

13 April 2018

The Registrar  
Wellington High Court  
DX SX11199  
**WELLINGTON**

**Attention: Denia Nunns**

**By email: denia.nunns@justice.govt.nz**

Dear Denia

**CIV 2012-485-2591 – ROSS ASSET MANAGEMENT LTD (IN LIQ.)**

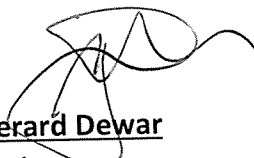
We **enclose** for filing with the Court:

1. Notice of Interlocutory Application for Joinder of Eoin David Fehsenfeld as Respondent;
2. Memorandum of Counsel in support of Application for Joinder; and
3. Our cheque in the sum of \$500.00 for the filing fee.

Thank you for your assistance.

Yours faithfully

**THOMAS DEWAR SZIRANYI LETTS**

  
**Gerard Dewar**  
**Partner**  
gerarddewar@tdsl.co.nz

Cc Mike Coulson  
By email: mike.colson@stoutstreet.co.nz

Cc Paul Chisnall  
By email: paul@portnic.co.nz

FEHE01-001.0004

Wellington  
Lower Hutt

**Lower Hutt**

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**Partners**

D Gerard Dewar LLB  
Louise M Sziranyi LLB  
Gerard M Letts BSc LLB  
Daniel D Vincent BA LLB (Hons)  
Clare Stanley LLB (Hons)  
Matt Freeman LLB BSc (Hons)

**Consultant**

Gregory J Thomas BA LLB

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE

CIV 2012-485-2591

UNDER

The Companies Act 1993 and the High Court  
Rules

IN THE MATTER OF

**ROSS ASSET MANAGEMENT LIMITED**  
**(IN LIQUIDATION) AND RELATED ENTITIES**

**JOHN HOWARD ROSS FISK AND DAVID JOHN BRIDGMAN** as Liquidators of Ross Asset Management Limited (in Liquidation), Dagger Nominees Limited (in Liquidation), Bevis Marks Corporation Limited (in Liquidation), United Asset Management Limited (in Liquidation), McIntosh Asset Management Limited (in Liquidation), Mercury Asset Management Limited (in Liquidation), Ross Investments Management Limited (in Liquidation) Ross Investments Management Limited (in Liquidation) and Ross Unit Trusts Management Limited (in Liquidation)

Applicants

**NOTICE OF INTERLOCUTORY APPLICATION FOR JOINDER OF**  
**EOIN DAVID FEHSENFELD AS RESPONDENT**

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PRESENTED FOR FILING BY:

THOMAS DEWAR SZIRANYI LETTS  
Solicitors,  
Level 2 – Corner Queens Drive & Margaret  
Street, Lower Hutt  
P O Box 31-240, DX RP42011  
Tel: (04) 570-0442  
Fax: (04) 569-4260  
Email: gerarddewar@tdsl.co.nz  
Solicitor dealing with proceeding:  
**D G DEWAR**

TO: The Registrar of the High Court at Wellington

AND TO: The above-named Applicants

AND TO: P R W Chisnall, Amicus Curiae

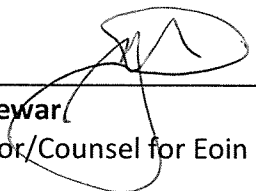
THIS DOCUMENT notifies you that Eoin David Fehsenfeld, retired Medical Practitioner will on the \_\_\_\_\_ day of \_\_\_\_\_ apply to the Court for an order that Eoin Fehsenfeld of Australia, retired, be added as a Respondent to the Liquidators' application dated 12 December 2017.

THE GROUNDS on which the order sought above are as follows that:

1. He is the single largest creditor whose presence before the Court is necessary to justly determine the issues arising and who will be bound by orders given.
2. He is the party referred to and described as Investor A in the examples listed at page 34 of the Affidavit of John Howard Fisk dated 11 December 2017.
3. He has a special interest in that he is the party who is most affected by the proposed distribution in respect of which directions are sought by the Liquidators.
4. He wishes to be heard on the liquidation application for directions and to oppose alternative distribution models which would severely disadvantage him.
5. The Applicants do not oppose the application.

