

IN THE FEDERAL COURT OF AUSTRALIA)
DISTRICT REGISTRY: VICTORIA)
DIVISION: CORPORATIONS)

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between

BRIAN SILVIA and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
Second Plaintiff

AFFIDAVIT OF MATTHEW JACOBS

I, **MATTHEW JACOBS**, of Level 30, Australia Square, 264 George Street, Sydney in the State of New South Wales, Chartered Accountant, make oath and say as follows:

1. **BRI Ferrier (NSW) Pty Ltd (BRI Ferrier)** employs me.
2. Peter Paul Krejci and Brian Raymond Silvia are:
 - (a) directors of **BRI Ferrier**; and
 - (b) deed administrators of, among others, **FEA Plantations Ltd** (subject to deed of company arrangement) (receivers appointed) (ACN 055 969 429) (**FEAP**).

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2172	Fax	(03) 9608 2222
Email	s.sawer@cornwalls.com.au		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		



[Form approved 01/08/2011]

3. I am authorised by Mr Krejci and Mr Silvia (together, the **Deed Administrators**) to make this affidavit and do so from my own knowledge.

Notice to creditors of FEAP

4. On 12 May 2010 and 17 May 2013, the Federal Court of Australia made orders to facilitate the giving of notice, and the provision of documents, to creditors of FEAP, including members of the 2002-2009 Schemes.
5. Annexed and marked '**MJ-1**' is a copy of the order made on 17 May 2013 by Kenny J in *Silvia, in the matter of FEA Plantations Ltd (subject to deed of company arrangement)* [2013] FCA 469 (**May 2013 Order**).

Notice of the plaintiffs' application filed on 12 November 2013

6. The Deed Administrators have used the May 2013 Order as a guide to how to give to members of the 2002-2009 Schemes notice of the plaintiffs' Originating Process filed on 12 November 2013 (the **Application**).
7. The following steps have been taken to give to members of the 2002-2009 Schemes (i.e. the schemes listed in Schedule 1 to the plaintiffs' Application) (**Scheme Members**) notice of the Application.
 - **Email notices**
8. On 15 November 2013, on behalf of the Deed Administrators, I caused notice of the Application to be sent to the personal email or electronic address of each Scheme Member for whom or which the Deed Administrators have a personal email or electronic address. The notice contained a link to the web site of BRI Ferrier – www.briferrier.com.au.
9. A notice of the kind referred to in paragraph 8 above was sent to 8,881 Scheme Members.
10. Annexed and marked '**MJ-2**' is an example of the notice referred to in paragraph 8 above.



- **Paper notices**

11. On 15 November 2013, on behalf of the Deed Administrators, I caused notice of the Application to be sent by ordinary pre-paid post to each Scheme Member for whom or which the Deed Administrators do not have a personal email or electronic address but do have a postal address.
12. A notice of the kind referred to in paragraph 11 above was sent to 1,894 Scheme Members.
13. Annexed and marked 'MJ-3' is a copy of the paper notice referred to in paragraph 11 above.

- **Email and paper notices**

14. In total, on 15 November 2013, notice of the Application was sent to more than 98.12% of all Scheme Members, as follows:

Scheme	Scheme Members whose address is unknown	Scheme Members given notice by email	Scheme Members given notice by post	% of Scheme Members given notice by email or post
2002	8	87	8	92.23%
2003	31	368	86	93.61%
2004	20	797	218	97.04%
2005	20	1509	307	98.91%
2006	31	1835	461	98.67%
2007	32	1472	313	98.24%
2008	60	2323	430	97.87%
2009	4	490	71	99.29%
TOTAL	206	8,881	1,894	98.12%

- **Scheme Members whose address is unknown**

15. From time to time since Mr Krejci and Mr Silvia were appointed administrators of FEAP on 14 April 2010, BRI Ferrier has sent letters and notices to Scheme



Members. Letters or notices addressed and sent to some Scheme Members have been returned to BRI Ferrier as unclaimed. A record of those Scheme Members has been made and retained. It is those Scheme Members to whom or which reference is made in the second column of the table in paragraph 14 above.

