

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383/2013

Applicants:

**RAYMOND EDWARD BRUCE AND
VICKI PATRICIA BRUCE
AND**

First Respondent:

**LM INVESTMENT MANAGEMENT LIMITED
(ADMINISTRATORS APPOINTED), ACN 077
208 461, IN ITS CAPACITY AS RESPONSIBLE
ENTITY OF THE LM FIRST MORTGAGE
INCOME FUND
AND**

Second Respondent:

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

AFFIDAVIT

I, PAUL ALEXANDER RUSSELL of Forensic Advisory Services, Level 10, 45 Clarence Street, Sydney NSW 2000, say on oath:

1. I am a partner of Financial Advisory Services.
2. I am forensic accounting specialist and chartered accountant with over 30 years' experience in the accountancy profession. I am also a registered liquidator and an official liquidator and have been involved in numerous insolvency administrations and investigations.
3. For the purpose of this proceeding I have been engaged on behalf of the Applicants to prepare a report on the Net Tangible Asset position of LM Investment Management Limited.

Signed:



Taken:



**AFFIDAVIT OF PAUL
ALEXANDER RUSSELL**


Piper Alderman
Level 23, Governor Macquarie Tower, 1 Farrer
Place, SYDNEY 2000

Filed on Behalf of the Applicants

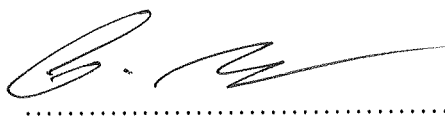
Ref: AB:SB:380287
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Fax No: +61 2 9253 9900

4. Exhibited to this affidavit and marked "PAR1" is a true copy of my report dated 3 May 2013, together with a copy of my curriculum vitae.
5. All facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

SWORN by PAUL ALEXANDER RUSSELL on 3 May 2013 in Sydney in the Presence of:



Deponent



Witness


Name:

Solicitor/Justice of the Peace

I, Carla Slyney, Solicitor, Prac Cert No 58074, certify the following matters concerning the making of this statutory declaration/ affidavit by the person who made it:

1. I saw the face of the person/ ~~I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.~~
2. ~~I have known the person for at least 12 months/~~ I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was:

Driver licence

 (sgd) Date: 3 / 5 / 20 13

SUPREME COURT OF QUEENSLAND

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LM INVESTMENT MANAGEMENT LIMITED
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461, IN ITS CAPACITY AS RESPONSIBLE ENTITY
OF THE LM FIRST MORTGAGE INCOME FUND
AND

Second Respondent:

THE MEMBERS OF THE LM FIRST MORTGAGE
INCOME FUND ARSN 089 343 288

EXHIBIT CERTIFICATE

This is the Exhibit marked "PAR" referred to in the affidavit of Paul Alexander Russell sworn 3 May 2013.


Before me:



.....
Solicitor/Justice of the Peace

I, Carla Slyney, Solicitor, Prac Cert No 58074, certify the following matters concerning the making of this statutory declaration/ affidavit by the person who made it:

1. I saw the face of the person/ I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering;
2. I have known the person for at least 12 months/ I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was:

Driver Licence
 (sgd) Date: 3 / 5 / 20 13

CERTIFICATE OF EXHIBIT

Piper Alderman
Level 23, Governor Macquarie Tower, 1 Farrer Place,
SYDNEY 2000

Filed on Behalf of the Applicants

Ref: AB:LG:384396
Phone No: +61 2 9253 9999
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Forensic Advisory Services Pty Ltd
ABN 24 068 615 869

Level 10, 45 Clarence Street, Sydney NSW 2000

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Website fas-au.com



**In the Supreme Court of Queensland
Proceedings 3383 of 2013**

Between:

**RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM INVESTMENT
MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)**

Applicants

v

THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Respondents

**Expert Accountant's Report
of
Paul Russell**

Dated: 3 May 2013

Specialist Field	:	Forensic Accounting
On behalf of	:	Applicants
Prepared for	:	Supreme Court of Queensland
On instruction of	:	Piper Alderman

