

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 1076/17

Plaintiff

**KORDAMENTHA PTY LTD (ACN
100 169 391) IN ITS CAPACITY AS
TRUSTEE OF THE LM MANAGED
PERFORMANCE FUND**

AND

Defendant:

**LM INVESTMENT MANAGEMENT
LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN
LIQUIDATION) (ACN 077 208 461)**

AFFIDAVIT

JARROD VILLANI of Level 14, 12 Creek Street, Brisbane, Queensland, chartered
accountant, states on oath:

Introduction

1. I am a partner and authorised officer of KordaMentha, the accounting firm
representing KordaMentha Pty Ltd ("**Trustee**") the trustee of LM Managed
Performance Fund ("**MPF**").

Signed:  Page 1 Taken by: 

AFFIDAVIT OF JARROD VILLANI

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 Brisbane

Filed on behalf of the Plaintiff

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference DOB 1109005

Form 46 Rules 431, 120(1)(b)

2. I am duly authorised by Messrs Korda and Mentha, the directors of the Trustee, to swear this affidavit on its behalf.
3. This affidavit is sworn in support of the application filed in this proceeding on 8 November 2018 (Court File Index number ('CFI') 9) ("**S 96 Application**") by the Trustee for directions pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**") as to whether the Trustee would be justified in discontinuing this proceeding against LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461).

Upload to the Website

4. The Trustee's records show that at approximately 2pm on 22 November 2018, a PDF copy of each of the following documents was uploaded to a website whose address is <http://www.kordamentha.com/creditor-information/australia/109> ("**Website**") conducted by the Trustee:
 - (a) the Claim and Statement of Claim filed on 6 February 2017 (CFI 1);
 - (b) the affidavit of Jarrod Villani sworn and filed on 24 January 2018 (CFI 3);
 - (c) the affidavit of David Thomas O'Brien sworn and filed on 31 January 2018 (CFI 4);
 - (d) the order of the Honourable Justice Atkinson made on 1 February 2018, granting leave to proceed against a company in liquidation (CFI 7);
 - (e) the S 96 Application filed on 8 November 2018 (CFI 9);
 - (f) the application for directions about service filed on 8 November 2018 (CFI 8);
 - (g) the affidavit of Jarrod Villani sworn and filed on 14 November 2018 (CFI 10);
 - (h) the affidavit of David Thomas O'Brien sworn and filed on 15 November 2018 (CFI 11);
 - (i) the order of the Honourable Justice Applegarth made on 20 November 2018, regarding service (CFI 13); and

Signed: 

Page 2

Taken by: 

- (j) the Statement of Facts drawn pursuant to s 96(1) of the *Trusts Act 1973* (Qld) and filed on 22 November 2018 (CFI 14).
5. Exhibit 'JV-1' is a copy of the relevant page of the Trustee's Website printed on 17 December 2018.
6. At approximately 2.36pm on 22 November 2018, the Trustee sent by email ("**Email**") to each of the unitholders at the email address held by the Trustee for them, a notice informing them, among other things, that:
- (a) the Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs;
 - (b) as a consequence the Trustee has formed the view that proceeding BS1076/17 ought be discontinued if this Honourable Court so directs;
 - (c) the Trustee has applied to this Honourable Court for directions that it would be justified in discontinuing proceeding BS1076/17; and
 - (d) certain Court documents relating to the application for a direction to discontinue had been uploaded to the Website.
7. Exhibit 'JV-2' is a copy of the Email that was sent by the Trustee at approximately 2.36pm on 22 November 2018, to each of the unitholders on the Email mail-out list.
8. On 22 November 2018, a copy of the Email was sent by pre-paid post to 546 separate addresses, covering unitholders from whom an undeliverable response to a previous email had been received and for whom the Trustee held a postal address. Where a postal address relates to multiple unitholder accounts, only one letter was sent to the postal address.
9. On 26 November 2018, a copy of the Email was sent by pre-paid post to an additional 424 unitholders from whom an undeliverable address response to the Email was received. Where a postal address relates to multiple unitholder accounts, only one letter was sent to the postal address.

