

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST
S CI 2011

IN THE MATTER OF THE WILLMOTT FORESTS 1995-1999 PROJECT
ARSN 089 598 612

B E T W E E N

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF
THE PROJECT) AND OTHERS

Plaintiffs

and

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
AND OTHERS

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 21 June 2011

Filed on behalf of: The Plaintiffs

Prepared by:

Allens Arthur Robinson
Lawyers
530 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:120090098 (Clint Hinch)

This is the exhibit marked '**BW-46**' now produced and shown to BRYAN WEBSTER at the time of affirming his affidavit on 21 June 2011.

Before me

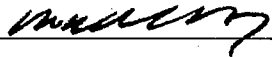

MATTHEW SIMON McCARTHY
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit 'BW-46'

**Copy of the Plaintiffs'
draft statement of claim**

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST #
S CI 2011

IN THE MATTER OF THE WILLMOTT FORESTS 1995-1999 PROJECT
ARSN 089 598 612

B E T W E E N

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF
THE SCHEME) AND OTHERS

Plaintiffs

and

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
AND OTHERS

Defendants

DRAFT STATEMENT OF CLAIM

Date of document:

Filed on behalf of: The Plaintiffs

Prepared by:

Allens Arthur Robison
Lawyers
530 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:120090098 (Clint Hinch)

1. The Scheme and the Parties

1. The Willmott Forests 1995-1999 Project (ARSN 089 598 612) (the **Scheme**) is and has at all times since 30 September 1999 been a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* (the **Corporations Act**).

Particulars

A copy of the amended Constitution of the Scheme dated 13 April 1995 (as contained in the Schedule to the Supplemental Deed Poll dated 16 September 1999) (the **Constitution**) is available for inspection by appointment at the offices of the solicitors for the plaintiffs.

2. The 1st Plaintiff (**Willmott Forests**):
- (a) is and at all relevant times has been a corporation registered under the Corporations Act; and
 - (b) was, prior to 23 August 1999, known as Timber Capital Limited.
3. Further, Willmott Forests:
- (a) is and has at all times since 30 September 1999 been the responsible entity of the Scheme; and
 - (b) is a member of the Scheme, set out further in paragraph 14 below.
4. On:
- (a) 6 September 2010, Willmott Forests entered voluntary administration pursuant to s 436A of the Corporations Act; and
 - (b) 22 March 2011, Willmott Forests was placed in liquidation pursuant to a resolution of its creditors, with Craig David Crosbie and Ian Menzies Carson being appointed as its liquidators (the **Liquidators**).
5. On 6 September 2010, the 2nd, 3rd and 4th Plaintiffs (the **Receivers**) were appointed as joint and several receivers and managers of all charged property of Willmott Forests and its associated companies.

Particulars

Deed of Appointment between CBA Corporate Services (NSW) Pty Ltd (in its capacity as trustee of the Primary Security Trust) and the Receivers dated 6 September 2010.

Deed of Appointment between CBA Corporate Services (NSW) Pty Ltd (in its capacity as trustee of the Secondary Security Trust) and the Receivers dated 6 September 2010.

6. The charged property of Willmott Forests comprises all of its assets, undertakings and rights, both present and future, except for certain property, in particular:
- (a) any land located within a radius of approximately 150 kilometres around the township of Bombala, New South Wales (the **Bombala Land**); and
 - (b) any property held by Willmott Forests in its capacity as responsible entity, trustee or custodian in respect of the managed investment schemes operated by Willmott Forests or any other property held by Willmott Forests or its wholly-owned subsidiaries in their capacity as a trustee or custodian.

7. On 24 September 2010, the Receivers' appointment as receivers and managers was terminated in respect of:

(a) Willmott Forests' rights, title and interest in, and its rights and interests under each agreement, deed or document:

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(i) appointing Willmott Forests as responsible entity and/or manager of the Scheme;

(ii) entered into by Willmott Forests in its capacity as responsible entity of the Scheme; and

(iii) entered into by Willmott Forests with the members of the Scheme; and

(b) Willmott Forests' rights and obligations as responsible entity of the Scheme otherwise arising at law,

but the termination of the Receivers' appointment was expressed, for the avoidance of doubt, not to include Willmott Forests' rights, title and interest in:

(c) any freehold land owned by Willmott Forests; or

(d) any debts owed to Willmott Forests, including any debts owed by Growers in the Scheme.

Particulars

Deed of Partial Termination between CBA Corporate Services (NSW) Pty Ltd (in its capacity as trustee of the Primary Security Trust) and the Receivers dated 24 September 2010.

Deed of Partial Termination between CBA Corporate Services (NSW) Pty Ltd (in its capacity as trustee of the Secondary Security Trust) and the Receivers dated 24 September 2010.

8. The 1st Defendant (**Grimsey**):

(a) is and at all relevant times has been a corporation registered under the Corporations Act carrying on business as a financial advisor;

(b) is an associated entity of Grimsey & Associates Financial Services Pty Ltd (ACN 056 610 167) which is a member of the Scheme in its own right; and

(c) is or has been financial advisor to a number of other investors in the Scheme.

9. The 2nd Defendant (**Redisland**):
- (a) is and at all relevant times has been a corporation registered under the Corporations Act carrying on business as a manager of managed investment schemes; and
- (b) is associated with principals of Grimsey who are themselves Growers in the Scheme;
10. The 3rd Defendant (the **WGG**):
- (a) is and has been an association incorporated under s 7 of the *Associations Incorporation Act 1981* (Vic) since on or about 22 September 2010; and
- (b) was formed and incorporated by Grimsey.
11. The stated objects of the WGG include:
- (a) to promote unity and co-ordination for members of the WGG who hold investments in financial projects for which Willmott Forests is currently the responsible entity; and
- (b) to communicate on behalf of members of the WGG with the administrators and/or receivers of the responsible entity and any other relevant stakeholders.
12. The 4th Defendant (**Challis**):
- (a) is the managing director of Redisland; and
- (b) is proposed to be nominated to preside as Chairman at the meeting of investors in the Scheme to be held on 14 June 2011, as referred to further below.

2. The Commercial Structure of the Scheme

13. The Scheme comprises six projects, corresponding to six successive prospectuses issued by Willmott Forests.

Particulars

There were two prospectuses issued in 1995 (referred to as the "1995 Prospectus (1995)" and the "1995 Prospectus (1996)"), and one prospectus issued each year from 1996 to 1999 inclusive. Each project consists of the interests in the Scheme issued to investors who applied to invest in the Scheme in response to each successive prospectus.

14. Willmott Forests is a member of the Scheme in its personal capacity, being the registered holder of issued Hectares in the following projects:

- (a) 1995 Prospectus (1995)– 22 Hectares;
- (b) 1996 Prospectus – 399 Hectares;
- (c) 1997 Prospectus – 23 Hectares;
- (d) 1999 Prospectus – 11 Hectares.

Grower contributions to and returns from the Scheme

15. The basic structure of the Scheme (for each project other than that undertaken pursuant to the 1999 Prospectus) is as follows:

- (a) on acceptance of their application to invest in the Scheme, investors (**Growers**) are issued, and registered as the holders of, leasehold interests of one or more hectares of a timber plantation (defined in the Constitution as **Hectares**) pursuant to a lease agreement between the 1st Plaintiff (**Willmott Forests**) as lessor and each Grower as lessee (a **Grower lease**);

Particulars

Constitution, definition of "Hectares" (clause 25.1); clauses 4.8, 4.9.

A sample Grower lease may be inspected at the offices of the solicitors for the plaintiffs.

- (b) pursuant to the Grower leases, each Grower has the right to harvest and sell timber from the trees standing on each of its Hectares (the **Trees**);
- (c) for Growers in the projects undertaken pursuant to the 1995 to 1998 Prospectuses, their investments in the Scheme were wholly made through upfront fees payable on entry to the Scheme; and

Particulars

In addition to a single lump-sum rental being payable in advance under the Grower leases, Growers were also required to pay upfront lump-sum fees under a Preparation and Planning Agreement and a Maintenance Agreement, each agreement being between Willmott Forests and the Grower.

A sample Preparation and Planting Agreement and a sample Maintenance Agreement may be inspected by prior appointment at the offices of the solicitors for the plaintiffs.

- (d) Growers' anticipated returns on investment were intended to be derived from the proceeds of timber harvested on each Hectare (net of harvesting and

marketing costs), which is expected to occur approximately 25 years after the planting of the Trees.

16. For Growers in the project undertaken pursuant to the 1999 Prospectus, the basic structure of the Scheme is as above, save that rent under the Grower lease and maintenance fees under the Maintenance Agreement were payable quarterly over the full term of the Scheme.

