

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS  
APPOINTED) (ADMINISTRATORS APPOINTED)  
A.C.N 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(ADMINISTRATORS APPOINTED)  
A.C.N 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF  
EACH OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1 AND IN  
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT  
SCHEMES LISTED IN SCHEDULE 2  
First Plaintiff

CRAIG DAVID CROSBIE  
Second Plaintiff

IAN MENZIES CARSON  
Third Plaintiff

**AFFIDAVIT OF JOHN VINCENT SINISGALLI**

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On 1 December 2010 I, **JOHN VINCENT SINISGALLI** of Level 26, 385 Bourke Street, Melbourne in the State of Victoria, An Australian Legal Practitioner (Solicitor), **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Partner in the firm of Hunt & Hunt Lawyers and have the care and conduct of this matter on behalf of the Avitus Thomas Fernandez ("**Mr Fernandez**"), the former administrator of the Willmott Group of Companies.

Date of document:  
Filed on behalf of:  
Prepared by:  
**Hunt & Hunt**  
Level 26, 385 Bourke Street  
Melbourne, VIC, 3000

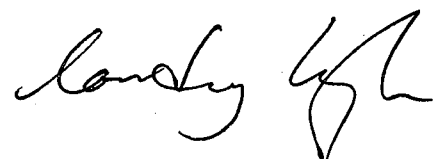
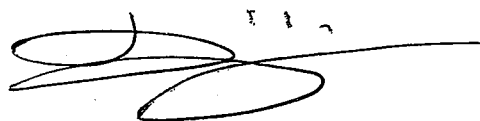
December 2010  
Applicant  
Solicitor Code: 9325  
Telephone: 03 8602 9200  
Facsimile: 03 8602 9299  
Ref: JVS:



2. I am authorised by Mr Fernandez to make this affidavit on his behalf.
3. I make this affidavit from my own knowledge save where otherwise indicated, in which case I make this affidavit from information and belief believing same to be true.

## **BACKGROUND**

4. On 6 September 2010 Mr Mark Korda and Mr Bryan Webster were appointed as joint receivers and managers of the Willmott Group of Companies.
5. On the same day Mr Fernandez was appointed administrator.
6. I am instructed by Mr Fernandez and believe that immediately after his appointment he was required to carry out various activities including but not limited to responding to creditor queries and securing all relevant property.
7. I refer to the affidavit of Mr Fernandez sworn 8 October 2010 filed in proceeding VID 836 of 2010 and note the following:
  - (a) The bulk of the real assets of the Willmott Group of Companies are represented by the ownership by Willmott Forests Ltd ("**WFL**") of agricultural land used predominately for forestry purposes. Further, WFL has prepaid leases of land from third parties upon which forestry operations are conducted.
  - (b) The Willmott Group of Companies own approximately 65,000 hectares of land. All of the land is owned by WFL. Approximately 39,500 hectares of the land, owned by the WFL, is planted with trees subject to managed investment schemes – both registered and unregistered. Approximately 26,000 hectares of the land owned by the WFL is not planted. The vast majority of those 26,000 hectares is not considered optimum land for planting. However there would be approximately 1,500 to 2,000 of those hectares that are suitable for planting but are presently unplanted. WFL owns approximately 27,800 gross hectares in Bombala across approximately 65 separate plantation properties. Of that 27,800 hectares approximately 19,500 hectares at Bombala are planted with pine trees. All of the Bombala land owned by WFL is specifically excluded from the security provided by the Willmott Group of Companies to the Commonwealth Bank of Australia ("**CBA**") and St George ("**StG**").



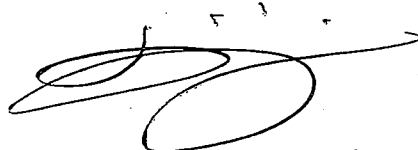
- (c) The Willmott Group of Companies lease approximately 15,000 hectares. That land is leased under what may be described as prepaid leases. There are approximately 28 prepaid leases relating to more than 100 properties. The rent for all of those leases has been prepaid for up to 25 years. The rent for the prepaid leases was paid in advance so as to protect the interests of the growers.
- (d) The growers that invested with WFL in connection with the projects relevant to the prepaid leases were aware of the fact that the rent for those leases was prepaid.

Now produced and shown to me and marked with the letters "JVS-1" is a true copy of the affidavit of Mr Fernandez sworn 8 October 2010 excluding exhibits referred to therein.

8. In or around mid September 2010 Ms Lilley Dawson of Denyse Dawson Barrister & Solicitor told Ms Courtney Wright of my office that she was in possession of certain titles of land owned by the Willmott Group of Companies and that she would be exercising her lien over the said titles in accordance with her cost agreement for unpaid fees.
9. Counsel engaged by Ms Dawson was advised of s438C of the *Corporations Act* 2001 and, ultimately, Ms Dawson permitted our office collect the titles in her possession.

#### **Meeting of creditors**

10. On 15 September 2010 the first meetings of creditors of the Willmott Group of Companies was held.
11. The meetings were adjourned.
12. On 28 September 2010 the adjourned first meetings of creditors was held.
13. At the meetings a vote was taken to replace Mr Fernandez as administrator of the Willmott Group of Companies.
14. The resolution to replace Mr Fernandez was neither carried nor not carried. As a result Mr Fernandez exercised his casting vote. Ultimately, Mr Fernandez was not replaced as administrator.



**Application to replace Mr Fernandez**

- 15. On or about 30 September 2010 the CBA filed an application seeking, *inter alia*, the removal of Mr Fernandez as administrator of the Willmott Group of Companies.
- 16. On 13 October 2010 the application was heard. Now produced and shown to me and marked with the letters "JVS-2" is a true copy of the transcript of the hearing.
- 17. On 26 October 2010 orders were made removing Mr Fernandez as administrator of the Willmott Group of Companies.

**LIENS**

- 18. On 27 October 2010 Ms Courtney Wright of my office received an email from Lilley Dawson of Denyse Dawson Barrister & Solicitor which stated:

*"In view of yesterday's Orders I assume that you will receive a request from PPB to deliver the titles you received from my office. I request that you inform the replacement Administrator of my lien."*

Now produced and shown to me and marked with the letters "JVS-3" is a true copy of the email dated 27 October 2010.

- 19. Mr Fernandez maintains that he has a right of indemnity out of the Willmott Group of Companies' property for the debts for which he is liable pursuant to s443D of the Act. To secure the right of indemnity Mr Fernandez seeks to exercise his lien over the Willmott Group of Companies' property pursuant to s443F of the Act.

**SWORN by JOHN VINCENT SINISGALLI )**

on this 1<sup>st</sup> day of December 2010 )  
at Melbourne in the State of Victoria )



Before me: .....

*Courtney Zelma Wright*  
**COURTNEY ZELMA WRIGHT**  
**385 Bourke Street, Melbourne, Vic. 3000**  
**An Australian Legal Practitioner**  
**(within the meaning of the Legal**  
**Profession Act 2004)**

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIAN DISTRICT REGISTRY

No. 836 of 2010

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS  
APPOINTED) (ADMINISTRATORS APPOINTED)  
A.C.N 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(ADMINISTRATORS APPOINTED)

A.C.N 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF  
EACH OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1 AND IN  
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT  
SCHEMES LISTED IN SCHEDULE 2

First Plaintiff

CRAIG DAVID CROSBIE  
Second Plaintiff

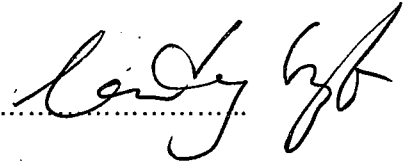
IAN MENZIES CARSON  
Third Plaintiff

**Certificate Identifying Exhibit**

This is the Annexure marked **JVS-1** referred to in the affidavit of John Vincent Sinisgalli of 1  
December 2010.

Date: 1 December 2010

Before me: .....



