

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-52"

Date sworn: 16 December 2015
Filed on behalf of: The Plaintiffs
Prepared by:
Ashurst Australia
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Attention: Ross McClymont
Email: ross.mcclymont@ashurst.com

This is the exhibit marked "**JH-53**" now produced and shown to Joseph David Hayes at the time of swearing his affidavit on 16 December 2015.


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Exhibit "JH-53"

Letter from Receivers to Trust Co dated

18 June 2014



18 June 2014

Rupert Smoker
The Trust Company
Level 15, 20 Bond Street
Sydney NSW 2000

By email: rsmoker@thetrustcompany.com.au

Dear Rupert

**Banksia Securities Limited (Receivers and Managers Appointed) ("BSL")
Additional remuneration entitlement of the Trustee**

1 Background

We refer to your letter dated 29 April 2014, which set out the status of the additional remuneration claim of the Trustee for the period from 25 October 2012 to 28 February 2014.

Our understanding of the Trustee's fee request is as follows:

- + the total fee request is for the period from 25 October 2012 to 28 February 2014 is \$3,839,617;
- + this request is based on the Trustee's interpretation and application of the Joint Memorandum of Advice of Alan Archibald QC and Gregory Ahern, and therefore allocates time between the following components:
 - non - chargeable;
 - chargeable at the Trustee's hourly rates; and
 - work considered value-add and therefore chargeable at something other than hourly rates.
- + that the Trustee would accept the terms of the proposal set out in the letter dated 7 February 2014, should the fee request be approved without the expense of a court application. The total fee payable pursuant to that proposal for the equivalent period totals c. \$2,767,931, based on the following terms:
 - a total fee of \$2,647,931 for the period from 25 October 2012 to 30 November 2013 (which excludes any value-add component and represents a c.15% discount on hourly rates presented in previous submissions);
 - a fee capped at \$60,000 for the month of December 2013 (subject to the Receivers review); and
 - monthly fees beyond 1 January 2014 to be based on time incurred, but capped to \$30,000 per month (assuming no unforeseen circumstances which would require separate approval).

D16 2-140519-BANKSEC01-Response to Trust proposal-KS

2 Status of fee request

As you are aware, we have been in dialogue with the BSL debenture holder Committee in relation to the additional remuneration entitlement of the Trustee for some time. As part of our ongoing discussions with the Committee, it has expressed a preference for the Trustee's fees to be approved via the Receiver's making an application to court, rather than as an expense being approved in the ordinary course of the Receivership.

Most recently, it was discussed at the Committee meeting held on 1 May 2014, whereby we presented the Trustee's final submission for its consideration. As noted in our email to the Committee following that meeting (which we provided to you for your information prior to issuing), we proposed a final alternate option to the Committee to avoid the costs and complexities associated with a court approval process.

The Committee has now formally responded to that proposal, indicating that its position remains the same, being the Trustee fee should be approved by the Court.

3 Our position

Based on our consultation with the Committee, we now confirm that we will instruct Ashurst to prepare a Court Application seeking directions under Section 424(1) of the Corporations Act, that the Receivers are justified in paying a fee to The Trust Company for acting as trustee, in consideration for the trustee enforcing its duties and responsibilities under the Trust Deed.

In preparing the Court Application, we will be summarising the process adopted to date in relation to the fee approval, including the various fee submissions of the trustee. Whilst we will disclose the full fee to the Court, we note that in our view, it is in the best interests of debenture holders to proceed with the application based on the final negotiated position of the trustee, being the 7 February 2014 proposal as outlined above.

4 Conclusion

As noted above, we have instructed Ashurst to prepare the Court Application, and have advised the Committee of the agreed course of action. We will continue to liaise with you where necessary in order to progress the application.

In the meantime, if you wish to discuss any aspect of our position, please do not hesitate to contact us.

Yours faithfully
Banksia Securities Limited (Receivers and Managers Appointed)



Tony McGrath
Joint and Several Receiver and Manager



Joseph Hayes
Joint and Several Receiver and Manager

no enclosures