NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/11/2021 6:12:03 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)

File Number: NSD616/2021

File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v

FORUM FINANCE PTY LIMITED & ORS

Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF

AUSTRALIA



Dated: 9/11/2021 6:12:07 PM AEDT Registrar

Important Information

Sia Lagos

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 59

Rule 29.02(1)

Affidavit

No. NSD of 616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Westpac Banking Corporations ABN 33 007 457 141 and another named in the Schedule Applicants

Forum Finance Pty Ltd ACN 153 301 172 (in Liquidation) and others named in the

Schedule

Respondents

Affidavit of: Sarwar (Sazz) Nasimi

Address: Level 6, 140 William Street, Melbourne 3000

Occupation: Legal practitioner

Date: 9 November 2021

Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Sarwar (Sazz) Nasimi sworn 9 November 2021	1	2
2	Exhibit SN-1 being a paginated bundle of documents	4	1-245

Filed on behalf of (name & role of party)

Vincenzo Frank Tesoriero, Third Respondent

Prepared by (name of person/lawyer)

Sazz Nasimi

Law firm (if applicable)

Madgwicks Lawyers

Tel 03 9242 4720

Fax 03 9242 4777

Email Alexandra.lawrence@madgwicks.com.au

Address for service

Level 6, 140 Williams Street, Melbourne 3000 VIC

(include state and postcode)

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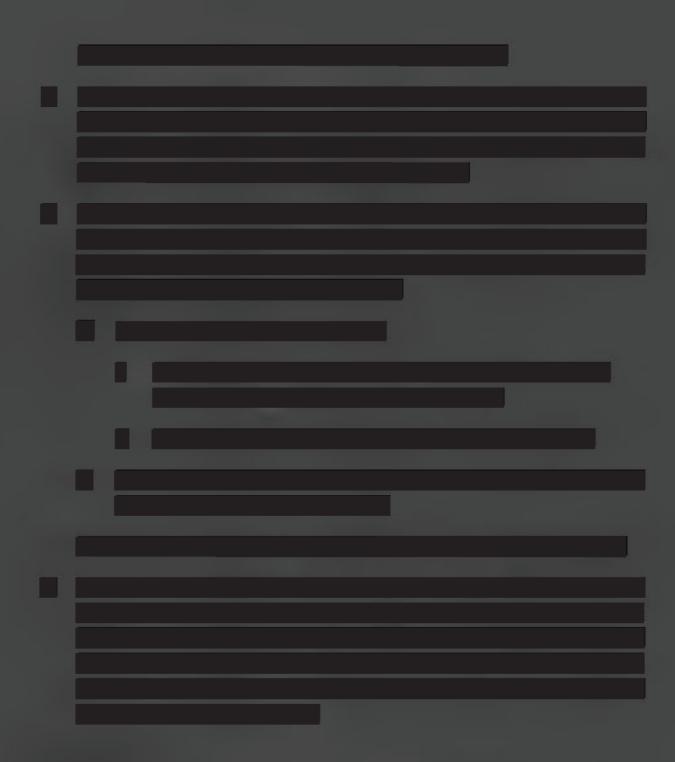
[Version 3 form approved 02/05/2019]

I, Sarwar (Sazz) Nasimi, of Level 6,140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

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CM:047678:4602593_1

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- 15. In addition to the above, I am aware of at least 6 practitioners working on this matter on behalf of the Applicant. A dedicated email address, [ProjectOlympus@minterellison.com] has been set up by the Applicant's solicitors, presumably for the Applicant's solicitors to keep track of the email traffic which flows between the parties.
- 16. Furthermore, since the filing of Madgwicks' notice of appearance on 22 September 2021, we have received, mainly from the Applicant's solicitors, in excess of 128 separate items of correspondence and 2384 pages of affidavits, which all directly relate to the proceeding.
- 17. On 29 October 2021, I caused a letter to be sent to MinterEllison which stated that due to funding restraints the Third Respondent was not yet in a position to respond to some of the correspondence. A copy of the 29 October 2021 letter can be seen at SN 149-150.
- 18. On 2 November 2021 MinterEllison responded to that letter, inter alia, as follows:

"If your client will not or cannot secure funding for your services, then you can cease to act."