**COURTNEY ZELMA WRIGHT**  
**385 Bourke Street, Melbourne, Vic. 3000**  
**An Australian Legal Practitioner**  
**(within the meaning of the Legal**  
**Profession Act 2004)**

---

Filed on behalf of the first Defendant  
Hunt & Hunt  
Solicitors  
Level 26  
385 Bourke Street  
Melbourne VIC 3000

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Ref:  
DX: 252 Melbourne

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IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
CORPORATIONS LIST

No. VID 836 of 2010

IN THE MATTER OF WILLMOTT FORESTS LTD (RECEIVERS AND  
MANAGERS APPOINTED) (ADMINISTRATOR APPOINTED) ACN 063 263 650  
AND OTHERS (ACCORDING TO THE SCHEDULE)

COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 134)  
AND ANOTHER (ACCORDING TO THE SCHEDULE)

Plaintiffs

AVITUS THOMAS FERNANDEZ  
AND OTHERS (ACCORDING TO THE SCHEDULE)

Defendants

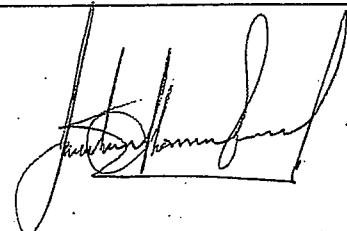

SECOND AFFIDAVIT OF AVITUS THOMAS FERNANDEZ

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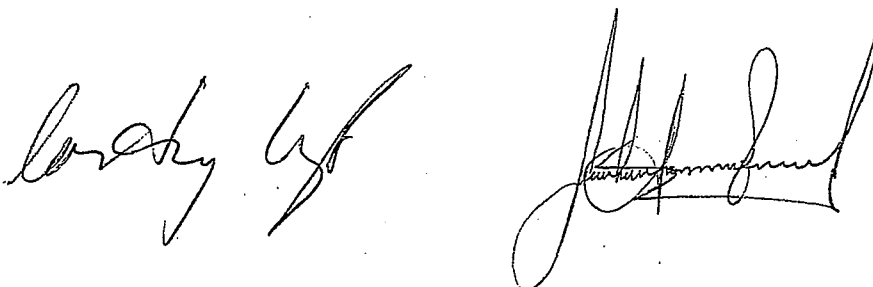
Filed on behalf of the first Defendant  
Hunt & Hunt  
Solicitors  
Level 26  
385 Bourke Street  
Melbourne VIC 3000

Tel: (03) 8602 9200  
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Email: jsinisgalli@hunthunt.com.au  
Ref:  
DX: 252 Melbourne



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I, **AVITUS THOMAS FERNANDEZ** of 3 Chester Street, Glen Waverley in the State of Victoria, Chartered Accountant and Registered Company Liquidator, **MAKE OATH AND SAY** as follows:

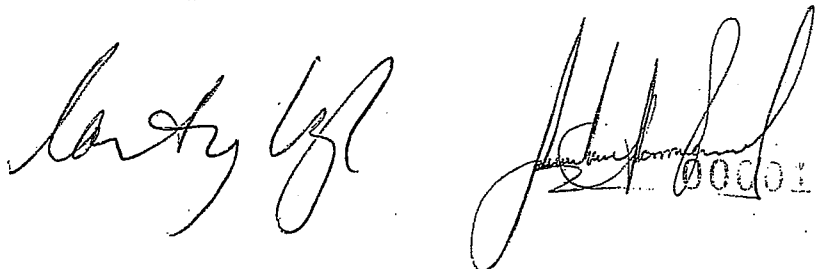


1. I am the first defendant in this proceeding.
2. I make this affidavit from my own knowledge save where I indicate to the contrary. Where I am informed of matters referred to herein I verily believe them to be true.
3. I refer to the affidavit sworn by me on 4 October 2010 and filed in this proceeding ("**my first affidavit**"). In this affidavit I use the same definitions as in my first affidavit and I continue the annexure numbers so that first annexure herein is "**ATF-11**".
4. I have read the following affidavits filed in this proceeding namely:
  - (a) of Bryan Webster affirmed on 1 October 2010 ("**Mr Webster's first affidavit**") (received by my solicitors on 1 October 2010 at approximately 6.04pm);
  - (b) of Bryan Webster affirmed on 4 October 2010 ("**Mr Webster's second affidavit**");
  - (c) of Mark Albert Bland affirmed on 4 October 2010 ("**Mr Bland's first affidavit**");
  - (d) the second affidavit of Mark Albert Bland affirmed on 4 October 2010 ("**Mr Bland's second Affidavit**"); and
  - (e) of Maria Antoaneta Duta sworn on 4 October 2010 ("**the Duta affidavit**").

#### **My first affidavit**

##### Paragraph 11 of my first affidavit

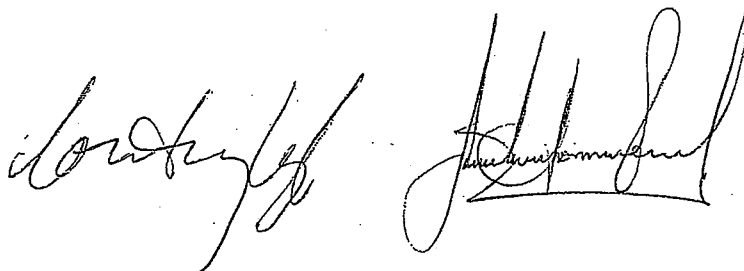
5. I refer to paragraph 11 of my first affidavit. The books and records and other documents of the Willmott Forests Companies have at all times been in the possession of the Receivers. The only documents provided to me by the Receivers are the three copies of a DVD of documents that were provided to me on 27 September 2010 and some further documents provided to me on another DVD on 29 September 2010. The documents on the DVD provided to me on 27 September 2010 relate to information about



the registered and unregistered managed investment schemes. This includes the scheme documents and product disclosure statements. Upon giving me the DVD on 27 September 2010, Mr Webster told me that he was giving me the documents because they related to the role of WFL as the Responsible Entity. Mr Webster also told me that he did not know whether the DVD contained all of the information that I required and that I would need to make my own enquires. The DVD provided to me on 29 September 2010 contains information as to the leased land. That DVD was forwarded to me by Mr Webster by letter of that date. Annexed to this my affidavit and marked "ATF-11" is a true copy of that letter. I note that the letter of 29 September 2010 from Allens Arthur Robinson ("AAR") specifically informed me that the Receivers believed that the documents provided did not comprise a complete set of lease documents. It also stated that the Receivers made no warranty that the documents they had provided were representative of all the lease documents and that I would need to make my own enquiries in that regard. Annexed to this my affidavit and marked "ATF-12" is a true copy of a letter dated 6 October 2010 from AAR to Hunt & Hunt which enclosed a document titled "Administrator's Access Deed". I am informed by Ms Wright of Hunt & Hunt that she received the letter of 6 October 2010 with its attachment by email at approximately 6:48pm on that day. I note that the Administrator's Access Deed was first mentioned by Mr Webster at our meeting on 27 September 2010. Mr Webster told me at that meeting that the Receiver's lawyers would provide me with a draft of Access Deed by the end of that week (i.e. by 30 September 2010).

Paragraph 12 of my first affidavit

6. I refer to paragraph 12 of my first affidavit. The document included as "ATF-1" which is annexed is not the correct version of the report read out by Mr Derham at the Adjourned Meetings. Annexed to this affidavit and

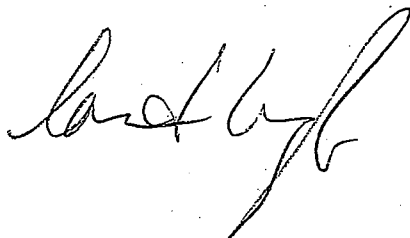
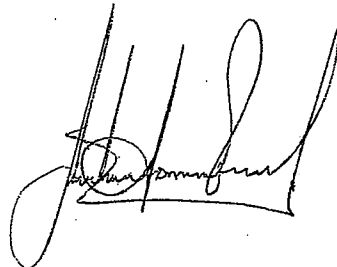


marked "ATF-13" is a true copy of the Derham report. I am informed by Mr Derham and believe that the document which is annexed as "ATF-1" is an earlier version of the Derham report. The document annexed as "ATF-1" was annexed to my first affidavit in error due to time constraints in the preparation of that document.

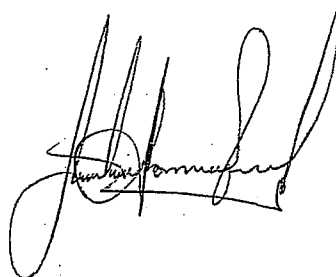
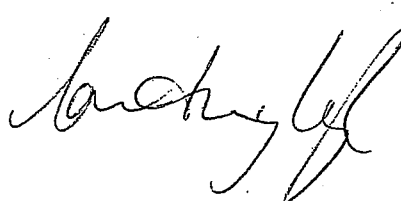
**The procedure adopted at the Original Meetings and the Adjourned Meetings for registration, issuing of voting slips the casting of votes at the poll and the recording of votes**

The Original Meetings

7. All employees, trade creditors and growers who forwarded a Statement of Debt and/or a proxy form were pre-entered by Peter Nash and Vijay Subra (of my firm) onto the relevant attendance registers for each of the Willmott Forests Companies. This was done prior to the Original Meetings by Mr Nash and Mr Subra. The proxies and Statements of Debt received via email and/or fax were processed until 9.30am on the day of the Original Meetings. The attendance registers were then printed and made available for signing by those creditors attending.
8. Only the remaining creditors (i.e. those creditors who had previously not forwarded any correspondence and who turned up on the day of the Original Meetings) were required to be processed during the registration period prior to the commencement of the Original Meetings.
9. In cases where creditors had submitted incomplete or incorrect Statements of Debt and/or proxy forms, they were contacted by telephone or email and requested to submit additional documentation.
10. During the registration process, those creditors who were already recorded on the registers were handed an identification card (which showed their unique creditor number), a set of voting slips and asked to sign the attendance registers.

