

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

CORPORATIONS LIST
S CI 2011 6816

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

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) 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 2 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED
INVESTMENT SCHEMES LISTED IN SCHEDULES 3 AND 4 AND ORS ACCORDING TO
SCHEDULE 1

Plaintiffs

AFFIDAVIT OF MARK JAMES HODDINOTT

Date of documents: 9 January 2012
Filed on behalf of: WILLMOTTACTIONGROUP INC (Reg No A0055149L) seeking leave
under Order 2.13 Supreme Court (Corporations) Rules 2003

Prepared by:
Lloyd & Lloyd Solicitors
Level 6 131 Clarence Street
SYDNEY NSW 2000

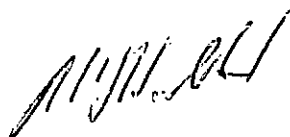
Tel: 02 801452245
Facsimile: 02 9279 3792
Ref: PS:KR:10500
(Patrick See – psee@lloyd-lloyd.com)

On 9 January 2012, I, Mark James Hoddinott of 517 Old Maitland Road, Mardi NSW,
financial planner, accountant and tax agent, **affirm and say** that:


1. I am a member and Chair of the Executive Committee of the
WILLMOTTACTIONGROUP INC (Reg No A0055149L) (**WAG**) and am
authorised to make this affidavit on WAG's behalf.
2. In my role as a financial planner, I separately advise 74 clients in relation to
their investments in the Schemes.
3. I am currently a Director of Wyong Community Bank, and was also the
founding Chair, having held this position from 1999.



4. I have previously held the position of president of CPA Australia – New South Wales (formerly Certified Practising Accountants) from April 2002 to March 2003.
5. I have also previously been a director of the Central Coast Economic Development board appointed by the NSW State Government. I held this position from January 2004 to December 2006.
6. I was a NSW Government appointed external administrator of the Darkinjung Local Aboriginal Land Council for the period from June 1998 to December 1999.
7. Now produced to me and marked "MJH-1" is a copy of my short form curriculum vitae.
8. I make this affidavit in support of WAG's application for leave pursuant to Order 2.13 of the *Supreme Court (Corporations Rules) 2003* to be heard in this proceeding (**WAG Application**) and in opposition to orders sought by the Second and Third Plaintiffs, to the extent those orders include or affect any of the schemes listed in Schedule 1, Schedule 2 and Schedule 3.
9. For the reasons set out below, WAG says that:
 - (a) its contributions will be useful and different from that of the other parties;
 - (b) the intervention will not unreasonably interfere with the ability of the parties to conduct the proceedings as they wish; and
 - (c) its contribution will assist in the resolution of the issues in the proceedings.



10. I make this affidavit from my own knowledge, except where otherwise stated, and after having made all due and proper enquiries. Where I depose to matters on the basis of information or belief, I believe those matters to be true.
11. I have read the affidavit of Craig David Crosbie sworn 13 December 2011 and filed in this proceeding and viewed the exhibits referred to therein.
12. I have read the affidavit of Mark Albert Bland affirmed on 15 December 2011 and filed in this proceeding and viewed the exhibits referred to therein.
13. Any references in this affidavit to the:
 - (a) **Banks** is a reference to the syndicate of CBA and St George Bank;
 - (b) **Bland Affidavit** is a reference to the affidavit of Mark Albert Bland affirmed and filed in this proceeding on 15 December 2012;
 - (c) **Crosbie Affidavit** is a reference to the affidavit of Craig David Crosbie sworn and filed in this proceeding on 13 December 2011;
 - (d) **Grower** and **Growers** is a reference to investors in the projects or schemes (both registered and unregistered) listed in Schedule 1, Schedule 2 and Schedule 3;
 - (e) **Liquidators** is a reference to the Second and Third Plaintiffs, including in their role as responsible entity and/or manager of the Schemes as liquidators of WFL;
 - (f) **Schemes** is a reference to all of the projects or schemes (both registered and unregistered) listed in Schedule 1, Schedule 2 and Schedule 3; and
 - (g) **WFL** is a reference to the First Plaintiff.