A copy of the 2 November 2021 letter can be seen at SN 153-154.

- 19. Prior to our engagement, the Third Respondent had already incurred in excess of \$200,000 in legal fees, which remain unpaid to date. I note that the liquidators have secured \$4.5M (excluding GST) in funding from the Applicant and have already sought approval of:
 - (a) their fees in the sum of \$511,930.00 (excluding GST) for Forum Finance Pty Ltd for the period 9 July 2021 to 19 September 2021. The specific page outlining the remuneration is at SN-73;
 - (b) their fees in the sum of \$2,848,126.00 (excluding GST) for Forum Group Financial Services Pty Ltd (in provisional liquidation) for the period 15 July 2021 to 19 September 2021. The specific page outlining the remuneration is at SN-73; and
 - (c) their fees in the sum of \$309,229.25 for Forum Group Pty Ltd for the period 8 July 2021 to 22 July 2021. A true copy of the report to creditors dated 28 October 2021 outlining the remuneration sought is exhibited at SN-155-237. The specific page outlining the remuneration is at SN-208.

The above summary highlights the size and scale of the current proceeding.



- 20. Moving forward it is somewhat difficult to estimate how much funding the Third Respondent (and his related entities) will require to defend the Applicant's claims. The uncertainty is by and large created by the Applicant and the liquidators who seem to be presently working in tandem and is dependent on the number of interlocutory applications that they make.
- 21. The table below sets out the legal fees which the Third Respondent has incurred to date, together with my best estimate of the legal fees which he will incur between now and the end of 2021:

	Ser	nior Counsel	Juni	or Counsel	Fortis Law	Madgwicks
	Days	\$	Days	\$		\$
Work conducted by previous solicitors					\$233,660.52	
Works to 12 November	-	\$110,550.00	-	\$17,500.00		\$100,000
Attendance to drafting of defence	3	\$ 29,700.00	4	\$10,000.00		\$8,785.00
Interlocutory applications	8	\$ 79,200.00	10	\$25,000.00		\$39,445.00
Expert Reports	2	\$ 19,800.00	3	\$ 7,500.00		\$15,995.00
Discovery/Subpoenas	1	\$ 9,900.00	2	\$ 5,000.00		\$47,285.00
Miscellaneous Interlocutory/client updates	1	\$ 9,900.00	2	\$ 5,000.00		\$36,715.00
Sub-Total		\$148,500.00		\$52,500.00	\$233,660.52	\$248,225.00
	Total	\$682,885.52				



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The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Sworn by Sarwar (Sazz) Nasimi

at Melbourne on 9 November 2021)

Before me:

Melissa Passarelli

6th Floor, 140 William St, Melboume, Vic, 3000 An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria).

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

- 1. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW).
- 2. I observed the deponent signing a copy of this affidavit in real time.
- 3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
- 4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
- 5. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence

Schedule of Parties

No. NSD616 of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Applicants

First Applicant Westpac Banking Corporation ABN 33 007 457 141

Second Applicant Westpac New Zealand Limited (company registration number company

number 1763882)

Respondents

First Respondent Forum Finance Pty Limited (in liquidation) ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent Vincenzo Frank Tesoriero

Fourth Respondent: Forum Group Financial Services Pty Ltd (provisional

liquidators appointed) ACN 623 033 705

Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (in liquidation)

ACN 153 336 997

Sixth Respondent: Forum Enviro Pty Ltd (provisional liquidators appointed)

