

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

No. VID 1019 of 2010

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (ADMINISTRATORS APPOINTED)

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

ACN 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 LEON ZWIER

(Order 14, rule 2)

On 1 December 2010 I, **LEON ZWIER** of Level 21, 333 Collins Street, Melbourne, in the State of Victoria, Solicitor, **SAY ON OATH** that:

1 I am a partner of Arnold Bloch Leibler, the solicitors for the Plaintiffs, and my partner Jane Sheridan and I have the care and conduct of this proceeding on behalf of the Plaintiffs. Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.

Willmott Corporate Structure Chart

2 Produced and shown to me marked "LZ-1" is a diagram illustrating the corporate structure of the Willmott Group of Companies (as that term is defined in paragraph 1 of the Affidavit of Craig David Crosbie sworn on 25 November 2010 and filed in this proceeding (**Crosbie Affidavit**)).



Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000
ABL/1311327v1

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)

Correction of Crosbie Affidavit - Identity of Responsible Entity and Manager

3 I refer to the Crosbie Affidavit. As Mr Crosbie explains in his affidavit, the affairs of the Willmott Group of Companies are complex and the investigations to date are preliminary. In paragraph 5 of the Crosbie Affidavit, Mr Crosbie states that Willmott Forests Limited acts as the responsible entity and manager of 8 registered and 29 unregistered managed investment schemes. As set out in paragraph 23 of Mr Crosbie's affidavit, BioForests Limited (ACN 096 335 876) (and not Willmott Forests Limited) is the responsible entity for two of the 8 registered schemes:

- (a) Bioforest Dual Income Project 2006 (ARSN 119 153 623); and
- (b) Bioforest Sustainable Timber and Biofuel Project 2007 (ARSN 124 133 535);

and the manager of one of the 29 unregistered schemes, 2005 Bioforest Wholesale Project No. 2.

CBA Request for Further Information

4 On 24 November 2010, I received an email from Karen O'Flynn of Clayton Utz seeking further information in relation to the Administrators' application. Produced and shown to me marked "LZ-2" is a copy of that email. On 30 November 2010, Bridget Slocum of Arnold Bloch Leibler responded to the questions raised in that email on my behalf. Produced and shown to me marked "LZ-3" is a copy of Ms Slocum's email dated 30 November 2010.

First Administrators' Remuneration

5 Produced and shown to me marked "LZ-4" is an email from John Sinisgalli of Hunt & Hunt Lawyers to me dated 30 November 2010.

6 I spoke to Mr Sinisgalli on 30 November 2010. Mr Sinisgalli told me that Mr Fernandez is holding the titles to the Bombala Land (as that term is defined in paragraph 6 of the Crosbie Affidavit) pursuant to a lien for his unpaid costs and expenses.

7 I am told by Craig Crosbie that the Administrators have asked Mr Fernandez to provide details of his remuneration and any costs incurred during his Administration of the Willmott Group of Companies. In response to this request, Mr Fernandez advised the Administrators on 24 November that he was preparing the relevant information and understood his remuneration would be approved by the creditors at




the second meeting. Mr Fernandez holds net funds of approximately \$80,000, following the realisation of a property in NSW.

ASIC Response to Administrators' Application

8 Produced and shown to me and marked "LZ-5" is an email from Andrew Tregear from the Australian Securities and Investments Commission to Bridget Slocum dated 30 November 2010.

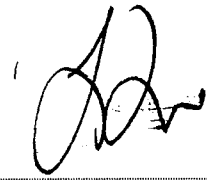
Growers' and Receivers' Response to Administrators' Application

9 I am told by Bridget Slocum that she has made inquiries of the solicitors representing the Willmott Action Group, the Willmott Growers Group and the Receivers and Managers of the Willmott Group of Companies and that none of those parties have instructions to appear at the hearing on 1 December 2010 to oppose the Administrators' Application.

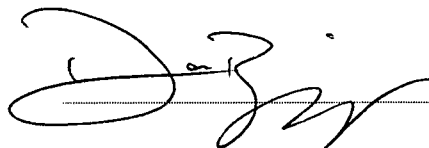
Commonwealth Bank's Response to Administrators' Application

10 On 30 November 2010, I received a letter from Clayton Utz, solicitors for the Commonwealth Bank of Australia. Produced and shown to me marked "LZ-6" is a copy of the letter dated 30 November 2010.