Investment in WFL Schemes

14. I am a Grower. From 2003 to 2006 I invested approximately \$136,000 in the Schemes. Now produced and shown to me and marked "MJH-2" is a spread sheet which lists my interests in the Schemes held in my name.
15. I invested in the Schemes to help fund my retirement. I believe in the future of the timber industry as an investment and as a green investment for Australia and continue to do so.
16. I fully own my investment in the Schemes, and my investment in the Schemes is not encumbered in any way. In each of the years I invested I was given and I examined cash flow projections from the Willmott Investment Calculator which showed that over the life of the investment term (25 years) each woodlot that I invested in would have net positive cash flows of approx \$30,000. Across 39 woodlots this amounted to \$1,170,000
17. My investment goals and returns are mine, and I believe I have a right to dictate my goals and objectives in respect of my investment in the Schemes. I want the trees underlying my Investment to continue to be grown to maturity, and I am happy to pay an annual management fee on my investments in the Schemes to enable this to occur.
18. I have insured the trees underlying my investment in the Schemes effective 24 November 2011 at their original investment value. This was done through King Insurance Brokers as approved by the Liquidators. As far as I am aware, the appropriateness of this value has not been disputed by the Liquidators. Now produced and shown to me and marked "MJH-3" is a print out of a series emails between me and Michael Carmody of PPB Advisory on behalf of the Liquidators dated from 18 November 2011 to 24 November 2011, regarding the level of insurance cover over Growers' trees. Now produced and shown to me and marked "MJH-4" is a copy of the payment confirmations for my insurance policies, dated 25 November 2011.



19. The Liquidators have to date never asked me what I would like to happen to my investment in the Schemes and the trees underlying that investment.
20. To the best of my knowledge, the Liquidators have not to date asked any grower or called a growers meeting to ascertain the Growers' intentions in respect of their investments in the Schemes and the trees underlying those investments.
21. On 29 November 2011, I, Patrick See and David Smith on behalf of WAG met with Craig Crosbie, Michael Carmody, Jane Sheridan and Barry Wight on behalf of the Liquidators at PPB Advisory's offices in Melbourne. So far as I am aware, this is the only time that WAG have met with the Liquidators. At this meeting I said words to the following effect to Craig Crosbie:

"Do you believe that the current secret deal with your proposed bidder is in my best interest"

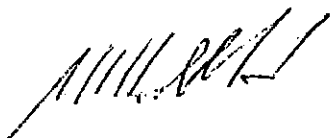
Jane Sheridan then said words to the following effect:

"I do not know. I will leave that decision to the courts."

22. I believe that the Liquidators have failed in their duties to the Growers, by, amongst other things, failing to adequately consult with Growers on their investments in the WFL Schemes.

WAG

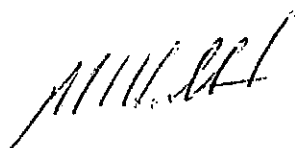
23. In or about October 2010 WAG was formed as a group that would represent the interests of shareholders, creditors, investors and Growers to ensure their concerns were heard by the external administrators of WFL.



24. WAG was established as an incorporated association on 12 October 2010. Now produced and shown to me and marked "MJH-5" is a copy of WAG's Certificate of Incorporation.
25. WAG is funded by donations from interested parties and operated by volunteers.
26. I have been a volunteer member of the WAG committee from 12 October 2010. I have been Chair of WAG from 15 November 2011. During the period from 12 October 2010 to date, I estimate that I have contributed approximately 1,200 hours of unpaid time to WAG.
27. One of the main purposes of WAG is to promote and represent the interests of investors and growers in the Schemes. Now produced and shown to me and marked "MJH-6" is a copy of a document on WAG's website outlining WAG's aims.
28. In or about October 2010, the WAG committee called for expressions of interest from Growers to join WAG and more than 1,600 responses were received from investors and growers involved in the schemes listed in Schedule 1, Schedule 2 and Schedule 3. Now produced and shown to me and marked "MJH-7" is a spread sheet prepared by WAG containing a list of growers and investors registered with WAG.
29. The cumulative historical cost of the investment in the Schemes made by Growers who are members of WAG, I am informed, is approximately \$132 million. Now produced and shown to me and marked "MJH-8" is a copy of a spreadsheet prepared by WAG that shows details of the amounts invested in the Schemes by Growers registered with WAG.

Schemes

30. WAG represents the interests of growers and investors under all of the projects listed in Schedule 1, Schedule 2 and Schedule 3. Schedule 1, Schedule 2 and Schedule 3 list registered and unregistered projects or



schemes. I refer to paragraphs 27 to 39 of the Crosbie Affidavit, which provides an overview of the differences between the Willmott Schemes, including registered and unregistered projects or schemes. Because of the differences between each of the individual projects or schemes, generalisations about them are of little utility.