Forensic Advisory Services
Level 10
45 Clarence Street
SYDNEY NSW 2000
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**Paul Russell
Partner**

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

CONTENTS

SECTION	PAGE
1.00 SCOPE	3
2.00 INSTRUCTIONS	5
3.00 QUESTION 1.	9
4.00 QUESTION 2.	10
5.00 QUESTION 3.	12
6.00 QUESTION 4.	14
7.00 QUESTION 5.	16
8.00 QUESTION 6	18
9.00 EXPERT'S CONFIRMATION	19

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

APPENDICES

- A. Letter of instruction
- B. Curriculum Vitae
- C. List of Documents Relied Upon

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated: 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

1.00 SCOPE

- 1.01 I, Paul Russell, am instructed by Piper Alderman, Solicitors, to act as an expert witness in the matter of Raymond Edward Bruce & Vicki Patricia Bruce and L M Investment Management Limited (Administrators Appointed) v The Members of the LM First Mortgage Fund. (Supreme Court of Queensland Proceedings No. 3383 of 2013).
- 1.02 I have been instructed to answer 6 questions in relation to LM Investment Management Limited (Administrators Appointed) ("LMIM") on the basis of assumptions provided to me in my letter of instructions dated 2 May 2013 and the limited information provided to me with my instructions.
- 1.03 At **Appendix A** is a copy of the letter of instruction I received from Piper Alderman, Solicitors.
- 1.04 I am a Chartered Accountant and an Associate Member of the Institute of Certified Fraud Examiners. I am a Registered Liquidator and an Official Liquidator. I am a Partner at Forensic Advisory Services Pty Limited which changed its name from RGL Forensics in March 2012.
- 1.05 Prior to joining RGL Forensics in April 2010, I was employed by PPB. I commenced with the predecessor of PPB in October 1999 and was admitted as a Partner to PPB in 2005. Over the past 10 years, I have provided expert opinions and have been subject to cross examination in legal forums in various jurisdictions in Australia. At **Appendix B** is a copy of my curriculum vitae.
- 1.06 Other staff members of Forensic Advisory Services have assisted me in relation to the preparation of this report. Where this has occurred, I have reviewed the results of their work and take responsibility for and adopt any conclusions reached.
- 1.07 I have prepared this report on the basis of the documents provided to me by Piper Alderman Lawyers and listed at **Appendix C**. Should any other additional

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

material become available, I would like the opportunity to review it and, if necessary, amend this report.

- 1.08 I have conducted this engagement in accordance with the professional standards of the Institute of Chartered Accountants in Australia ('ICAA') and CPA Australia Limited ('CPA Australia') including Forensic Accounting Standard, APES 215 – Forensic Accounting Services.
- 1.09 I have read Chapter 11, Part 5 of the Uniform Civil Procedure Rules 1999 (QLD). I agree to be bound by the Rules.
- 1.10 I have not undertaken an audit or other independent examination of the documentation other than for the purpose of this report.
- 1.11 My review is confined to the financial aspects of the matter and is not concerned with liability.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

2.00 INSTRUCTIONS

2.01 I have been instructed to answer the following 6 questions on the basis of the material provided to me and the Assumptions detailed at paragraph 2.09 to 2.17 below:

2.02 Question 1.

Making the Assumptions, what is 0.5% of the average value of scheme property of the Registered Schemes LMIM operates up to 5 million dollars?

2.03 Question 2.

Making the Assumptions, should the matters referred to in assumption 8 be excluded as assets from the calculation of the NTA?

2.04 Question 3.

Making the Assumptions, what are the assets of LMIM that are cash or cash equivalents?

2.05 Question 4.

Making the Assumptions, what are the adjusted assets of LMIM?

2.06 Question 5.

Making the Assumptions, what are the adjusted liabilities of LMIM?

2.07 Question 6.

Making the Assumptions, what is the NTA of LMIM?

2.08 The Assumptions that I have been asked to make are as follows:

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated: 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

2.09 Assumption 1.

ASIC Class Order (11/1140) (Class Order) applies to LMIM as responsible entity for the Fund.