- **Web site publication**

16. On 15 November 2013, on behalf of the Deed Administrators, I caused copies of
 - (a) the Application;
 - (b) the affidavit made by Brian Raymond Silvia on 8 November 2013 (**Mr Silvia's affidavit**); and
 - (c) all of annexure BRS-1 to Mr Silvia's affidavit,to be posted on and made accessible in the 'Current Matters' section of BRI Ferrier's web site – www.briferrier.com.au.
17. The materials referred to in paragraph 16 above remain posted on and accessible at BRI Ferrier's web site.
18. Annexed and marked 'MJ-4' is a copy of a screen-shot taken from the relevant part of the 'Current Matters' section of BRI Ferrier's web site – www.briferrier.com.au – on 15 November 2013.

- **Newspaper advertisement**

19. On 22 November 2013, I caused to be published in the Legal Notices section of 'The Australian' newspaper an advertisement giving notice of the Application.
20. Annexed and marked 'MJ-5' is a copy of that publication.

Numbers of Scheme Members

21. The table in paragraph 37 of Mr Silvia's affidavit refers to a total of 13,603 Scheme Members. However, the table in paragraph 14 above refers to a total of 10,981 Scheme Members. The difference is due to the fact that 'joint holders' were counted separately for the purpose of Mr Silvia's affidavit whereas in my affidavit, and in the



table in paragraph 14 above, each group of 'joint holders' is counted as one Scheme Member.

Enquiries and communications from Scheme Members

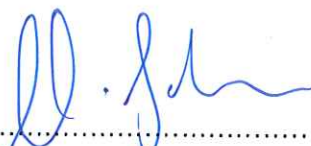
22. As at the date of this my affidavit, BRI Ferrier has not received from any Scheme Member(s) any enquiry or other communication in respect of the Application.

Notice to the FEA Growers Group Inc registration no. A0054610B' and others

23. In addition to the above, on 15 November 2013 on behalf of the Deed Administrators, I caused notice of the Application to be sent by email to Mr Rob Burns – the Chairman of FEA Growers Group Inc. (Victorian registered incorporated association no. A0054610B).
24. Also on 15 November 2013 on behalf of the Deed Administrators, I caused notice of the Application to be sent by email to:
- (a) the receivers appointed to property of FEAP (**Receivers**);
 - (b) the Receivers' solicitors, Maddocks; and
 - (c) the Receivers' appointor's solicitors, Henry Davis York.

Sworn by the said **MATTHEW JACOBS**)
at Sydney in the State of New South)
Wales this 22nd day of November 2013.)

Before me: 


.....
[Signature of person taking affidavit]

Name: **MATTHEW JACOBS**

Address: **Level 30, 264 George St, Sydney NSW 2000**

Capacity of person taking affidavit: **Accountant**

LUCIA ANTOINETTE VECCHIO

An Australian Legal Practitioner

Under the Legal Profession Act 2004 (NSW) number 38639

Level 30, Australia Square, 264 George Street, Sydney

IN THE FEDERAL COURT OF AUSTRALIA)
DISTRICT REGISTRY: VICTORIA)
DIVISION: CORPORATIONS)

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between


BRIAN SILVIA and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
Second Plaintiff

ANNEXURE 'MJ-1'

This is the annexure marked with the letters 'MJ-1' referred to in the affidavit of **MATTHEW JACOBS** sworn before me this 22nd day of November 2013.

Before me:



.....

LUCIA ANTOINETTE VECCHIO

An Australian Legal Practitioner

Under the Legal Profession Act 2004 (NSW) number 22

Level 30, Australia Square, 264 George Street, ..

Filed on behalf of (name & role of party)	The Plaintiffs	Ref	SPS:1027767
Prepared by (name of person/lawyer)	Stephen Sawer		
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2172	Fax	(03) 9608 2222
Email	s.sawer@cornwalls.com.au		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

[Form approved 01/08/2011]

FEDERAL COURT OF AUSTRALIA

Silvia, in the matter of FEA Plantations Ltd (Administrators Appointed) [2013]

FCA 469

Citation: Silvia, in the matter of FEA Plantations Ltd
(Administrators Appointed) [2013] FCA 469