Previous Proceedings

31. I refer to paragraphs 20 to 22 of the Crosbie Affidavit, and to paragraphs 57 to 63 and exhibits MAB-1, MAB-2 and MAB-3 of the Bland affidavit, referring to Federal Court proceeding VID 386 of 2011 (**Federal Court Proceeding**).
32. In or about June 2011, WAG sent a request form to Growers, seeking authorisation from investors and growers for WAG to act on their behalf in the Federal Court Proceedings. Now produced and shown to me and marked "MJH-9" is an example of the type of request form that WAG sent to Growers.
33. The holders of approximately 1,200 individual Woodlot and/or leases supported and authorised WAG to act in their interests for the purposes of the Federal Court Proceeding. Now produced and shown to me and marked "MJH-10" is a spread sheet containing a list of those 1,200 individual Woodlot and/or leases who supported WAG in the Federal Court Proceeding.
34. WAG filed an application to be heard in the Federal Court Proceeding, but withdrew that application for the reasons set out by Mr S Hopper at page 2 of exhibit MAB-3, being page 22 of the transcript of Federal Court proceeding VID 386 of 2011 before Justice Dodds-Streeton at Melbourne on 28 June 2011.

Consent Deed

35. A Consent Deed (**The Consent Deed**) was entered into by WFL, Willmott Forests Investment Management Pty Ltd in its capacity as trustee for the Growers, CBA Corporate (NSW) Pty Ltd in its capacity as trustee under the

CBA Security Trust and also in its capacity as trustee under the Willmott Security Trust (**CBA**) and Willmott Subscriber Pty Ltd on 17 March 2009. Now produced and shown to me and marked "MJH-11" is a copy of the Consent Deed.

36. The Consent Deed provides that its terms are for the benefit of growers and investors under the Schemes. In effect it provides that CBA will not exercise any security inconsistently with the rights of growers and investors and other parties pursuant to Willmott Forestry Agreements. For the reasons set out in this affidavit and the Application of WAG, I am of the view that the present application is an attempt by the First, Second and Third Plaintiffs to act inconsistently with the terms of the Consent Deed.
37. There have been several opportunities for the First, Second and Third Plaintiffs to address the existence of the Consent Deed or indeed to provide a copy of it to Growers, including at the previous proceedings described as VID 836 of 2010 and VID 386 of 2011. WAG has made it known on many occasions to the Liquidators that it has not received full and complete information about its members' interests from them.

Poyry Report, Poyry Valuation Report and M3 Report

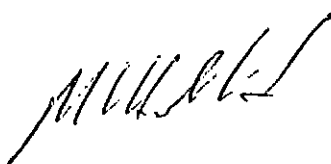
38. I refer to paragraphs 48 and 49 of the Crosbie Affidavit, which refers to a detailed viability analysis of the Schemes prepared by Poyry Management Consulting (Australia) Pty Ltd (**Poyry Report**) dated 19 January 2011.
39. On 19 January 2011, WAG was provided with a copy of the Poyry Report.
40. WAG requested the Liquidators to answer further questions about the Poyry Report and other matters. Now produced and shown to me and marked "MJH-12" is a true copy of responses to questions asked by WAG and growers, prepared by the Liquidators and currently available on the Liquidators' web site.



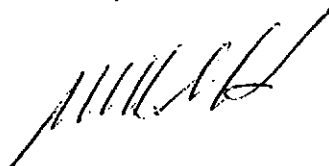

41. The Poyry Report is inadequate for assessing the future viability of the Schemes because it:
- (a) was commissioned by a Responsible Entity that had a conflict of interest;
 - (b) is based on inadequate information about the current state of scheme plantations;
 - (c) does not take into account other possible funding arrangements designed to facilitate continuation of the Schemes;
 - (d) does not take into account the interests of growers and investors and possible future contributions that growers and investors are willing and able to make towards the continued viability of the Schemes.
42. I refer to paragraph 130 and Confidential Exhibit CDC-20 of the Crosbie affidavit, referring to a report prepared by M3 Property Strategists on the value of various parcels of land owned or leased by Willmott (**the M3 Report**) and a report prepared by Poyry on the value of the trees on a plantation-by-plantation basis (**the Poyry Valuation Report**). I have not reviewed these reports, as the Liquidators have maintained that these reports are confidential. Consequently, I have not been able to assess if execution of the Sale Contracts is in my best interests as an investor, or whether it is in the best interests of my client Growers or any other Growers.