SWORN at Melbourne in the State of Victoria.)
)
)



Before me:



DANIEL JOSEPH BRIGGS
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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First Plaintiff

CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, **DANIEL JOSEPH BRIGGS**, certify to the Court that the affidavit of **LEON ZWIER** sworn on
1 December 2010 filed on behalf of the Plaintiffs complies with Order 14, rule 2 of the
Federal Court Rules.

Date: 1 December 2010



DANIEL JOSEPH BRIGGS

Solicitor for the Plaintiffs

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000
ABL/1311327v1

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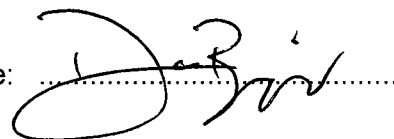
CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "LZ-1" now produced and shown to **LEON ZWIER** at the time of
swearing his affidavit on **1** December 2010.

Before me:



DANIEL JOSEPH BRIGGS
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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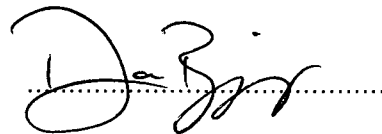
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Second Plaintiff

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CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "LZ-2" now produced and shown to **LEON ZWIER** at the time of
swearing his affidavit on **1** December 2010.

Before me:



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Level 21, 333 Collins Street
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Filed on behalf of the Plaintiffs
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Ref: 01-1565015
(Leon Zwier)

"L2-2"

Daniel Briggs

From: Martinez, Laura [lmartinez@claytonutz.com] on behalf of O'Flynn, Karen [koflynn@claytonutz.com]
Sent: Wednesday, 24 November 2010 1:59 PM
To: Leon Zwier
Cc: Bridget Slocum; James, Paul
Subject: Willmott Forests Court Application

Dear Leon

In order that our clients can give proper consideration to the proposed orders in the draft Originating Process, it would be appreciated if you could provide the following information as soon as possible:

- (a) what income is currently being received by Willmott Forests Limited (receivers and managers appointed) (administrators appointed) (**WFL**) arising from its position as responsible entity of the managed investments schemes and as manager of the unregistered managed investment schemes;
- (b) what is the proposed quantum of the credit facility which the administrators are seeking to obtain;
- (c) in relation to the "*Willmott Group's statutory maintenance obligations*", please identify the various categories of obligation, the entity in the group which is subject to each type of obligation and the monthly or quarterly quantum of the costs of compliance;
- (d) with respect to paragraph 2(b), what is the monthly cost of wages and employment - related costs; and
- (e) is some mechanism proposed whereby WFL will be reimbursed for costs it incurs in complying with obligations of other group companies.

It may be that many of the queries we have raised above will be dealt with in the supporting affidavit of the Second Plaintiff which is referred to in the draft Originating Process. If that is the case, could you please forward a draft of that affidavit as soon as possible.

Kind regards
Karen O'Flynn | Partner | Litigation & Dispute Resolution
Clayton Utz

1 O'Connell Street, Sydney NSW 2000 Australia | D +61 2 9353 4146 | F +61 2 8220 6700
koflynn@claytonutz.com

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This email is confidential. If received in error, please delete it from your system.

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First Plaintiff

CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "LZ-3" now produced and shown to **LEON ZWIER** at the time of swearing his affidavit on 1 December 2010.

Before me:



DANIEL JOSEPH BRIGGS
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)

" LZ-3 "

Daniel Briggs

From: Bridget Slocum
Sent: Tuesday, 30 November 2010 1:23 PM
To: 'O'Flynn, Karen'
Cc: 'pjames@claytonutz.com'; 'Craig Crosbie (ccrosbie@ppb.com.au)'; Leon Zwier; Jane Sheridan; 'Barry Wight (bwight@ppb.com.au)'
Subject: RE: Willmott Forests Court Application

Dear Karen

In response to your email of 24 November 2010, our client's responses are set out in italics below:

(a) What income is currently being received by Willmott Forests Limited (receivers and managers appointed) (administrators appointed) (WFL) arising from its position as responsible entity of the managed investments schemes and as manager of the unregistered managed investment schemes?