Parties: **BRIAN RAYMOND SILVIA AND PETER PAUL
KREJCI IN THEIR CAPACITY AS DEED
ADMINISTRATORS OF FEA PLANTATIONS LTD
(ACN 055 969 429) (SUBJECT TO DEED OF
COMPANY ARRANGEMENT) (RECEIVERS
APPOINTED) AND FOREST ENTERPRISES
AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO
DEED OF COMPANY ARRANGEMENT
(RECEIVERS AND MANAGERS APPOINTED), FEA
PLANTATIONS (ACN 005 969 429) (SUBJECT TO
DEED OF COMPANY ARRANGEMENT)
(RECEIVERS APPOINTED) and FOREST
ENTERPRISES AUSTRALIA LTD (ACN 009 553 548)
(SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (RECEIVERS AND MANAGERS
APPOINTED)**

File number: VID 369 of 2013

Judge: **KENNY J**

Date of judgment: 17 May 2013

Catchwords: **CORPORATIONS** – Application to vary Deeds of
Company Arrangement pursuant to s 447A of the
Corporations Act 2001 (Cth).

Legislation: *Corporations Act 2001* (Cth)

Cases cited: *Memory Limited v Brien* (2000) 200 CLR 270
Re GIGA Investments Pty Ltd (in liquidation) (1995) 17
ACSR 547
Milankov Nominees Pty Ltd v Roycol Ltd (1994) 52 FCR
378
Mulvaney v Rob Wintulich Pty Ltd (1995) 60 FCR 81
*Re Paradox Digital Pty Ltd; ex parte Vincent Anthony
Smith & Anor* [2001] WASC 182
*Re Ansett Australia Ltd; Korda v Ansett Australia Ground
Staff Superannuation Plan Pty Ltd & Anor* (2002) 41

ACSR 598
Re Pasmenco Ltd (No 2) (2004) 49 ACSR 470
*Silvia, in the matter of FEA Plantations Ltd (Administrator
Appointed)* [2010] FCA 468

Date of hearing: 17 May 2013

Place: Melbourne

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 21

Counsel for the Plaintiffs: A P Young with V M Priskich

Solicitor for the Plaintiffs: DLA Piper Australia

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

VID 369 of 2013

IN THE MATTER OF FEA PLANTATIONS LTD (ACN 005 969 429) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED) AND FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)

BETWEEN: BRIAN RAYMOND SILVIA AND PETER PAUL KREJCI IN THEIR CAPACITY AS DEED ADMINISTRATORS OF FEA PLANTATIONS LTD (ACN 055 969 429) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED) AND FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)
First Plaintiff

FEA PLANTATIONS LTD (ACN 005 969 429) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED)
Second Plaintiff

FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)
Third Plaintiff

JUDGE: KENNY J
DATE OF ORDER: 17 MAY 2013
WHERE MADE: MELBOURNE

THE COURT ORDERS THAT:

1. Pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) ('Act'), Part 5.3A of the Act is to operate in relation to the second plaintiff, FEA Plantations Ltd (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed) ('FEAP'), in such a way as to empower the Court to vary the deed of company arrangement dated 14 December 2010 between FEAP and the deed administrators, Brian Raymond Silvia and Peter Paul Krejci ('FEAP DOCA').

2. Clause 3.1.5 of the FEAP DOCA is varied by deleting clause 3.1.5 and substituting therefor the following:

“3.1.5 On 22 June 2013 unless prior to that time the deed is further extended by court order or the Creditors have resolved to extend the Deed pursuant to a meeting of creditors convened pursuant to s 445F of the Act.”

3. Pursuant to s 447A(1) of the Act, Part 5.3A of the Act is to operate in relation to the third plaintiff, Forest Enterprises Australia Ltd (ACN 009 553 548) (subject to deed of company arrangement) (receivers and managers appointed) (‘FEA’), in such a way as to empower the Court to vary the deed of company arrangement dated 14 December 2010 between FEA and the deed administrators, Brian Raymond Silvia and Peter Paul Krejci (‘FEA DOCA’).

4. Clause 3.1.5 of the FEA DOCA is varied by deleting clause 3.1.5 and substituting therefor the following:

“3.1.5 On 22 June 2013 unless prior to that time the deed is further extended by court order or the Creditors have resolved to extend the Deed pursuant to a meeting of creditors convened pursuant to s 445F of the Act.”