Expressions of Interest Campaign

43. I refer to Exhibit CDC-1 of the Crosbie Affidavit which exhibits copies of affidavits sworn by the Second Plaintiff, including two affidavits dated 25 November 2010 and 4 February 2011 respectively, and filed in Federal Court proceeding VID 1019 of 2010, and an affidavit dated 11 May 2011 and filed in Federal Court Proceeding VID 386 of 2011.



44. Paragraphs 47 to 51 of the affidavit of the Second Plaintiff dated 25 November 2010 refer to the Expressions of Interest Campaign (**EOI Campaign**) conducted by the Liquidators for the land and trees under the Schemes or for a replacement responsible entity only.
45. Paragraph 5 of the affidavit of the Second Plaintiff dated 11 May 2011 provides the Liquidators' summary of the EOI Campaign and which purports to explain why the bids received were deemed not to be acceptable.
46. Plantation Capital Limited (**PCL**) is a party that I am participated in the EOI Campaign. On 31 March 2011, I attended a meeting in Melbourne between Marie Bermingham, the then Chair of WAG, and John Woods, a then member of WAG, on behalf of WAG, and Mr. Stephen Blair, Mr. Keith Woodhead and Brian Ellerbeck on behalf of Plantation Capital Limited (**PCL**). At this meeting, PCL's proposal to take over the role of responsible entity and forestry management for the Schemes was discussed.
47. On 8 April 2011, I attended a meeting between Marie Bermingham, Dean Perrett, a then member of WAG and James Simpson, a then member of WAG on behalf of WAG and Mr. Tony Jack and others from Black Tree Pty Ltd (**Blacktree**) in Sydney regarding the EOI Campaign. My understanding is that Blacktree were a bidder in the EOI Campaign.
48. One Investment Group Pty Ltd (**OIG**) is a party that I understand participated in the EOI Campaign. On 16 May 2011, I attended a meeting between Dean Perrett on behalf of WAG, and Frank Tearle and Justin Epstein on behalf of **OIG**.
49. Each of PCL, Blacktree and **OIG** expressed a keen interest in taking on the role of responsible entity and manager for the Schemes. Representatives of each expressed to me their frustration with the obstacles being put before them by the Liquidators.
50. Now produced and shown to me and marked "**MJH-13**" is a copy of an e-mail sent to Marie Bermingham by Mr. Woodhead on 6 June 2011 in relation to a

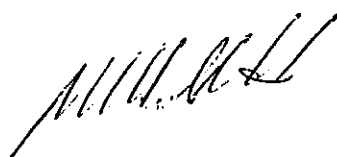


conditional tender that PCL submitted to the Liquidators on 2 February 2011. I was shown this email at a WAG committee meeting held shortly after 6 June 2011.

51. Now produced and shown to me and marked "MJH-14" is a copy of an e-mail sent to Marie Birmingham by Mr. Frank Tearle on 8 June 2011. I was shown this email at a WAG committee meeting held shortly after 8 June 2011.
52. Based on these various discussions and meetings, and the emails from PCL and OIG, I am of the view that there were deficiencies in the EOI campaign conducted by the Liquidators, as:
- a. The information made available during the EOI Campaign was limited and incomplete. For example, requests for statements of actual liabilities of the schemes were not provided to bidders by the Liquidators, nor, so far as I am aware, have they ever been provided to any interested person including WAG and the Growers;
 - b. The very short time did not allow any reasonable bidder time or access to perform due diligence activities; and
 - c. It appeared that the Liquidators were not prepared to consider any bid that was conditional.

Sale Process

53. I refer to paragraphs 76 to 120 the Crosbie affidavit re sale process. I am unable to form a view on the adequacy or otherwise of this process, and the merits of the Liquidators proposed sale, not having had access to the confidential exhibits to the Crosbie Affidavits.
54. Without being able to access the confidential exhibits to the Crosbie Affidavit, I have also been unable to advise my 74 clients who hold investments in the Schemes as to the Liquidators proposed sale.