2.10 Assumption 2.

By reason of the Class Order any responsible entity which has an external custodian is to have:

2.1 A minimum Net Tangible Assets (NTA) of the greater of:

(a) \$150,000 or

(b) 0.5% of the average value of scheme property of the Registered Schemes it operates up to 5 million dollars; or

(c) 10% of the average responsible entity revenue.

2.2 50% of the NTA requirement to be held in cash or cash equivalents as defined in the Class Order.

2.3 100% of the NTA requirement is to be held in liquid assets – meaning:

(a) Cash or cash equivalents;

(b) Assets that can be reasonably expected to realise for their market value within 6 months;

(c) That are free from encumbrances and, in the case of receivable, free from any right of set off.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

2.11 Assumption 3.

LMIM is a responsible entity which has an external custodian.

2.12 Assumption 4.

LMIM's assets and liabilities are as listed in the Speaking Notes prepared by FTI (FTI Report) at page 8 namely:

- 4.1 \$7.8 million in assets with \$5.2 million of investments including those in overseas related entities and the Cavill Avenue property;
- 4.2 \$1.07 million in liabilities;
- 4.3 Management fee income in advance of \$13.7 million;
- 4.4 Fund creditors and advisor commission of \$9.9 million.

2.13 Assumption 5.

In working out the NTA, the Cavill Avenue property is not to be included.

2.14 Assumption 6.

According to the Circular to Creditors the funds under management in the Registered Schemes operated by LMIM (excluding the LM Managed Performance Fund because this is not a registered scheme) total \$352,654,700 as follows:

- 6.1 LM Australian Income Fund - \$36m
- 6.2 LM Australian Structured Fund - \$12m
- 6.3 LM Cash Performance Fund - \$654,700

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

6.4 LM First Mortgage Fund - \$304m

2.15 **Assumption 7.**

According to the Statement of Financial Position (SFP) of LMIM as at 30 June 2012, the net assets are \$6,320,896.

2.16 **Assumption 8.**

According to the SFP:

8.1 Investments in associates is \$4,631,927 (page 8);

8.2 Related party receivables are \$430,579 (page 28);

8.3 Deferred tax assets are \$129,557 (page 8).

2.17 I have assumed that the relevant date applicable to all of the questions is the date of the meeting of creditors of LMIM being 2 April 2013.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

3.00 QUESTION 1.

3.01 *"Making the Assumptions, what is 0.5% of the average value of scheme property of the Registered Schemes LMIM operates up to 5 million dollars?"*

3.02 According to Assumption 6 the total funds under management in the Registered Schemes operated by LMIM was \$352,654,700.

3.03 0.5% of this amount is equal to \$1,763,274.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
 INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
 v
 THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
 Dated: 3 May 2013
 Specialist Field: Forensic Accounting
 On behalf: Applicant

4.00 QUESTION 2.

4.01 *"Making the Assumptions, should the matters referred to in assumption 8 be excluded as assets from the calculation of the NTA?"*

4.02 Assumption 8 indicates that according to the Statement of Financial Position of LMIM as at 30 June 2012 the following amounts were included as assets of LMIM:

Asset	Amount
	\$
Investments in associates	4,631,927
Related party receivables	430,579
Deferred Tax Assets	129,557
Total	5,192,063

4.03 On the assumption that these balances remained in place and were continued to be regarded as the same class of asset at the date of the appointment of the Administrator to LMIM, and that administrators were also appointed to related parties of LMIM it is my opinion that these amounts should be excluded as assets from the calculation of the NTA as at the date of the administrators appointment. My reasoning for this is as follows:

4.03.1 The assets described as "Investments in Associates" and "Deferred Tax Assets" are classified as non current assets in the financial statements for LMIM for the 2012 financial which by definition means that they are not expected to be realised within a 12 month period. Furthermore, the balance sheet for LMIM as at 30 June 2012 indicates total assets of \$7,705,034 of which \$4,631,927 represents

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

an amount for "Investment in Associates". Note 10 to the 2012 Financial Report for LMIM indicates that this relates to a 66.67% interest in an asset described as "Cavill Avenue Joint Venture". Assumption 5 states that in determining the NTA, the Cavill Avenue property is not to be included.