11. On arrival at the Original Meetings an attendee who had previously lodged a proxy form was requested to sign the attendance register in the space next to the name of the creditor that the proxy represented.
12. Mr Nash and Lorelle De Anglis (of my firm) processed all who attended in person at the Original Meetings. Those persons were requested to complete a Statement of Debt (if they did not bring a completed one with them).
13. Mr Nash and Ms De Anglis also allocated the creditors that identified themselves for the first time on the day a unique creditor number (generally in numerical sequence to the last one allocated). A creditor identification card and a set of voting slips were also provided to those creditors.
14. The details of new creditors were written onto the attendance registers and entered onto the electronic attendance registers soon thereafter.
15. The voting slips used at the Original Meetings were of a different colour for each resolution. The voting slips were blue, green and orange.
16. Mr Subra and William Hayes (of my firm) were responsible for the registration process for employees and trade creditors respectively. The process undertaken by them as to the employees and trade creditors was the same as that described above.
17. Courtney Wright and Emmeline Granger of Hunt & Hunt were responsible for registering attendees via the telephone conferencing facility.
18. Prior to the Original Meetings, Jasmina Bulatovic (of my firm) emailed attendees who wished to participate by telephone the details of the telephone conference facilities. Only creditors who lodged a Statement of Debt and/or a proxy form were allowed to participate via telephone conference.
19. The registration for telephone conference attendees commenced at 2.15pm on the day of the Original Meetings. Upon joining the telephone conference, Ms Wright asked the creditors:
  - (a) to confirm their name; and



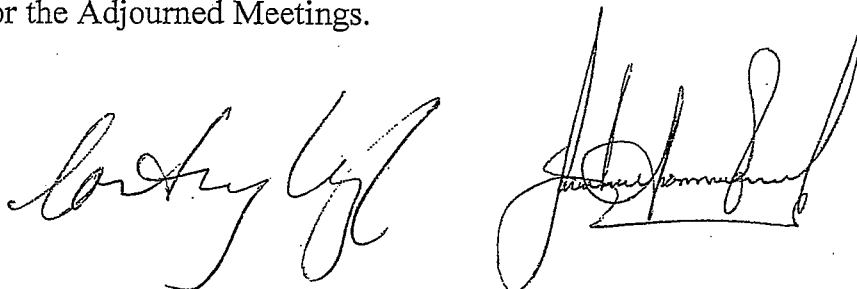
- (b) whether they were attending in their own right or if another person held a proxy on behalf of them.
20. Attendees of the Original Meetings that had submitted proxies were noted separately as observers because they did not have an entitlement to vote in their own right, unless specific instructions were received to change their proxy.

Between the Original Meetings and the Adjourned Meetings

21. After the Original Meetings, creditors and growers that had not submitted a Statement of Debt and/or proxy form had the ability to submit them for the Adjourned Meetings. Some creditors and growers did so. Those creditors and growers were progressively recorded on the attendance registers for the Adjourned Meetings. This process was handled by Mr Subra and Mr Nash. In addition, my firm received some change of proxy forms. For example, some creditors had changed the proxy holder from Marcus Derham to Mark Bland or Phillip Allen. The attendance registers were updated to reflect these changes. The proxies and Statements of Debt received via email and/or fax were processed until 9.30am on the day of the Adjourned Meetings.

The Adjourned Meetings

22. The same registration process carried out for the Original Meetings was adopted for the Adjourned Meetings.
23. Approximately 90 new grower creditors registered on the day of the Adjourned Meetings.
24. New voting slips were prepared for the Adjourned Meetings. The voting slips for the Adjourned Meetings were pink, buff, yellow and orange in colour. All voting slips were secured behind the registration desks to ensure they could not be accessed by attendees. Paul Baillie (of my firm) was responsible for the security of the voting slips (including block voting slips) for the Adjourned Meetings.

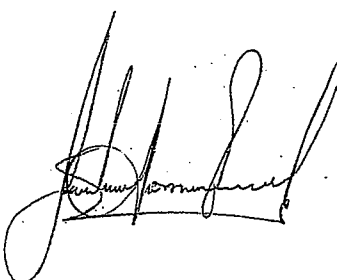
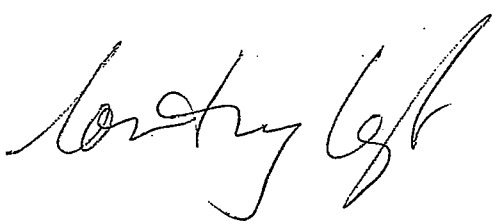


25. Mr Subra and Mr Nash processed the proxy forms and Statements of Debt received via email and fax.

Voting slip distribution to attendees of the Original Meetings and the Adjourned Meetings

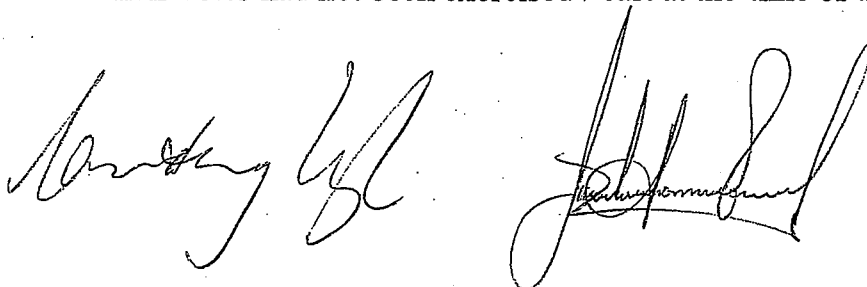
26. At the Original Meetings and the Adjourned Meetings, voting slips for known attendees, who held a number of proxies, were pre-counted and bagged. Mr Baillie was responsible for distributing these voting slips and block voting registration forms. The recipients of the forms could choose to complete each voting slip or exercise all their votes using the single block voting slip form.
27. The process of using the block voting registration forms and block voting slips was explained by Mr Baillie (of my firm) to each person who was issued with them. Also those persons were told that if they used a block voting slip, it would be collected along with their allocated pile of voting slips for the particular resolution.
28. Persons who arrived at the Adjourned Meetings with proxies not already entered on the attendance registers, had those additional proxies checked before being directed to sign the attendance register and being provided with voting slips. For example, Phil Grimsey, Antony Madden and Mr Petrofezza arrived at the Adjourned Meetings with 55 new proxy forms in addition to the 126 proxies already allocated to them. The 55 proxy forms were checked and verified. Two proxies were removed as they were special proxy forms. Also, one proxy form was removed because it was discovered to be a duplication of a proxy form already received and entered into the attendance register in favour of an attendee(s).
29. The process described above was undertaken to ensure attendees were given the correct number of voting slips and to protect the integrity of the voting process.

Collection of voting slips at the Adjourned Meetings



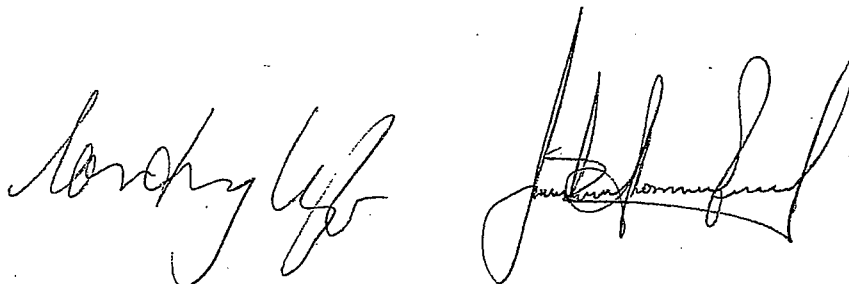
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30. Mr Baillie was responsible for collecting the voting slips and delivering them to Mr Subra and Mr Nash for counting.
31. Prior to the poll being performed, attendees were informed as to which colour voting slip to use. Creditors entitled to vote were then invited to complete their voting slips.
32. Creditors with a single vote completed a single voting slip. Creditors holding bulk proxies had the option of either:
  - (a) completing individual voting slips for each creditor they represented;
  - or
  - (b) using the block voting slips as described above.
33. Once the attendees completed their voting slips, each voting slip was collected by my staff. First, the "For" votes were collected which were placed on the Chairman's table. Then, the "Against" votes and "Abstain" votes were collected in turn and placed on the Chairman's table in separate piles. I announced the vote collection process prior to it being undertaken by the attendees.
34. The piles of votes were then taken by Paul Baillie to Mr Subra and Mr Nash for processing.
35. Mr Subra was the responsible Voting Register Officer. He was assisted by Mr Nash.
36. For persons attending via telephone, their votes were taken by the staff dedicated to the phone conference point, and voting slips were completed by Mr Hayes. These were then handed to Mr Baillie during the voting slip collection process. Where telephone registered attendees left the telephone conference facility, those votes were not included in the poll because the votes had not been exercised / cast at the time of the poll. Likewise, the votes of those persons present at the commencement of the Adjourned Meetings who left the meeting prior to the poll, were not included in the poll because their votes had not been exercised / cast at the time of the poll.