The only income presently generated by the plantations relates to pulpwood thinning works. The sale of this pulpwood, net of the costs of the thinning contractors, is estimated to be \$15k per month up to at least 30 March 2011. Willmott's management staff have asserted that WFL (in its capacity as Responsible Entity and manager) is not entitled to any management fees for these activities. This is subject to clarification following a review of the relevant scheme documents.

The Administrators are also aware that the Receivers and Managers currently hold approximately \$1.8m of Grower-related funds. It is not certain whether these funds are held by WFL in its personal capacity, or in its capacity as responsible entity and manager, or the extent to which the funds are held by WFL on behalf of Growers. It may take significant time to determine the capacity in which these funds are held, and to seek their release from the Receivers and Managers (if appropriate). Accordingly, we are not yet in a position to confirm whether WFL as RE/manager is entitled to receive any fees in relation to these funds.

The Administrators understand that the \$1.8m can be broken down as follows:

\$1m – 2003 Hail damage insurance proceeds:

WFL has incurred costs in relation to the reinstatement of damaged trees and may therefore be entitled to be reimbursed from insurance proceeds. It is not clear whether WFL's right to any such reimbursement is in its capacity as land owner or Responsible Entity.

WFL may also be entitled to a management fee in relation to the insurance proceeds net of the costs incurred, however this is subject to a review of the relevant scheme documents.

\$600k – Insurance claim 2009:

Willmott's management staff have informed the Administrators that WFL may be entitled to a management fee of 8% (or \$48k) in respect of these funds, however not yet clear whether the Receivers and Managers will assert a rights to these fees (if any). This is subject to our review of the relevant scheme documents.

\$200k – thinning proceeds:

WFL has received, and may continue to receive, proceeds from thinning operations, however Willmott's management staff have informed the Administrators that the Responsible Entity is not entitled to any management fee in relation to this process. This is subject to the Administrators' review of the relevant scheme documents.

(b) What is the proposed quantum of the credit facility which the administrators are seeking to obtain

The Administrators intend to seek a credit facility of \$5m. This is based on the Administrators' preliminary analysis of the costs to be incurred through to the 2nd meeting of creditors. The Administrators are currently undertaking a detailed cashflow analysis and will share their final forecast with the Secured Creditors when it is available.

(c) In relation to the "Willmott Group's statutory maintenance obligations", please identify the various categories of obligation, the entity in the group which is subject to each type of obligation and the monthly or quarterly quantum of the costs of compliance

The Administrators do not yet know the full extent of the statutory maintenance obligations, nor the quantum of the costs of compliance. This is because the plantations are located across four states – each with differing legislation. At present, the scheme documents available to the Administrators are incomplete. Until our client has completed its review of all relevant legislation and obtained and reviewed copies of all relevant lease documents and title particulars of all the plantations, our clients are not in a position to provide a scope of works, or an estimate of costs.

For example, in NSW, both the owner and manager of "authorised plantations" are liable to complete statutory works. We are instructed that 81 of the Willmott plantations are authorised plantations. In respect of land owned by third parties, the relevant compliance work is the joint responsibility of the manager (WFL) and the owner of the land. Many of the scheme documents available to the Administrators identify de-registered companies as the relevant land owner. In these cases, we are unable to establish whether the land is owned by a third party, or by an entity within the Willmott Group, without conducting a title search. In some cases, the leases provided to our client in respect of a scheme relate to only a small part of the relevant scheme's property. Until we obtain title particulars of the remaining land on which those schemes are conducted, we cannot determine the extent of the relevant statutory maintenance required.

Until this complex analysis is completed, we are unable to provide an estimate of costs, or indication of the scope of relevant work. This analysis will not be completed before Wednesday's hearing. However, the Administrators do not intend to spend any funds completing work that is not required by law.

(d) with respect to paragraph 2(b), what is the monthly cost of wages and employment - related costs

Monthly Administrators' employee outgoings (including on-costs) are estimated below:

Grower liaison employee	\$10,000
IT Manager	\$8,167
Operations Manager and OHS/Quality Manager	\$5,833
Forestry worker 1	\$5,333
Forestry worker 2	\$3,500
Total	\$32,833

With regard to employees directly under the Receivers' and Managers' control, we understand the monthly outgoings are \$29,243. The Administrators may be liable for a proportion of these costs, as and when they utilise the relevant staff members.