- 4.03.2 The assets described as "related party receivables" are unlikely to be realised within a 6 month period if the related parties are also under external administration.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
 INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
 v
 THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
 Dated: 3 May 2013
 Specialist Field: Forensic Accounting
 On behalf: Applicant

5.00 QUESTION 3.

5.01 *"Making the Assumptions, what are the assets of LMIM that are cash or cash equivalents?"*

5.02 ASIC Class Order (11/1140) defines **cash or cash equivalents** to mean:

"(a) cash on hand, demand deposits and money deposited with an Australian ADI that is available for immediate withdrawal; and

(b) short-term, highly liquid investments that are readily convertible to known amounts of cash that are subject to an insignificant risk of changes in value; and

(c) the value of any eligible undertaking provided by an eligible provider; and

(d) a commitment to provide cash from an eligible provider that can be drawn down within 5 business days and has a maturity of at least 6 months."

5.03 The LMIM Financial Report for the year ended 30 June 2012 recorded the following amounts held as cash and cash equivalents:

Cash and Cash Equivalents	\$
Cash at bank	1,112,667
Cash at hand	1,622
Total Cash and Cash Equivalents	1,114,289

5.04 LMIM's cash or cash equivalents as at 30 June 2012 was \$1,114,289.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell

Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

5.05 I am unable to determine the assets that meet the definition of “cash and cash equivalents” as at the date of the appointment of an administrator to LMIM from the information available to me.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated: 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

6.00 QUESTION 4.

6.01 *"Making the Assumptions, what are the adjusted assets of LMIM?"*

6.02 ASIC Class Order (11/1140) defines **adjusted assets** to mean:

"the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

*(a) minus the value of **excluded assets** that would be included in the calculation; and*

(b) minus the value of any receivable that would be included in the calculation up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and

(c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and

(d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and

(e) plus the amount of any eligible undertaking that is not an asset."

6.03 The definition of **excluded assets** is included in ASIC Class Order (11/1140) includes assets invested in an associate of the licensee.

6.04 Assumption 4.1 indicates that as at the date of the administrator's appointment LMIM had \$7.8 million in assets with \$5.2 million of investments including those in overseas related entities and the Cavill Avenue property.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

- 6.05 Assumption 5 indicates that the Cavill Avenue property is not to be included in the calculation of NTA which is defined in ASIC Class Order (11/1140) as "*adjusted assets minus adjusted liabilities*".
- 6.06 The \$5.2 million in assets referred to in the Administrators' speaking notes as consisting of investments in overseas related entities and the Cavill Avenue property value are excluded assets and on this basis the adjusted assets of LMIM at the date of the administrator's appointment were \$2.6 million (i.e. \$7.8 million less \$5.2 million).

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

7.00 QUESTION 5.

7.01 *"Making the Assumptions, what are the adjusted liabilities of LMIM?"*

7.02 ASIC Class Order (11/1140) defines **adjusted liabilities** as:

"the amount of total liabilities as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

- a) minus the amount of any liability under any subordinated debt approved by ASIC that would be included in the calculation; and*
- b) minus the amount of any liability the subject of an enforceable right of set-off that would be included in the calculation, if the corresponding receivable is excluded from adjusted assets; and*
- c) minus the amount of any liability under a credit facility that would be included in the calculation, if it is made without recourse to the licensee; and*
- d) plus the value of any assets that are encumbered (other than assets that are encumbered merely to support a guarantee provided by the licensee) as a security against another person's liability where the licensee is not otherwise liable, but only up to the lower of:*
 - (i) the amount of that other person's liability; or*
 - (j) the value of the assets encumbered; and*
- e) plus the maximum potential liability of any guarantee provided by the licensee other than a:*
 - (i) guarantee limited to an amount of recoverable out of any scheme property (and in the case of a scheme which is not registered, out of any*

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
 INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
 v
 THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
 Dated: 3 May 2013
 Specialist Field: Forensic Accounting
 On behalf: Applicant

contributions, money, property or income that would be scheme property of the scheme were registered) of a managed investment scheme operated by the licensee; or

(ii) guarantee of the obligations of another member of a stapled group, except where the licensee is the responsible entity of a registered scheme that is not part of the stapled group.