55. Whilst the price being offered by the preferred bidder on the land is not known to WAG, I do know that the price is on the basis of their being no encumbrances on the land. I believe that such a price has no relevance until such time it has been compared to a price with the current encumbrances maintained. To the best of my knowledge, bids were never invited on the basis of maintaining the existing encumbrances (i.e. Growers' rights).

The interests of growers and investors

56. The interests of growers and investors in the Schemes are wider in scope than a simple interest in the timber produced from each separate project.
57. I refer to Exhibit CDC-1 of the Crosbie Affidavit which contains copies of two affidavits sworn by the Second Plaintiff on 25 November 2010 and 4 February 2011 respectively, and filed in Federal Court proceeding VID 1010 of 2010. Exhibit CDC-4 of the affidavit sworn on 25 November 2010 (**Exhibit CDC-4**) refers to a computer disc containing the constituent documents of the Schemes. Paragraphs 56 to 63 below refer to documents contained on Exhibit CDC-4.
58. Under the WFCS Securities Plantation First and Second Prospectuses for 1990 and 1991, the grower leases one or more hectares of land and engages the Manager to clear, plant and maintain a pine forest upon the land.
59. Under the constituent documents for the Timber Capital Plantation 1995 to 1999 Projects and the WFCS Securities Plantation Third Prospectus expiring 27 May 1992, the grower leases one or more hectares of land for a term of 25 years and on leasing the land, enters into an agreement to develop, establish and maintain the plantation over the period of the lease.
60. Under the constituent documents for the Willmott Forests Project 2000, Willmott Forests Project 2001, Willmott Forests Project 2002 and Willmott Forests Project 2003 (all ARSN 089 379 975), the Manager, amongst other things:




(a) leases land to the growers; and

(b) distributes harvest proceeds to the growers.

61. Under the constituent documents for both the Willmott Forests Project 2006 and Willmott Forests Project 2004 (both ARSN 089 379 975) the Manager, amongst other things:

(a) leases land to the growers;

(b) seeks registration of a Forestry Right on the title to the project land leased to the growers; and

(c) distributes harvest proceeds to growers.

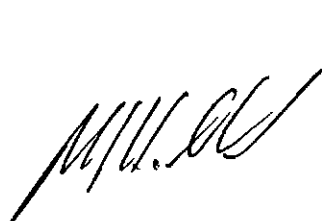
62. Under the constituent documents of the BioForest Dual Income Project 2006 (ARSN 119 153 623), growers subscribe for Timberlots of approximately 0.5 hectares through a 15 year Land Sourcing and Management Agreement and enter into a lease agreement and/or a Profit a Pendre and License Agreement depending on whether their Timberlot is located in New South Wales or Queensland.

63. Under the constituent documents for the BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 133 535), growers are granted Timberlots and the Manager, amongst other things:

(a) grants a Forestry Right to occupy the land to the growers;

(b) seeks registration of a Forestry Right in relation to the land granted to growers; and

(c) distributes net proceeds of sale to growers.



64. In relation to the Product Disclosure Statement (**PDS**) for the Willmott Forests Project 2007 (ARSN 089 379 975), each participating grower, amongst other things:

(a) obtains a Woodlot;

(b) is granted a right to occupy identifiable areas of land under a Land Tenancy Agreement; and

(c) is granted a Forestry Right which is held on trust for the grower's benefit.

65. I refer to page 8 of the PDS in relation to the Willmott Forests Premium Forestry Blend – 2010 Project (ARSN 142 722 585) which provides, amongst other things, that:

(a) investors are issued "Forestry Interests";

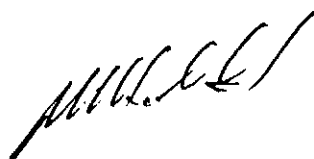
(b) each "Forestry Interest" represents a share in the beneficial interest in the "Project Property"; and

(c) the "Project Property" includes the Land Agreements, the trees established for the purposes of the Project and the income derived from the harvesting and sale of the trees.

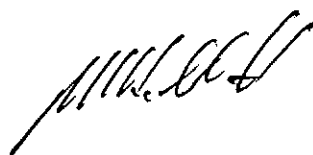
66. My understanding in relation to my investments in the Schemes is that I have prepaid all my required expenses to the end of the 25 year lease term applying to my investments in the Schemes.

