

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 PATRICK CHRISTOPHER SEE

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Date of documents: 9 January 2012  
Filed on behalf of: WILLMOTT ACTION GROUP 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)

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On 9 January 2012, I, Patrick Christopher See of Level 6, 131 Clarence Street,  
Sydney NSW, solicitor, make oath and say that:

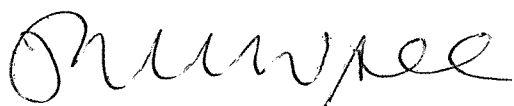
1. I am a Principal of Lloyd & Lloyd Solicitors.
2. Lloyd & Lloyd Solicitors are the solicitors for the WILLMOTT ACTION GROUP  
INC (Reg No A0055149L) (**WAG**).
3. I make this affidavit in support of WAG's application for leave pursuant to  
Order 2.13 of the *Supreme Court (Corporations Rules) 2003* 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.

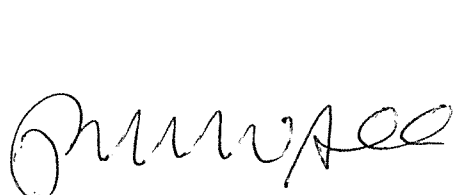
4. For the reasons set out below, WAG says that:
  - (a) its contributions will be useful and different from that of the other parties;
  - (b) the intervention will not unreasonably interfere with the ability of the parties to conduct the proceedings as they wish; and
  - (c) its contribution will assist in the resolution of the issues in the proceedings.
5. 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.
6. 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.
7. I have read the affidavit of Bryan Webster affirmed on 15 December 2011 and filed in this proceeding but have not viewed the exhibits referred to therein.
8. 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.
9. 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) **Liquidators** is a reference to the Second and Third Plaintiffs;
- (e) **Schemes** is a reference to all of the projects or schemes (both registered and unregistered) listed in Schedule 2, Schedule 3 and Schedule 4;
- (f) **Webster Affidavit** is a reference to the affidavit of Bryan Webster affirmed and filed in this proceeding on 15 December 2011; and
- (g) **WFL** is a reference to the First Plaintiff.

#### **Notification of Proceeding**

10. On 13 December 2011, I was served with an unfiled copy of the Liquidators Originating Process dated 13 December 2011 (**Liquidators' 6816 Application**), along with the Crosbie Affidavit. I was not provided with a copy of the exhibits to the Crosbie Affidavit. On 14 December 2011 I was served with a sealed copy of the Liquidators' Application. Now produced and shown to me and marked "**PCS-1**" is a series of emails from the Meagan Grose of Arnold Bloch Leibler, solicitors for the Liquidators, dated 13 and 14 December 2011, serving the originating process for this proceeding.
11. I am aware that on 14 December 2011 the Liquidators also commenced Supreme Court proceeding SCI 2011 6762 (**Liquidators' 6762 Application**).
12. The Liquidators' 6816 Application and the Liquidators 6762 Application were heard and given directions by Justice Davies on 16 December 2011. On this occasion, Justice Davies set down the Liquidators' 6816 Application for hearing on 23 January 2012, and the Liquidators' 6762 Application for hearing immediately following the hearing of the Liquidator' 6816 Application.



### Correspondence with solicitors for the Liquidators

13. Now produced and shown to me and marked "**PCS-2**" is a copy of a letter I received from the solicitors for the Liquidators dated 20 December 2011, regarding the intervention of WAG in this proceeding.
14. Now produced and shown to me and marked "**PCS-3**" is a copy of a letter and attachment I sent to the solicitors for the Liquidators on 21 December 2011, regarding a request for access to the confidential exhibits to the Crosbie Affidavit (**Confidential Exhibits**) and other information regarding the Schemes.
15. Now produced and shown to me and marked "**PCS-4**" is a copy of a letter I received from the solicitors for the Liquidators dated 21 December 2011, partially responding to my letter of 21 December 2011.
16. Now produced and shown to me and marked "**PCS-5**" is a copy of a letter I sent to the solicitors for the Liquidators on 23 December 2011, responding to their letter of 21 December 2011, and again requesting access to the confidential exhibits to the Crosbie Affidavit and other information regarding the Schemes.
17. Now produced and shown to me and marked "**PCS-6**" is a copy of a letter I received from the solicitors for the Liquidators dated 23 December 2011, responding to my letter of 23 December 2011. Under cover of this letter, the Liquidators provided to me a copy of "**Confidential CDC-20**" to the Crosbie Affidavit and a redacted copy of "**Confidential CDC-22**" to the Crosbie Affidavit. Through discussions with the solicitors for the Liquidators and the correspondence referred to in paragraphs 13 to 15 above, I understood that these exhibits were provided subject to my undertaking that they only be disclosed to lawyers acting for WAG, and not to any other party (including WAG).