7.03 Assumptions 4.2, 4.3 and 4.4 detail the following liabilities of LMIM as at the date of the administrator's appointment:

Description	Amount
	\$
Unspecified liabilities	1,070,000
Management Fee income in advance	13,700,000
Fund Creditors and advisor commissions	9,900,000
Total Liabilities	24,670,000

7.04 I consider each of the amounts detailed above represent liabilities and therefore the total of \$24.67 million would be included as total liabilities in a balance sheet for LMIM as at the date of the administrator's appointment.

7.05 The limited information available to me does not enable me to determine whether any amounts included in the total liabilities totalling \$24.67 million would need to be excluded for the purposes of calculating LMIM's adjusted liabilities. Accordingly, I have assumed LMIM's adjusted liabilities total \$24.67 million.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
 INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
 v
 THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
 Dated 3 May 2013
 Specialist Field: Forensic Accounting
 On behalf: Applicant

8.00 QUESTION 6

8.01 *"Making the Assumptions, what is the NTA of LMIM?"*

8.02 ASIC Class Order (11/1140) defines **NTA** as *"adjusted assets minus adjusted liabilities"*.

8.03 In accordance with my findings in relation to questions 4 and 5, the NTA of LMIM is a deficit of \$22.07 million determined as follows:(i.e. \$2.60 million for adjusted assets less \$24.67 million for adjusted liabilities).

Details	\$
Adjusted Assets	2,600,000
Adjusted Liabilities	24,670,000
Deficiency of NTA	22,070,000

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 3 May 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

9.00 EXPERT'S CONFIRMATION

9.01 I, Paul Russell, confirm that:

- a) insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true;
- b) I have made all enquires that I consider appropriate;
- c) the opinions I have expressed represent my true and complete professional opinion;
- d) I have endeavored to include in my report all matters which I consider significant;
- e) I understand my duty to the Court and that this duty overrides any obligation to the party by which I am engaged. I confirm that I have complied and will continue to comply with my duty.



Paul Russell
Partner,
Forensic Advisory Services



Our Ref: AKB.AEF.384396
Your Ref:

2 May 2013

By Email: paul.russell@fas-au.com
Original forwarded by Post

Forensic Advisory Services Pty Ltd
Level 10, 45 Clarence Street
SYDNEY NSW 2000

Attention: Mr Paul Russell

Dear Sir

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED), IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND V THE MEMBERS OF THE LM FIRST MORTGAGE FUND

We act for the Applicants in proceedings number 3383 of 2013 in the Supreme Court of Queensland (**Proceedings**).

Our clients are unit holders in the LM First Mortgage Income Fund (**Fund**). The current responsible entity of the Fund is LM Investment Management Limited (Administrators Appointed) (**LMIM**).

We seek your assistance to prepare a written opinion, based upon your specialised training, study or experience as a forensic accountant, in answer to the questions below.

Before proceeding, it is necessary for you to read and understand Chapter 11 Part 5 of the Uniform Civil Procedure Rules, 1999 (*Qld*)(**Expert Rules**) which are annexed to this letter and marked "A".

Your report will also need to include:

1. a statement as to your expertise, including your training, study and experience in the above field;
2. the facts, matters and assumptions you have been asked to make (if convenient, by attaching a copy of this letter of instruction to your report) and on which you have based the opinions expressed in your report;
3. details of the material (including literature, examinations, tests and other investigations) relied on by you in the preparation of your report; and
4. your reasons for each opinion you express.

Lawyers

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To: Forensic Advisory Services Pty Ltd
 Date: 2 May 2013
 Our Ref: AKB AEF 364396
 Page: 2

If you are prepared to proceed on that basis, we ask you to read and consider the materials which listed are below; make the assumptions that we set out; and provide us with a written report in accordance with the Expert Rules that answers the questions which are posed.