"Best interests" of Growers

67. I refer to paragraphs 121 to 126 of the Crosbie Affidavit, which sets out the basis for the Liquidators' view that the Revised GFP offer is in the best interests of Growers. I have not been able to review the original or revised GFP offers.



68. I refer to paragraphs 122 (a) and 122(b) of the Crosbie Affidavit. Grower Leases in fact have varying dates of expiry. Whilst Grower leases generally run for 25 years, the 25 year period commences upon investment in the relevant Scheme. Therefore Grower Leases associated with Schemes entered into in 2000 will expire in 2025. In any event, this does not affect the possible winding up of the Willmott Group and the sale of the assets it owns, namely the land which is subject to the Grower Leases.
69. I refer to paragraph 122(c) of the Crosbie Affidavit. As set out in paragraphs 38 to 41 above, I believe the Poyry Report is deficient. The Second Plaintiff has not identified the timing of any contributions needed, rather implying that all contributions will be needed up front.
70. I refer to paragraph 122(d) of the Crosbie Affidavit. The viability of the Scheme and acceptable rates of return are matters that should be put forward to each Grower to assess on an individual basis. The Poyry Report is based on assumptions about the objectives and interests of Growers in their assessment of the viability of the Schemes, rather than Growers actual objectives and interests.
71. I refer to paragraph 122(e) of the Crosbie Affidavit. The Liquidators, as far as I am aware, have not taken any steps to ascertain what funds Growers may be willing to contribute to maintain their current investments. For example, approximately 30% of Growers (including myself) have in large numbers, contributed further funds in October and November 2011 to insure their trees against a variety of environmental risks, as part of an insurance offer. Now produced and shown to me and marked "MJH-15" is a series of emails between me and Paul Kaiser of King Insurance Brokers dated from 9 December 2011 to 22 December 2011, regarding take up by Growers of the insurance offer.
72. I refer to paragraph 122(f) of the Crosbie Affidavit. It is incorrect to assume that the only way for Growers to harvest their trees is for them to personally harvest the trees on an individual basis. It is more likely to be the case that



Growers would take collective approach to harvesting Growers' trees by jointly engaging a suitably experienced and skilled forestry company.

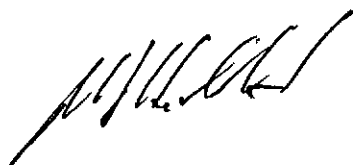
73. I refer to paragraph 123 of the Crosbie Affidavit. The Liquidators do not appear to have put forward any compelling evidence to demonstrate that the Grower leases are onerous or unprofitable.
74. I refer to paragraph 124 of the Crosbie Affidavit. The Liquidators have not put forward any evidence to support the assertion that growers are unable to maintain or harvest their trees. As far as I am aware, to date the Liquidators have made no attempt to ascertain whether Growers are able to maintain or fund the maintenance of trees.
75. I regard the actions of the Liquidators to be contrary to the Australian Securities & Investments Commission Regulatory Guide 175, regarding conduct and disclosure when dealing with financial products. In particular I believe that the Liquidators have specifically breached section 175.16, 175.17 and 175.18. If the Liquidators believe that it is not their obligation to consult with Growers, it should at least be their obligation to request that Growers consult with their financial advisors in relation to their investments in the Schemes. Such a recommendation has not occurred, nor has information been given to enable advisors to fully assess the suitability of the sale for their Grower clients.
76. On 9 April 2011, WAG sent a poll questionnaire to its members. The poll asked the two questions below:
- (a) Would they consider a proposal that would preserve their investment in trees and would they be prepared to pay maintenance fees annually in advance?; and
 - (b) Did they understand that they would likely suffer a dilution in their eventual returns if they cannot pay maintenance annually in advance when others may do so?



77. Now produced and shown to me and marked "MJH-16" is a copy of a spreadsheet which shows that 553 growers and/or investors responded in the affirmative to the two questions asked in the WAG poll. I regard that 553 responses provides a valid survey sample.
78. I refer to paragraph 125 of the Crosbie Affidavit. The Liquidators appear to have accepted that the WGG proposal is in the best interests of the WGG Growers, but have made no attempt to determine if a similar proposal would be appropriate for other Growers.
79. I refer to paragraph 126 of the Crosbie Affidavit. Not having had access to the confidential exhibits, and in particular exhibits "Confidential CDC-16", "Confidential CDC-17", "Confidential CDC-18" and "Confidential CDC-19", I am unable to assess the merits of various bids, or to assess the Second Plaintiff's assertion that the Liquidators had concerns with the ability of Bidder 1 to complete on the transaction.