Entering of Votes onto Voting Register:

37. Mr Subra and Mr Nash took each of the piles of votes and counted them by transferring the details from the voting slips (including the block voting slips) into the voting register (which was maintained on a computer). This is detailed below.
38. All the special proxies were pre-recorded onto the voting register based on the preferences indicated by the creditors.
39. The process of entering the results on the computer was as follows. Mr Nash read the creditor name / ID number to Mr Subra who entered the vote against the creditor automatically. If the creditor held bulk proxies, the electronic voting register calculated the total number of votes.
40. After entering the votes, including the block votes, the electronic voting register automatically calculated the votes and produced a result of the total number and quantum of votes "For", "Against" and "Abstain" for each resolution.
41. The result produced was then read by Mr Subra and written by Paul Baillie on a piece of paper showing the number of votes and quantum/dollar value in respect of "For", "Against" and "Abstain" for the resolution voted upon ("the Result Sheet"). The Result Sheet was then handed to me to announce the result of the poll.
42. After the Adjourned Meetings concluded, the results of the polls were reviewed. In relation to the poll for the replacement of the Administrator of WFL, it appeared that the quantum/dollar value, in respect of the "For" vote read aloud, was incorrect. The quantum of votes for the resolution stated to the Adjourned Meetings was \$123,835,125 instead of \$123,835,677. This is a difference of \$552. I note that the error, in my statement, would not have materially affected the result of the poll.



**The minutes of the first meetings of creditors of the Willmott Forests Companies**

43. Annexed to this my affidavit and marked "ATF-14" is a true copy of the minutes of the first meetings of creditors of the Willmott Forests Companies.

**Information provided to me by Mr Derham**

44. I am informed by Mr Derham of the matters set out in paragraphs 46 to 79 below and I believe those matters to be true. Mr Derham informs me of these matters as a result of his knowledge:
- (a) and experience of the Willmott Forests Companies and their operations including as the Chief Executive Officer and Director of WFL since 1995; and
  - (b) of the books and records of the Willmott Forests Companies.

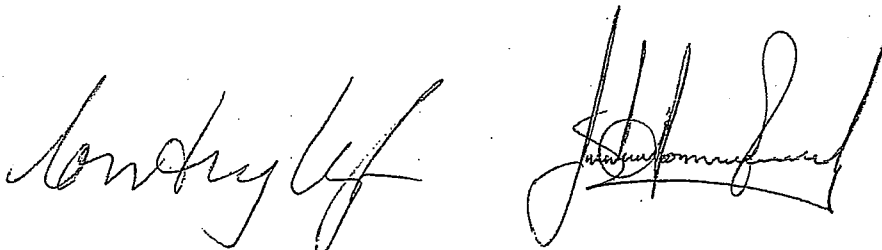
Structure of the Willmott Forests Companies

45. Annexed to this my affidavit and marked "ATF-15" is a diagram of the corporate structure of the Willmott Forests Companies provided to me by Mr Derham as reflecting the ownership structure and assets of the Willmott Forests Companies as at the date of my appointment as Administrator.

Description of the Willmott Forests Companies

46. The bulk of the real assets of the Willmott Forests Companies are represented by the ownership by WFL of agricultural land used predominantly for forestry purposes. Further, WFL has prepaid leases of land from third parties upon which forestry operations are conducted.
47. The Willmott Forests Companies own approximately 65,000 hectares of land. All of the land is owned by WFL. Approximately 39,500 hectares of the land, owned by the WFL, is planted with trees subject to managed investment schemes – both registered and unregistered. Approximately 26,000 hectares of the land owned by the WFL is not planted. The vast

*Handwritten signatures:*



majority of those 26,000 hectares is not considered optimum land for planting. However there would be approximately 1,500 to 2,000 of those hectares that are suitable for planting but are presently unplanted. WFL owns approximately 27,800 gross hectares in Bombala across approximately 65 separate plantation properties. Of that 27,800 hectares approximately 19,500 hectares at Bombala are planted with pine trees. All of the Bombala land owned by WFL is specifically excluded from the security provided by the Willmott Forests Companies to the Commonwealth Bank of Australia ("CBA") and St George ("StG").

48. Annexed to this my affidavit and marked "ATF-16" is a true copy of the Willmott Forests Companies' land register. Broadly speaking, it records, among other things, the region in which the land is located, the property name, the species of trees planted at the property, the gross area of the property, the net plantable area, the non-plantable area and the cost of that land.
49. The Willmott Forests Companies lease approximately 15,000 hectares. That land is leased under what may be described as prepaid leases. There are approximately 28 prepaid leases relating to more than 100 properties. The rent for all of those leases has been prepaid for up to 25 years. The rent for the prepaid leases was paid in advance so as to protect the interests of the growers.
50. The prepaid rent is reflected in the balance sheet of the Willmott Forests Companies. The audited accounts of the Willmott Forests Companies for the financial year ended 30 June 2009 show that prepayment:
- (a) in current assets of \$16,585,821, of which \$1,031,855 is by way of prepayment plantation land leases for that financial year (see note 12 to those accounts); and
  - (b) in noncurrent assets of \$34,496,643 for plantation land leases. The financial accounts for the Willmott Forests Companies for the

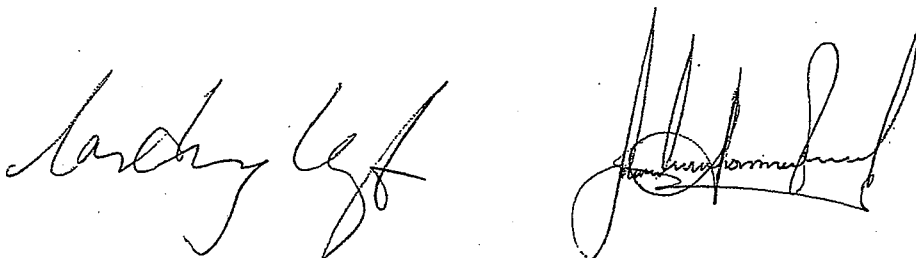
financial year ended 30 June 2010 have been prepared but the auditors have not as yet completed their audit report.

Annexed to this my affidavit and marked "ATF-17" is a true copy of the 2009 Annual Report (including the Willmott Forests Companies audited accounts) of the Willmott Forests Companies for the financial year ended 30 June 2009.

51. The growers that invested with WFL in connection with the projects relevant to the prepaid leases were aware of the fact that the rent for those leases was prepaid. The prepaid leases of the Willmott Forests projects is a distinguishing feature of the projects undertaken by those companies compared with projects undertaken by Great Southern, Timbercorp, Forest Enterprises and other forestry managed investment schemes. A summary of the land owned or leased by WFL is as follows:

Land	Hectares (Approx.)
Land owned by WFL – Planted	39,500
Land owned by WFL – Not Planted	26,000
Total Land Owned by WFL	65,500
Land leased by WFL	15,000
Total Land Owned and leased by WFL	80,500

52. WFL has been listed on the Australian Stock Exchange since 2000 and has been considered as one of Australia's leading integrated forestry companies for many years. Since its establishment in 1979, those Companies have been developers and managers of plantation resources throughout Australia. The vast majority of their plantations are of pinus radiata (pine). The Willmott Forests Companies have been the most prolific developers of pine plantations in Australia over the last decade. More recently, the Willmott Forests Companies established plantations of silky oak and she oak

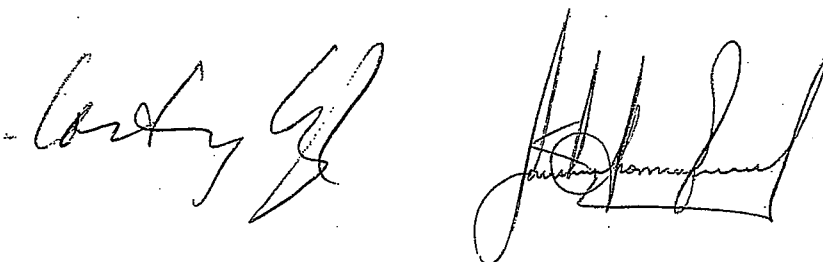


plantations in the North Coast region of New South Wales and over the border into Queensland along with African mahogany plantations in the Northern Territory. When the Willmott Forests Companies were placed under external administration, they employed 55 persons (this number included its directors).