To avoid any doubt, the report must make clear the basis for your opinion and the reasoning process you have used when applying your specialist knowledge and experience to the assumptions you have been asked to make. If other assumptions are made by you in your reasoning process, please reveal those assumptions together with your reasoning process so the Court may understand the way you have reached your opinion by applying your specialised knowledge and experience to the assumed facts. If an assumption is a fact which you are able to prove from your direct observation, please identify that assumption and state the observations you have made which prove the fact.

Materials

The Materials we ask you to consider are contained in a folder marked "Material for Accounting Expert", which contains the documents listed in the annexure marked "B" to this letter. The Assumptions we ask you to make are as follows:

Assumptions

1. ASIC Class Order 11/1140 (**Class Order**) applies to LMIM as responsible entity for the Fund.
2. By reason of the Class Order any responsible entity which has an external custodian is to have:
 - 2.1 A minimum Net Tangible Assets (**NTA**) of the greater of:
 - (a) \$150,000 or
 - (b) 0.5% of the average value of scheme property of the Registered Schemes it operates up to 5 million dollars; or
 - (c) 10% of the average responsible entity revenue.
 - 2.2 50% of the NTA requirement to be held in cash and cash equivalents as defined in the Class Order.
 - 2.3 100% of the NTA requirement is to be held in liquid assets – meaning:
 - (a) Cash or cash equivalents;
 - (b) Assets that can be reasonably expected to realise for their market value within 6 months;
 - (c) That are free from encumbrances and, in the case of receivable, free from any right of set-off
3. LMIM is a responsible entity which has an external custodian.

To: Forensic Advisory Services Pty Ltd
Date: 2 May 2013
Our Ref: AKB.AEF.384396
Page: 3

4. LMIM's assets and liabilities are as listed in the Speaking Notes prepared by FTI (FTI Report) at page 8, namely:
 - 4.1 \$7.8 million in assets with \$5.2 million of investments including those in overseas related entities and the Cavill Avenue property;
 - 4.2 \$1.07 million in liabilities;
 - 4.3 Management fee income in advance of \$13.7 million
 - 4.4 Fund creditors and adviser commissions of \$9.9 million.
5. In working out the NTA, the Cavill Avenue property is not to be included
6. According to the Circular to Creditors the funds under management in the Registered Schemes operated by LMIM (excluding the LM Managed Performance Fund because this is not a registered scheme) total \$352,654,700 as follows:
 - 6.1 LM Australian Income Fund - \$36m
 - 6.2 LM Australian Structured Fund - \$12m
 - 6.3 LM Cash Performance Fund - \$654,700
 - 6.4 LM First Mortgage Fund - \$304m
7. According to the Statement of Financial Position (SFP) of LMIM as at 30 June 2012, the net assets are \$6,320,896.
8. According to the SFP:
 - 8.1 Investments in associates is \$4,631,927 (page 8);
 - 8.2 Related party receivables are \$430,579 (page 28);
 - 8.3 Deferred tax assets are \$129,557 (page 8).

Questions

1. Making the Assumptions, what is 0.5% of the average value of scheme property of the Registered Schemes LMIM operates up to 5 million dollars?
2. Making the Assumptions, should the matters referred to in Assumption 8 to be excluded as assets from the calculation of the NTA?
3. Making the Assumptions, what are the assets of LMIM that are cash or cash equivalents?
4. Making the Assumptions, what are the adjusted assets of LMIM?



To: Forensic Advisory Services Pty Ltd
Date: 2 May 2013
Our Ref: AKB AEF 384396
Page: 4

5. Making the Assumptions, what are the adjusted liabilities of LMIM?
6. Making the Assumptions, what is the NTA of LMIM?

If there are any other documents other those with which we have briefed you that you need to consider when forming your opinion, or have considered, in the process of making your report, please identify that document and ensure that it is listed in your report and a copy is provided. It is important that your report identify every document to which you have had reference in the preparation of your report.

As an independent expert witness, you have the following general duties:

- A paramount duty to the Court which overrides any duty to any party to the proceedings;
- An overriding duty to assist the Court on matters relevant to your area of expertise in an objective and unbiased manner;
- A duty not to be an advocate to any party in the proceedings;
- A duty to make it clear when a particular question or issue falls outside the area of your expertise.