5. An order pursuant to s 477A(1) of the Act that Part 5.3A of the Act is to operate in relation to the second plaintiff, FEAP, and the third plaintiff, FEA, as if its provisions permitting notice of any future meeting of creditors (‘Notice’) and any other documents (‘Documents’) is to be given to creditors of the company by:

- 5.1 not less than 5 business days before the meeting, sending the Notice to the personal electronic address of each creditor of the company who has requested that the deed administrators communicate with her, him or it by electronic means;
- 5.2 not less than 5 business days before the meeting, sending the Notice to the personal electronic address of each creditor of the company, for whom or which the deed administrators have a personal electronic address, by electronic means;

- 5.3 not less than 5 business days before the meeting, sending a paper copy of the Notice to all known creditors of the company to whom or which no notification is sent pursuant to sub-paragraphs 5.1 or 5.2 of this Order, along with a statement that the Documents are available on the deed administrators' website, www.briferrier.com.au, and on the third plaintiff's website, www.fealtd.com; and
- 5.4 causing a notice to be published in a national newspaper (at least 5 business days before the meeting of creditors) providing:
 - 5.4.1 notice of the date, time and location of the meeting of creditors;
 - 5.4.2 notice that the Documents are available on the deed administrators' website, www.briferrier.com.au, and on the third plaintiff's website, www.fealtd.com; and
 - 5.4.3 details of a telephone hotline number by which any creditor may contact the deed administrators to request a paper or electronic copy of the Documents.
6. An order that the costs and expenses of this application be costs and expenses in the deed administration of FEAP and FEA.

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

VID 369 of 2013

IN THE MATTER OF FEA PLANTATIONS LTD (ACN 005 969 429) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED) AND FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)

BETWEEN: BRIAN RAYMOND SILVIA AND PETER PAUL KREJCI IN THEIR CAPACITY AS DEED ADMINISTRATORS OF FEA PLANTATIONS LTD (ACN 055 969 429) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED) AND FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)
First Plaintiff

FEA PLANTATIONS LTD (ACN 005 969 429) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED)
Second Plaintiff

FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)
Third Plaintiff

JUDGE: KENNY J
DATE: 17 MAY 2013
PLACE: MELBOURNE

REASONS FOR JUDGMENT

1 The plaintiffs seek orders pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) ('Act'), principally, to vary the deed of company arrangement of:

- (a) the second plaintiff, FEA Plantations Ltd ('FEAP'), dated 14 December 2010; and
- (b) the third plaintiff, Forest Enterprises Australia Ltd ('FEA') dated 14 December 2010 (collectively referred to as the 'Deeds of Company Arrangement').

2 The variation proposed to the Deeds of Company Arrangement is to amend the termination dates to 22 June 2013 from 31 May 2013.

3 In addition to orders for variation of the termination dates in the Deeds of Company Arrangement, the first plaintiffs, as the deed administrators, seek orders concerning the method of giving notice to creditors of FEAP and FEA regarding future creditors' meetings.

4 In support of their application the plaintiffs relied upon:

- (a) the affidavit sworn by Philip Hanley Armstrong on 15 May 2013;
- (b) the affidavit sworn by Mark Bland on 15 May 2013; and
- (c) the two affidavits sworn by Stephen Sawyer on 16 May 2013.

BACKGROUND

5 The first plaintiffs are the deed administrators of FEAP and FEA and were appointed on 14 April 2010. On the same day receivers were appointed to FEA and FEAP by ANZ Fiduciary Services Pty Ltd.

6 FEA is the parent company within the FEA group and wholly owns FEAP. FEAP is the responsible entity of 17 forestry managed investment schemes.

7 A different managed investment scheme was established for each year from 1993 to 2009 inclusive. The schemes have a total of 14,068 members, who are known as 'Growers'. The schemes occupy approximately 76,000 hectares of land across Tasmania, New South Wales and Queensland. The trees planted in the 1993 and 1994 schemes have already been harvested. The trees planted in the 1995 to 2009 schemes have not yet been harvested. Generally speaking, the value of the trees increases as they grow and mature.

8 The creditors of FEA and FEAP are:

- (a) the 14,068 Growers, who by number are the largest group of ordinary unsecured creditors, and are admitted under the Deeds of Company Arrangement as contingent unsecured creditors.

- (b) 327 ordinary unsecured creditors (FEA) and 296 ordinary unsecured creditors (FEAP). Those creditors are primarily trade and leasehold creditors.
- (c) Commonwealth Bank of Australia ('CBA') and Australia and New Zealand Banking Group Limited ('ANZ'), who are secured creditors.