ACN 168 709 840

Seventh Respondent: Forum Enviro (Aust) Pty Ltd (provisional liquidators

appointed) ACN 607 484 364

Eighth Respondent 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662

Ninth Respondent 14 James Street Pty Ltd (in liquidation) ACN 638 449 206

Tenth Respondent 26 Edmonstone Road Pty Ltd (in liquidation) ACN 622 944 129

Eleventh Respondent 5 Bulkara Street Pty Ltd (in liquidation) ACN 630 982 160

Twelfth Respondent 6 Bulkara Street Pty Ltd (in liquidation) ACN 639 734 473

Thirteenth Respondent 23 Margaret Street Pty Ltd ACN 623 715 373

to for

Fourteenth Respondent 1160 Glen Huntly Road Pty Ltd ACN 639 447 984

Fifteenth Respondent 14 Kirwin Road Morwell Pty Ltd ACN 641 402 093

Sixteenth Respondent Canner Investments Pty Ltd ACN 624 176 049

Seventeenth Respondent 123 High Street Taradale Pty Ltd ACN 639 872 512

Eighteenth Respondent 160 Murray Valley Hwy Lake Boga Pty Ltd ACN 641 392 921

Nineteenth Respondent 31 Ellerman Street Dimboola Pty Ltd ACN 641 392 887

Twentieth Respondent 4 Cowslip Street Violet Town Pty Ltd ACN 639 872 352

Twenty-First Respondent 55 Nolan Street Maryborough Pty Ltd ACN 641 392 912

Twenty-Second Respondent 89 Betka Road Mallacoota Pty Ltd ACN 641 393 179

Twenty-Third Respondent 9 Gregory Street Ouyen Pty Ltd ACN 641 392 707

Twenty-Fourth Respondent 9 Main Street Derrinallum Pty Ltd ACN 639 872 736

Twenty-Fifth Respondent 286 Carlisle Street Pty Limited ACN 610 042 343

Twenty-Sixth Respondent 275 High Street Golden Square Pty Ltd ACN 639 870 545

Twenty-Seventh Respondent Mazcon Investments Hellas IKE

Twenty-Eighth Respondent Palante Pty Ltd ACN 135 344 151

Twenty-Ninth Respondent Anastasios Giamouridis

Thirtieth Respondent The Forum Group of Companies Pty Ltd (in liquidation) ACN 151 964 626

Thirty-First Respondent lugis Pty Ltd (in liquidation) ACN 632 882 243

Thirty-Second Respondent lugis (UK) Limited

Thirty-Third Respondent lugis Holdings Limited

Thirty-Fourth Respondent lugis Global Financial Services Limited

Thirty-Fifth Respondent lugis Finance Limited

Thirty-Sixth Respondent Spartan Consulting Group Pty Ltd (in liquidation) ACN 168

989 544 ACN

Thirty-Seventh Respondent Intrashield Pty Ltd (in liquidation) ACN 133 426 534

Thirty-Eighth Respondent Tesoriero Investment Group Pty Ltd ACN 161 088 115

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Thirty-Ninth Respondent Mangusta (Vic) Pty Ltd ACN 631 520 682

Fortieth Respondent 193 Carlisle Street Enterprises Pty Ltd ACN 612 615 237

Forty-First Respondent 8-12 Natalia Ave Oakleigh Pty Ltd ACN 643 838 626

Forty-Second Respondent lugis Hellas IKE

Forty-Third Respondent lugis Energy SA

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1 Executive Summary

We are seeking creditor approval for the Liquidators remuneration of \$511,930 (excluding GST) and disbursements of \$5,248 (excluding GST) for Forum Finance for the period from 9 July 2021 to 19 September 2021 and the Provisional Liquidators remuneration of \$2,848,126 (excluding GST) and disbursements of \$42 (excluding GST) for Forum Group Financial Services for the period from 15 July 2021 to 19 September 2021.

We estimate the total cost of the Forum Finance Liquidation will be \$750,000. This has increased from my previous estimate due to the following:

- the extent of investigations required to be undertaken is higher than expected; and
- the extent of reporting to creditors is greater than anticipated.