If you have any difficulty understanding your obligations or this letter of instruction, please do not hesitate to draw that matter to our attention.

As discussed, we require your report by **4pm, Friday 3 May 2013.**

Yours faithfully
Piper Alderman

Per:

A handwritten signature in black ink, appearing to read 'Amanda Banton', written over the printed name.

Amanda Banton
Partner

Enc.

Appendix B

CURRICULUM VITAE

Paul Russell, CA **Partner**

Professional Status

Associate of the Institute of Chartered Accountants in Australia
Associate of the Association of Certified Fraud Examiners
Registered Liquidator
Official Liquidator
Justice of the Peace

Professional history

Forensic Advisory Services Pty Limited, formerly	
RGL Forensics - Partner	2010 to Present
PPB – Partner	1999 to 2010
Jones Condon - Associate	1989 to 1999
Logic Group Pty Limited	1989 to 1989
Mulvaney Coulton Isaac	1988 to 1989
Nelson Wheeler	1981 to 1988

Academic history

Bachelor of Business	1987
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Mr Russell has over 29 years experience in the accounting profession and over 20 years experience in litigation support services, business consulting and corporate insolvency. He regularly acts as an expert witness in legal proceedings and has been involved in numerous complex insolvency administrations and investigations at the request of major banks, financiers and insurance companies.

Since 2000 Mr Russell has been regularly engaged by legal practitioners and other stakeholders to conduct the following:

- Valuations of business enterprises for the purposes of litigation and commercial negotiation; including family law matters, shareholder disputes and sale of partial interests.
- Complex insolvency administrations for major banks, financiers and insurance companies.
- Provision of Reports and expert opinion in relation to economic loss.
- Provision of Reports and expert opinion in relation to solvency.
- Review and analysis of suspected or fraudulent activity and provision of a report and expert opinion in relation to findings.
- Expert accounting reviews and provision of expert opinion.

Mr Russell has been instructed by both Plaintiffs and Defendants and as a Court appointed single Expert. He has appeared in numerous Australian Legal Forums as an Expert Witness including the Federal Court of Australia, Family Court of Australia, Supreme Court of NSW, Land and Environment Court of NSW, NSW District Court and Administrative Tribunals.

EXPERIENCE

Examples of Mr Russell's experience are set out below:

FRAUD INVESTIGATION

- Fraud investigation and completion of numerous detailed reports following the discovery of two concurrent fraudulent acts by Senior Management of a large registered club occurring over a lengthy period.
- Fraud investigation and interviews with numerous members of a large registered club in fiduciary roles engaged in systematic fraudulent acts. Completion of detailed report of findings and presentation to Board of Directors.
- Review of funds flow transactions following significant systematic credit card fraud at the request of a major Australian Trading Bank.
- Detailed accounting investigation of numerous bank accounts for a large Australian bank.
- Investigation of long term systematic fraud by the operator of a sub branch for a large Australian Retail bank.

BUSINESS VALUATION

- Regularly engaged by legal practitioners to conduct valuations of business enterprises for the purposes of litigation and commercial negotiation including analysis of accounting information and calculation of loss for a variety of businesses.
- Valuation of shareholder interests including a significant chain of fast food outlets in the Australian Eastern states and a group of specialty retail stores located at Australian airports.
- Valuation of a professional services firm and the effect various undisclosed executive services agreements had on the value of the business to a new shareholder.
- Valuation of a pig farming and small goods manufacturing business operating on land subject to compulsory acquisition.
- Valuation of a store in a significant retail chain occupying premises subject to resumption by the NSW government.

FAMILY LAW

- The analysis of accounting information to determine the nature and extent of a husband's financial interests following his inability to assist due to medical circumstances.
- The valuation of a professional services firm servicing the mining industry that relied heavily upon one key man.