Failure to consult growers

80. I refer to Exhibit CDC-1 to the Crosbie Affidavit, which contains copies of two affidavits sworn by the Second Plaintiff on 25 November 2010 and 4 February 2011 respectively, and filed in Federal Court proceeding VID 1010 of 2010. At paragraphs 44 and 45 of the affidavit sworn on 25 November 2010, the Liquidators state that they would seek the views of growers and investors about viability of the Schemes once a viability analysis had been conducted.
81. At paragraphs 25 and 26 of the affidavit sworn on 4 February 2011, the Liquidators state their intention to call a meeting of growers and investors.
82. To the best of my knowledge the Liquidators did not communicate with growers or investors under the Schemes to ask for their views and interests regarding an appointment of a new Responsible Entity or manager to administer the Schemes or the continuation of the Schemes themselves. The



investors or growers have not been consulted for their views regarding bids during the Sale Process conducted by the Liquidators.

83. Now produced and shown to me and marked "MJH-17" is a true copy of a letter of the type sent by WAG supporters to the Second Plaintiff via e-mail between 7 April 2011 and 7 May 2011.

84. WAG's records indicate that over 300 WAG supporters sent a letter of the type referred to in the paragraph above to the Second Plaintiff. WAG was copied in on the e-mails transmitting those letters.

Actions undertaken by WAG

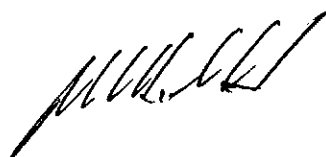
85. On 9 April 2011, WAG resolved it would create a fighting fund for investors and growers to redress the inequities created by the Liquidators' process.

86. WAG maintains a web site (willmottactiongroup.com.au) through which it communicates with Growers. WAG also emails and mails Growers directly from time-to time.

87. Now produced and shown to me and marked "MJH-18" is a letter I received from the Liquidators on 7 July 2011, regarding the outcome of the Federal Court Proceeding. My understanding is that this letter was sent to all Growers.

88. Now produced and shown to me and marked "MJH-19" is a series of emails between me and Michael Carmody of PPB Advisory on behalf of the Liquidators dated from 15 July 2011 to 28 September 2011, regarding the affairs of WFL.

89. Now produced and shown to me and marked "MJH-20" is a printout of a survey sent to Growers on 7 October 2011. Now produced and shown to me and marked "MJH-21" is a copy of a spread sheet which shows that WAG received 735 responses in total, 680 affirmative responses to the first question asked in the WAG survey, and 621 affirmative responses to the second question asked in the WAG survey.



90. Now produced and shown to me and marked "MJH-22" is a printout of a notice to Growers re Insurance Coverage dated 12 November 2011. This notice was posted on WAG's web site and also emailed to registered Growers.
91. Now produced and shown to me and marked "MJH-23" is a series of emails between me and Michael Carmody of PPB Advisory on behalf of the Liquidators dated from 18 November 2011 to 25 November 2011, regarding a request for a meeting between WAG and the Liquidators. The first and only meeting between WAG and the Liquidators took place on 29 November 2011 at PPB Advisory's offices in Melbourne, as referred to in paragraph 21 above.
92. Now produced and shown to me and marked "MJH-24" is a printout of a Grower Statement of Wishes. The Grower Statement of Wishes was posted on WAG's web site and also emailed to registered Growers on 22 December 2011. To date, 572 signed Grower Statements of Wishes have been received by WAG. Now produced and shown to me and marked "MJH-25" is a copy of a spread sheet listing the Growers who have signed a Grower Statement of Wishes to date. WAG continues to receive further completed Grower Statement of Wishes. However I regard the number of responses received so far to represent a valid survey sample.
93. WAG is currently undertaking key investigations into the Schemes. Concurrently with those investigations, WAG is pursuing the continuation of the Schemes through recapitalisation and the appointment of a replacement responsible entity to manage the Schemes. Negotiations with persons interested in taking over as responsible entity and manager of the Schemes are ongoing.
94. In the last four weeks, including the Christmas period, I have personally responded to over 250 email enquiries from Growers.



Lack of Information

95. As a grower and investor, I believe I have not been provided with proper information or documentation by the Plaintiffs despite my many requests.