For the avoidance of doubt this report covers the period when we were appointed Liquidators of Forum Finance Pty Limited (Forum Finance) and Provisional Liquidators of Forum Group Financial Services Pty Ltd (FGFS). Remuneration for the Former Voluntary Administrators' of FGFS, Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones of Mackay Goodwin is detailed in the remuneration approval reports attached separately to the report to creditors dated 8 October 2021.

Please note that any defined terms in this report have the same meaning as those contained in the main body of the report to creditors dated 8 October 2021.

2 Declaration

We, Jason Preston and Jason Ireland of McGrathNicol have undertaken a proper assessment of this remuneration and disbursements claim in accordance with the law and applicable professional standards. We are satisfied that the remuneration and disbursements claimed is in respect of work properly performed in the conduct of these matters.

We have reviewed the work in progress (WIP) report for the liquidations to ensure that remuneration is only being claimed for necessary and proper work performed and have made the following adjustments as detailed below:

- Written off a total of \$342,844 from the recorded work in progress (WIP) (being 9.3% of the unreviewed time cost recorded) across FF and FGFS including:
 - general administrative matters including training, remuneration preparation and other non-chargeable time;
 - a portion of internal team project meetings on the basis that there is a large team working across the various concurrent workstreams required to support the appointments given their size and complexity;
 - time incurred by McGrathNicol employees who have undertaken less than 10 hours work across the liquidations to remove intermittent time and any perceived inefficiencies incurred;
 - time incurred by McGrathNicol employees who attended third party financers update calls, above a two partner limit;
 - time incurred by McGrathNicol employees who attended the public examinations for FGFS above a two partner and director limit; and
 - time incurred by McGrathNicol undergraduate employees to remove any perceived inefficiencies incurred by junior members of the team.
- A direct reallocation of WIP from one entity time code to another entity time code was undertaken to ensure that the WIP was recorded against the appropriate entity. This reallocation ensures that the work was properly performed on the appropriate matter. A material reallocation of WIP was undertaken for the following workstreams:
 - those tasks relating to the investigations (mostly forensic investigations) have been reallocated to FGFS
 on the basis that FGFS was the key entity where proceeds from the alleged fraud were initially directed
 and then applied; and



MADGWICKS LAWYERS

Minter Ellison Anthony Sommer Level 40 Governor Macquarie Tower 1 Farrer Place SYDNEY NSW 2000 Date: 29 October 2021 File No: 047678

Author: Melissa Passarelli

Partner: Sazz Nasimi Your Ref: 1353397

By email: anthony.sommer@minterellison.com; cailtin.murray@minterellison.com

Dear Mr Sommer

Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & ors Federal Court of Australia proceeding number NSD616/2021 (Proceedings)

We are responding to the consistent flow of letters originating from your office.

We find it somewhat disingenuous that your client expects responses from our office in circumstances where you have knowledge that we are not yet funded.

Furthermore, your client's actions to date in obstructing the release of the NAB funds is the primary reason as to why our client has not been able to fund his defence to your client's claim. In particular, we refer to:

- (a) your client's freezing order, which we believe encroaches well beyond any legitimate protection your client is entitled to; and
- (b) your correspondence to the NAB which, despite the carveouts allowed for under the freezing order, objected to our client being paid any sum of money for his living and legal expenses.

The manner in which your client has elected to run the present proceeding and deprive our client of the necessary funding he required, means that we are not yet in a position to respond to some of your correspondence.



T: +61 3 9242 4744 F: +61 3 9242 4777 E: madgwicks@madgwicks.com.au W: madgwicks.com.au



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We anticipate being in a position to advance our client's defence shortly and shall respond to you further in the coming days.

Yours faithfully MADGWICKS

Sazz Nasimi Partner

T: 03 9242 4741

E: Sazz.Nasimi@madgwicks.com.au

Liability limited by a scheme approved under Professional Standards Legislation

MinterEllison.