Particulars

The fees payable under the 1999 Prospectus were:

- (i) an up-front fee of \$6,000 per Hectare under the Preparation and Planning Agreement;
- (ii) an annual maintenance fee of \$150 per Hectare (fixed for 10 years, then indexed annually for CPI) payable quarterly over the term of 25 years under the Maintenance Agreement; and
- (iii) annual rent of \$100 per Hectare (fixed for 10 years, then indexed annually for CPI) payable quarterly over the term of 25 years under the Grower lease agreement.

The Land

17. The Scheme is conducted wholly on land of which Willmott Forests is the registered proprietor, situated in New South Wales or Victoria, within a radius of 150 kilometres around the township of Bombala, New South Wales (the **Land**).

18. Subject to the interests of Growers under the Grower leases, the Land is legally and beneficially owned by Willmott Forests and is not scheme property of the Scheme.

3. The Liquidators' Application to Approve an Informal Winding-up of the Scheme

19. Willmott Forests is insolvent and is unable to fund the continued operation of the Scheme in its capacity as responsible entity, including procuring the necessary ongoing maintenance of the Land and the Trees.

20. The Liquidators are entitled to disclaim the Grower leases pursuant to section 568(1A) of the Corporations Act.

21. On 11 May 2011, Willmott Forests, by its Liquidators and in its capacity as responsible entity of the Scheme, made an application to the Federal Court of Australia seeking directions pursuant to section 511 of the Corporations Act in relation to the Scheme (and in relation to 29 other managed investment schemes) that the Liquidators are justified:

(a) in procuring Willmott Forests to amend the Constitution of the Scheme to give the responsible entity power to extinguish the rights of Growers under the Scheme Documents and with respect to the Trees; or

(b) alternatively, in disclaiming the Scheme Documents of the Scheme as onerous,

on certain conditions, in order to enable an informal winding-up of the Scheme through which it will become possible to offer for sale the Land on an unencumbered basis, and thereby to achieve the best outcome for the Growers and creditors of Willmott Forests.

Particulars

Federal Court of Australia Proceeding VID 381/2011.

4. The WGG Proposal: Notice of Meeting, Proposed Constitutional Amendments and Explanatory Memorandum

22. On 20 May 2011, Grimsey and Redisland, with the assistance of the WGG, called a meeting of Growers to be held on 14 June 2011 pursuant to s 252D of the Corporations Act by giving written notice to Growers.

Particulars

A written notice of meeting was circulated to Growers on about 20 May 2011.

23. The notice of meeting proposes that the following resolutions be considered and, if thought fit, passed in order to give effect to a proposal sponsored by the WGG for the future operation of the Scheme (the **WGG Proposal**):

Resolution 1 - Approval of the WGG Proposal

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*“That, subject to Resolutions 2, 3 and 4 being passed, the Growers approve the WGG Proposal as described in the Explanatory Memorandum, as amended, given to Growers with this Notice of Meeting (**Explanatory Memorandum**).”*

Resolution 2 - Amendments to Project Constitution to implement the WGG Proposal

To consider and, if thought fit, pass the following resolution as a special resolution:

“That, subject to Resolutions 1, 3 and 4 being passed, the Constitution of the Project be amended by PSL, immediately following its appointment as the responsible entity under section 601FJ of the Act, in accordance with the

amendments set out in the Explanatory Memorandum, as amended, and any consequential amendments that may be required to give effect to the WGG Proposal."

Resolution 3 - Change of responsible entity: Removal of WFL as responsible entity of the Project

To consider and, if thought fit, pass the following resolution as an extraordinary resolution:

"That, subject to Resolutions 1, 2 and 4 being passed, WFL be removed as responsible entity of the Project in accordance with section 601 FM of the Act."

Resolution 4 - Change of responsible entity: Appointment of PSL as responsible entity of the Project

To consider and, if thought fit, pass the following resolution as an extraordinary resolution:

"That, subject to Resolutions 1, 2 and 3 being passed, PSL be appointed as the new responsible entity of the Project in accordance with section 601FM of the Act."

24. Grimsey, Redisland and the WGG propose to nominate Challis for election as chair of the meeting pursuant to s 252S(3) of the Corporations Act.
25. An Explanatory Memorandum regarding the WGG Proposal and prepared by the WGG:
- (a) was sent to Growers together with the notice of meeting;
 - (b) includes an introductory letter to Growers signed by Challis on behalf of the WGG.
26. The basis of the WGG Proposal is to convert the Scheme from its existing structure to a contributory scheme whereby Growers will, *inter alia*, be required to pay a reconstruction fee, an initial management fee, ongoing management fees, supplementary initial management fees and supplementary management fees.

Particulars

As to the existing structure of the Scheme, the Plaintiffs refer to and repeat paragraph 13 above and the particulars thereto.

5. **The Proposed Constitutional Amendments are Beyond the s 601GC(1)(a) Power of Amendment**
27. The interests conferred on Growers pursuant to the issue of Hectares in the Scheme are valuable interests that are legally and/or beneficially vested in the Growers.

Particulars

The Plaintiffs refer to and repeat paragraph 15 above and the particulars thereto, and refer also to clauses 4.12, 13, 14 and 17.5 of the Constitution.

28. By resolution 2 proposed in the notice of meeting, Grimsey, Redisland and the WGG propose to effect amendments to the Constitution of the Scheme, the full text of which is set out at pages 39 to 66 the Explanatory Memorandum. The proposed amendments include:

- (a) new defined expressions "Gross Proceeds of Sale", "Grower Contributions Account", "Grower's Proportional Share", "Net Proceeds of Sale", "Participating Growers", and "Revenue Account" as follows:

Gross Proceeds of Sale: the gross amount received by the Responsible Entity from:

- (a) sale of the standing Trees or Forest Produce;
- (b) payments in consideration for termination, surrender, assignment, consent to assignment or any other dealing with respect to the Land or any other Assets;
- (c) any proceeds of insurance;
- (d) any other revenues relating to the disposal of Project Assets; and
- (e) any redistribution of value from the Deferred Management Fees received by the Responsible Entity.

Gross Proceeds of Sale does not include any borrowed monies (if any) in accordance with clause 6.8 of this constitution.

Grower Contributions Account: the account so called established pursuant to clause 13A of this constitution.

Grower's Proportional Share: the proportion which the number of Hectares in the Phase held by the Grower after applying Clause 10C.1 bears to the total number of Hectares in that Phase held by all Growers after applying Clause 10C.1.

Net Proceeds of Sale: the Gross Proceeds of Sale less the Costs of Sale less any reimbursement costs to the Responsible Entity under clause 10.9 and clause 10.10.

Participating Growers: those Growers in each Phase whose entitlement to the Revenue Proceeds [sic] Account at any time is not zero (0).

Revenue Account: *the account established pursuant to clause 10C [sic] of this constitution.*

- (b) a new clause 6.1A(a), vesting certain irrevocable powers in the responsible entity as the agent, representative and attorney of each Grower, including a power:

(x) *in its capacity as a trustee to receive the Gross Proceeds of Sale and to hold the Gross Proceeds of Sale in the Revenue Account and to deal with the Gross Proceeds of Sale and other money in the Revenue Account as provided in this constitution (and in so doing, to make payment of any amount due to the Responsible Entity as the Responsible Entity may be entitled);*

- (c) a new cl 6.1A(h), providing as follows:

In relation to any Head Lease, Forestry Right or other Project Document the Responsible Entity may in its name or in the name of any custodian or agent for the Responsible Entity assume any interest which a Grower may have had.

- (d) new clauses 10A and 10B, providing for the responsible entity to invoice Growers for the Initial Management Fee, the Reconstruction Fee, Supplementary Initial Management Fees, the Management Fee and Supplementary Management Fees, with such fees to be paid into the Grower Contributions Account;
- (e) a new clause 10C, providing for the progressive extinguishment of certain Growers' interests in the Scheme, as follows:

10C.1 For each \$10 (with any part thereof in excess of \$5.00 being rounded up and otherwise being rounded down) of any invoice for the Initial Management Fee, Reconstruction Fee, Supplementary Initial Management Fee, Management Fee or Supplementary Management Fee in respect of each Hectare in each Phase held by a Grower which that Grower does not pay by the due date (or any extended time permitted by the Responsible Entity), the Grower's Proportional Share will be reduced by 1.5%, and for the purpose of calculating the Grower's Proportional Share in a Phase the total number of Hectares held by all Growers in that Phase will be deemed to be reduced by the total of all the accumulated individual Grower reductions in relation to the Phase under this clause. The Responsible Entity has the discretion to determine any matter in respect of the reduction of a Grower's Proportional Share, including whether the reduction occurs and when the reduction occurs.

10C.2 If the Responsible Entity is of the view that the amount of the Total Management Costs could be reduced under an agreement with any person (or a number of persons contracting jointly), or any cash flow deficit of the Project could be underwritten by an agreement with any

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person or for some other reason the Growers would be advantaged by an agreement with any person, the Responsible Entity may on behalf of each several Grower enter into any agreement with any person under which a percentage of the Grower's Net Proceeds of Sale (but not exceeding that proportion by which for the time being the total number of Hectares held by all Growers in the definition of "Grower's Proportional Share" has been reduced by the total of all the individual Grower reductions pursuant to clause 10C.1) is granted to that person.