9 The total value of creditors' claims is approximately \$833,105,000.

10 The creditors of FEA and FEAP have appointed Committees of Inspection under the Deeds of Company Arrangement.

11 Over the last 7 months CBA and ANZ have engaged in without prejudice negotiations with the deed administrators to resolve a dispute which is currently before the Supreme Court of Victoria and in respect of all future claims concerning the land used in the schemes.

12 The deed administrators, CBA and ANZ are very close to finalising the terms of a proposed settlement agreement. The settlement agreement will consist of an Implementation Deed and new deeds of company arrangement for each of FEAP and FEA.

13 The Implementation Deed must be executed before creditors meetings can be convened to vote on the adoption of the new deeds of company arrangement. Although there remain some outstanding matters to resolve, it is anticipated that the Implementation Deed and the new deeds of company arrangement will be finalised and, so far as necessary, executed within the next two weeks. It is anticipated that the terms of the proposal will not be finalised in time to put to the vote of creditors on or before 31 May 2013, but will be finalised in time to put to a vote of creditors before 22 June 2013.

CONSIDERATION

14 Section 445A of the Act provides that deeds of company arrangement may be varied by a resolution of creditors passed at a creditors' meeting. However, s 447A(1) of the Act gives the Court power to alter the operation of Part 5.3A of the Act as it operates in relation to a particular company. Section 447A has been held to confer wide discretionary power in this regard: see *Memory Limited v Brien* (2000) 200 CLR 270 at 280 [20] - 281 [24] per Gleeson CJ, McHugh, Gummow, Hayne & Callinan JJ; *Re GIGA Investments Pty Ltd* (in

liquidation) (1995) 17 ACSR 547 at 549 per Branson J; *Milankov Nominees Pty Ltd v Roycol Ltd* (1994) 52 FCR 378 at 383 per Lee J.

15 The Court has a well-established power to vary deeds of company arrangement pursuant to s 447A(1). The power conferred by s 447A(1) is not subject to limitations found in other sections within Part 5.3A of the Act. Relevantly, s 447A(1) of the Act grants power to the Court to alter the operation of s 445A (or any other section in Part 5.3A) thereby empowering the Court to itself vary a deed of company arrangement: *Milankov Nominees Pty Ltd v Roycol Ltd* (1994) 52 FCR 378 at 383 per Lee J; *Mulvaney v Rob Wintulich Pty Ltd* (1995) 60 FCR 81 at 83 per Branson J; *Re Paradox Digital Pty Ltd; ex parte Vincent Anthony Smith & Anor* [2001] WASC 182 [13]-[15] per Owen J; *Re Ansett Australia Ltd; Korda v Ansett Australia Ground Staff Superannuation Plan Pty Ltd & Anor* (2002) 41 ACSR 598, 602 [17]-[20] and 604 [26] per Warren J; *Re Pasmenco Ltd (No 2)* (2004) 49 ACSR 470, 481 [35] per Finkelstein J.

16 In the present case, the evidence establishes that:

- (a) It will be difficult to convene meetings of creditors of FEA and FEAP to occur on or before 31 May 2013.
- (b) In the event that it is not possible to convene creditors' meetings to extend the Deeds of Company Arrangement on or before 31 May 2013, FEAP and FEA would enter into liquidation. That outcome would be detrimental to the Growers because it is unlikely that they would receive any return in relation to those trees which have matured and are ready for harvest.
- (c) If the meetings could be convened on or before 31 May 2013 they will only be to extend the Deeds of Company Arrangement until new deeds of company arrangement can be presented to creditors. It is inevitable that another meeting would need to be convened to vote on those new deeds of company arrangement. That meeting is expected to occur before 22 June 2013, that is, within no more than 22 days of any meeting of creditors to vary the Deeds of Company Arrangement. It is costly to convene creditors' meetings, with the anticipated costs being in the order of \$60,000 to \$80,000. Thus, even if creditors' meetings can be convened prior to 31 May 2013, the costs of doing so will adversely affect unsecured creditors by reducing the available pool of funds for distribution.