THIS APPLICATION is made in reliance on Rule 4.1 of the High Court Rules.

Dated this 13<sup>th</sup> day of April 2018

  
\_\_\_\_\_  
**D G Dewar**  
Solicitor/Counsel for Eoin Fehsenfeld

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE

CIV 2012-485-2591

UNDER

The Companies Act 1993 and the High Court Rules

IN THE MATTER OF

**ROSS ASSET MANAGEMENT LIMITED**  
**(IN LIQUIDATION) AND RELATED ENTITIES**

**JOHN HOWARD ROSS FISK AND DAVID JOHN BRIDGMAN** as Liquidators of Ross Asset Management Limited (in Liquidation), Dagger Nominees Limited (in Liquidation), Bevis Marks Corporation Limited (in Liquidation), United Asset Management Limited (in Liquidation), McIntosh Asset Management Limited (in Liquidation), Mercury Asset Management Limited (in Liquidation), Ross Investments Management Limited (in Liquidation) Ross Investments Management Limited (in Liquidation) and Ross Unit Trusts Management Limited (in Liquidation)

Applicants

**MEMORANDUM OF COUNSEL IN SUPPORT OF APPLICATION FOR**  
**JOINDER OF EOIN DAVID FEHSENFELD AS RESPONDENT**

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PRESENTED FOR FILING BY:

THOMAS DEWAR SZIRANYI LETTS  
Solicitors,  
Level 2 – Corner Queens Drive & Margaret Street, Lower Hutt  
P O Box 31-240, DX RP42011  
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Email: gerarddewar@tdsl.co.nz  
Solicitor dealing with proceeding:  
**D G DEWAR**

MAY IT PLEASE THE COURT:

1. The undersigned Counsel is briefed as solicitor and counsel for Dr Eoin Fehsenfeld, a retired medical practitioner and investor in RAM.
2. The application is to give him standing in the matter to be heard, and particularly to ensure he has an appellate right in respect of orders made in consequence of the Liquidators' December application for directions reflecting the manner in which recovered funds are to be distributed to the investor creditors.
3. The Applicant has a special interest, in that he is firstly the largest single investor and therefore obviously the most affected, but perhaps more significantly, is the party most adversely affected should the Court be persuaded to adopt (or direct application of) the alternative model described in paragraphs 9.21 to 9.24 of Mr Fisk's affidavit of 11 December.
4. The Applicant is the party described as "Investor A" in the modelling presented by Mr Fisk at page 34, which graphically illustrates the effect on him. An application of the net contributions (orthodox) distribution model will return a dividend to him of \$630,341.43 from his loss of \$5,614,963.98, whereas an application of the alternative model will result in a nil distribution to him.
5. For the above reasons, it is submitted that, while the purpose of Rule 4.1 is to limit parties, his presence is necessary to justly determine the issues arising and, in particular, to preserve to him such appellate rights as may arise from the determination to be made given the Liquidators' indication that the Court's decision is otherwise unlikely to be the subject of any appeal.

6. It is not proposed (on the state of the proceedings at present) that the Applicant will produce any evidence. Accordingly, should the application be granted it will not affect the timetable.
7. The Applicants' participation will accordingly be confined to the presentation and delivery of submissions.
8. It is understood that neither Counsel appointed to assist the Court nor the Liquidators' Counsel intends to offer any opposition to this application. A memorandum will be sought to confirm that position to enable the Court to deal with the application expeditiously.
9. On the assumption that both Counsel to assist the Court and Counsel for the Liquidators confirm the position as set out above and indicate that they do not wish to be heard, we respectfully suggest that the application might be dealt with on the papers.

Dated this 13<sup>th</sup> day of April 2018

  
\_\_\_\_\_  
**D G Dewar**  
Solicitor/Counsel for Eoin Fehsenfeld