10C.3 If a Grower's Proportional Share has been reduced to zero, the Responsible Entity may remove that Grower from the Register, whereupon the Grower shall cease to be a Grower. The Responsible Entity may transfer that Grower's Hectare to any other person (including pursuant to a product disclosure statement) with or without consideration if that person agrees to be bound by the provisions of this constitution and relevant Project Documents (including the obligation to pay all outstanding fees as and when invoiced). Otherwise, the Responsible Entity shall hold the Hectare formerly held by the Grower as scheme property, namely in trust for Growers as a whole. If the transfer is with consideration, the consideration is to be deposited into the Grower Contributions Account.

(f) a new clause 13A, providing for the responsible entity to create accounts in relation to the Scheme, including the following provisions:

13A.2 The Responsible Entity shall create at least 2 separate accounts in relation to the Project in accordance with this clause, being the:

- (a) Grower Contributions Account; and
- (b) Revenue Account.

13A.4 The Responsible Entity shall lodge or cause to be lodged in a Bank account designated as the Revenue Account all moneys received by the Responsible Entity which are required to be placed in the Revenue Account pursuant to this constitution which moneys are to be held and applied by the Responsible Entity upon the trusts hereby constituted.

13A.6 A Grower shall have an interest in the Revenue Account equal to the Grower's Proportional Share in each applicable Phase but shall not have any interest in any particular part of the Revenue Account.

13A.7 In the event that upon the termination of the Project any sum remains in the Grower account, each Participating Grower in relation to each Phase which has not been terminated shall be paid the Grower's Proportional Share.

(g) a new clause 13B, providing for the collection and distribution of revenue, including the following provisions:

13B.1 Responsible Entity to Collect Income

The Responsible Entity shall collect, receive and get in, to the extent it is entitled, all Gross Proceeds of the Sale of the Trees, the Forest Produce and the Land and any other scheme property to which it is entitled on behalf of all Participating Growers for each Phase, and income from the Investments from time to time relating to the Project for the relevant Phase, and pay all such income into the relevant Revenue Account of each Phase.

13B.2 Distribution of Revenue Account

Subject to clauses 13B.3, 13B.4 and 13B.5 of this constitution, the Responsible Entity shall, on or before each Distribution Date, distribute among the Participating Growers of the relevant Phase who were such Growers on the last day of the previous Accounting Period.

13B.3 Proportional Share

Any amounts (whether income, profits or otherwise) to be distributed shall be distributed among the relevant Participating Growers according to the Grower's Proportional Share.

- (h) a new clause 15.10, regarding the valuation of Grower's interests in the Scheme for voting purposes, as follows:

At any meeting of Growers, for the purpose of valuing the total interests that a Grower has in the Project, and hence the number of votes any Grower has, the Responsible Entity will take into account the Grower's Proportional Share for the time being and not the number of Hectares held by the Grower.

- (i) replacing the existing clause 17.5, which provides for the distribution of the net proceeds of realisation in proportion to Growers' respective holdings of Hectares in the Scheme, with the following provision:

The Responsible Entity must on completion of any realization of Assets relating to any Phase, distribute to each Grower the Grower's Proportional Share (for the time being) of the net proceeds of realisation and all other property forming part of the Phase that is to be distributed in kind.

29. The amendments proposed by resolution 2 will, if passed, purport to allow Growers' interests in the Scheme to be expropriated at the discretion of the Scheme's responsible entity for the benefit of the other Growers in the Scheme.

Particulars

- (a) At present, Growers are under no obligation to pay fees or rent or to make any other monetary contributions to the Scheme for the remaining life of the Scheme.

(b) Under the proposed new clauses 10A and 10B, Growers will be obliged to pay:

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- (i) the Initial Management Fee, the Reconstruction Fee, and any Supplementary Initial Management Fees following the approval of the WGG Proposal; and
 - (ii) the Management Fee and any Supplementary Management Fees each year over the remaining life of the Scheme,

the amounts of which are unspecified and unlimited.

(c) Under the proposed new clause 10C.1, in the event that a Grower is unable or declines to or pay any of the above fees by the due date, the Grower's Proportional Share in each of its Hectares in the Scheme is liable to be reduced by 1.5% for each \$10 per Hectare that remains unpaid.

(d) The proposed new clause 10C.1 vests a discretion in the responsible entity to determine any matter in respect of the reduction of a Grower's Proportional Share, including whether and when any such reduction occurs.

(e) Under the proposed new clause 10C.2, a percentage of the Net Proceeds of Sale (up to the aggregate proportion by which Growers' interests in the Scheme have been reduced under clause 10C.1) may be granted to any person if the responsible entity is of the view that the Growers would be advantaged by an agreement with that person.

(f) Under the proposed new clause 10C.3, in the event that a Grower's Proportional Share has been reduced to zero, the responsible entity may, in its discretion, remove that Grower from the register, and may:

- (i) transfer that Grower's Hectare to any other person either with or without consideration, with any consideration received therefor being deposited into the Grower Contributions Account; or
- (ii) hold that Grower's Hectare as scheme property, on trust for the other Growers in the Scheme.

(g) The reduction of a Grower's Proportional Share under the proposed new clause 10C.1:

- (i) correspondingly reduces:
 - (A) the Grower's interest in the Revenue Account under the proposed new clause 13A.6;

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- (B) the Grower's entitlement to receive a proportional share of distributions from the Revenue Account under the proposed new clause 13B.3;
 - (C) the number of votes that a Grower has at any meeting of Growers under the proposed new clause 15.10;
 - (D) the Grower's entitlement to be paid a proportion of any sum remaining in the Grower Contributions Account upon the termination of the Scheme under the proposed new clause 13A.7; and
 - (E) the Grower's entitlement to receive a proportion of the net proceeds of realisation, or distribution in kind, on completion of any realisation of Assets relating to any Phase of the Scheme under the proposed new clause 17.5,
- (ii) does not reduce the amount of any of the fees payable by a grower under the proposed new clauses 10A and 10B, unless and until the Grower's Proportional Share is reduced to zero under the proposed new clause 10C.1;
 - (iii) is liable, if it leads to expropriation of the Grower's Hectares pursuant to proposed new clause 10C.3, to benefit other Growers in the Scheme by reason of the matters referred to in subparagraph (f)(i) and (ii) above.
- (h) Further, the proposed new clause 6.1A(h) purports to vest a plenary power in the responsible entity to assume any interest which a Grower may have had in relation to any Project Document.
30. Willmott Forests, by reason of its insolvency, is and will be unable to pay, in its capacity as a Grower in the Scheme, the new fees provided for in new clauses 10A and 10B of the Constitution, as set out in paragraph 28(d) above.
31. The proposed amendments the subject of proposed resolution 2, if made:
- (a) would not be made for a proper purpose;

Particulars

The proposed amendments are not, alternatively, have not been shown to be, necessary in order to secure the Scheme, and/or the members of the Scheme as a whole, from significant detriment or harm.

- (b) would be unfair and oppressive to a minority of Growers in the Scheme.

Particulars

If passed, the proposed amendments:

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- would, through erosion of their "Growers' Proportional Share", have the practically inevitable effect of diminishing and, ultimately, eradicating the rights of Willmott Forests or any other Grower, which is unable or unwilling to pay the new fees provided for in proposed clauses 10A and 10B, to benefits produced by the scheme and, therefore, of their interests in the scheme;
- (ii) would have the practically inevitable effect that Hectares of which Willmott Forests or any other Grower, which is unable or unwilling to pay the new fees provided for in proposed clauses 10A and 10B, is the registered holder will be wholly expropriated;
- (iii) have the further effect that such Growers, whose interests in the Scheme are so expropriated, will receive no consideration for the same;
- (iv) would be oppressive of and unfair to Willmott Forests and any other insolvent Growers in the Scheme.
32. By reason of the matters aforesaid:
- (a) the proposed amendments could not be validly made;
- (b) resolutions 1 and 2, alternatively resolution 2, would be beyond the power of approval by a special majority of Growers of the Scheme pursuant to s 601GC(1)(a) of the Corporations Act.

6. The Basis for Injunctive Relief

33. By reason of the matters alleged at paragraphs 22 to 25 and 32 above, each of the Defendants is proposing to engage in conduct that would constitute a contravention of the Corporations Act.
34. Willmott Forests, in its personal capacity, and the Receivers are persons whose interests have been, are or would be affected by the aforesaid conduct within the meaning of s 1324 of the Corporations Act.

