discussing strategy);

64.3 preparing material for proceedings, including reviewing affidavit material and other evidence;

64.4 attending to settlement negotiations and mediations;

64.5 investigating the possibility of obtaining litigation funding for claims; and

64.6 document management claims, including processing documents for the purposes of creating an electronic document database for litigation purposes.

65. The litigated matters on which work was done during the relevant period include:

65.1 Bellpac.

(a) This matter is Supreme Court of Queensland proceeding BS12317/2014. The Trustee is the 8th defendant, in its capacity as trustee of the MPF.

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(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 of the realisation of the property was paid to the MPF as a fee for funding the litigation that realised the property. The payment of this fee is now in dispute. All of the relevant transactions occurred before the new trustees were appointed.

(c) During the relevant period:

(1) the Trustee applied for and obtained directions pursuant to s 96 of the Trusts Act that it is justified in defending the claim;

(2) the Trustee prepared and filed a defence on behalf of the MPF;

(3) the other defendants put on their defences; and

(4) the Trustee investigated the possibility of obtaining litigation funding for the defence of this claim, but have not yet done so.

(d) The specific tasks undertaken by my team in relation to this matter during the relevant period have included reviewing court submissions, reviewing defences filed in the proceedings and responding to requests for instructions from our legal representatives.

(e) Documents relating to this matter are hosted on a document management system. Work was also done reviewing those documents during the relevant period.

65.2 Peregian Beach.

(a) This is Supreme Court of Queensland proceeding BS8792/2013.

(b) 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. The claim alleges that LMIM breached its trust duties by entering into that deed.

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(c) The new trustees obtained directions pursuant to s.96 of the *Trusts Act* that they were justified in pursuing this claim prior to the relevant period.

(d) During the relevant period:

(1) The claim and statement of claim were amended and served.

(2) The defendant, LMIM as responsible entity of another fund, put on a defence; and

(3) A negotiated settlement with the liquidators of LMIM has been agreed.

(e) We have recently received approval from the Court in relation to the settlement, pursuant to s.96 of the Trusts Act.

65.3 Barly Wood – proceeding BS8032/14 in the Supreme Court of Queensland.

(a) This claim arises out of a transaction which occurred before the new trustees were appointed. When LMIM was trustee of the MPF and responsible entity of another fund, it arranged for a loan provided on behalf of that other fund to be assigned to the MPF.

(b) The basis of the claim is that LMIM breached its duties as trustee by causing the loan to be assigned to the MPF.

(c) During the relevant period the Trustee obtained litigation funding for the claim, which has been approved by the court subject to also getting directions pursuant to s.96 of the *Trusts Act* that they are justified in pursuing this claim.

(d) On 26 August 2015 Justice Daubney gave judgment pursuant to s 96 directing that the Trustee would be justified in prosecuting this claim, together with the Lifestyle claim explained in paragraph 65.4 below.

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

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(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.

(b) During the relevant period the Trustee obtained litigation funding for the claim, which has been approved by the court subject to also getting directions pursuant to s.96 of the *Trusts Act* that they are justified in pursuing this claim.

(c) As set out in paragraph 65.3(d) above, on 26 August 2015 Justice Daubney gave judgment pursuant to s 96 directing that the Trustee would be justified in prosecuting this claim.

65.5 Peter Drake.

(a) This is a claim against the former managing director of LMIM. Judgment was obtained against Mr Drake and he became a bankrupt before the relevant period.

(b) During the relevant period a small amount of work was done in relation to his bankruptcy, which related to outstanding matters negotiated with his trustee in bankruptcy before the relevant period including possible recovery actions and investigations being conducted by the trustee.

(c) During the relevant period my staff also liaised with ASIC regarding documentation to be used in proceedings against Peter Drake and consulted with legal advisors in relation to documents held by the MPF in relation to those proceedings.

65.6 Other matters.

(a) Work relating to the present application for approval of remuneration has been included in this category, including:

(1) seeking and obtaining advice from Squire Patton Boggs in relation to the continued operation of the services agreement and the basis on which the Trustee can claim remuneration; and

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(2) attending with Squire Patton Boggs regarding the same and providing instructions to make this application.

(b) During the relevant period the Trustee entered into conditional litigation funding agreements for the Barly Wood and Lifestyle claims described above. The work done in this category includes negotiations leading to those funding agreements (which were subsequently executed), as well as negotiations for other potential claims that are not funded as yet. There has also been ongoing work carried on in relation to the various court proceedings to which the Trustee is a party concerning LMIM and its liquidators. This includes the approval and implementation of a regime to allow the Trustee and other interested parties to access books and records of the MPF and books and records maintained by other trusts previously controlled by LMIM but which relate to the affairs of the MPF, which have been in the custody of LMIM's liquidators.