Signed:  Page 3 Taken by: 

10. The Trustee has so far received 11 substantive responses to its Email notification of 22 November 2018. Exhibit 'JV-3' is a copy of those responses.
11. No unitholder has offered to fund these proceedings.
12. The Trustee will bring any further substantive responses from unitholders to the attention of the Court at the hearing of the S 96 Application.

Current Estimate

13. I seek leave to refer to that Statement of Facts filed in this proceeding on 22 November 2018 (CFI 15).
14. In paragraph 103 of the Statement of Facts an estimate is given of the Trustee's costs of defending proceeding BS12317/14. That estimate was based on the assumption that the trial in BS12317/14 would be of four weeks duration. At a directions hearing on 14 December 2018 in proceeding BS12317/14, the Honourable Justice Jackson set down the trial in that proceeding for two weeks commencing on 1 April 2019.
15. I am informed by David O'Brien of MinterEllison and believe that his current estimate to bring the Trustee's defence of BS12317/14 to the conclusion of a two week trial is between \$480,000 and \$630,000 exclusive of GST.
16. Based on the estimate in paragraph 103 of the Statement of Facts, the Trustee in paragraph 106 of the Statement of Facts expresses the opinion that "it cannot fund the prosecution of the proceeding [BS1076/17] out of the Trustee's own resources whilst also defending the FMIF Proceeding [BS12317/14]."
17. Notwithstanding Mr O'Brien's lower estimate, the Trustee remains of the same view as that expressed in paragraph 106 of the Statement of Facts. That is, the Trustee has insufficient financial capacity to both prosecute this proceeding BS1076/17 and defend the FMIF proceeding BS12317/14.

Signed: 

Page 4

Taken by: 

18. All the facts and circumstances deposed to in this affidavit are within my own knowledge except where they have been deposed to from information only and my means of knowledge and sources of information appear in my affidavit.

SWORN by JARROD VILLANI on 17 December 2018

at Brisbane

in the presence of:


Deponent

 *Claire Davies*
Solicitor/Commissioner for
~~Declarations/Justice of the Peace~~

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 1076/17

Plaintiff **KORDAMENTHA PTY LTD (ACN 100 169
391) IN ITS CAPACITY AS TRUSTEE OF
THE LM MANAGED PERFORMANCE
FUND**

AND

Defendant: **LM INVESTMENT MANAGEMENT
LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) (ACN 077
208 461)**

CERTIFICATE OF EXHIBIT

Exhibit **JV-1 to JV-3** to the affidavit of JARROD VILLANI sworn on 17 December 2018.


Deponent


~~Solicitor/Commissioner for~~
~~Declarations/Justice of the Peace~~

CERTIFICATE OF EXHIBITS

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 Brisbane

Filed on behalf of the Plaintiff

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference DOB 1109005

Form 47 Rule 435

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 1076/17

Plaintiff

KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS CAPACITY AS TRUSTEE OF THE LM MANAGED PERFORMANCE FUND

AND

Defendant:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 077 208 461)

LIST OF EXHIBITS

Exhibit	Document	Pages
JV-1	Trustee's Website page as at 17 December 2018	1-5
JV-2	Trustee's notice to unitholders dated 22 November 2018	6-7
JV-3	Eleven responses from unitholders to the Trustee's notice dated 22 November 2018	8-85

LIST OF EXHIBITS

Filed on behalf of the Plaintiff

Form 46 Rules 431, 120(1)(b)

ME_155506124_1

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE

Telephone (07) 3119 6000
Facsimile (07) 6119 1000
Email david.obrien
@minterellison.com
Reference DOB 1109005

"JV-1"

10:24 am Mon 17 Dec

100%



kordamentha.com



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LM Managed Performance Fund

Company Name

LM Managed Performance Fund (ABN: 95 595 833 174)

Type of Appointment

Voluntary Administration

Date of Appointment

12 April 2013

Appointees

Mark Korda

Background Information

KordaMentha and its affiliated firm Calibre Capital were appointed Trustee of the Fund on 12 April 2013.