- (d) The nature of the variation proposed to be made to the Deeds of Company Arrangement is simple and merely involves extending the operation of the Deeds of Company Arrangement by changing the termination date in clause 3.1.5 of the Deeds of Company Arrangement.
- (e) Although the variation to the termination date is itself simple, a number of meetings within a short space of one another may cause confusion to the Growers, or at least cause inconvenience and expense in travelling to Tasmania twice within 22 days if creditors choose to attend the meetings.
- (f) The variation does not adversely affect the interests of creditors. Conversely, the variation is in the interests of creditors because it will allow time for the negotiations between the deed administrators and CBA and ANZ to be finalised; and all new deeds of company arrangement to be put to a vote at creditors' meetings. The terms of the new deeds of company arrangement are expected to benefit creditors, particularly the Growers.
- (g) The plaintiffs' application is supported by representative growers joined in the Supreme Court proceeding and by members of the Committee of Creditors of FEA and FEAP.
- (h) The receivers of FEAP and the receivers and managers of FEA, the CBA and ANZ have all indicated that they know of and do not oppose the plaintiffs' application.

17 These factors favour the exercise of the Court's discretion under s 477A(1) to vary the Deeds of Company Arrangement. There would not appear to be any significant countervailing factors. Accordingly, the Court should, in exercise of its discretion, make the orders sought, to vary the Deeds of Company Arrangement, so that 22 June 2013 is substituted for 31 May 2013 as the termination date.

18 The plaintiffs also seek orders pursuant to s 447A(1) to vary the operation of Part 5.3A of the Act regarding the method by which notice is given to creditors for creditors' meetings.

19 The orders proposed today seek to notify creditors individually by email, for those creditors that have requested the deed administrators to communicate with them by email. That method of communication already applies pursuant to s 445F(2) of the Act (when read

with s 600G) to creditors' meetings convened to vary a deed of company arrangement. Further, it is proposed that the deed administrators communicate with creditors by email for those creditors for whom the deed administrators have a personal email address (whether or not the creditor has requested the deeds administrators to communicate with her, him or it by email). In the case of other known creditors, there is to be a paper notice sent, accompanied by a statement that documents are available on the deed administrators' website. In addition, it is proposed that a notice be published in a national newspaper. Similar measures were approved in *Silvia, in the matter of FEA Plantations Ltd (Administrator Appointed)* [2010] FCA 468.

20 The proposed orders will substantially reduce the cost of notifying the very large number of creditors of future creditors' meetings, including a creditors' meeting to vote on the new deeds of company arrangement anticipated to occur before 22 June 2013, in an appropriate fashion. I would, therefore, make the orders sought.

21 I would also order that the costs of the plaintiffs' application be costs and expenses in the deed administration.

I certify that the preceding twenty-one (21) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Kenny.

Associate:

Dated: 17 May 2013

IN THE FEDERAL COURT OF AUSTRALIA)
DISTRICT REGISTRY: VICTORIA)
DIVISION: CORPORATIONS)

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between

BRIAN SILVIA and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

Second Plaintiff

ANNEXURE 'MJ-2'

This is the annexure marked with the letters 'MJ-2' referred to in the affidavit of **MATTHEW JACOBS** sworn before me this 22nd day of November 2013.

Before me:



LUCIA ANTOINETTE VECCHIO

An Australian Legal Practitioner

*Under the Legal Profession Act 2004 (NSW) number 38639
Level 30, Australia Square, 264 George Street, Sydney*

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2172	Fax	(03) 9608 2222
Email	s.sawer@cornwalls.com.au		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

[Form approved 01/08/2011]

Sharon Noorman

From: fea [fea@briferriernsw.com.au]
Sent: Friday, 15 November 2013 4:02 PM
To: fea
Subject: FEAP - Notice to Growers in the 2002 to 2009 Schemes

**FEA PLANTATIONS LIMITED
(SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED) ("FEAP")
ACN 055 969 429**

Dear Grower

Please take the following steps to access the Circular to Growers in the Schemes 2002 -2009 dated 15 November 2013.

1. Go to the BRI Ferrier website (<http://briferrier.com.au/current-matters/?page=3>);
2. Click on "Forest Enterprises Australia Group of Companies";
3. Click "I adopt";
4. Click on the Report titled "Circular to Growers in the 2002 to 2009 Schemes" dated 15 November 2013.