53. In or about mid July 2010, the CBA and StG appointed KordaMentha to do a high level review of the Willmott Forests Companies' asset divestment plan. KordaMentha continued its review of the Willmott Forests Companies until around the time that members of that firm were appointed as the Receivers.

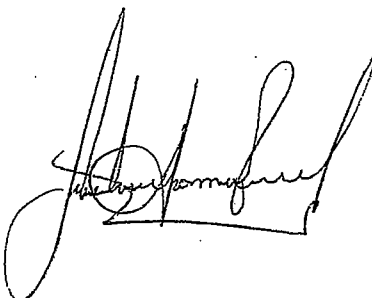
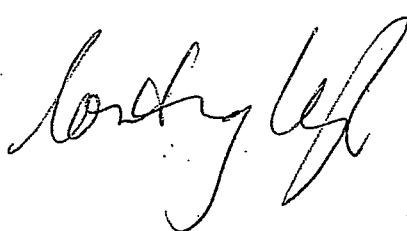
The caretaking and maintenance requirements for the projects for October 2010 to December 2010

54. The limited minimum caretaking and maintenance works that the pre – 2009 projects require to maintain the health of the forests between now and the end of 2010 may be summarised as follows. The roads and fire breaks at each of the plantations need to be maintained, particularly to ensure that they are trafficable in the event of a fire. This could be achieved by slashing the roads and fire breaks. This would ensure that the insurance policies for the projects are not breached. The trees of the pre-2009 projects do not require any form of watering or other works to ensure their health during that time. The cost of carrying out the works during the months of October, November and December 2010 would be in the order of approximately \$1.6M. This would include internal fixed overheads that relate directly to those forest operations.
55. The limited minimum work that needs to be carried out on the plantations that relate to the 2009 project is as follows. It will be necessary to carry out the maintenance works referred to in paragraph 55 above and it will also be



necessary to carry out post planting works (including weed control) for the 2009 project. Mr Derham is unable to provide an estimate of those costs at this time.

56. The Willmott Forests Companies sold a project during 2010. This was done up until 30 June 2010. The Willmott Forests Companies have approximately 18 months, from 30 June 2010, to complete the plantation establishment works for that project.
57. The Willmott Forests Companies have a management structure in place which can attend to each of the matters referred to in paragraphs 55 to 57 above over the course of October, November and December 2010. The remaining employees of the Willmott Forests Companies are well qualified to carry out or supervise the carrying out of that work. Those employees are more than capable of working under the direction of an Administrator or a new Responsible Entity to achieve all of the necessary maintenance and other work to best maintain and preserve the assets of the growers/investors.
58. In the opinion of Mr Derham, any additional overlay of management costs is completely unnecessary and not in the best interests of the creditors or the growers/investors of the Willmott Forests Companies.
59. I have informed Mr Derham that at the Adjourned Meetings Mr Carson said words to the effect that PPB has employees that live in Southern New South Wales who could easily access plantation sites. In response Mr Derham says that in his opinion, it is unnecessary for the Administrator (or the Administrator's employees) to access the plantations in the short term. In his opinion, the best use of the Administrator's time is to:
- (a) read and consider the detailed annual growers' reports which contain independent forestry advice that could and should be relied upon without the need to visit the plantations. (The growers report as at



2010 is the most up to date account of the health and wellbeing of each of the plantations); and

- (b) rely upon information provided by the employees of the Willmott Forests Companies about the health and wellbeing of the plantations.

Mr Derham is of the opinion that if, at this early stage, an Administrator desires a visual appreciation of the project, there is mapping data, aerial photography and ground based photography in the possession of management which can be reliably used for that purpose.

60. The Willmott Forests Companies staff have prepared forestry expenditure budgets under the supervision of David Smith, the Head of the Forestry Division. That forestry expenditure budget which relates to all pre-2009 projects, show that for the months of October, November and December 2010 the planned essential expenditure on forestry maintenance operations is as follows:

Expenditure	Oct 2010	Nov 2010	Dec 2010
Plantation Maintenance	\$360,000	\$180,000	\$170,000
Head office (salaries etc.)	\$170,000	\$170,000	\$170,000
In-Field staff (salaries etc.)	\$125,000	\$125,000	\$125,000

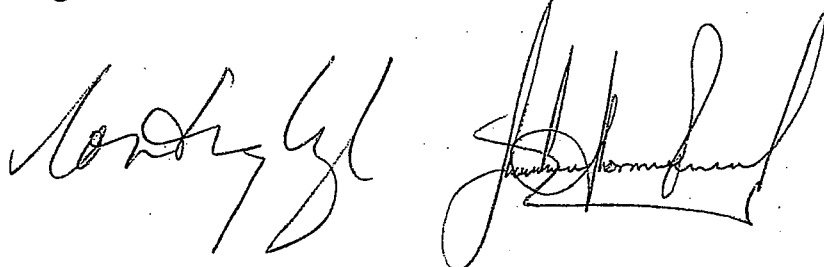
The above figures are approximate.

61. Mr Derham is of the opinion that the Forestry Operations Division can be maintained at an even lower cost in caretaker mode for the months of October, November and December 2010 without adversely affecting the growers/investors assets whilst the market is canvassed for a new Responsible Entity.

Summary of the role of the CBA

62. In 2006, the Willmott Forests Companies sold their receivables portfolio to the CBA at its face value of approximately \$60M.

63. In each of 2006, 2007, 2008 and 2009, the Willmott Forests Companies entered into origination deeds with the CBA for it to finance the investments by growers in the Willmott Forests projects. The total amount advanced by the CBA to grower/investors was in the order of \$140M. This means that the CBA has an exposure of approximately \$200M to growers/investors. The origination deeds were to provide growers/investors with finance which effectively provided the Willmott Forests Companies with cash for its sales.
64. On or about 19 March 2009, the Willmott Forests Companies entered into a syndicated debt facility with the CBA and StG to provide a facility totalling \$135M. Of the \$135M, the CBA provided \$95M and StG provided \$40M. Of the \$135M:
- (a) \$55M matured after two years; and
  - (b) \$80M matured after three years.
65. The syndicated debt facility was entered into on the basis of an information memorandum prepared by the Willmott Forests Companies dated December 2008. In that information memorandum, it was assumed that the grower finance facilities provided by the CBA, through its origination deeds, would continue from 2009 through to at least 2012. That is, the projections of the Willmott Forests Companies, which the syndicate relied upon, assumed that the CBA would continue to provide grower finance in the same way that it had done from 2006.
66. The security provided for the syndicated debt facility was:
- (a) a fixed charge over plantation land excluding the Bombala land; and
  - (b) a floating charge over all of the assets of WFL and its wholly owned subsidiaries.
67. In April 2009, Timbercorp went into administration and, in May 2009, Great Southern Plantations followed. As a result, the sector experienced significant volatility and uncertainty. In the face of that, the Willmott



Forests Companies traded profitably and well within their banking covenants. With the support of the grower financing provided by the CBA under the origination deeds for the financial year ended June 2009, the Willmott Forests Companies achieved the second highest sales figures in their 30 year history (albeit down on the sales for the 2008 year).

68. For the financial year ended 30 June 2010, the CBA refused to enter into an origination deed to provide grower finance as it had done in the prior years.
69. It is usual for products such as those sold by the Willmott Forests Companies to be paid for by growers/investors towards the end of a financial year. Therefore, there are few sales paid for before May or June of any given year. It is therefore usual for finance to be required by growers/investors in the last few months of a financial year. In the years 2006 to 2009, the origination deeds with the CBA were normally entered into prior to the peak marketing period for the products which normally commences in March or April.
70. In or about late 2009, the CBA informed Mr Derham that it would not be entering into an origination deed to provide grower/finance as it had done in previous years. This was, apparently, due to the demise of others in the sector, rather than a reflection on the Willmott Forests Companies' business. The Willmott Forests Companies managed to secure an off balance sheet facility by Merricks Capital, subject to certain criteria one of which was a minimum level of overall sales. To Mr Derham's knowledge that was not a criteria which had been previously imposed by the CBA. The facility with Merricks Capital was negotiated and signed in early May 2010. At that time the Willmott Forests Companies had every expectation that the minimum level of sales would be easily surpassed. Unfortunately, that was not the case and the facility was unable to be drawn upon.