Assets

66. The total amount of remuneration claimed for this category is $12,285.00 exclusive of GST. A schedule setting out every time entry allocated to this category between 12 January 2015 and 30 June 2015 is at page 217 of Exhibit JV-1. A separate schedule setting out every time entry allocated to this category between 1 July 2015 and 31 October 2015 is at page 234 of Exhibit JV-1. 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.

67. By the beginning of the relevant period, the majority of the assets of the MPF had been realised. The only remaining asset was a property at Lygon Street, Melbourne (**Lygon Street**), over which the MPF holds a third registered mortgage.

68. The MPF's loan funded a property development project. During the relevant period, the Trustee carried out work monitoring the borrower's compliance with the terms of the loan and the completion of the property development project.

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69. The work undertaken during the relevant period principally consisted of reviewing a valuation of Lygon Street, assessing the MPF's security position and conducting a settlement analysis.

Investors

70. The total amount of remuneration claimed for this category is $97,604.50 exclusive of GST. A schedule setting out every time entry allocated to this category between 12 January 2015 and 30 June 2015 is at pages 218 to 219 of Exhibit JV-1. A separate schedule setting out every time entry allocated to this category between 1 July 2015 and 31 October 2015 is at pages 235 to 237 of Exhibit JV-1. These schedules include the identity of the person who performed the work, the date and amount of time they were engaged and a brief narration of the task performed.

71. As noted elsewhere in this affidavit, there are approximately 4500 members of the MPF. During the relevant period my staff and I have attended to answering investor enquiries, and issuing investor communications to keep investors updated as to the winding-up, including the process of asset realisation and the expected return to investors.

72. During the relevant period, my staff and I have also continued to:

72.1 correspond with investors (and/or their solicitors or representatives) regarding changes to their details, if required; and

72.2 correspond with investors on general matters, as well as drafting responses to investor correspondence where required; and

72.3 update and maintain investor details based on this correspondence, as required.

73. For the purposes of investor communications, including the Trustee's reports and letters to the investors, my staff and I have been required to collate all relevant material for these reports, including collating detailed fee summaries and narrations and attending to the issue of these reports to each investor. I consider that these tasks are necessary to keep investors properly informed as to the progress of the administration and the winding up of the MPF.

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74. Work undertaken in relation to communications with investors may be recorded in more than one category. However, time for carrying out each task is only recorded once.

Statutory Compliance and Investigations

75. The total amount of remuneration claimed for this category is $125,800.00. A schedule setting out every time entry allocated to this category between 12 January 2015 and 30 June 2015 is at pages 220 to 224 of Exhibit JV-1. A separate schedule setting out every time entry allocated to this category between 1 July 2015 and 31 October 2015 is at pages 238 to 240 of Exhibit JV-1. 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.

76. This category has been used to record time spent reviewing the MPF's books and records and preparing income tax returns and BAS returns.

77. As noted elsewhere in this affidavit, many of the books and records of the MPF were held by LMIM until an arrangement was reached early this year for the Trustee to have access to those documents for the purposes of the MPF. This category has also been used to record time spent reviewing documents to which access has been obtained in this way to identify their usefulness in managing the affairs of the MPF.

78. Before the new trustees' appointment in April 2013, the MPF was audited by Williams Partners Independent Audit Specialists. Given the financial position of the MPF, in the relevant period the Trustee conducted extensive investigations into whether the audits were conducted properly, and whether there might be claims available against the auditors. Based on those investigations, in May 2015, the Trustee obtained advice from its solicitors, Squire Patton Boggs, in relation to the claims that might be available.

79. Having considered the results of our investigations and the advice we have received, the Trustee has not presently elected to pursue a claim against the auditor.

80. This category includes the work that has been done in this regard. Much of the work carried out during the relevant period involved reviewing the books and records obtained from LMIM's liquidators for documents relevant to a possible claim against

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the auditor. Investigations were also carried out by the Trustee in the period 1 July 2015 to 31 October 2015 into a loan agreement provided by the MPF to AIIS, and the relationship between that loan and a loan provided by LMIM to the same borrower on behalf of another fund, the FMIF. The investigations carried out by the Trustee in relation to this loan include:

80.1 tracing and recording amounts advanced under the loan facility;

80.2 reconciling bank statements and general ledger accounts with loan statements in order to verify amounts advanced under the loan facility;

80.3 attending with Senior Counsel to assist with the preparation of a statement of claim; and

80.4 reviewing the draft statement of claim.

81. This category has also been used to record time spent on general accounting tasks connected with the MPF, including processing payments and receipts, foreign currency movements and bank account reconciliations.