As for contractors, Willmott's management staff have estimated that approximately 17 contractors will be required to comply with the relevant statutory obligations, at an estimated cost of \$365k for the fire season. This is subject to the review described above in relation to question (c).

(e) is some mechanism proposed whereby WFL will be reimbursed for costs it incurs in complying with obligations of other group companies

As we have stated above in relation to question (c), the Administrators, together with our firm, are currently analysing the legal requirements of the various statutory provisions, in particular, whether those obligations fall on companies other than WFL. If so, arrangements will be put in place to deal with the funding of those companies' obligations.

Please call me if you wish to discuss any of these matters further.

I note that the Judge's Associate has contacted me today and asked me to determine whether any other parties will attend the hearing of the tomorrow's application. I have phoned the relevant parties and confirm:

- (a) the two grower groups do not intend to appear/oppose the application;
- (b) I have yet to receive confirmation either way from the receivers and ASIC; and
- (c) I informed the Judge's Associate that your client was awaiting further information regarding the application from my client today, and that this information might inform your client's position in relation to the application.

Accordingly, I would be grateful if you could please confirm as soon as possible whether your client intends to appear tomorrow and if so, whether your client intends to object to any of the directions or orders sought.

Kind regards

Bridget Slocum | Lawyer

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000
T: +61 3 9229 9631 | F: +61 3 9916 9358
bslocum@abl.com.au | www.abl.com.au

Arnold Bloch Leibler acknowledges the traditional owners of country throughout Australia.

From: Ienna, Danielle [<mailto:DIenna@claytonutz.com>] **On Behalf Of** O'Flynn, Karen
Sent: Monday, 29 November 2010 11:21 AM
To: Leon Zwier
Cc: Bridget Slocum; James, Paul
Subject: Willmott Forests Court Application

Dear Leon

I refer to your email of 24 November 2010.

The Affidavit of Mr Crosbie (**Affidavit**) does not specifically provide the information sought in paragraphs (a) to (e) of my email of 24 November 2010.

In relation to paragraph (a), we assume from paragraph 20 of the Affidavit that no income is currently being received. However, could you please confirm that this is the case and provide the balance of the information sought by close of business today.

Kind regards

Karen O'Flynn | Partner | Litigation & Dispute Resolution
Clayton Utz

1 O'Connell Street, Sydney NSW 2000 Australia | D +61 2 9353 4146 | F +61 2 8220 6700
koflynn@claytonutz.com

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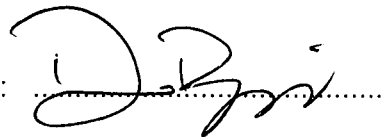
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Before me:



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Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

333 Collins Street

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Tel: 9229 9999

Fax: 9229 9900

Ref: 01-1565015

(Leon Zwier)

Daniel Briggs

From: John Sinisgalli [jsinisgalli@hunthunt.com.au]
Sent: Tuesday, 30 November 2010 11:59 AM
To: Leon Zwier
Subject: Crosbie & Carson re Willmott Forests - My client - Avitus Thomas Fernandez

Leon

I have tried calling & missed you & vice versa.

Is your application for directions proceeding tomorrow?

I need to intervene to protect Mr Fernandez claim for remuneration, costs and expenses incurred during the term of his administration.

Are you prepared to amend the directions sought to make provision for Mr Fernandez' position?

We have been awaiting the reasons for decisions from His Honour Justice Finkelstein but your application affects my client's position.

I would like to discuss with you asap.

John Sinisgalli
Partner, Accredited Commercial Litigation Specialist
Hunt & Hunt

T +61 3 8602 9223
F +61 3 8602 9299
E jsinisgalli@hunthunt.com.au

www.hunthunt.com.au

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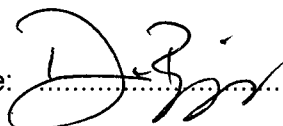
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Filed on behalf of the Plaintiffs
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Lawyers and Advisers
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333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)