Kind regards
FEA Team



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IN THE FEDERAL COURT OF AUSTRALIA)
DISTRICT REGISTRY: VICTORIA)
DIVISION: CORPORATIONS)

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between

BRIAN SILVIA and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

Second Plaintiff

ANNEXURE 'MJ-3'

This is the annexure marked with the letters 'MJ-3' referred to in the affidavit of **MATTHEW JACOBS** sworn before me this 22nd day of November 2013.

Before me:



LUCIA ANTOINETTE VECCHIO

An Australian Legal Practitioner

Under the Legal Profession Act 2004 (NSW) number 38639

Level 30, Australia Square, 264 George Street, Sydney

Filed on behalf of (name & role of party)	The Plaintiffs	Ref	SPS:1027767
Prepared by (name of person/lawyer)	Stephen Sawer		
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2172	Fax	(03) 9608 2222
Email	s.sawer@cornwalls.com.au		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

[Form approved 01/08/2011]

15 November 2013

CIRCULAR TO GROWERS IN THE 2002 - 2009 SCHEMES

Dear Sir or Madam

FEA PLANTATIONS LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED) ("FEAP")
ACN 055 969 429

FOREST ENTERPRISES AUSTRALIA LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED) ("FEA")
ACN 055 009 553 548

As referred to in the FEA and FEAP 445F Creditors Report dated 21 October 2013, the Deed Administrators have assessed that FEAP Schemes 2002-2009 are not, on current projections, viable or likely to become so.

Under the Settlement Proposal and the Implementation Deed, Growers in these Schemes will be admitted as claimants on a fund to be established under the FEA Further Amended DOCA referred to as Pool B. Pool B will comprise:

- Trees in the Schemes 1995-2001 owned by FEA
- A contribution from the Timberlands Trust Fund (but under a One Line Sale only)
- Any proceeds recovered by the Deed Administrators from the sale of the FEA Corporate Shell
- Amounts to be paid by the 1995-2001 Schemes in respect of costs incurred for the common benefit of those schemes and these schemes between 2010 and the Operative Date
- Amounts to be recouped from remaining assets of FEAP, including some outstanding Grower Contributions

A requisite milestone to allow the Settlement Proposal to proceed, is that the 2002-2009 Schemes be wound up. An application is being made to the Federal Court of Melbourne on 26 November 2013 by the Deed Administrators of FEAP.

Ferrier (Chairman) | Silvia | Krejci | Resnick | Cummins | Green (consultant) | Hodgson (consultant)

BRI Ferrier (NSW) Pty Ltd Chartered Accountants ABN 97 128 947 848
Trading as BRI Ferrier ABN 59 212 882 443

Level 30, Australia Square, 264 George Street, Sydney NSW 2000 GPO Box 7079, Sydney NSW 2001
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A copy of the application and supporting affidavit of Brian Silvia together with exhibit BRS -1 is posted on the BRI Ferrier website www.briferrier.com.au. The other exhibit - BRS -2 is a confidential exhibit & is not available.

In summary the orders sought from the court include orders that each of the schemes be wound up & that the constitutions of each of the schemes be amended to allow leases and/or forestry rights to be extinguished so as to enable an unencumbered sale of the FEA Group owned land occupied by the schemes.

Any enquiries ought be directed to the FEA Team at BRI Ferrier on (02) 8263 2300. You also ought be aware that Mills Oakley, instructed by the FEA Growers Group has been served with the material & enquiries can also be directed to that firm.

Yours faithfully

FEA PLANTATIONS LIMITED

(SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED)



BRIAN SILVIA

Joint and Several Deed Administrator

IN THE FEDERAL COURT OF AUSTRALIA)
DISTRICT REGISTRY: VICTORIA)
DIVISION: CORPORATIONS)

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between

BRIAN SILVIA and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
Second Plaintiff

ANNEXURE 'MJ-4'

This is the annexure marked with the letters 'MJ-4' referred to in the affidavit of **MATTHEW JACOBS** sworn before me this 22nd day of November 2013.