Trade on

82. The total amount of remuneration claimed for this category is $43,370.00. A schedule setting out every time entry allocated to this category between 12 January 2015 and 30 June 2015 is at pages 225 to 227 of Exhibit JV-1. A separate schedule setting out every time entry allocated to this category between 1 July 2015 and 31 October 2015 is at pages 241 to 243 of Exhibit JV-1. 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.

83. 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.

84. This category includes time spent on general administrative tasks associated with the management of the MPF, including:

84.1 monitoring cashflow and preparing cashflow forecasts;

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84.2 considering trading liabilities and management of same;

84.3 considering and approving the payments and expenses of the MPF, including payment of legal expenses and consultants' expenses;

84.4 reviewing and considering accounts payable;

84.5 updating receipts and payments and reconciling same;

84.6 dealing with bank accounts;

84.7 reviewing and considering MYOB entries and cashbook entries;

84.8 updating weekly cash reconciliation including foreign exchange calculations and foreign currency bank account balances; and

84.9 dealing with bank guarantees held on behalf of the MPF.

Forensic services

85. The total amount of remuneration claimed for this category is $27,390.00 for forensic services provided in relation to the MPF between 20 January 2015 and 30 April 2015. A schedule setting out every time entry allocated to the Forensic Services category is at page 244 of Exhibit JV-1. Although this remuneration is for work that was done in in the same time period covered by Schedule 1 (at page 176 of Exhibit JV-1), this category of remuneration is not included in the summary in Schedule 1.

86. The KordaMentha accounting practice includes a standalone business group conducted via the entity KordaMentha Pty Ltd, which provides IT and forensic services (**KordaMentha Forensic**). KordaMentha Forensic has provided extensive services to assist in the management of the MPF, principally in connection with the processing and review of electronic books and records of the MPF as provided to the Trustee, pursuant to a court order, by the former trustee's liquidators and/or the liquidator of the former trustee's service company, LM Administration Pty Ltd (**LMA**).

87. The separate KordaMentha Forensic business unit has invoiced the Trustee for these services notwithstanding that it is the same legal entity. This is a requirement of KordaMentha's internal structure and service charging arrangements. However, the

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Trustee seeks approval from the Court for these costs as remuneration of the Trustee, not as a disbursement. A copy of the invoice is at page 245 of Exhibit JV-1.

88. The services performed by KordaMentha Forensic do not overlap with any of the fees claimed in the Administration (Litigation and Legal) category, discussed above at paragraphs 62 to 65, despite some of the narrations in the Administration category being described as "Forensics and Investigations". Much of the data received from the former trustee and LMA comprised complex electronic databases storing financial information. The work performed by KordaMentha Forensic included:

    88.1 extracting the relevant data from the large volume of available material;

    88.2 identifying the relevant databases and other documents;

    88.3 processing the data so that it was capable of being reviewed and used by the Trustee's staff in the form of a searchable SQL database; and

    88.4 identifying, processing and producing historical emails between relevant individuals over specific date ranges to assist the Trustee in managing the MPF and investigating possible claims.

89. None of the staff ordinarily engaged in the management of the MPF work for KordaMentha Forensic, and the services provided by KordaMentha Forensic were exclusively technical in nature. The work that was done by KordaMentha Forensic could not have been done by members of the Trustee's staff. In my view it was necessary and appropriate for the Trustee to engage KordaMentha Forensic to conduct that work, and the amount claimed by KordaMentha Forensic is reasonable by reference to the work that was done.

90. All of the tasks set out in paragraphs 62 to 89 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

91. 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.

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92. The Trustee has been, and continues to be, involved in complex litigation on behalf of the MPF with a variety of other parties.

93. Given the complexities involved in the administration of the MPF, including the ongoing issues in relation to LMIM as the former trustee (which include the handover of books and records, claims for indemnity by LMIM and by its liquidators and the various claims against LMIM for breaches alleged to have been committed while it was trustee), I believe the remuneration sought of $666,522.00 excluding GST for professional fees (across all six categories) represents a fair and reasonable claim for remuneration, and that the work undertaken to which the remuneration relates was necessary for the proper conduct of the administration and winding up of the MPF.

94. I respectfully request that this Honourable Court make orders that my remuneration for the period 12 January 2015 to 31 October 2015 be determined in the amount of $733,174.20 inclusive of GST.

95. As the winding of the MPF is ongoing there will be a need for further applications for approval of remuneration. In particular, multiple proceedings are still ongoing (see paragraph 65 above) with other claims still in contemplation; 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. I estimate that it will take at least 24 months to complete the necessary work to wind up the MPF, although I am hopeful that the majority of the litigated claims will be resolved well within this timeframe.

Sworn by JARROD VILLANI
On 2 December 2015
at Brisbane, Queensland, in the presence of:

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Signed Commissioner for Declarations

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