Appointment Contacts

Brisbane

Level 14, 12 Creek Street,
Brisbane QLD

Background Information

KordaMentha and its affiliated firm Calibre Capital were appointed Trustee of the Fund on 12 April 2013.

LM Managed Performance Fund is a Trust that was previously operated by LM Investment Management Limited ('LMIL').

John Park and Ginette Muller of FTI Consulting were on 19 March 2013 appointed as Joint and Several Voluntary Administrators of LMIL. However, in Brisbane on 12 April 2013, the Supreme Court of Queensland removed and replaced LMIL as Trustee of the Fund.

On 5 January 2015, Calibre Capital Limited retired as co-trustee of the Fund. KordaMentha is now sole-trustee of the Fund.

Appointment Contacts

Brisbane
Level 14, 12 Creek Street,
Brisbane QLD
+61 7 3338 0222

All enquiries:
T: +61 7 3338 0286
F: +61 7 3338 0298
E:
lminvestors@kordamentha.com

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General Information	▼
Updates to Investors - Five to Nineteen	▼
Applications	▼

Download Documents

General Information	▼
Updates to Investors - Five to Nineteen	▼
Applications	▼
Matter number BS1076/17 – Prepayments claim	▼
Matter number 11917/2015 - Trustee interlocutory application for fee approval (third application for fee approval)	▼
Matter Number BS12716/15 AHS action	▼
Matter Number 5329/15 - Barly Wood and Lifestyle action	▼
Matter number 11917/2015 - Trustee interlocutory application for fee approval (second application for fee approval)	▼
Matter number 5329/15 - Directions Application in Lifestyle and Barly Wood claims	▼
Matter Number 12317/2014 – Directions Application in defence of FMIF claim	▼
Matter number 8792/2013 – Directions application	▼

Matter Number 3691/2013 - Service Application	▼
Matter Number 3691/2013 - Wind Up Application	▼
Matter Number 3691/2013 - Books and Records Application	▼
Matter Number 11593/2013 - Approval of Settlement Agreement	▼
Matter number 8792/2013 – Directions application regarding settlement	▼
Matter Number 119172015 - Trustee application for fee approval	▼
Court Orders	▼
Relevant Information	▼

KordaMentha is an advisory and investment firm that helps clients to grow, protect and recover value.

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Matter number BS1076/17 – Prepayments claim



- | | | |
|--|----------------------|--|
| 01. Claim and statement of claim in BS1076/17 | 22/11/2018 895kb | |
| 02. Affidavit of Jarrod Villani sworn on 24 January 2018 | 22/11/2018 12475kb | |
| 03. Affidavit of David O'Brien sworn on 31 January 2018 | 22/11/2018 3103kb | |
| 04. Order of Justice Atkinson made on 1 February 2018 | 22/11/2018 63kb | |
| 05. Section 96 Application | 22/11/2018 78kb | |
| 06. Application for directions about service of the Section 96 Application | 22/11/2018 133kb | |
| 07. Affidavit of Jarrod Villani sworn on 14 November 2018 | 22/11/2018 11826kb | |
| 08. Affidavit of David O'Brien sworn on 15 November 2018 | 22/11/2018 1704kb | |
| 09. Order of Justice Applegarth made on 20 November 2018 | 22/11/2018 124kb | |
| 10. Statement of Facts prepared pursuant to section 96(1) of the Trusts Act 1973 (Qld) | 22/11/2018 11057kb | |

Matter number 11917/2015 – Trustee interlocutory application for fee approval (third



From: lminvestors <lminvestors@kordamentha.com>
Sent: Thursday 22 November 2018 03:01 pm
To: lminvestors
Subject: Matter number BS1076/17 – Prepayments claim

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act* 1973 (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;

- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act 1973* (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

[Website](#) | [Blog](#) | [LinkedIn](#) | [Twitter](#)



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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday 23 November 2018 12:22 pm
To: Noelle Coak
Subject: RE: Matter number BS1076/17 – Prepayments claim

Dear Noelle,

Thank you for your email.