SOLVENCY REVIEWS

- Report and critical evaluation as to solvency position for a number of large companies in liquidation or threatened with liquidation including engagements by directors, creditors, banking institutions and other stakeholders.
- Review of the action of voluntary administrators and deed administrators of a large public company on behalf of a significant creditor owed in excess of \$50M.
- Review and analysis of a report by a liquidator as to the solvency of a company relied upon in pursuit of a preference claim.
- Review of the accounts of the subsidiary of a listed company in liquidation in relation to transactions occurring with the listed parent company immediately prior to liquidation, resulting in the recovery of substantial funds from the parent company in a settled litigation action for the benefit of creditors.
- Assessment of solvency of a company that operated a top ranking basketball team in the Australian National Basketball League.
- Assessment of solvency of a grain trading business dealing in forward contracts for the purchase of grain. The matter proceeded to hearing.
- Assessment of solvency for a significant paper product wholesaler involving eliminating the effects of a substantial debt factoring fraud from its financial results.
- Assessment of solvency of a retail distribution business focusing on its entitlement to rely on demonstrated funding from external sources. The matter proceeded to hearing.
- Assessment of solvency of a significant Australian gold mining operation in liquidation including a detailed review of its operation in the period preceding the appointment of a liquidator.
- Detailed review of the operation of a major Sydney entertainment venue at the request of the NSW state government.
- Assessment of solvency of a company that imported luxury motor vessels into the Australian Market

SPECIALIST ACCOUNTING REVIEWS

- Review of the actions of a firm of accountants at the request of an insurance company in relation to alleged acts of negligence.
- Preparation of a detailed operating budget for a major entertainment venue operated by the NSW government in the Sydney CBD following the resumption of the venue from its operator that was in liquidation.

ECONOMIC LOSS

- Regularly engaged by legal practitioners to analyse and calculate economic loss and financial effect arising under various scenarios involving corporate transactions.
- Critical evaluation of a claim for economic loss in respect of an action against a prominent listed building company and a trade union and the termination of a contract for demolition by the building company.
- Review of a significant volume of grouped banking accounts on behalf of a major trading bank to determine the effect of the inclusion of certain transactions on the overall group position at various times.
- Review of the operation of a significant medical practice owned by a listed public company and the effect on the business following the departure of a medical practitioner.
- Review of the operation of a significant dental practice owned by a listed public company and the effect on the business following the departure of a dental practitioner.
- Review of the effect on a retail distribution business following the exit of a specialty product division from the business.
- Review of the effect of the termination of a non-compete agreement between two multinational waste management businesses in different geographical sectors in the Australian market.
- Review of the effect of the termination of a lease on the operation of a health services business in the Sydney CBD.
- Review of the quantum of losses suffered by a property developer and the nexus of any losses incurred with professional advice received.
- Recalculation of the loss claimed to have been suffered by a clothing retailer following a fire and eliminating the effects of transactions with a related party to determine the actual replacement cost of trading stock.

INDUSTRY EXPERIENCE

Mr Russell's industry experience includes, but is not limited, to the following:

Agriculture/Livestock
Banking/Financial services
Business & Support services
Construction
Health Services
Hospitality, Leisure & Tourism
Manufacturing
Mining
Professional Services
Retail/Wholesale

EXPERT ADVICE AND EVIDENCE

Mr Russell has extensive experience in many areas of consultation and expert evidence including:

- He regularly acts as an expert witness in legal proceedings and is regularly engaged by legal practitioners to provide an expert opinion.
- Experienced in meeting with opposing experts to determine and define areas of agreement and disagreement for the benefit of the Court.
- Acting as a single court appointed expert.

SEMINARS

Mr Russell has participated in seminars in Australia to clients in relation to fraud related matters and forensic accounting matters.

Appendix C

Raymond Edward Bruce & Vicki Patricia Bruce and LM Investment Management Limited
(Administrators Appointed)

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The Members of the LM First Mortgage Fund

LIST OF DOCUMENTS I HAVE REVIEWED

I have been provided with the following documents from my instructing solicitors:

1. ASIC Class Order (CO 11/1140) and Explanatory Statement
2. Speaking notes from the first meeting of creditors of LM Investment Management Limited (Administrators Appointed)
3. Circular to Creditors of LM Investment Management Limited (Administrators Appointed)
4. LM Investment Management Limited financial report for the year ended 30 June 2012