Bridget Slocum

From: Andrew Tregear [Andrew.Tregear@asic.gov.au]
Sent: Tuesday, 30 November 2010 2:30 PM
To: Bridget Slocum
Cc: 'bwatson@ppb.com.au'; 'Barry Wight'; 'Craig Crosbie (ccrosbie@ppb.com.au)'; Jane Sheridan; 'lilleydawson@bigpond.com'; Leon Zwier; 'Mark.bland@clarendonlawyers.com.au'; 'Whittle, Matthew'; 'pjames@claytonutz.com'
Subject: RE: Willmott Federal Court Proceedings - Administrators' Application for Orders and Directions [SEC=UNCLASSIFIED]
Attachments: Originating Process.pdf

Bridget

ASIC neither consents to nor opposes the orders sought in the originating process and has no submissions it wishes to make in relation to it.

It does not intend to appear at the hearing tomorrow.

regards

Andrew

Andrew Tregear | Litigation Counsel, Chief Legal Office | Australian Securities and Investments Commission

+61 3 9280 3218 | +61 3 9280 3545 | andrew.tregear@asic.gov.au

From: Bridget Slocum <bslocum@abl.com.au>
To: "" (Mark.bland@clarendonlawyers.com.au)"" <Mark.bland@clarendonlawyers.com.au>, ""lilleydawson@bigpond.com"" <lilleydawson@bigpond.com>, ""Andrew Tregear (andrew.tregear@asic.gov.au)"" <andrew.tregear@asic.gov.au>, ""pjames@claytonutz.com"" <pjames@claytonutz.com>, ""Whittle, Matthew"" <Matthew.Whittle@aar.com.au>
Cc: Leon Zwier <LZwier@abl.com.au>, Jane Sheridan <JSheridan@abl.com.au>, 'Barry Wight' <BWight@ppb.com.au>, ""Craig Crosbie (ccrosbie@ppb.com.au)"" <ccrosbie@ppb.com.au>, ""bwatson@ppb.com.au"" <bwatson@ppb.com.au>
Date: 26/11/2010 11:44 AM
Subject: RE: Willmott Federal Court Proceedings - Administrators' Application for Orders and Directions [SEC=UNCLASSIFIED]

This email message has been processed by MIMESweeper

Dear Parties,

I now **attach** a sealed copy of the originating process.

As you will note from the originating process, we have been advised by the Court that the matter will now be heard by Justice Gordon at **11am on 1 December 2010** (not 2:15pm before Justice Finkelstein, as previously advised).

Kind regards

Bridget Slocum | Lawyer

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000
T: +61 3 9229 9631 | F: +61 3 9916 9358
bslocum@abl.com.au | www.abl.com.au

Arnold Bloch Leibler acknowledges the traditional owners of country throughout Australia.

From: Bridget Slocum

Sent: Thursday, 25 November 2010 6:43 PM

To: ' (Mark.bland@clarendonlawyers.com.au)'; 'lilleydawson@bigpond.com'; 'Andrew Tregear (andrew.tregear@asic.gov.au)'; 'pjames@claytonutz.com'; 'Whittle, Matthew'

Cc: Leon Zwier; Jane Sheridan; 'Barry Wight'; 'Craig Crosbie (ccrosbie@ppb.com.au)'; 'bwatson@ppb.com.au'

Subject: RE: Willmott Federal Court Proceedings - Administrators' Application for Orders and Directions

Dear Parties,

Further to my last email, I now **attach** a copy of the Originating Process and sworn affidavit of Craig David Crosbie dated 25 November 2010. These documents will be filed with the Court first thing tomorrow morning. A sealed copy of the originating process, together with the affidavit will be couriered tomorrow, together with exhibit CDC-4 which is a CD containing the primary scheme documents (which has been omitted from this email due to its size).

Kind regards

Bridget Slocum | Lawyer

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000

T: +61 3 9229 9631 | F: +61 3 9916 9358

bslocum@abl.com.au | www.abl.com.au

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From: Bridget Slocum

Sent: Thursday, 25 November 2010 4:56 PM

To: ' (Mark.bland@clarendonlawyers.com.au)'; 'lilleydawson@bigpond.com'; 'Andrew Tregear (andrew.tregear@asic.gov.au)'; 'pjames@claytonutz.com'; 'Whittle, Matthew'

Cc: Leon Zwier; Jane Sheridan; 'Barry Wight'; 'Craig Crosbie (ccrosbie@ppb.com.au)'

Subject: RE: Willmott Federal Court Proceedings - Administrators' Application for Orders and Directions

Importance: High

Dear Parties,

I refer to my email below.