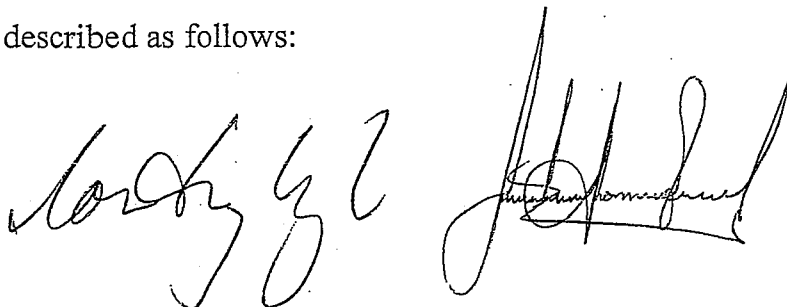


Replacing the Responsible Entity

71. Mr Derham is of the opinion that there are organisations that would be interested in becoming the replacement Responsible Entity for the Willmott Forests projects. He is aware of organisations in Australia that have recently bid in similar situations. An example of this are organisations that have bid to become the replacement Responsible Entity for the Great Southern projects.
72. Mr Derham says that in his experience, the key documents required to enable interested persons to provide an indicative bid as the replacement Responsible Entity of the Willmott Forests projects include:
- (a) the forecast expenditure and income statement (also known as scheme cash flows) for the projects prepared by the employees of the Willmott Forests Companies;
  - (b) mapping data including aerial photographs;
  - (c) historical growers' reports for the last 5 years;
  - (d) the growers register; and
  - (e) the land register (i.e. "ATF-16").
73. Prior to 6 September 2010, the Willmott Forests Companies had prepared a forecast expenditure and income statements for each of the forestry projects with the assistance of external advisors. Mr Derham believes that since 6 September 2010, the Receivers may have reviewed those documents and revised them or developed their own version.

Available information memoranda to obtain expressions of interest for a Deed of Company Arrangement

74. Prior to the Receivers being appointed, the Willmott Forests Companies had engaged Mallesons Stephens Jaques, solicitors, and Gresham Advisory Partners to prepare two separate information memoranda. In summary, the information memoranda ("**the information memoranda**") may be described as follows:



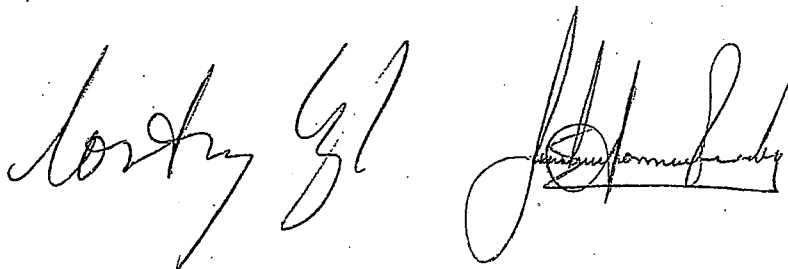
- (a) a corporate information memorandum designed to attract significant investment into the Willmott Forests Companies; and
- (b) an assets information memorandum designed to sell the land assets of the Willmott Forests Companies to facilitate significant debt reductions.

Each of the information memoranda were prepared on the basis of WFL being the Responsible Entity.

75. Each of the information memoranda were substantially complete as at 6 September 2010, subject to final checking and approval by Mr Derham. Mr Derham as the CEO had been charged by the Board of WFL with the responsibility of signing off on the information contained in each of the information memoranda. Mr Derham believes that the information memoranda contain some information which is confidential to the Willmott Forests Companies and commercially sensitive to those companies. He is of the opinion that only minor modifications would need to be made to the information memoranda so as to tailor them for use in seeking a replacement Responsible Entity or for seeking interest as to the sale of the assets of the Willmott Forests Companies. Mr Derham is of the opinion that each of the information memoranda would only require minor modification to reflect what has occurred since 6 September 2010.
76. On 24 September 2010, Mr Derham provided copies of each of the information memoranda to Mr Bryan Webster of the Receivers and to me.
77. Mr Derham believes that the information contained in the two information memoranda will be of great assistance to the Administrator in seeking expressions of interest for a deed of company arrangement.

Mr Webster's First Affidavit

78. Mr Derham has read the first affidavit of Mr Webster. As to paragraph 12, Mr Derham says that the growers/investors may be contingent creditors of other entities of the Willmott Forests Companies and not just contingent



creditors of WFL (as Mr Webster deposes). Mr Derham is of the opinion that the determination of whether the grower/investors are contingent creditors of the other entities will require further investigation.

**Mr Bland's Second Affidavit**

Paragraph 14 of Mr Bland's second affidavit

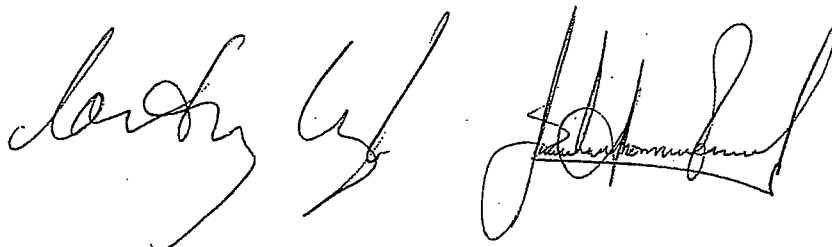
79. On or about 10 September 2010, Mr Bland contacted me. He told me that it would be a good idea for me to speak to BRI Ferrier in Sydney. He said that he wanted me to speak to BRI Ferrier with a view to taking on a joint appointment with them as Administrators of the Willmott Forrests Companies. I told Mr Bland that I would consider the matter and discuss it with Brian Silva of BRI Ferrier. Following my telephone conversation with Mr Bland I spoke with Mr Silva. I told Mr Silva that I would consider the idea of a joint appointment and that I would get back to him.
80. On 13 September 2010, I met with Tony Madden, Phil Grimsey and Paul Challis (together with Mr Bland by telephone). The meeting was convened at the request of Mr Bland. The purpose of the meeting was to discuss their concerns about my resources and the idea raised by Mr Bland as to the joint appointment with BRI Ferrier. During the meeting Mr Bland was informed that the idea of a joint appointment of Administrators from different firms was not possible. Mr Bland was invited to produce some authority in support of his idea of the joint appointment of administrators from different firms, which would be considered. Mr Bland never produced any authority to that effect.

**Mr Webster's second affidavit**

81. In his second affidavit Mr Webster refers to several meetings and/or telephone conversations. However he does not refer to a meeting on 20 September 2010.

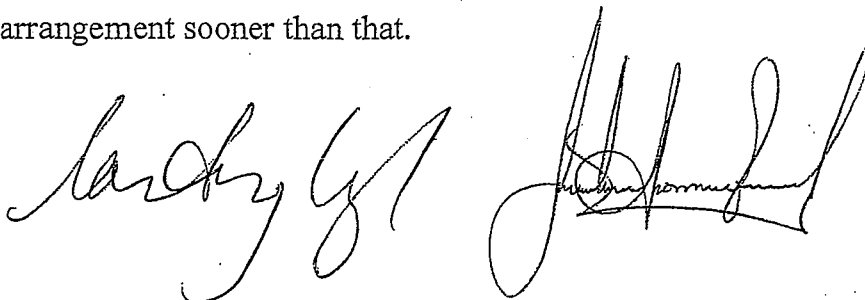
The meeting on 20 September 2010

82. I met with Mr Webster on 20 September 2010 at the offices of the Willmott Forests Companies in South Melbourne. Also present at the meeting was Mr Ryan of KordaMentha. The substance of the conversation on that day set out in paragraphs 84 to 89 below.
83. Mr Webster said that he was concerned that the Administrator had no funding. I told Mr Webster that the Willmott Forests Companies had the Bombala land. I told Mr Webster that the insurance for standing timber was due to expire on 30 September 2010 together with other insurances. I told him that it would be necessary to work out a pro-rata for the payment of the insurance premiums beyond 30 September 2010. I raised that issue because the Willmott Forests Companies had previously arranged insurance, including for standing timber, across all projects. That is, the insurance covered both projects on the charged land and the Bombala land as if it were one. The responsibility for all insurances was that of the Responsible Entity. At that time the Receivers were maintaining their position as the Responsible Entity. Therefore my interest was to ensure that the standing timber on the Bombala land would continue to be insured beyond 30 September 2010. Mr Webster said that as the Administrator, I did not have any funding to be able to meet the insurance premiums. I said that we would need to work out an arrangement because I wanted to make certain that the standing timber on the Bombala land was insured.
84. We then discussed the employees of the Willmott Forests Companies. (Prior to the meeting on 20 September 2010, Mr Webster had told me that on Friday 17 September 2010, the Receivers had terminated the employment of a number of employees particularly sales and marketing employees). I asked Mr Webster as to the position of the remaining employees. He said that the Receivers would be terminating the employment of some more of the remaining employees. On 20 September



2010, Mr Webster said that the Receivers may be terminating the employment of some other employees as well. As to the other employees, Mr Webster said that if the Receivers made decisions to terminate their employment, they would do so upon consultation with me. Mr Webster told me that the terminated employees were paid their entitlements accrued after the Receivership commenced. He told me that the Receivers had not settled the pre-receivership entitlements of those employees. He told me that the Receivers expected to pay the pre-receivership entitlements within the next fortnight. Mr Webster told me that for the future they would be terminating employees as and when they were surplus to requirements of the receivership.

