

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 IN RESPECT OF COSTS
ON BEHALF OF DR E D FEHSENFELD

PRESENTED FOR FILING BY:

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D G DEWAR

MAY IT PLEASE THE COURT:

1. An application for costs is made on behalf of Dr Fehsenfeld in respect of his role in the application for directions and hearing on 22 June 2018, and in respect of which the Court issued its Judgment on 8 August 2018.
2. Dr Fehsenfeld was invited to seek party status as a result of the position he was in in respect of the alternative distribution models being promoted by a group of investors which was ultimately to be presented to the Court by Counsel appointed to assist.
3. Although Dr Fehsenfeld was not the only party potentially, adversely affected by the potential adoption of an alternative distribution model, he had the most to lose.
4. His participation was foreshadowed in a teleconference on 9 April 2018. (The undersigned Counsel attempted to join the conference unsuccessfully.) It was accordingly foreshadowed in the Minute issued on 10 April 2018. Subsequently, on 13 April 2018 Dr Fehsenfeld filed an application for joinder and paid the requisite filing fee.
5. The joinder of Dr Fehsenfeld as a respondent was effectively consented to by the Liquidator in a memorandum of 16 April 2018. Your Honour granted the application for joinder on 26 April 2018, with a Minute reserving costs.
6. Dr Fehsenfeld took a full role in the proceeding. He had a proper interest and a great deal to lose.
7. It was of note that at least potentially important points were raised on his behalf. Most notably, was the significance of the timing of deposits and withdrawals which (had the alternative distribution

models been applied) would, it was argued, created a significant injustice to him.

8. For the foregoing reasons it is submitted that Dr Fehsenfeld was a party who was put to cost in an adversarial setting where he was required to present an argument that has prevailed.
9. As between solicitor and client, he has incurred attendances to a value of \$14,996.00. Time records have been submitted to the Liquidator and to Amicus.
10. It is understood that the Liquidator will oppose a costs application, although reasons have not been provided to Counsel.
11. Respectfully, the Court is referred to its general power to award costs as conferred by Section 51G of the Judicature Act 1908, which confers jurisdiction to award costs in any matter in which the Court has jurisdiction.
12. Dr Fehsenfeld paid a filing fee of \$500.00. He has incurred costs. It is not understood that any issue is taken with the level of those, and an order that he be paid costs out of the Liquidator's funds is accordingly sought.
13. Applying recognised principles, as endorsed in Rule 14.1 of the Rules, it can be said that Dr Fehsenfeld was successful. There were elements of the matter being a test case with elements of public interest and, of course, in reality Dr Fehsenfeld represented the interests of others who were potentially adversely affected, had the alternative distribution models been applied.

14. It may be that the Court is minded to apply the two-thirds “principle”. Dr Fehsenfeld respectfully asks to be awarded his solicitor and client costs, but, if not, a contribution based on the two-thirds principle is sought.

Dated this *4th* day of September 2018



D G Dewar
Solicitor/Counsel for Eoin Fehsenfeld