2 November 2021

BY EMAIL: Sazz.Nasimi@madqwicks.com.au

Sazz Nasimi Partner Madgwicks Lawyers Level 6, 140 William Street Melbourne VIC 3000

Dear Mr Nasimi

Westpac Banking Corporation & Anor v Forum Finance Pty Limited (in liquidation) & Ors Federal Court of Australia proceeding number NSD616/2021 (Proceedings)

Dear Mr Nasimi

We refer to:

- our email of 28 September 2021 at 8.26am (28 September Email);
- our letter of 28 October 2021 (28 October Letter). Unless otherwise defined, capitalised terms in this letter have the same meaning given in our 28 October Letter; and
- your letter of 29 October 2021 (Your Letter).

For at least the following the reasons below, our clients consider that the position stated in Your Letter is misplaced.

First, neither you nor your client can take a position that you are on the record in the Proceedings but will not respond to our correspondence related to the proceedings nor otherwise communicate with us in a meaningful way. On 22 September 2021, you filed a notice of acting for the third respondent, Vincenzo Frank Tesoriero (Mr Tesoriero) in the Proceedings, and accordingly have duties including those under s 37M and s 37N of the Federal Court of Australia Act 1976 (Cth) (Act). Alternatively, if your client will not or cannot secure funding for your services, then you can cease to act. What is impermissible is to take a position of refusing to engage while solicitor on the record.

Second, none of the issues raised in our 28 October Letter are new to your client. For example, we have been corresponding with Mr Christopher Nehme of Fortis Law, your client's former solicitor, about your client's intended sale of the Property since 11 August 2021. We have corresponded with you regarding the Property since 24 September 2021. As set out in our 28 October Letter, our clients are concerned that your client and the Company are in default of their obligations to our client under the Deed.

Third, the position stated in Your Letter is inconsistent with both our 28 September Email (which attached a copy of our letter dated 20 September 2021 to Dentons on behalf of National Australia Bank Limited) and the statements made to the Court by Senior Counsel for our clients during the hearing on 20 October 2021 regarding the freezing orders against Mr Tesoriero: see Transcript 20.10.21, 3-7. As you know, our client has consistently acknowledged the exception in the freezing orders regarding your client's reasonable legal expenses.

Fourth, the position taken in Your Letter is inconsistent with your client incurring costs in taking an active position in opposing the winding up application in relation to the PL Entities (as defined in the Orders dated 20 October 2021), as indicated in your letter of 27 October 2021 to us and Allens, the solicitors for the provisional liquidators of the PL Entities. It is therefore apparent that your client is currently securing your legal services, and on an ongoing basis, with respect to issues that he is currently prioritising.

Level 40 Governor Macquarie Tower 1 Farrer Place Sydney GPO Box 521 Sydney NSW 2001 Australia DX 117 Sydney T +61 2 9921 8888 F +61 2 9921 8123 minterellison.com In short, our clients consider that the position contended for in Your Letter is wrong and, whether intended or not, impermissibly delaying, specifically, the sale of the Property, and in contravention of your client's and the Company's obligations under the Deed, and more generally, the efficient conduct of the Proceedings.

Separately we are instructed that yesterday your client executed an agency agreement in relation to sale of the Property but has not taken other necessary steps including paying or securing the pre-marketing funding. Given that step and the matters above, our clients require your substantive response to our 28 October Letter by no later than 5.00pm (AEDT) Thursday 4 November 2021, failing which (as notified to you in our 28 October Letter) our clients may apply to the Court for appropriate orders at the hearing on 12 November 2021 including to enforce the Deed as against your client and the Company under s 22 or s 23 of the Act or that receivers be appointed to take possession of and sell the Property. Our clients intend to rely on this correspondence, together with our previous correspondence regarding this issue, on the question of whether your client and the Company should pay our clients' costs of such application on an indemnity basis.

All of our clients' rights are expressly reserved.