The email of 22 November 2018 is in relation to the discontinuance of a claim by the Trustee against LM Investment Management Ltd (Receivers and Managers Appointed) (in Liquidation).

As per previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
[Website](#) | [Blog](#) | [LinkedIn](#) | [Twitter](#)



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From: Noelle Coak <Noelle.Coak@regus.com>
Sent: Thursday, 22 November 2018 2:49 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

Thank you for this email.
Can you please summarize and let us know what it means.

Are we going to receive any of our investment?
If so, how much and when?
Seems this keeps dragging on and eating all Monies in paying lawyers.

Appreciate some light in the tunnel.

Thank you

With regards

Noelle

On Nov 22, 2018, at 13:42, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act* 1973 (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
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- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act* 1973 (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

<image001.png>

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

Website | Blog | LinkedIn | Twitter

<image002.png>

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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday 23 November 2018 12:23 pm
To: Colin Cooke
Subject: RE: Matter number BS1076/17 – Prepayments claim

Dear Colin,

Thank you for your email.

The email of 22 November 2018 is in relation to the discontinuance of a claim by the Trustee against LM Investment Management Ltd (Receivers and Managers Appointed) (in Liquidation).

As per previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards,

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
[Website](#) | [Blog](#) | [LinkedIn](#) | [Twitter](#)



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From: Colin Cooke <cookieboy69@hotmail.co.uk>
Sent: Thursday, 22 November 2018 2:59 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

Hello,

Please excuse my ignorance but although being a unit holder, I haven't got a clue about the meaning or understanding of what you sent me.

I.....and probably most unit holders would like to know basic answers to questions like "ARE WE GETTING ANY MONEY SOON?" if so when? but if not why?

Kind regards

Colin Cooke

----- Original message -----

From: lminvestors <lminvestors@kordamentha.com>
Date: 22/11/2018 04:35 (GMT+00:00)
To: lminvestors <lminvestors@kordamentha.com>
Subject: Matter number BS1076/17 – Prepayments claim

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

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- The S 96 Application;
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- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act* 1973 (Qld).

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You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,



Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday 23 November 2018 12:24 pm
To: Gabriel Symonds
Subject: RE: Matter number BS1076/17 • Prepayments claim

Dear Gabriel,

Thank you for your email.

The email of 22 November 2018 is in relation to the discontinuance of a claim by the Trustee against LM Investment Management Ltd (Receivers and Managers Appointed) (in Liquidation).

As per previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards,

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
[Website](#) | [Blog](#) | [LinkedIn](#) | [Twitter](#)



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From: Gabriel Symonds <symonds@tokyobritishclinic.com>
Sent: Thursday, 22 November 2018 3:22 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: RE: Matter number BS1076/17 • Prepayments claim

I cannot understand this complicated email.

Would you please tell me: am I likely to get any money back from my investment in the LM Managed Performance Fund or not?

Gabriel Symonds

From: lminvestors [<mailto:lminvestors@kordamentha.com>]
Sent: Thursday, November 22, 2018 2:01 PM
To: lminvestors
Subject: Matter number BS1076/17 – Prepayments claim

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) ("**S 96 Application**") in the

Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act* 1973 (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia



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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday 23 November 2018 02:35 pm
To: colin Macandrews
Subject: RE: Matter number BS1076/17 – Prepayments claim

Dear Colin,

Thank you for your email.

The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
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From: colin Macandrews <colin7225@gmail.com>
Sent: Thursday, 22 November 2018 4:14 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

You said at the beginning of the year that some small refunds to investors under 5% would be made this year but to date nothing has occurred. Are you delayed again?