AND THE PLAINTIFFS CLAIM:

35. The Plaintiffs claim the relief specified in the Originating Process.

[date]

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ALLENS ARTHUR ROBINSON

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
 COMMERCIAL AND EQUITY DIVISION
 COMMERCIAL COURT

LIST 11
 S CI 2011

IN THE MATTER OF THE WILLMOTT FORESTS 1995-1999 PROJECT
 ARSN 089 698 612

BETWEEN

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
 (IN LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF
 THE SCHEME) AND OTHERS

Plaintiffs

and

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
 AND OTHERS

Defendants

SCHEDULE OF PARTIES

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
 (IN LIQUIDATION) (IN ITS CAPACITY AS A MEMBER OF THE SCHEME)
 ACN 063 263 650

First Plaintiff

BRYAN WEBSTER

Second Plaintiff

MARK ANTHONY KORDA

Third Plaintiff

MARK FRANCIS XAVIER MENTHA

Fourth Plaintiff

and

GRIMSEY FINANCIAL SERVICES PTY LTD
 ACN 113 911 247

First Defendant

REDISLAND AUSTRALIA LIMITED
 ACN 104 555 455

Second Defendant

WILLMOTT GROWERS GROUP INC (VIC)
 ABN 34 287 512 211

Third Defendant

PAUL CHALLIS

Fourth Defendant

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
S CI 2011 3155

IN THE MATTER OF WILLMOTT FORESTS 1995 - 1999 PROJECT
ARSN 089 598 612

BETWEEN

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF THE SCHEME)
AND OTHERS

Plaintiffs

AND

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
Defendants

AFFIDAVIT OF CRAIG DAVID CROSBIE
DATED 22 JUNE 2011

On **22 June 2011**, I, **CRAIG DAVID CROSBIE** of Level 21, 181 William Street, Melbourne, in the State of Victoria, 3000, Chartered Accountant, **SAY ON OATH** that:

- 1 On 22 March 2011, I was appointed joint and several Liquidator of Willmott Forests Limited (ACN 063 263 650) (**WFL**) and its wholly owned subsidiaries (together, the **Willmott Group of Companies**) along with my partner Ian Carson (the **Liquidators**). I am authorised to make this affidavit on behalf of the Liquidators.
- 2 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. I am authorised by Mr Carson to make this affidavit on his behalf. Reference in this affidavit to "we", "us", "our" or "ourselves" is a reference to Mr Carson and me.
- 3 I have been a partner of the firm PPB Advisory since 2002. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Institute of Chartered Accountants, the Australian Institute of Company Directors and the

Filed on behalf of the Liquidators

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 lzwier@abl.com.au)

Insolvency Practitioners Association of Australia. I also hold a Bachelor of Business. I have worked in corporate insolvency for over 21 years.

- 4 I have reviewed the Receiver's application and the affidavit of Brian Webster affirmed on 21 June 2011 (**Webster Affidavit**). The Liquidators support the relief sought by the Receivers.

Current Federal Court Proceedings

- 5 On 11 May 2011, I issued on WFL's behalf proceeding VID 386 of 2011 in the Federal Court of Australia. In those proceedings, we seek orders and directions pursuant to s 511 of the Corporations Act 2001 in connection with a number of managed investment schemes, including the Willmott Forests 1995-1999 Project (ARSN 089 589 612) (the **Scheme**) for which WFL is the responsible entity.
- 6 Insofar as the application affects the Scheme, we seek orders and directions that the Liquidators are justified and reasonable in causing WFL to exercise its power pursuant to section 601GC of the Act to amend the constitution of the Scheme to empower WFL to terminate, relinquish or surrender the leases, sub-leases, forestry management agreements and other project documents between WFL and Growers and any rights of the Growers arising from on in connection with the Project Documents.
- 7 The directions and orders sought are on the basis that WFL considers that they will not adversely affect Growers' rights and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the amendment or disclaimer, of the Project Documents or Grower Rights.
- 8 The directions and orders sought are limited to amending the constitution of the Scheme to provide the power to disclaim and that WFL does not intend to exercise that power at this stage. In fact, we set out in that application that we will apply to the Court for further orders and directions before seeking to exercise that power.
- 9 The purpose of our application and the directions and orders being sought is facilitative in nature in order to allow the Liquidators and Receivers to commence a sale campaign of the assets of WFL. We consider that the granting of a power of sale and/or the confirmation of the Liquidators' right to disclaim the Project Documents will provide sufficient comfort to potential purchasers of the ability of the liquidators to give clear title on settlement of any sale. Potential purchasers should

therefore be willing to participate in the sale process and incur the costs and take the time needed to submit a binding bid. This should maximise the price obtained both for the land and trees.

- 10 VID 386 of 2011 is listed for final hearing on Tuesday 28 June 2011 and has been set down for two days.

WGG Proposal

- 11 On 12 May 2011, I was forwarded a copy of an email from Mark Bland of Clarendons to Jane Sheridan, a partner of our solicitors Arnold Bloch Leibler (**ABL**) attaching a draft Notice of Meeting and Explanatory Memorandum in relation to the WGG Proposal and seeking comments within 24 hours.
- 12 On 13 May 2011, I instructed ABL to send a letter to Clarendons setting out our main concerns with the WGG Proposal. Now produced and shown to me and marked "**CDC-1**" is a true copy of ABL's response.
- 13 On 20 May 2011, I was forwarded a copy of the Notice of Meeting and Explanatory Memorandum in relation to the WGG Proposal which was issued to members of the Scheme. A copy of those documents are at BW-33 of the Webster Affidavit. Whilst the Explanatory Memorandum had been amended to take into account some of the matters raised in ABL's response of 13 May 2011, a number of those matters had not been addressed including those set out in paragraph 15 below.
- 14 On 10 June 2011 I was forwarded a copy of an email from Mark Bland of Clarendons to Jane Sheridan of ABL attaching a copy of a letter sent by WGG to Growers (**Further Notice**) providing additional information in relation to the WGG Proposal and addressing certain concerns which the Receivers had raised. A copy of that Further Notice is at BW-41.
- 15 I continue to have serious concerns with the WGG Proposal, in particular:
- (a) Unknown and Uncapped Fees: The WGG Proposal effectively changes the Scheme from a non-contributory scheme to a contributory scheme. Members are required to make an initial contribution of \$500 per hectare (being a \$200 reconstruction fee plus \$300 initial management fee). An annual management fee, estimated at \$150 to \$250 per hectare, would also be payable under the WGG Proposal. However, the new responsible entity may issue supplementary invoices if the initial contribution or annual management

fees are insufficient to cover its costs. Without any guarantee about how much they will be required to contribute, Growers cannot properly assess if the WGG Proposal is in their best interests.

- (b) Dilution of Interest: The WGG Proposal provides a dilution mechanism in the event that a Grower is unable or unwilling to contribute to the Scheme. Growers will lose 1.5% of their interest for every \$10 invoiced but not paid. Accordingly, if a Grower does not contribute the initial contribution of \$500 per hectare, their interest will automatically be diluted by 75%. The new responsible entity has not agreed to apply to the Court for approval of the WGG Proposal and, accordingly, there is no safeguard for the minority interests. The Further Notice attempted to provide some mechanism for matching Growers who wanted to sell their interests with potential purchasers. However, I do not consider this mechanism would adequately protect those Growers.
- (c) No guarantee the Scheme will continue: If the WGG Proposal is passed, the new responsible entity will undertake due diligence and a viability report in the first 60 days. If this study results in the new responsible entity concluding that the Scheme is not viable, then it may sell the assets and wind up the scheme. Growers who have not contributed the initial contribution of \$500 per hectare will have had their interest diluted by 75%, even though the new responsible entity has elected to wind up the Scheme. Concurrently, if it does not receive sufficient contributions to fund the operations, either immediately or at any time during the life of the scheme, then it may sell the assets and wind up the Scheme. If the Scheme is to be wound up, then we consider it would be more beneficial for Growers that it be wound up by WFL at the same time as the other Willmott Schemes. This is because a joint sale campaign for all of the WFL and Scheme assets will probably result in a higher purchase price and will reduce the costs on a scheme-by-scheme basis. In addition, it means that Growers in the Scheme will not have paid any fees to the new responsible entity and/or lost any of their interest due to the dilution mechanism.
- (d) Payment of any outstanding debt: The WGG Proposal does not adequately address the payment of any outstanding debt that is owing in relation to the Scheme. We estimate the Liquidators have incurred approximately \$200,000 in costs attributable to the Scheme. The Receivers' costs will also need to be considered.

Effect of the WGG Proposal on VID 386 of 2011

16 If the WGG Proposal is passed, then WFL will be replaced as responsible entity of the Scheme and the orders sought in VID 386 of 2011 insofar as they relate to the Scheme can no longer be sought. As a result, we may not be able to include the land affected by the Scheme in any sale campaign. The Growers could lose the opportunity to properly evaluate their options between terminating or continuing the scheme. The intermingling of land will also make any attempt by the Liquidators to sell the land used in the schemes complex and may reduce the attractiveness of any sale to potential purchasers. Due to the statement in the Further Notice that WGG was "not aware of any reason why, if the WGG Proposal fails or cannot be implemented, the land and trees in the Project cannot be sold under the Liquidator's proposal", Growers have been led to believe that the replacement of WFL as responsible entity would not affect their right to participate in a sale by the Liquidators.