18. Now produced and shown to me and marked "PCS-7" is a copy of a letter I sent to the solicitors for the Liquidators on 4 January 2012, regarding access to the Confidential Exhibits by WAG and Growers.
19. Now produced and shown to me and marked "PCS-8" is a copy of a letter I received from the solicitors for the Liquidators dated 4 January 2011, responding to my letter of 4 January 2012.
20. Now produced and shown to me and marked "PCS-9" is a copy of a letter sent to me by the solicitors for the Liquidators dated 4 January 2012, attaching a partial and redacted copy of exhibit "confidential CSC-19" to the Crosbie Affidavit, being one sale contract with the sale price redacted. I received this letter and the attachment on 9 January 2012. Now produced and shown to me and marked "PCS-10" is a copy of an email I sent to the solicitors for the Liquidators dated 9 January 2012, regarding receipt of this letter.

#### **Preparation for hearing of Liquidators' Application**

21. I have experienced significant difficulties in preparing for the hearing of the Liquidators' Application due to receiving short notice of the Liquidators' Application, not having adequate access to the confidential exhibits to the Crosbie Affidavit, and the 2011 Christmas break.

#### **16 December 2011 Directions Hearing**

22. Since receiving notice of the Liquidators' Application on 13 December 2011, I have personally worked from my office every business day over the Christmas break, to prepare for the hearing of the Liquidators' Application, even though my office was shut between 23 December 2011 and 9 January 2012 and all other staff were on leave.
23. I received instructions from WAG to prepare an application to be heard in this proceeding and in Supreme Court of Victoria proceeding SCI 2011 6762 (6762 Proceeding) on 15 December 2011.



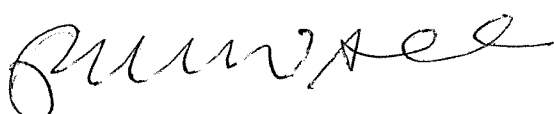
24. The first time I was made aware that the Liquidators required a hearing date for the Liquidators 6816 Application and the Liquidators' 6762 Application was when the Liquidators' counsel advised the court of this at the directions hearing on 16 December 2011.
25. I was unable to obtain comprehensive instructions for the directions hearing held on 16 December 2011 for this proceeding and the 6762 Proceeding held. This was partly due to only receiving notice of the directions hearing on 14 December 2011, and partly due to not having had access to the confidential exhibits to the Crosbie Affidavit.
26. Not being a party to the application, and without instructions, I was unable to put forward a view to the court at the directions hearing as to the timing of the hearing of the Liquidators' 6816 Application and the Liquidators 6762 Application.

### **Engaging Counsel**

27. Following the directions hearing on 16 December 2011, I sought to engage counsel to advise and appear for WAG in this proceeding and the 6762 Proceeding. On 23 December 2011, I contacted David Eardley and David Denton SC of counsel to ask if they would consent to act in this matter. Each confirmed their consent, and I prepared and sent a brief to each of them.
28. David Eardley and David Denton SC both took leave over the 2011 Christmas break. David Denton returned to his chambers on 9 January 2012, and did not have access to the full brief I had prepared until this date. I believe that David Eardley returned to his chambers on 9 January 2012, but made a special trip to collect the brief on or around 30 December 2011.

### **Obtaining Instructions**

29. All members of the WAG Committee took leave over the Christmas break, and only returned to their respective offices on 9 January 2012. As a result, in



the period from 23 December 20 11 to 8 January 2012, my ability to obtain instructions for the conduct of this proceeding and the 6762 Proceeding was adversely affected, although I was able to obtain limited instructions via email.

30. WAG's ability to provide instructions has been limited due to not having had access to the confidential exhibits to the Crosbie Affidavit.