Due to the hour, we have re-listed the administrators' application on **Wednesday 1 December 2010 at 2:15pm** before Finkelstein J. We apologise for any inconvenience caused.

The Court documents will be filed shortly, and a copy of the originating process and the supporting affidavit of Craig David Crosbie dated 25 November 2010 will be circulated by email this evening, with hard copies to follow in tomorrow's mail.

Kind regards

Bridget Slocum | Lawyer

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000

T: +61 3 9229 9631 | F: +61 3 9916 9358

bslocum@abl.com.au | www.abl.com.au

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From: Bridget Slocum

Sent: Wednesday, 24 November 2010 12:25 PM

To: (Mark.bland@clarendonlawyers.com.au); 'lilleydawson@bigpond.com'; Andrew Tregear (andrew.tregear@asic.gov.au); 'pjames@claytonutz.com'; Whittle, Matthew

Cc: Leon Zwier; Jane Sheridan; Barry Wight; Craig Crosbie (ccrosbie@ppb.com.au)

Subject: Willmott Federal Court Proceedings - Administrators' Application for Orders and Directions

Dear Parties,

We act for the administrators of the Willmott Group of Companies.

The administrators have listed an application for orders and directions before the Honourable Justice Finkelstein on Friday 26 November 2010 at 10:30am.

I **attach** the final form of the Administrators' Originating Process. The application is yet to be filed. We are currently finalising the supporting affidavit of Craig David Crosbie and will provide the affidavit and the final sealed copy of the Originating Process as soon as possible.

Kind regards

Bridget Slocum | Lawyer

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000
T: +61 3 9229 9631 | F: +61 3 9916 9358
bslocum@abl.com.au | www.abl.com.au

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IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

VID 1019/10

No. of 2010

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (ADMINISTRATORS APPOINTED)
ACN 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(ADMINISTRATORS APPOINTED)
ACN 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF
EACH OF THE MANAGED INVESTMENTS 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

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under s 447D, s 439A, s 447A and s 449E of the *Corporations Act 2001* (Cth) (*Corporations Act*), and the inherent jurisdiction of the Court.



The Plaintiffs seek directions regarding questions that have arisen in the administration of the First Plaintiff and those companies listed in schedule 3 to this originating process (*Willmott Group of Companies*).

On the facts stated in the supporting affidavit of the Second Plaintiff sworn 25 November 2010, the Second and Third Plaintiffs (in their capacity as administrators of the Willmott Group of Companies) seek in respect of the managed investment schemes listed in Schedules 1 and 2:

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)

- 1 A direction pursuant to s 447D of the Corporations Act that the Second and Third Plaintiffs are justified in procuring the First Plaintiff to obtain a credit facility from a major trading bank to be secured by first ranking mortgage against the First Plaintiff's unsecured assets, more particularly described in the affidavit of Craig David Crosbie dated 25 November 2010 (**Credit Facility**).
- 2 A direction pursuant to s 447D of the Corporations Act and the inherent jurisdiction of the Court, that the Second and Third Plaintiffs are justified in procuring the First Plaintiff to apply the Credit Facility to:
 - (a) the costs of compliance with the Willmott Group's statutory maintenance obligations;
 - (b) employees' wages and employment-related costs; and
 - (c) the Second and Third Plaintiffs' remuneration, costs and disbursements.
- 3 A direction pursuant to s 447D of the Corporations Act and the inherent jurisdiction of the Court, that the Second and Third Plaintiffs are justified in seeking the Court's approval of their remuneration in the form of the report attached as exhibit CDC-8 to the affidavit of Craig David Crosbie dated 25 November 2010.
- 4 An order pursuant to s 449E of the Corporations Act determining the Second and Third Plaintiffs' remuneration for the period 26 October 2010 to 15 November 2010 at \$228,416.50 plus GST.
- 5 An order pursuant to s 439A(6) or alternatively s 447A(1) of the Corporations Act that subject to further order, Part 5.3A of the Corporations Act is to operate as if the convening period for the meeting of the creditors of the Willmott Group of Companies to be convened pursuant to s439A of the Act, be further extended to 15 March 2011.
- 6 An order that pursuant to s 447A(1) of the Corporations Act the meeting of creditors of the Willmott Group of Companies required by s 439A of the Act may be held at anytime during, or within, 5 business days after the end of, the convening period as extended by order 5 above.
- 7 An order that leave be reserved to the Second and Third Plaintiffs to make a further application at any time within the convening period as extended under order 5 above for orders further extending the convening period.