P 9.

17 In my view, it would be more sensible for the WGG to undertake its due diligence and viability report prior to putting the WGG Proposal to members. That way, Growers would not be prejudiced if it is concluded that the Scheme is not viable and the WGG decides to withdraw its proposal. The defendants (and/or their associates) participated in an Expressions of Interest campaign and were provided with access to all relevant information and essentially all documentation in the Liquidators' control. We would also be willing to provide additional access and assistance to the WGG.

"information available compare Further Notice p 6 [4], [5]

18 In addition, the due diligence and viability analysis will take place at the same time as the sale campaign. If the WGG does intend to issue another proposal to replace the responsible entity and continue running the Scheme, then members will be able to assess the proposal at the same time as any offers received from the Liquidators and/or Receivers in the sale process. Growers and the responsible entity will be in a better position to assess what is in the Growers' best interests.

19 I do not consider the WGG Proposal would be prejudiced by the granting of the orders and directions sought in VID 386 of 2011.

Valuation of Voting Interests

20 Pursuant to s253F(c) of the Act, WFL as responsible entity is required to calculate values for interests in the Scheme for the purposes of voting. The value of an

interest in a registered scheme is calculated relevantly as the amount that the responsible entity determines a willing but not anxious buyer would pay for the interest if it was sold on the business day immediately before the day on which the poll is taken.

- 21 On 21 March 2011, I instructed Jane Sheridan of ABL to write to Clarendons (on behalf of the Growers) and Allens (on behalf of the Receivers) inviting them to provide submissions in relation to the manner in which the interests in the Scheme should be valued. Now produced and shown to me and marked "**CDC-2**" is a true copy of ABL's letter.
- 22 I have been forwarded a copy of a letter from Allens to ABL, dated 13 April 2011 which sets out preliminary comments by the Receivers in relation to the valuation of the interests. Now produced and shown to me and marked "**CDC-3**" is a true copy of Allens' letter. I have been informed by Jane Sheridan that Matthew Whittle of Allens advised her that the Receivers intended to supplement their letter of 13 April 2011 with further submissions prior to any meeting going ahead. I am not aware of any further submissions being provided by the Receivers.
- 23 I have also been forwarded a copy of a letter from Clarendons to ABL dated 9 June 2011 which sets out the WGG's submissions in respect of the valuation of voting rights and includes a Deed of Assignment. Now produced and shown to me and marked "**CDC-4**" is a true copy of Clarendons' letter.
- 24 The Scheme covers 5,473 hectares and there are 757 Growers. However, a number of those Growers have entered into deeds of assignment, deferment and variation with WFL pursuant to which Growers assigned a percentage of their interest (being defined in the relevant deeds of assignment, deferment and variation as the trees referred to in the agreements entered into by the Growers as part of their application for an interest in the Scheme) to WFL.
- 25 I refer to paragraphs 36 to 38 of the Webster Affidavit which set out WFL's interest in the Scheme as a member. The Deed of Assignment attached to WGG's Submissions appears to affect some of WFL's interest. I had not seen a copy of the Deed of Assignment before it was provided to ABL by Clarendons. I have not yet been able to confirm its legitimacy.

- 26 I understand that an interest in a managed investment scheme is defined in the Act as a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).
- 27 On the basis of the information in our possession and the submissions provided to us to date, I intend to determine the valuation of the interests in the Scheme having regard to the following principles:
- (a) Growers have an interest in the Scheme;
 - (b) any person to whom a Grower has assigned an interest under a deed of assignment, deferment and variation (an "Assigned Interest") also has an interest;
 - (c) the value of an Assigned Interest will be taken to have a value equal to the amount obtained by multiplying the percentage of the Grower's interest assigned by the value the Grower's interest would have had if no part of it had been assigned and the value of the interest of the Grower who assigned the Assigned Interest will be reduced accordingly;
 - (d) any person to whom all or part of an Assigned Interest has been assigned ("Further Assigned Interest") also has an interest;
 - (e) the value of a Further Assigned Interest will be taken to have a value equal to the amount obtained by multiplying the percentage of the Assigned Interest which was assigned by the value the Assigned interest would have had if no part of it had been assigned and the value of the interest of the person who assigned the Further Assigned Interest will be reduced accordingly;
 - (f) Growers who invested in the Scheme pursuant to a particular prospectus will be taken to have interests of the same value (subject to any adjustment required by virtue of paragraphs (b) and (c)), regardless of the particular plantation in which their trees are located; and
 - (g) if Growers elected to "walk away" from the interest, including as a consequence of default by the Growers under loan agreements entered into by Growers at the time of acquiring their interest in the Scheme, an interest of corresponding value is held by WFL or the person to whom the interest defaulted.

*Voting
valuation*

28 On 7 December 2010, in our previous capacity as administrators of the Willmott Group of Companies, we engaged Poyry Management Consulting (Australia) Pty Ltd (**Poyry**) to conduct a detailed viability analysis of the various Willmott Schemes. On 19 January 2011, we received Poyry's final viability analysis of the Willmott schemes (**Poyry Report**). The Poyry Report values the Scheme on a project by project basis (there are six projects within the Scheme, each project corresponding to a prospectus issued by WFL in relation to the Scheme). In undertaking its valuation, Poyry applies a discount rate of between 11-15%.

29 I intend to base my valuation of interests in the Scheme on the Poyry Report. Whilst I do not agree that a discount rate of between 11-15% is correct (I believe that a higher discount rate is appropriate), the discount rate applied will not affect voting values since the same discount rate will be applied to all interests. I propose applying a discount rate of 15%.

30 I have not yet had an opportunity to identify to which project each interest in the Scheme (determined in accordance with the principles set out in paragraph 27) relates and therefore determine the value of each interest for voting purposes. If the meeting proceeds, I will complete the determination of valuation required by section 253F(c) of the Act.

SWORN at Melbourne in the State of Victoria this 22nd day of June 2011

)
)
)

Before me:

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

**LIST E
S CI 2011 3155**

**IN THE MATTER OF WILLMOTT FORESTS 1995 - 1999 PROJECT
ARSN 089 598 612**

BETWEEN

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF THE SCHEME)
AND OTHERS**

Plaintiffs

AND

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
Defendants

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**CDC-1**" now produced and shown to **Craig David Crosbie** at the time of swearing his affidavit on 22 June 2011.

Before me:

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

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Before me:

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COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

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Before me:

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COMMERCIAL COURT**

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This is the exhibit marked "CDC-1" now produced and shown to **Craig David Crosbie** at the time of swearing his affidavit on 22 June 2011.

Before me:

Arnold Bloch Leibler

Lawyers and Advisers

13 May 2011

Private & Confidential

Mr Mark Bland
Director
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
Melbourne VIC 3000

Your Ref
Our Ref JCS
File No. 011565015

Contact
Jane Sheridan
Direct 61 3 9229 9815
Facsimile 61 3 9229 9944
jsheridan@abl.com.au



Level 21
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Dear Mark

Willmott Forests 1995-1999 Project Draft Explanatory Memorandum

We refer to your email of yesterday attaching a draft Explanatory Memorandum (the **Memorandum**) relating to the replacement of the responsible entity in the Willmott Forests 1995-1999 Project (the **Project**).

One day is insufficient to properly consider the Memorandum and provide full feedback and comments. Our clients reserve all their rights in relation to the Memorandum, the proposed meeting and resolutions.

From the preliminary review we have conducted in the limited time available, we consider that the Memorandum is severely lacking in detail, fails to address in a full and frank manner the various risks to Growers in passing the proposed resolutions and is therefore misleading. In particular, we make the following comments:

Resolution One: Please confirm in what capacity your clients intend to propose the first (ordinary) resolution, given section 252D of the *Corporations Act 2001* (Cth) only allows meetings of members to be called to propose special and extraordinary resolutions. Please also clarify what the intended effect of Resolution One is.

Fees: It is not clear that the initial fees being sought from Growers as set out in the Memorandum will be sufficient to cover the costs of maintaining the plantations, reconstructing the Project and dealing with the anticipated legal issues. The Memorandum does not make clear that the stated initial fees could be increased, without any cap, without the approval of Growers. Consequently, Growers cannot adequately assess whether passing the proposed resolutions would be in their best interests.