85. I then raised with Mr Webster the seeking of expressions of interest in realising the assets of the Willmott Forests Companies with particular reference to the Bombala land. I told him that I wanted to discuss the seeking of expressions of interest for the realisation of all assets either as a whole or on an individual basis. Mr Webster said that both approaches could be considered. However he said that the Receivers were not in a position to call for expressions of interest until they had completed their reviews of all forestry projects on a scheme by scheme basis. He said that it would take the Receivers, at that stage, another three weeks at a minimum to complete those reviews. He said that no information could be released to interested parties in connection with expressions of interest until the Receivers had completed those reviews. We then discussed the timing of major milestones in securing purchasers for the assets. I told Mr Webster that I was keen to seek expressions of interest in order to put forward a deed of company arrangement. He said that the time frame for the realisation of assets in his estimate may not be earlier than January 2011. I told him that I was keen to be in a position to propose a deed of company arrangement sooner than that.

The block contains two handwritten signatures in black ink. The signature on the left is written in a cursive style and appears to be 'Lindy G'. The signature on the right is also cursive and appears to be 'John [unclear]'. Both signatures are positioned below the main body of text.

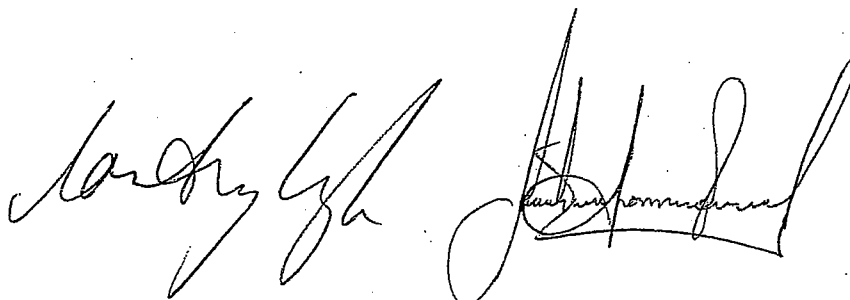
86. We then agreed to meet again on 29 September 2010 to further discuss the timetable for the process of a realisation of assets.
87. I asked Mr Webster when the Receivers might make the books and records of the Willmott Forests Companies available to me so that I could make an assessment of the value of the Bombala assets. I told him that instead of duplicating the process that the Receivers were undertaking, there may be some economies in me utilising the work that they had undertaken in connection with the Bombala assets. Mr Webster said that I could have access to the books and records once the Receivers had completed their reviews.
88. At no time during the meeting on 20 September 2010 did Mr Webster tell me that the Receivers' resignation as the Responsible Entity was imminent.

Paragraph 4 of Mr Webster's second affidavit

89. I refer to paragraph 4 of Mr Webster's second affidavit. When I spoke to him by telephone on the evening of 24 September 2010, I did not say to Mr Webster that I was unable to meet with him until Wednesday 29 September 2010. I told Mr Webster that I would more than likely ring him on Monday morning, 27 September 2010, to arrange a time to meet. In the event, I did ring Mr Webster at approximately 8:30am on Monday 27 September 2010. He was not available so I then sent him the email that is referred to in paragraph 6 of Mr Webster's second affidavit.

Paragraph 7 of Mr Webster's second affidavit

90. Although the Receivers provided me with a DVD of the documents (referred to in paragraph 7 (a) to (c) of Mr Webster's second affidavit) in the AAR letter of 29 September 2010 I was informed that the Receivers were unable to confirm that the sets of documents were complete and up to date and that I would need to conduct my own enquiries in that regard.



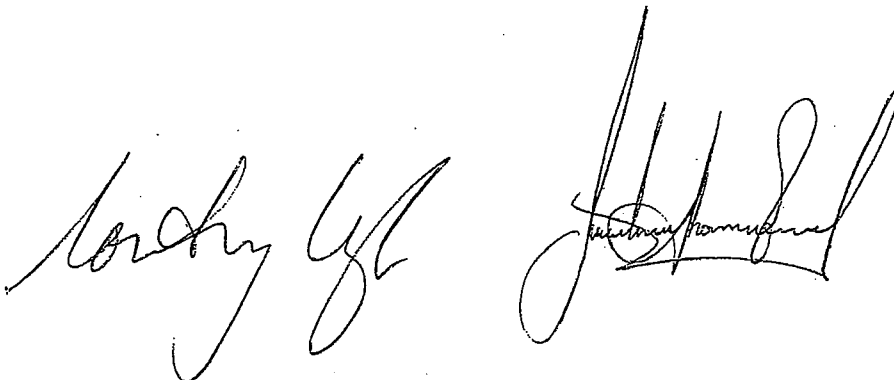
Paragraph 8 of Mr Webster's second affidavit

91. I refer to paragraph 8 of Mr Webster's second affidavit. It is not correct to say that Mr Whittle said that whilst AAR were preparing a draft Access Deed, that I would be given access to the books and records of WFL upon request insofar as relevant to matters pertaining to the administration. I was told that the Receivers would consider any request that I made for access to the books and records of the Willmott Forests Companies and they would want to know why I needed any particular documents. I was also told that some documents would not be provided as there were privacy issues relating to them. For example, either Mr Webster or Mr Ryan said that I may not be provided with documents relating to negotiations between the Receivers, Hancocks and Forests NSW.

92. On 5 October 2010, Hunt & Hunt sent a letter to AAR requesting:

- (a) documents relating to the Willmott Forest projects; and
- (b) a copy of the draft Access Deed which had still not been provided to me.

Annexed to this my affidavit and marked "ATF-18" is a true copy of a letter dated 5 October 2010 sent by Hunt & Hunt to AAR. On 6 October 2010 Hunt & Hunt received a response from AAR which stated that my request had been discussed with the Receivers and they were uncertain as to the precise document requested. Annexed to this my affidavit and marked "ATF-12" is a true copy of the letter dated 6 October 2010. Earlier today Hunt & Hunt responded to the letter dated 6 October 2010 from AAR. Annexed to this my affidavit and marked "ATF-19" is a true copy of Hunt & Hunt's letter of earlier today.



**Mr Bland's Second affidavit**Paragraph 14 of Mr Bland's second affidavit

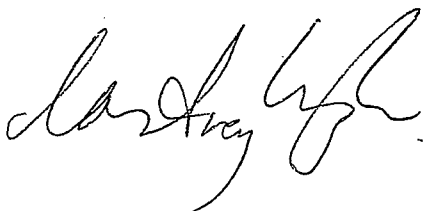
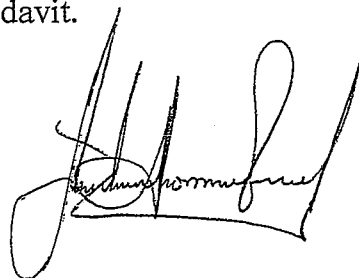
93. Shortly prior to the Original Meetings, I became aware that Professional Investment Services Pty Ltd may have issued a web release available to their authorised representative financial advisers recommending that the grower clients appoint Mr Bland as their proxy in support of a nomination of BRI Ferrier in Sydney to replace me as Administrator.
94. On or about 17 September 2010, I became aware of an email dated 17 September 2010. Annexed to this my affidavit and marked "ATF-20" is a true copy of the email dated 17 September 2010. The contents of the email are incorrect. The Original Meetings were adjourned for the reasons set out in my affidavits. I note that the email states that "we would support BRI Ferrier replacing Fernandez Partners as Administrator" and "Mark Bland ... was willing to act as a proxy for growers."

Paragraph 17 of Mr Bland's second affidavit

95. In paragraph 17 of Mr Bland's Second affidavit he deposes that I said words to the effect that "We have contacted all that we could" and I "had not accessed the register of members." I did not make those statements or make any statement(s) that effect. I refer to paragraphs 11, 13 and 15 to 24 of my first affidavit.

Paragraphs 18 to 23 of Mr Bland's second affidavit

96. I refer to paragraphs 18 to 23 of Mr Bland's second affidavit. My firm and I did not have any involvement whatsoever in creating, drafting, authorising or forwarding those emails annexed as "MAB-7" and "MAB-8". Additionally, my firm and I did not have anything to do with the content or subject matter of those emails.
97. I refer to:
- (a) paragraph 13 of Mr Bland's First Affidavit; and
  - (b) paragraph 8 of Ms Duta's Affidavit.

