

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST

S CI 2015

IN THE MATTER OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ABN 45 004 736 458

BETWEEN

ANTHONY GREGORY MCGRATH, JOSEPH DAVID HAYES, MATTHEW WAYNE CADDY AND ROBERT MICHAEL KIRMAN AS RECEIVERS AND MANAGERS OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ABN 45 004 736 458

First Plaintiffs

BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ABN 45 004 736 458

Second Plaintiff

AFFIDAVIT OF JOSEPH DAVID HAYES "JH-51"

Date sworn: 16 December 2015
Filed on behalf of: The Plaintiffs
Prepared by:
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This is the exhibit marked "**JH-51**" now produced and shown to Joseph David Hayes at the time of swearing his affidavit on 16 December 2015.



Exhibit "JH-51"

Email from Joseph Hayes to Debenture Committee

dated 19 May 2014

From: Linda Szadanovski [<mailto:lsazanovski@mcgrathnicol.com>] **On Behalf Of** Joe Hayes
Sent: Monday, 19 May 2014 1:50 PM
To: 'c_m_hayes@bigpond.com'; 'lcogger@coggergurry.com.au'; 'bandhlloyd@bigpond.com'; 'goodidea@anson.com.au'; 'ramsdent1@iinet.net.au'; 'donandlzmckenzie@bigpond.com'; 'susanpitman@ymail.com'; 'robjea@bigpond.com'; 'robjea789@gmail.com'; 'elliott@eastmelbourne.net'
Cc: Tony McGrath; Kathy Sozou; Mike Hill; Barry Kogan; 'michael.sloan@ashurst.com' (michael.sloan@ashurst.com); 'ross.mcclymont@ashurst.com'
Subject: Banksia - Committee Update - Trustee Fees

Dear Committee Members,

Following the Committee meeting held on 1 May 2014, we report as follows on the various issues discussed.

1 Litigation and mediation strategy

Following December's Committee meeting, it was decided to retain Messrs Guy Edwards of PwC and Peter Collinson of Queen's Counsel to consider the claims being pursued by the Receivers and separately those being pursued by the class action and to provide independent advice to the Committee as to whether the claims being pursued by the Receivers had merit and the intersection of those claims with those of the class action. Messrs Edwards and Collinson provided their advice at the meeting. Input was also provided by Philip Crutchfield of Queen's Counsel, who acts for the Receivers.

A more detailed note summarising the key themes expressed at the meeting and the next steps to be taken by the Receivers will be distributed separately.

2 Receivers Report

We updated Committee Members on developments since our last Report in February, including an update to the cash position, delivery of the Impaired Loan Options and MOU Reports, and our remuneration.

3 Trustee Fees

At the meeting, we advised that the Trustee had submitted its final fee request for the period from 25 October 2012 to 28 February 2014 for \$3,839,617, which Trust considers would form the basis of any court application required to resolve the issue. The quantum of the final request is based on the methodology proposed in the original fee submission received on 9 December 2013, which is based on an allocation of time between non-chargeable work, work chargeable at hourly rates and work attracting a "value-add" component. The Trustee has also proposed that should their fee request be approved without the expense of a court application, that the Trustee would accept the terms of its 7 February proposal, which involved a c.15% discount on hourly rates and no value-add time and totalled c. \$2,767,931 for the same period.

The Trustee has requested that we formally consider this request and advise our position. We are still considering our position on this issue.

We note that we also advised the Committee that preparations are underway for a Court Application, and in that regard Mr McClymont of Ashurst updated the Committee on the timetable and process, including the need for a contradictor and the potential for the Committee to fulfil that role at Court.

3.1 *Alternate Option*

It was raised at the meeting that in the interests of avoiding the time and costs associated with a court application to resolve this issue, that the Committee may be willing to consider an alternate option. That is, rather than seeking approval from the Committee in relation to the ultimate quantum of the Trustee fee request, the Receivers would seek endorsement from the Committee for the process undertaken by the Receivers in negotiating an outcome with the Trustee in relation to its fee request. The intention of this alternate option is that the endorsement would provide sufficient comfort to the Receivers that they have fulfilled their obligations to debenture holders without the necessity of a court application.

Having consulted with Ross McClymont we have prepared the following wording of a proposed resolution to be sought from the Committee in relation to this endorsement:

"Based on senior counsel's advice obtained by the Receivers and the materials submitted to the Committee regarding the Trustee's fee request (Fee Request), the Committee is satisfied that the process adopted by the Receivers in considering and negotiating the quantum of that Fee Request has been appropriate and transparent. The Committee acknowledges in these circumstances that the Receivers will now proceed to pay the quantum of the Fee Request as negotiated by them."

4 **Next Steps**

We would appreciate if Committee members could either respond individually or collectively as to their appetite to consider the alternate option in relation to the Trustee Fee request to allow us to progress the issue.

In the event that the Committee is willing to consider the alternate option proposed above, then we would recommend you discuss the issue amongst yourselves. We can convene a conference call to discuss the proposed resolution, and the mechanics of its approval should this be required.

As noted above, we will separately issue a summary of the litigation/mediation issues discussed at the meeting.

Please do not hesitate to contact either Tony or myself should you wish to discuss any aspect of the above further.

Kind regards - Joe

Joe Hayes
Partner

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