8 Such further or other orders as the Court deems fit.

DATE: 26 November 2010

Arnold Bloch Leibler

ARNOLD BLOCH LEIBLER
Solicitors for the plaintiff

This application will be heard by the Federal Court of Australia, 305 William Street,
Melbourne at ~~2:15 pm~~ on 1 December 2010 .
11:00am

B. NOTICE TO DEFENDANT

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing: **26 NOV 2010**

[Signature]

An officer acting with the authority of the
DISTRICT REGISTRAR



This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street,
Melbourne, VIC, 3000, solicitors for the plaintiff.

E. SERVICE

The plaintiff's address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street,
Melbourne, VIC, 3000.

It is intended to serve a copy of this originating process on the following persons:

- (a) the Australian Securities and Investments Commission;
- (b) the Willmott Growers Group by their solicitors Clarendons Lawyers;
- (c) the Willmott Action Group by their solicitors Lilley Dawson;
- (d) the Commonwealth Bank of Australia by their solicitors Clayton Utz; and

- (e) Mark Korda, Bryan Webster and Mark Mentha of KordaMentha by their solicitors Allens Arthur Robinson.

A copy of this originating process and the supporting affidavit of the second plaintiff will also be posted on the websites of Arnold Bloch Leibler (www.abl.com.au) and PPB (www.ppb.com.au).



Schedule 1 - Managed Investment Schemes

- (a) Willmott Forests 1989 - 1991 Project
- (b) Willmott Forests 1995 - 1999 Project
- (c) Willmott Forests Project
- (d) BioForest Dual Income Project 2006
- (e) BioForest Sustainable Timber and Biofuel Project 2007
- (f) Willmott Forests Premium Forestry Blend Project
- (g) Willmott Forests Premium Forestry Blend Project - 2010 Project
- (h) Willmott Forests Premium Timberland Fund No. 1



Schedule 2 - Unregistered Managed Investment Schemes

- (a) 1983 (No Project);
- (b) 1984 (No Project);
- (c) 1985 (No Project);
- (d) 1986 (No Project);
- (e) 1987 (No Project);
- (f) 1989 (No Project);
- (g) 1990 (No Project) - Interest Only Offer;
- (h) 1991 (No Project);
- (i) McKenzie & Partners - Forestry Partnership No.1 (1993);
- (j) Grimsey & Associates Pty Ltd - Forestry Partnership No. 1 (1994);
- (k) Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (1994);
- (l) Grimsey & Associates Pty Ltd - Forestry Partnership No. 3 (1994);
- (m) McKenzie & Partners - Forestry Partnership No. 2 (1994);
- (n) 1995 (No Project) (Custom);
- (o) Sharp/Reed Plantation Project -1998 Information Memorandum;
- (p) Willmott Forests - Professional Investor - 2001 Project - 2001 Information Memorandum;
- (q) 2001 (No Project);
- (r) Willmott Forests - Professional Investor - 2002 Project - 2002 Information Memorandum;
- (s) Willmott Forests - Professional Investor - 2003 Project - 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004);



- (t) Willmott Forests - Professional Investor - 2004 Project - 2004 Information Memorandum and 2004 Information Memorandum (2005);
- (u) 2005 BioForest Wholesale Project No. 2 - 2005 Wholesale Forestry Memorandum (Bioforest); and
- (v) Willmott Forests - Professional Investor - 2006 Project - 2006 Information Memorandum.