Dilution of Interest: Growers are not informed until page 11 that failure to contribute all of the funds sought will result in a dilution of their interest in the

MELBOURNE

SYDNEY

Partners
Mark M Leibler AC
Henry D Lanzer
Joseph Borenszajn
Leon Zwiir
Philip Chester
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Steven Klein
Leonie R Thompson
Zaven Mardirossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Tell
Henry Skene
Andrew Silberberg
Lisa Merryweather
Jonathan Milner
John Mengolian

Senior Litigation
Counsel
Robert J Heathcote

Special Counsel
Danuta Czuchwicki
Simonne Einfeld

Senior Associates
Sue Kee
Jorja Cleeland
Caroline Goulden
Matthew Lees
Genevieve Sexton
Jeremy Leibler
Amelia Kelly
Benjamin Marshall
Kristina Vermey
Seaton Theobald
Teresa Ward
Jason Blankfield
Kate O'Brien
Christine Flear
Shaun Cartoon
Nancy Collins
Susanna Ford
Kimberley MacKay
Amanda Hutchings
Clint Harding

Consultants
Alan Fels AO
Steven M Skala AO

Project. We consider this dilution to be both significant and materially adverse to Growers and should be clearly brought to Growers' attention at the outset. Failure to do so, in our view, is misleading. We note that, if a Grower does not contribute to the Reconstruction Fee and Initial Management Fee as currently proposed, their interest will automatically be diluted by 75%. Failure to pay the first year's management fee will then further dilute their interest to between zero or 2.5% (depending on the fee levied). If the stated fees are increased, the dilution to zero will occur even more quickly. The statement that a Grower's interest could be diluted to zero over "a number of years" is therefore misleading.

Growers' "Best Interest": Given the complete failure to undertake any viability analysis or consider the tax implications of the Proposal and the materially adverse dilution mechanism proposed, we cannot see how your client can state that the proposal is in the best interests of the Growers.

Land as Scheme Property: The Memorandum inadequately addresses the issue of whether the land is scheme property and the risks and costs that will be associated with a dispute around this issue.

Uncertainty: The Memorandum does not make clear the uncertainty surrounding the ability to implement Proposal or the continuation of the Project. No details are provided in relation to the proposed underwriting or the effect on the Proposal if underwriting cannot be obtained. As such, the Memorandum give a false impression to Growers that the Project can and will continue.

Receiver's Position: The Memorandum inadequately addresses the role of the Receivers in relation to their holding of interests directly and through the grower finance agreements and the risk of any opposition from the Receivers in passing the resolutions. If, as we expect will occur, the Receivers challenge the proposed meeting or resolution, significant costs will be incurred. It appears to us that your clients are reliant upon the support of the Receivers to pass the proposed resolution and, in this regard, we would recommend entering into a dialogue with them prior to issuing the Notice of Meeting to avoid unnecessary costs being incurred.

We trust these matters will be taken into consideration before the Notice of Meeting is issued.

Yours sincerely



Jane Sheridan
Partner

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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Defendants

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "CDC-2" now produced and shown to **Craig David Crosbie** at the time of swearing his affidavit on 22 June 2011.

Before me:

Arnold Bloch Leibler

Lawyers and Advisers

21 March 2011

By E-mail

Mr Mark Bland
Director
Clarendon Lawyers
Level 17
Rialto North Tower
525 Collins Street
Melbourne VIC 3000

Your Ref MAB:PAC 1000479
Our Ref JCS
File No. 011565015

Contact
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61 3 9229 9900

Dear Mark

Willmott Forests Limited (Receivers and Managers appointed) (Administrators appointed) ("WFL")

We refer to your letter of 1 March 2011.

Your understanding of the discussion between your client and Les Cullen of PPB Advisory (referred to in your letter of 18 February 2011) does not accord with Mr Cullen's recollection. Mr Cullen did have a discussion with Mr Kirby shortly prior to the closing date for the expression of interest campaign. We are instructed that Mr Cullen told Mr Kirby that Mr Kirby needed to get legal advice as to what debts would be assumed by a new responsible entity and that Mr Cullen could not advise Mr Kirby regarding that issue.

In relation to the further requests by your clients, we respond as follows (adopting your numbering):

1 Project related documents

- (a) Our client has not located or been provided with a copy of this document.
- (b) We understand that you no longer seek access to these leases.
- (c) Our client has not located or been provided with a copy of this document.

2 Application to court for directions

Our client intends to apply to the Court prior to exercising any power of sale over the plantation land used in the Projects. Our client also intends to continue with its current practice of providing notice to the grower groups (including your client) of any relevant Court applications.

MELBOURNE

SYDNEY

Partners

Mark M Leibler AC
Henry D Lanzer
Joseph Borensztein
Leon Zwiier
Philip Chester
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Steven Klein
Leonie R Thompson
Zaven Mardirossian
Jonathan M Weng
Paul Sokolowski
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Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Tell
Henry Skene
Andrew Silberberg
Lisa Menyweather
Jonathan Milner
John Mengolian

**Senior Litigation
Counsel**
Robert J Heathcote

Special Counsel
Danuta Czuchwicki
Simonne Einfield

Senior Associates
Sue Kee
Jorja Cleeland
Caroline Goulden
Matthew Lees
Genevieve Sexton
Jeremy Leibler
Arnelia Kelly
Benjamin Marshall
Kristina Verney
Seaton Theobald
Teresa Ward
Jason Blankfield
Kale O'Brien
Christine Fleer
Shaun Cartoon
Nancy Collins
Susanna Ford
Kimberley MacKay
Amanda Hutchings
Clint Harding

Consultants
Allan Fels AO
Steven M Skala AO

3 Valuation of voting rights 1995 -1999 Projects

As no meeting of members has been convened for any of the registered managed investment schemes, our client has not yet addressed the question of the valuation of the interests of members for the purposes of voting at any future meetings. Our client will address this if and when a meeting is convened. In the interim, our client will consider any submissions you, or any other interested party, wishes to make in relation to the manner in which that valuation should occur.

4 Future Maintenance Fund

Our client's investigations to date have not identified any "Future Maintenance Funds" or "Future Maintenance Accounts" of the kind to which you refer.

5 1998 Sharp - Reed Project

Our client has not located or been provided with a copy of this document.

Yours sincerely



Jane Sheridan
Partner

cc Clint Hitchen, Allens Arthur Robinson

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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Before me:



Date 13 April 2011
From Clint Hinchin / Matthew Whittle
To **Jane Sheridan**, Partner, Arnold Bloch Leibler,
Melbourne
Email jsheridan@abl.com.au

ABN 47 702 595 758
Level 27
530 Collins Street
Melbourne VIC 3000
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T +61 3 9614 1011
F +61 3 9614 4661
Correspondence
GPO Box 1776
Melbourne VIC 3001
Australia
DX 30999 Melbourne
www.aar.com.au

Confidential Email

Dear Jane

**Willmott Forests Limited (Receivers and Managers Appointed) (In
Liquidation) ACN 063 263 650 (WFL)**

Please see attached.

Attach

Our Ref CCHM:EVBM:120090098

atrm A0117084498v6 120090098 13.4.2011

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13 April 2011

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Dear Jane

Willmott Forests Limited (Receivers and Managers Appointed) (In Liquidation) ACN 063 263 650 (WFL)

We refer to your email sent on 21 March 2011 attaching a copy of your letter of the same date in response to Clarendon Lawyers' letter dated 1 March 2011. We refer in particular to paragraph 3 of your letter, which states that your client will consider submissions of any interested parties in relation to the valuation of the interests of members in the registered managed investment scheme known as Willmott Forests 1995 – 1999 Project ARSN 089 589 612 (*Scheme*).

We set out below our clients' preliminary comments on this issue. Our clients reserve the right to make further submissions in due course.

1. Voting rights – general principles

Under s 9 of the Corporations Act, 'member' means, in the case of a registered managed investment scheme, a person who holds an *interest* in the scheme. In turn, 'interest' in a managed investment scheme means a right to benefits produced by the scheme (whether the right is actual, prospective, contingent and whether it is enforceable or not) (s 9).

Accordingly, if a person has an 'interest' in the scheme, it will have voting rights as a 'member' of the scheme pursuant to s 253C of the Corporations Act.

The value of an interest for voting purposes must be determined in accordance with s 253F of the Act. Given that the Scheme is not quoted on a prescribed financial market, and the Scheme is otherwise not liquid, paragraph (c) of section 253F is applicable. Paragraph (c) of s 253F provides that the value of an interest in a registered scheme is the amount that the responsible entity determines in writing to be the price that a willing but not anxious buyer would pay for the interest if it was sold on the business day immediately before the day on which the poll is taken.

In determining the value of an interest under section 253F(c), the responsible entity must act in accordance with its duties, including duties to:

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- (a) exercise the degree of care and diligence that a reasonable person would exercise if they were in the RE's position;¹
- (b) act in the best interests of members, and if there is a conflict between the members' interests and its own interests, give priority to the members' interests;² and
- (c) treat members who hold interests of the same class equally and members who hold interests of different classes fairly.³

The responsible entity would be entitled to obtain the advice of an expert valuer for the purposes of determining the value of an 'interest' under paragraph (c) of s 253F.