Report by Mr. David Smith

96. On 7 June 2011 WAG retained Mr. David Alan Smith to carry out an inspection of the Willmott Forests softwood plantations located in the Murray Valley region (Victoria and New South Wales) and Bombala region (New South Wales) and to provide a report.

97. Now produced and shown to me and marked "MJH-26" is a copy of the report prepared by Mr. Smith (**Smith Report**). I refer to page 66 of the Smith Report which finds, *inter alia*, that:

- (a) *Pinus radiata* estates with the regions inspected, remain viable and growers should be encouraged to continue to manage those estates; and
- (b) The estates within the regions inspected can be managed at varying levels of expenditure to achieve commercially acceptable levels of returns for growers.

Other Reports

98. I have been provided a copy of another report in relation to the future viability of some of the projects listed in the Schedules by Mr. Ross Sigley of Growing Investments dated 12 May 2011. Now produced and shown to me and marked "MJH-27" is a true copy of that report.



Conclusion

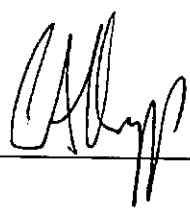
99. The Directions and Orders sought by the Plaintiffs in relation to the Schemes are inappropriate because;

- (a) there has been a failure by the Liquidators to provide investors and growers who have invested in the Schemes with proper information or the opportunity for consultation;
- (b) The Liquidators are not justified in pressing for sale without first seeking the approval of the growers and investors;
- (c) Because of paragraphs (a) and (b) above, there has been a failure by the Plaintiffs to comply with terms of the Consent Deed as they are pursuing a course of conduct that is inconsistent with the rights and interests of the growers and investors; and
- (d) The Smith Report finds that a majority of the projects in the estates located in the Bombala and Murray Valley region are likely to be commercially viable.

Affirmed at Sydney)
 In the State of New South Wales)
 by **MARK JAMES HODDINOTT**)
 this 9th day of January 2012.)



Before me:
 Craig Allsopp



Level 14, 25 Bligh Street, Sydney NSW 2000
 An Australian Legal Practitioner within the meaning of the
 Legal Profession Act 2004

SCHEDULE ONE
REGISTERED MANAGED INVESTMENTS SCHEMES

- (a) Willmott Forests 1989 – 1991 Project (ARSN 092 516 651)
- (b) Willmott Forests 1995 – 1999 Project (ARSN 089 598 612)
- (c) Willmott Forests Project (ARSN 089 379 975)
- (d) BioForest Dual Income Project 2006 (ARSN 1149 153 535)
- (e) BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535)
- (f) Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
- (g) Willmott Forests Premium Forestry Blend Project – 2010 (ARSN 142 722 585)
- (h) Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)

SCHEDULE TWO
UNREGISTERED MANAGED INVESTMENTS SCHEMES: PROFESSIONAL INVESTOR
SCHEMES

Professional Investor Schemes

- (a) Willmott Forests – Professional Investor – 2001 Project – 2001 Information Memorandum;
- (b) Willmott Forests – Professional Investor – 2002 Project – 2002 Information Memorandum;
- (c) Willmott Forests – Professional Investor – 2003 Project – 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004);
- (d) Willmott Forests – Professional Investor – 2004 Project – 2004 Information Memorandum and 2004 Information Memorandum (2005);
- (e) 2005 BioForest Wholesale Project No. 2 – 2005 Wholesale Forestry Memorandum (BioForest);
- (f) Willmott Forests – Professional Investor – 2006 Project – 2006 Information Memorandum.

SCHEDULE THREE

UNREGISTERED MANAGED INVESTMENT SCHEMES: CONTRACTUAL SCHEMES AND PARTNERSHIP SCHEMES

Contractual 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) 1995 (No project) (Custom);
- (j) Sharp/Reed Plantation Project – 1998 Information Memorandum;
- (k) 2001 (No project).

Partnership schemes

- (a) McKenzie & Partners – Forestry Partnership No. 1 (1993);
- (b) Grimsey & Associates Pty Ltd Forestry Partnership No. 1 (1994);

(c) Grimsey & Associates Pty Ltd – Forestry Partnership No. 2 (1994);

(d) Grimsey & Associates Pty Ltd – Forestry Partnership No. 3 (1994);

(e) McKenzie & Partners – Forestry Partnership No. 2 (1994).