Before me:



LUCIA ANTOINETTE VECCHIO

An Australian Legal Practitioner

Under the Legal Profession Act 2004 (NSW) number 38639

Level 30, Australia Square, 264 George Street, Sydney

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawyer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2172	Fax	(03) 9608 2222
Email	s.sawer@cornwalls.com.au		
Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000		

[Form approved 01/08/2011]

IN THE FEDERAL COURT OF AUSTRALIA)
DISTRICT REGISTRY: VICTORIA)
DIVISION: CORPORATIONS)

No. VID 1157 of 2013

IN THE MATTER OF **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)

AND IN THE MATTER OF **AUSTRALIAN FORESTS PROJECT 2002** (ARSN 099 656 429) and other schemes

Between

BRIAN SILVIA and **PETER KREJCI** as deed administrators of **FEA PLANTATIONS LTD** (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
First Plaintiffs

FEA PLANTATIONS LTD (ACN 055 969 429) (subject to deed of company arrangement) (receivers appointed)
Second Plaintiff

ANNEXURE 'MJ-5'

This is the annexure marked with the letters '**MJ-5**' referred to in the affidavit of **MATTHEW JACOBS** sworn before me this 22nd day of November 2013.

Before me:



LUCIA ANTOINETTE VECCHIO

An Australian Legal Practitioner

Under the Legal Profession Act 2004 (NSW) number 38639

Level 30, Australia Square, 264 George Street, Sydney

Filed on behalf of (name & role of party)	The Plaintiffs		
Prepared by (name of person/lawyer)	Stephen Sawyer	Ref	SPS:1027767
Law firm (if applicable)	Cornwall Stodart		
Tel	(03) 9608 2172	Fax	(03) 9608 2222
Email	s.sawer@cornwalls.com.au		

Address for service (include State and postcode)	Cornwall Stodart Level 10 114 William St Melbourne VIC 3000
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[Form approved 01/08/2011]

Company Notices

FEA PLANTATIONS LIMITED

(Subject to Deed of Company Arrangement)
(Receivers Appointed) (FEAP) ACN 655 969 429

As referred to in the FEA and FEAP 445F Creditors Report dated 21 October 2013, the Deed Administrators of FEAP have assessed that FEAP Schemes 2002-2009 are not, on current projections, viable or likely to become so.

- (a) the Australian Forests Project 2002 (ARSN 093 656 381) (2002 Scheme)
- (b) the Forest Enterprises Plantation Project 2003 (ARSN 104 311 633) (2003 Scheme)
- (c) the FEA Plantations Project 2004 (ARSN 108 148 198) (2004 Scheme)
- (d) the FEA Plantations Project 2005 (ARSN 113 195 583) (2005 Scheme)
- (e) the FEA Plantations Project 2006 (ARSN 119 069 591) (2006 Scheme)
- (f) the FEA Plantations Project 2007 (ARSN 125 108 063) (2007 Scheme)
- (g) the FEA Plantations Project 2008 (ARSN 129 750 296) (2008 Scheme)
- (h) the FEA Plantations Project 2009 (ARSN 136 438 616) (2009 Scheme)

Under the Settlement Proposal and the Implementation Deed, Growers in these Schemes will be admitted as claimants on a fund to be established under the FEA Further Amended DOCA referred to as Pool B. Pool B will comprise:

- ▶ Trees in the Schemes 1995-2001 owned by FEA
- ▶ A contribution from the Timberlands Trust Fund (but under a One Line Sale only)
- ▶ Any proceeds recovered by the Deed Administrators from the sale of the FEA Corporation Shell
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A requisite milestone to allow the Settlement Proposal to proceed, is that the 2002-2009 Schemes be wound up. An application is being made to the Federal Court of Melbourne on 26 November 2013 by the Deed Administrators of FEAP.

A copy of the application and supporting affidavit of Brian Silvia together with exhibits BRS-1 is posted on the BRI Ferrier website www.brierrier.com.au. The other exhibit BRS-2 is a confidential exhibit and is not available.

In summary the orders sought from the court include orders that each of the schemes be wound up and that the constitutions of each of the schemes be amended to allow leases and/or forestry rights to be extinguished so as to enable an unencumbered sale of the FEA Group owned land occupied by the schemes.

Any enquiries ought be directed to the FEA Team at BRI Ferrier on (02) 8263 2300. You also ought be aware that Mills Oakley, instructed by the FEA Growers Group has been served with the material and enquiries can also be directed to that firm on telephone (03) 9570 9111.

Dated 20 November 2013

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