We are aware that your clients obtained a report from Poyry Management Consulting (Australia) Pty Ltd dated 19 January 2011 (*Poyry Report*), which sets out the estimated net present value of hectares for each of the schemes conducted by the Willmott Forests Group, including the Scheme.

2. Value of WFL's interests in the Scheme

WFL owns certain Hectares (as that term is defined in the Scheme Constitution) in its own right as a grower in a number of the projects within the Scheme and is listed on the grower register.

In addition, a number of individual growers in the Scheme who borrowed their initial investment funds have agreed to assign a varying amount of between 25-30% of their interest in the trees located on their Hectares to WFL in consideration for deferment of the date for repayment of the principal amount due under the loan agreements to the date when the trees are cleared and felled.

In both cases, WFL has an interest in the Scheme, as it has a right to benefits produced by the scheme. Accordingly, WFL has voting interests as a member of the Scheme – one vote for each dollar of value of the total interests it has in the Scheme (s 253C).

The breakdown of the Hectares of trees owned by WFL or assigned to it in each project within the Scheme is set out in the table below. This table has been compiled based on WFL's books and records. The data has been rounded to the nearest tenth of a hectare.

¹ Section 601FC(1)(b) of the Corporations Act.

² Section 601FC(1)(c) of the Corporations Act.

³ Section 601FC(1)(d) of the Corporations Act.



	Total Area	WFL's Interest			Total (%)
		Owned Holdings	Assigned (Equiv. Ha)	Total (Ha.)	
1995 Prospectus (1995)	967.0 ha	22.0 ha	269.7 ha	291.7 ha	30.17%
1995 Prospectus (1996)	3.0 ha	-	-	-	0%
1996 Prospectus (1996)	1,030.0 ha	399.0 ha	171.4 ha	570.4 ha	55.38%
1997 Prospectus (1997)	1,288.0 ha	23.0 ha	301.2 ha	324.2 ha	25.17%
1998 Prospectus (1998)	1,309.0 ha	-	304.8 ha	304.8 ha	23.28%
1999 Prospectus (1999)	876.0 ha	11.0 ha	133.8 ha	144.8 ha	16.52%
Total	5,473.0 ha	455.0 ha	1,180.8 ha	1,635.8 ha	

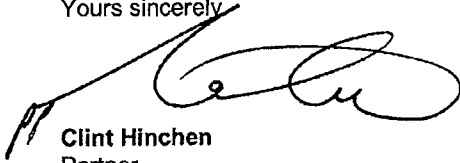
In assigning an appropriate value to interests in the Scheme, while our clients do not accept all aspects of the Poyry Report, for present purposes only, they would not object to your clients using the estimated values set out in the Poyry Report in order to determine the value of interests for voting purposes. Your clients may wish to consider whether the Poyry Report would need to be updated to provide a valuation of Hectares as at the date of any meeting of growers in the Scheme.

Set out in the table below is a breakdown of the value (based on the Poyry Report, applying 11% discount rate) of WFL's total interest in the Scheme according to the percentage interest in the Hectares held by WFL or assigned to it. We note that the Poyry Report does not include a valuation for the Hectares of the 1995 Prospectus (1996) Project.

	WFL's Total Interest (% by Ha.)	Poyry valuation	WFL's Total Interest	
			Value	(% by Value)
1995 Prospectus (1995)	30.17%	\$2,374,480	\$716,273	29.12%
1996 Prospectus (1996)	55.38%	\$826,727	\$457,814	
1997 Prospectus (1997)	25.17%	\$2,871,115	\$672,395	
1998 Prospectus (1998)	23.28%	\$2,239,693	\$521,426	
1999 Prospectus (1999)	16.52%	\$46,860	\$7,743	
Total		\$8,158,875	\$2,375,651	29.12%

In the circumstances, the value of WFL's interests in the Scheme, including the interests which were assigned to WFL, is \$2,375,651, or 29.12% of the total value of the interests in the Scheme. For completeness, this percentage interest is calculated on the basis that growers who assigned a portion of their Hectares to WFL are not entitled to vote in respect of those Hectares.

Yours sincerely



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**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

**LIST E
S CI 2011 3155**

**IN THE MATTER OF WILLMOTT FORESTS 1995 - 1999 PROJECT
ARSN 089 598 612**

BETWEEN

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF THE SCHEME)
AND OTHERS**

Plaintiffs

AND

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
Defendants

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**CDC-4**" now produced and shown to **Craig David Crosbie** at the time of swearing his affidavit on 22 June 2011.

Before me:



Level 17 Biallo North Tower
525 Collins Street Melbourne
Victoria 3000 Australia

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ABN 45 704 593 249

Our Ref: MAB:1000479

9 June 2011

Jane Sheridan
Partner
Arnold Bloch Leibler
Level 21, 333 Collins Street
MELBOURNE VIC 3000

By email: JSheridan@abl.com.au

Dear Jane

Willmott Forests 1995-1999 Project

We refer to your email dated 24 May 2011 requesting submissions in respect of the valuation of voting rights for the Willmott Forests 1995-1999 Project (**Project**) in accordance with section 253F of the *Corporations Act 2001*.

We provide the following submissions from the Willmott Growers Group in respect of the valuation of voting rights in the Project:

- (a) Hectares in each relevant plantation year in the Project should be given equal value based on the data in the Poyry Report. For certainty, this means that Hectares in each Prospectus year will have the same value and Hectares in different Prospectus years will have different values.
- (b) It is impracticable and undesirable for the Liquidator to conduct an assessment of the value of each Hectare and while there is no clear pooling mechanism provided for in the Constitution, there are sufficient implications in each Prospectus of a pooling of harvest proceeds on a year by year basis to given Hectares in the same year the same value.
- (c) The rights arising for Willmott Forests Limited (Receivers & Managers appointed)(in Liquidation) (**WFL**) out of the Deeds of Assignment, Deferment and Variation (**Deeds**) have no value because:
 - (i) The Deeds amount to a conditional agreement to assign a future chose in action. An agreement to assign a chose in action operates to transfer the property assigned once the property is acquired (*Palette Shoes Pty Ltd v Krohn* 58 CLR 1 per Dixon J at p26-27; *Ansett v Travel Software* (2007) 65 ACSR 47; *Bluebottle UK Ltd v Deputy Commissioner of Taxation* (2006) 58 ACSR 536 at [59]. At the "effective date", WFL, subject to conditions in Clause 1 of the Deed, would receive the assignor Grower's rights. A prospective interest might arise from an assignment of a future chose in action (*Federal Commissioner of Taxation v Everett* 1978 21 ALR 625) however such an interest would be both prospective and conditional. As an interest in a chose in action, it is likely to be at best an interest in an interest in the scheme, a concept recognised in see s764(1)(b) of the *Corporations Act 2001* (**the Act**). A member is defined as a person with a direct interest (right to benefits) in the scheme (s9 of the Act).
 - (ii) No "interest" arising out of the Deeds for WFL is recorded in the Project Register. In the absence of evidence to the contrary, the Register is proof of the matters shown in it. (s176 of the Act).
 - (iii) Clause 3 of the Constitution (Application Price for Hectares) is expressly stated to be included in the Constitution to satisfy s601GA(1)(a) of the Act which requires that the Constitution make adequate provision for consideration to be paid for an interest in the scheme. Clause 3 equates "Hectare" with an "interest" in the Project.



- (iv) No transfer and transmission of Hectares has occurred pursuant to clause 14 of the Constitution as a consequence of the Deeds.
- (d) If the rights arising for WFL out of the Deeds do have value, they are diluted by the attached on assignment to Grimsey and Associates Financial Services Pty Ltd (**Assignment Deed**).



Yours sincerely

Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

DEED OF ASSIGNMENT

THIS DEED made the 23rd day of January 2002

BETWEEN

WILLMOTT FORESTS LIMITED ACN 063 263 650 of 335 Ferrars Street, Albert Park, Victoria ("the Assignor") of the first part

and

GRIMSEY AND ASSOCIATES FINANCIAL SERVICES PTY. LTD. ACN 056 610 167 of 2nd Floor, 766 Elizabeth Street, Melbourne, Victoria ("the Assignee") of the second part

RECITALS

- A. The Assignor has entered into Deeds of Assignment, Deferment and Variation ("the Deeds") with the Parties and on the dates detailed in the Schedule annexed herewith and marked with the letter "A".
- B. The Assignor and the Assignee have entered Agreements ("the agreements") which provide inter alia for assignments contemporaneously with those assignments provided for in the Deeds.
- C. Pursuant to the agreements the Assignor has agreed to assign to the Assignee the interests detailed in the Deeds.

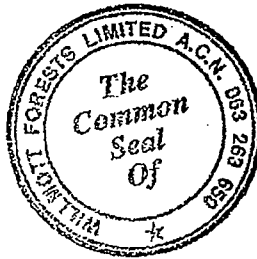
why?