Schedule 3 - Willmott Group of Companies

- (a) Willmott Forests Limited (Receivers And Managers Appointed) (Administrators Appointed) (ACN 063 263 650);
- (b) Willmott Finance Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 081 274 811);
- (c) Willmott Forest Products Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 103 019 094);
- (d) Willmott Forests Investment Management Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 098 718 837);
- (e) Willmott Forests Nominees Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 085 588 772);
- (f) Willmott Energy Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 130 251 759);
- (g) Willmott Subscriber Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 134 963 027);
- (h) Bioenergy Australia Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 096 335 901);
- (i) Bioforest Limited (Receivers And Managers Appointed) (Administrators Appointed) (ACN 096 335 876); and
- (j) Willmott Notes Pty Ltd (Receivers And Managers Appointed) (Administrators Appointed) (ACN 134 963 036)



IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

No. VID 1019 of 2010

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (ADMINISTRATORS APPOINTED)

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

ACN 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

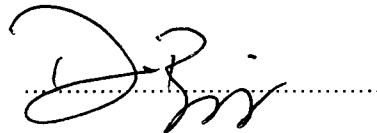
CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "LZ-6" now produced and shown to **LEON ZWIER** at the time of
swearing his affidavit on 1 December 2010.

Before me:



DANIEL JOSEPH BRIGGS
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)

CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

Confidential

Email

30 November 2010

Arnold Bloch Leibler
Level 21
333 Collins Street
Melbourne VIC 3000
lzwier@abl.com.au/bslocum@abl.com.au

Our ref 146/80111887

Dear Mr Zwier

Willmott Forests Limited (Receivers and Managers Appointed) (Administrators Appointed) (WFL)

We refer to our email of 29 November 2010 and your response of earlier this afternoon.

We are instructed to confirm that we intend to seek leave for our clients to appear at the hearing of the application tomorrow.

In our view, the information contained in your email of earlier this afternoon is relevant to the application and should be made available to the Court in proper form by a further affidavit being sworn.

In general terms, our clients' position in relation to the application is:

- (a) the application should be adjourned so far as paragraph 2(a) of the Originating Process is concerned until such time as the Administrators are able to identify the specific statutory maintenance obligations which they propose to meet including an estimate of the costs involved in meeting each obligation and which companies in the Willmott Group have each obligation;
- (b) the directions sought should only be made on the basis that, to the extent that the Credit Facility is applied in payment of the costs, expenses and remuneration specified, there should be an allocation of those costs, expenses and remuneration such that:
 - (i) non scheme related remuneration and expenses should be borne by WFL;
 - (ii) scheme related remuneration and expenses should be borne by the schemes equally where the scheme related work is not specific to any particular scheme;
 - (iii) specific scheme related remuneration and expenses should be borne by the particular scheme;
- (c) in relation to sub-paragraphs (b)(ii) and (iii) above, the invitation to Growers to make financial contributions foreshadowed in paragraph 44 of the Affidavit of Mr Crosbie

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Canberra

Darwin

Arnold Bloch Leibler

30 November 2010

- should include provision to cover repayment of that portion of the Credit Facility which has been used in payment of such scheme related remuneration and expenses;
- (d) the proceeds of the Credit Facility should not be expended except in payment of the identified cost, expenses and remuneration which have been incurred prior to the date on which the second meeting of creditors of WFL is first held;
 - (e) the Credit Facility (which is to be secured on the assets of WFL) should not be applied to meeting any of the costs, expenses and remuneration identified to the extent that they are obligations of, or otherwise attributable to, companies in the Willmott Group other than WFL - for example, if companies such as Bioforest Limited do not have sufficient assets to meet such obligation and the Growers of the schemes for which it is the responsible entity are not prepared to provide any further funds, the second meeting of creditors for such companies should be convened immediately; and
 - (f) in relation to paragraph 5 of the Originating Process (further extension of convening period to 15 March 2011), the Banks' position is that once the Solvency and Viability Analysis is completed by the Administrators, the s.439A report to creditors should be finalised and the second meetings of creditors convened so as to enable the creditors to determine the fate of the companies at the earliest practical opportunity.

As a final matter, our clients have assumed from the fact that this application is being made that the Administrators have not incurred, and are not proposing to incur, liabilities of any other nature which are referable only to the interests of some, or all, of the Willmott Schemes in the period up to the date on which the second meeting of creditors is first held. If this assumption is not correct, could you please let us know as soon as possible, including providing details of what other such liabilities the Administrators have or are proposing to incur.

Yours faithfully



Karen O'Flynn, Partner
+61 2 9353 4146
koflynn@claytonutz.com