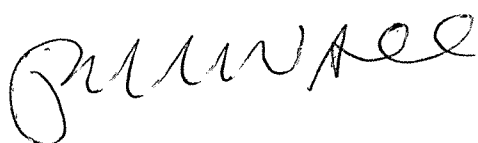
### **Engaging Experts**

31. I believe that WAG will need to obtain one or more expert reports to respond to the Liquidators' 6816 Application and the Liquidators 6762 Application. To engage experts requires special funding, which needs to be approved by WAG.

32. I have to date been unable to engage any experts in relation to the Liquidators' 6816 Application and the Liquidators 6762 Application as:

- a. To engage experts will require special funding, which needs to be approved by WAG and then obtained through what amounts to donations to a funding fund;
- b. The approval process is greatly hampered by WAG's lack of access to the confidential exhibits to the Crosbie Affidavit;
- c. I am unable to obtain quotes for expert reports or to appropriately instruct potential experts without providing them with copies of at least some of the confidential exhibits to the Crosbie Affidavit;

33. Notwithstanding the above, I have made initial enquiries to locate suitable experts. These enquiries have been unsuccessful to date, mainly due to the 2011 Christmas break.



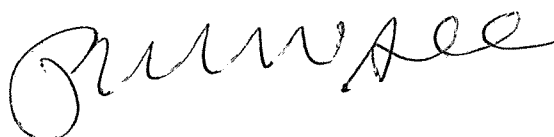
34. Now produced and shown to me and marked "PCS-9" is a copy of an email I sent to Mark Hoddinot and Arthur Roe of WAG dated 4 January 2011, forwarding an email of the same date sent to me by Keryn Borrelli of Cosgraves Property Advisers, regarding valuations of the Schemes and project land.
35. I am unable to provide Cosgraves Property Advisers with the information requested in their email dated 4 January 2011, without being provided wider access to the confidential exhibits to the Crosbie Affidavit and obtaining other information.

### **Lack of Information**

36. As set out in paragraphs 14 to 20 above, I have been provided with only limited access to some of the confidential exhibits to the Crosbie Affidavit. WAG has not had any access to the confidential exhibits to the Crosbie Affidavit.
37. I do not know the consideration being provided by the successful bidder to the Liquidators under the Sale Contracts.

### **Conclusion**

38. I do not believe WAG is able to adequately prepare for the hearing of the Liquidators' Application on 23 January 2012 for the following reasons:
- a. WAG was provided with limited notice of the Liquidators' 6816 Application and the Liquidators' 6762 Application, having received notice of these applications on 13 December 2011;
  - b. WAG's preparation for the hearing has been made more difficult by the 2011 Christmas Break, as set out in paragraphs 21, 22, 28 and 29 above;

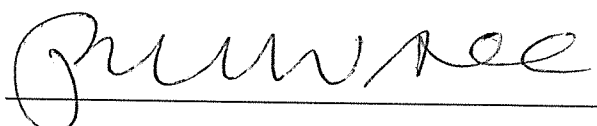


- c. The Liquidators' refusal to provide WAG with access to the confidential exhibits to the Crosbie Affidavit has caused irreparable damage to WAG's ability to prepare for the hearing.

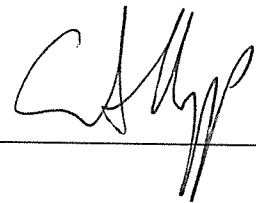
39. I am unable to reasonably estimate how much time WAG will need to properly prepare for the hearing of the Liquidators' application, as:

- a. I have not had access to all of the confidential exhibits to the Crosbie Affidavit, and thus I cannot assess how much work might be involved in assessing and potentially responding to those exhibits;
- b. Whilst I have been provided with access to the confidential exhibits to the Crosbie Affidavit marked "Confidential CSC-19" (partial and redacted) "Confidential CSC-20" and "Confidential CSC-22" (redacted), I have not been able to disclose this exhibit to WAG to obtain instructions, or to an expert or experts for the purpose of engaging them to assess and potentially respond to this exhibit.

Sworn at Sydney  
 In the State of New South Wales  
 by **PATRICK CHRISTOPHER SEE**  
 this 9<sup>th</sup> day of January 2012.

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Before me:

  
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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).