IT IS AGREED

1. In consideration of the agreements the Assignor, as beneficial owner, assigns and transfers to the Assignee the interests detailed in said Schedule.
2. The assignments shall come into effect on the dates provided for in the Deeds.
3. Nothing contained herein shall operate to release either the Assignor or the Assignee from any obligation under the agreements, which shall remain in full force and effect.
4. The Assignor shall prepare and deliver to the Assignee updated Schedules ("the Schedules") as and when necessary.
5. It is acknowledged and agreed by the parties that the Schedules shall be incorporated in and form part of this Deed.

EXECUTED AS A DEED

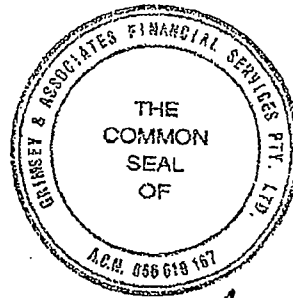
THE COMMON SEAL of WILLMOTT
FORESTS LIMITED ACN 063 263
650 was hereunto affixed in
accordance with its Articles of
Association in the presence of:



Director:.....

Secretary:.....

THE COMMON SEAL of GRIMSEY AND
ASSOCIATES FINANCIAL SERVICES
PTY. LTD. ACN 056 610 167
was hereunto affixed in
accordance with its Articles of
Association in the presence of:



Director:.....

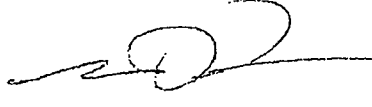
Secretary:.....

A handwritten signature in black ink, appearing to be 'J. J.', written over the dotted line for the Director's name.

A handwritten signature in black ink, appearing to be 'T. H.', written over the dotted line for the Secretary's name.

Schedule A

PARTIES	DATE OF DEED	ASSIGNEE'S INTEREST (PER HECTARE)
ALDERUCCIO Mr Robert	27-Apr-2000	0.7
ANAGNOSTOU Mr Nikolas	17-May-2000	2.7
ANAGNOSTOU Mrs Helen	17-May-2000	0.3
ANDERSON Mr Brett	29-Jun-2000	1.2
ARCHER Dr Brett	24-May-2000	0.3
ASHTON Dr Mark Winter	22-Nov-2000	1.4
BAMCO MANOR PTY LTD A T F The McLean Family Trust	19-Apr-2000	0.4
BARTON Mr Christopher Phillip	03-Jul-2000	0.6
BARTON Mr Christopher Phillip	26-Apr-2000	0.5
BARTON Mrs Cassie Francis	26-Apr-2000	0.5
BASSALY Mr Sam	24-May-2000	2.8
BEECH Dr Peter James	17-May-2000	2
BENTICK Dr Craig Gerrard Joseph	12-May-2000	0.3
BIVIANO Mr Angelo	11-Jul-2000	0.1
BIVIANO Mrs Sandra	12-Jul-2000	0.1
BORG Mr Bernard	14-Apr-2000	1.9
BRANDER Mrs Mandy Louise	17-Aug-2000	0.8
BREADMORE Dr Ross Stephen	26-Apr-2000	0.4
BREADMORE Mrs Julie Ann	26-Apr-2000	0.2
BROADHEAD Mr Peter Lafe	18-Apr-2000	1
BROOKS Mr Anthony Bruce	17-Apr-2000	3.2
BULACH Mr Richard Stephen	01-May-2000	0.8
BULLING Dr Elizabeth Mary	20-Apr-2000	0.5
BURN Mr Christopher Patrick	18-Apr-2000	3.4
CALLAN Mr Peter Phillip	08-May-2000	4.6
CATALFAMO Mr Frank	18-Apr-2000	1.3
CERRA Mr Joseph	16-Jun-2000	1.5
CHALLIS Mr Paul Robert	14-Apr-2000	1
CHANDRA Mr Rakesh	04-May-2000	0.3
CHAPKOUN Mr John	03-May-2000	5.3
CHAPMAN-O'Meara Ms Sandra (formerly Chapman)	28-Apr-2000	1.5
CHAPMAN-O'Meara Ms Sandra (formerly Chapman)		
CHILTERN RIDGE PTY LTD	13-Feb-2001	0.1
CHILTERN RIDGE PTY LTD A T F J D Crowe Family Trust	27-Apr-2000	1
CHINDAMO Mr Domenic	27-Apr-2000	1
CHRISTIE Ms Elizabeth	05-Feb-2001	4
CLARK Dr Michael Stuart	10-Oct-1997	1.8
CLARK Dr Michael Stuart	13-Jul-2000	0.8
COTSOMITIS Mr Paul	12-Feb-2001	0.3
COXON Dr Anthony James	04-May-2000	1
CROOK Mr Ronald Malcolm	30-May-2000	0.5
CROWE Dr John	27-Apr-2000	5
DADALIAS Mr Angelo	13-Apr-2000	0.8
DE GLERIA Dr Savina	13-Jul-2000	0.4
DE VRIES Mr Kevin John	17-Apr-2000	0.4
DI SALVO Mr Frank John	29-Jun-2000	7.1
DOIG Dr Rowan Grant	20-Apr-2000	4.2
DOUGLASS Mr Phillip Robert	10-May-2000	0.4
EVANS Ms Elizabeth Helen	27-Feb-2001	1.3
FARMAKIS Mr Alex	26-Apr-2000	0.8

23/1/2002  

Schedule A

PARTIES	DATE OF DEED	ASSIGNEE'S INTEREST (PER HECTARE)
FIELD Mr Davin John	01-May-2000	1.5
FIELD Mrs Carolyn Lee	01-May-2000	1
FLAIM Mr Michael	16-Nov-2000	0.8
FLEMING Dr William Robert	13-Apr-2000	1.3
FOENANDER Dr Adrian Nigel	22-May-2000	0.5
GANCI Mr Dino	28-Apr-2000	0.6
GANCI Mr Robert	28-Apr-2000	0.6
GATUM WILLOWS PTY LTD	26-Jul-2000	0.8
GATUM WILLOWS PTY LTD A T F Guiney Family Trust	26-Jul-2000	1
GAVAGHAN Mr Anthony Francis	20-Apr-2000	0.2
GAVFAM PTY LTD A T F Gavaghan Family Trust	15-May-2000	0.5
GELLIE Mr David	04-Sep-2000	0.7
GENTIS Mr Con	23-May-2000	0.5
GIANNAKOPOULOS Dr Ioannis	13-Apr-2000	1.2
GIANNAKOPOULOS Mr Stefanos	02-May-2000	1.5
GIOKAS Dr Sam Sotirios	14-Apr-2000	1.5
GIIOULEKAS Mr John	22-Jun-2000	0.2
GOODRIDGE Mr Mark Donald	19-Apr-2000	0.3
GRANT Dr Peter David	31-Aug-2000	1
GRECO Mrs Connie	18-Apr-2000	1.2
GRIMFAM HOLDINGS PTY LTD A T F Grimsey Family Trust	30-Jun-2000	4
GRIMSEY Mr Phillip John	12-Apr-2000	3.3
GRIMSEY & ASSOCIATES FINANCIAL SERVICES P / L A T F Grimsey & Associates Financial Services Unit Trust (formerly Binch)	30-Jun-2000	1
GROVES Mr Dean	12-Apr-2000	0.7
GUBBELS Mr Ross Stewart	01-May-2000	0.7
GUINEY Dr Michael John	26-Apr-2000	2.9
HALL Dr Anthony John	19-Jul-2000	1
HAYES Mr Allan Leslie	10-Oct-1997	2.7
HAYES Mr Allan Leslie	16-Nov-2000	1.9
HAYES Mrs Miriam	16-Nov-2000	0.5
HILL Dr Peter James Conley	29-May-2000	0.3
HING Dr Norman Richard	17-Apr-2000	10.1
HORVAT Dr Joseph	30-May-2000	0.8
HORVAT Dr Joseph	31-May-2000	0.7
HOSEMANS Mr Jason Chris Alexander	26-Apr-2000	0.8
HUMPLIK Dr Annetta Joy	10-Apr-2000	0.3
ISAACS Mr Anthony Gerard	28-Aug-2000	0.2
JACKSON Mr Robert Mc Donald	19-Apr-2000	1.2
JAMES Mr Peter Richard	10-Oct-1997	3.6
JAMES Mr Peter Richard	22-Nov-2000	2.3
JAMES Mr Stephen John	23-Nov-2000	5.8
JANSON Mr Christopher Mark	17-Apr-2000	0.4
JEJAMA PTY LTD	27-Apr-2000	2.5
KAMATEROS Mr John	18-Apr-2000	0.5
KARAMANIDIS Mr Christos	12-Feb-2001	0.2
KARDIS Mr John Paul	19-Apr-2000	3.6
KASTRINAKIS Mr Steven	17-Apr-2000	2
KASTRINAKIS Mr Steven	17-May-2000	1.6

23/1/2002  