In response to the matters raised in those paragraphs, I refer to and repeat paragraphs 58, 59 and 66 to 69 of my first affidavit.

98. I refer to paragraph 7 of Ms Duta's affidavit. In that paragraph she deposes that after ASIC received my letter of 27 September 2010, ASIC still has concern about my capacity to undertake the administrations. My letter of 27 September 2010 to ASIC crossed with that of ASIC of the same date.

**The report as to affairs of the Willmott Forests Companies**

99. The directors of the Willmott Forests Companies have provided me with a Report as to Affairs ("the RATA"). Annexed to this my affidavit and marked "ATF-21" is a true copy of the RATA.
100. The RATA contains a summary of the assets and liabilities of the Willmott Forests Companies as at 6 September 2010. It also discloses the assets that are the subject of the charge to the CBA and StG. The charge excludes the Bombala land.

**Advertisement in the Financial Review**

101. I have arranged for an advertisement to be placed in the Australian Financial Review to appear on 11 October 2010. The advertisement calls for expressions of interest for a replacement responsible entity for WFL.

**Claim for confidentiality of information memoranda**

102. Mr Derham has informed me and I believe that the information memoranda contain information which is confidential to the Willmott Forests Companies. I have read those documents. I am also of the opinion that the information memoranda contain information which is confidential to the Willmott Forests Companies. I believe that this information may have an effect on the ultimate sale price of the assets of the Willmott Forests Companies. I believe that it is in the best interests of the Willmott Forests

Companies if the information memoranda are kept confidential. Annexed to this my affidavit and marked "ATF-22" is a bundle comprising the information memoranda.

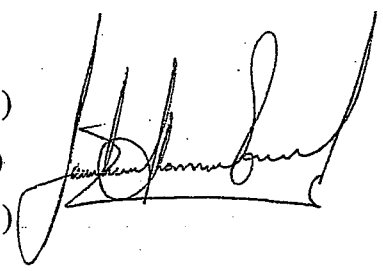
**Extension of insurance for standing timber for all projects**

103. In my role as Administrator, I have made arrangements with the insurance brokers for the insurer to extend the cover for standing timber on all projects to the end of October 2010.

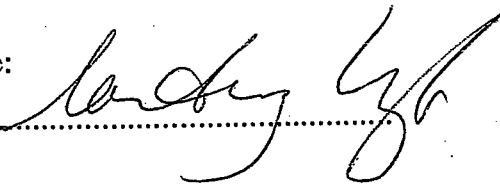
**SWORN by AVITUS THOMAS FERNANDEZ** )

on this 8 day of October 2010 )

at Melbourne in the State of Victoria )



Before me:

..... 

**COURTNEY ZELMA WRIGHT**  
**385 Bourke Street, Melbourne, Vic. 3000**  
**An Australian Legal Practitioner**  
**(within the meaning of the Legal**  
**Profession Act 2004)**

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIAN DISTRICT REGISTRY

No. 836 of 2010

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS  
APPOINTED) (ADMINISTRATORS APPOINTED)  
A.C.N 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(ADMINISTRATORS APPOINTED)  
A.C.N 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF  
EACH OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1 AND IN  
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT  
SCHEMES LISTED IN SCHEDULE 2  
First Plaintiff

CRAIG DAVID CROSBIE  
Second Plaintiff

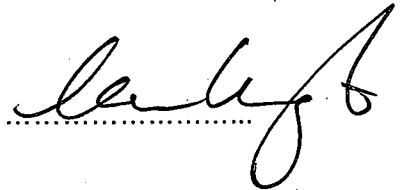
IAN MENZIES CARSON  
Third Plaintiff

**Certificate Identifying Exhibit**

This is the Annexure marked **JVS-2** referred to in the affidavit of John Vincent Sinisgalli of 1  
December 2010.

Date: 1 December 2010

Before me: .....



**COURTNEY ZELMA WRIGHT**  
**385 Bourke Street, Melbourne, Vic. 3000**  
**An Australian Legal Practitioner**  
**(within the meaning of the Legal**  
**Profession Act 2004)**

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Filed on behalf of the first Defendant  
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Solicitors  
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Melbourne VIC 3000  
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## TRANSCRIPT OF PROCEEDINGS

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O/N 147639

**FEDERAL COURT OF AUSTRALIA**

**VICTORIA REGISTRY**

**FINKELSTEIN J**

**No. VID 836 of 2010**

**COMMONWEALTH BANK OF AUSTRALIA and OTHERS**

**and**

**AVITUS THOMAS FERNANDEZ and OTHERS**

**MELBOURNE**

**10.29 AM, MONDAY, 11 OCTOBER 2010**

**MR P.D. CRUTCHFIELD SC appears with MR G. SLATER and MR C. MOLLER  
for the applicants**

**MR N. LUCARELLI QC appears with MR J. KOHR, MR M.J. GALVIN and DR O.  
BIGOS for the respondents**

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MR P.D. CRUTCHFIELD SC: If the court pleases, the matter is proceeding.

HIS HONOUR: Mr Crutchfield. Good.

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MR CRUTCHFIELD: First, there is two notices to produce which we have given to our friends. I have got the originals here, your Honour.

HIS HONOUR: Thanks.

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MR CRUTCHFIELD: I call on those notices.

MR N. LUCARELLI QC: In response to the notices, may I hand to your Honour a folder and to my learned friend a bundle of documents responding to the notices to produce. There is a policy of insurance in the front of the folder and in the front of the bundle, and some proxies in the back of the folder.

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HIS HONOUR: Thank you.

MR CRUTCHFIELD: Your Honour, could we be provided with the original proofs of debt that have been handed forwarded? We wish to – the appointment of proxies, I should say, we wish to examine them. Your Honour can see – well, your Honour has got the originals so you will be able to see it more clearly than we can, but it appears from the copies that we have got that many of the proxies for the first meeting of creditors were pre-prepared in the sense that the name of the person who was being appointed as the proxy was completed before the documents were went to creditors. We wish to examine the originals to make good that proposition. Thank you, your Honour. Then some additional affidavit material that your Honour may or may not have seen.

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HIS HONOUR: I do know that one arrived at 10 pm on Friday.

MR CRUTCHFIELD: Yes.

HIS HONOUR: And I haven't read it.

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MR CRUTCHFIELD: Yes, well, I can do better than that, your Honour. There was one sworn at about quarter past one this morning.

HIS HONOUR: I haven't read that either.

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MR CRUTCHFIELD: I have only just read it myself, your Honour. And I understand that there is a further affidavit coming from Mr Bland as well, a short further affidavit. What I wanted to do, your Honour, there is a lot of material here and I wanted to try and take your Honour through that material in order to make out a number of propositions - - -

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HIS HONOUR: Yes.

MR CRUTCHFIELD: - - - along the lines of the propositions I put to your Honour last week. Now, your Honour, Mr Fernandez's first affidavit, if your Honour goes to that - - -  
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HIS HONOUR: The 1 October affidavit?

MR CRUTCHFIELD: Yes. No, that is the convenient period one, I think. I am talking about the 4 October affidavit. Yes, that 1 October affidavit is in a different application.  
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HIS HONOUR: Okay. It happens to be in the same file, but I have the 4 October affidavit.  
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MR CRUTCHFIELD: Thank you, your Honour. Now, your Honour knows that receivers were first appointed to this group on 6 September, and then later that day the directors appointed a Mr Fernandez as administrator of the entities in the Willmott Forest Limited group and I think there are ten of them. If your Honour goes to exhibit 2 to Mr Fernandez's affidavit, that is the notice of meeting.  
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HIS HONOUR: Notice of meeting, yes.

MR CRUTCHFIELD: And you will see in the notice of meeting, this is paginated on the right-hand side down low on my set anyway, your Honour, the meeting is going to be held 15 September, 3 o'clock. Attached to the - no, not attached, but ATF3, the next document, it is convenient perhaps to go to that document, that is the agenda for the meeting which Mr Fernandez says in his first affidavit at paragraph 14 was handed out to those attending the meeting.  
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HIS HONOUR: Yes.

MR CRUTCHFIELD: If your Honour looks at the agenda, you see agenda item 7 "Confirmation of administrator, appointment of alternative administrator." Your Honour knows, and I will take your Honour to the Crosby affidavit where Mr Crosby exhibits the documents, but your Honour knows that the day before PPB contacted Mr Fernandez and said they had a - and sent through the consent to act and the declaration of relationships document.  
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HIS HONOUR: Can I just ask one procedural question before you go on and that is, I know that the affidavits aren't all here yet but is there going to be cross-examination of any of the deponents by anyone?  
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MR CRUTCHFIELD: Not from my side, and I have not received a notice that anybody on my side is required for cross-examination.  
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MR LUCARELLI: No, your Honour.