Yours faithfully MinterEllison

Contact: Anthony Sommer T: +61 2 9921 4182

anthony.sommer@minterellison.com Partner: Caitlin Murray T: +61 2 9921 4279

Minder Ellison

OUR REF: 1353397

Part 3.1 A - Reso ution 1 - Ca cu ation of Remuneration

			ORUM GRO	UP PTY LTD (Adı	ministrators	FORUM GROUP PTY LTD (Administrators Appointed) - Calculation of Remuneration	alculation o	f Remuneratio	u			
		For Remun	eration For t	the Preservation	n of Compan	For Remuneration For the Preservation of Company's Assets for the period 08 July 2021 to 22 July 2021	ne period 08	July 2021 to 2	2 July 2021			
		\$/hour	Total	Total				Task Area	Irea			
		(ex GST)	actual	(\$)	As	Assets	Tra	Trade On	Employees	yees	Administration	tration
Employee	Position		hours		hrs	\$	hrs	\$	hrs	\$	hrs	\$
Domenic Calabretta	Appointee	750	60.20	45,150.00	52.20	39,150.00	7.40	5,550 00	7.90	5,925.00	09:0	450.00
Grahame Ward	Appointee	750	42.00	31,500.00	33.50	25,125.00	8.50	6,375 00	2.00	1,500.00	•	•
Thyge Trafford-Jones	Appointee	750	45.60	34,200.00	10.90	8,175.00	34.70	26,025 00	0.30	225.00		
Mtchell Ball	Director	150	80.90	60,675.00	71.80	53,850.00	9.10	6,825 00	0.30	225.00		
Andrew Ngo	Director	929	0.20	135.00	-	-	0.20	135 00	2.30	1,552.50		1
Anthony Lucic	Consultant	929	26.00	17,550.00	26.00	17,550.00		-	-	-	٠	٠
Mchael Bouge	Consultant	929	14.70	9,922.50	14.70	9,922.50		-	1	-	•	•
Nelson Huang	Senior Manager	620	29.00	17,980.00	5.40	3,348.00	23.60	14,632 00		-		
Matthew Moldrich	Manager	525	1.80	945.00	0.40	210.00	1.40	735 00	13.80	7,245.00		•
Andrew Quinn	Manager	525	9.20	4,830.00	8.20	4,305.00	1.00	525 00		-	'	٠
Rachel Brown	Supervisor	480	2.50	1,200.00	0.50	240.00	1.80	864 00	-	-	0.20	96.00
Jack Michie	Supervisor	480	5.10	2,448.00	2.60	1,248.00	2.50	1,200 00	3.70	1,776.00		•
Lily Safa	Supervisor	480	42.90	20,592.00			42.90	20,592 00	0.40	192.00		•
Harrison Greaves	Senior Analyst 2	350	4.30	1,505.00	3.30	1,155.00	1.00	350 00	-	,		•
Christopher Knight	Senior Analyst 2	350	0.20	70.00	0.20	70.00		-	4.70	1,645.00		٠
Jordan Brittain	Senior Analyst 1	375	7.70	2,887.50	5.70	2,137.50	2.00	750 00				•
Katherine Hines	Analyst 1	290	11.30	3,277.00	1.50	435.00	9.80	2,842 00	1.60	464.00		,
Abby Xu	Analyst 1	290	25.60	,		1			06:0	261.00		•
Felix Bidwell	Analyst 2	270	8.50	2,295.00	8.50	2,295.00						
George Huxtable	Analyst 2	270	2.20	594.00	2.20	594.00						•
Nelson Wells	Analyst 2	270	7.30	1,971.00		-	7.30	1,971 00	-	-		1
Sasiw impl Surrliphan	Secretary	190	0.50	95.00	•		•		0.50	95.00		'
Wanida Sriraksa	Secretary	190	0.40	76.00	-			-	0.40	76.00		,
Wasumon Jaterujikan	Secretary	190	1.10	209.00					1.10	209.00		
TOTAL HOURS			441.50		247.60	169,810.00	153.20	89,371 00	39.90	21,390.50	0.80	546.00
TOTAL REMUNERATION				281,117.50								
GST				28,111.75								
TOTAL (Including GST)				309,229.25								