On 22/11/2018, lminvestors <lminvestors@kordamentha.com> wrote:

> Dear Unitholder
>
>
>
> Application by the Trustee for directions regarding proposed discontinuance
> of a claim
>
>
>
> As you know, KordaMentha Pty Ltd ("Trustee") is the trustee of the LM
> Managed Performance Fund ("MPF").
>
>
>
> The purpose of this correspondence is to notify Unitholders that the Trustee
> has on 8 November 2018, filed an application within proceeding BS1076/17
> under section 96 of the Trusts Act 1973 (Qld) ("S 96 Application") in the

> Supreme Court of Queensland seeking directions as to whether the Trustee
> would be justified in discontinuing a claim against LM Investment Management
> Limited (Receivers and Managers Appointed) (in Liquidation) ("LMIM").

>
>
>
> The claim relates to transactions entered into by, among others, LMIM as the
> former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as
> trustee of the LM Administration Trust ("LMA")).

>
>
>
> In proceeding BS1076/178, the Trustee seeks, among other things, to recover
> from LMIM in its personal capacity, \$12,340,378 together with interest on
> that sum and costs.

>
>
>
> The claim and statement of claim relied upon by the Trustee in BS1076/17 was
> filed on 6 February 2017, and is the most recent pleading. A copy of each of
> the claim and statement of claim is being uploaded to the website referred
> to below.

>
>
>
> On 1 February 2018, the Supreme Court of Queensland made an order that,
> relevantly, the defendant is not required to file a defence and any
> counterclaim until 28 days after the plaintiff gives written notice to the
> defendant that it is required to do so. This order was made in the
> circumstances of ongoing multi-party settlement negotiations which
> ultimately ended without success.

>
>
>
> The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously
> defend a claim made by Mr Whyte, the Court appointed receiver of the LM
> First Managed Investment Fund against eight defendants (including the
> Trustee as the 8th defendant) in proceeding BS12317/14 for approximately
> \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed
> the view that it ought apply to the Supreme Court of Queensland for a
> direction that it would be justified in discontinuing BS1076/17.

>
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>
> The Supreme Court of Queensland has made similar directions in relation to
> three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and
> BS12716/15.

>
>
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> The Trustee has lodged a proof of debt in the liquidation of LMIM in
> relation to, among other debts, the amount of \$12,340,378 the subject of
> BS1076/17.

> The following information pertaining to the S 96 Application has been
> uploaded to our website at
> <http://kordamentha.com/creditor-information/australia/109>
>
>
>
> * The claim and statement of claim in BS1076/17;
> * The affidavit of Jarrod Villani sworn and filed on 24 January 2018,
> in support of an application for leave to proceed against a company in
> liquidation;
> * The affidavit of David Thomas O'Brien sworn and filed on 31 January
> 2018, in support of an application for leave to proceed against a company in
> liquidation;
> * The order of the Honourable Justice Atkinson made on 1 February
> 2018;
> * The S 96 Application;
> * The Application for directions about service of the S 96
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> * The affidavit of Jarrod Villani sworn and filed on 14 November 2018,
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> * The affidavit of David Thomas O'Brien sworn and filed on 15 November
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> Trusts Act 1973 (Qld).
>
>
>
> The S 96 Application is set to be heard commencing at 10.00am on 19 December
> 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane,
> Queensland, Australia.
>
>
>
> You are not obliged to respond to or take any action with respect to this
> notification.
>
>
>
> At the hearing of the S 96 Application, the Trustee will bring to the
> attention of the Court any correspondence it receives from Unitholders
> regarding the S 96 Application.
>
>
>
> Kind regards,
>
>
>
>
>
>
> Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
> Website<<http://www.kordamentha.com>> |
> Blog<<http://www.kordamentha.com/News-and-Insights?type=Blog>> |
> LinkedIn<<http://www.linkedin.com/company/kordamentha>> |

> Twitter<<https://twitter.com/KordaMentha>>
> <<http://www.kordamentha.com/grow-protect-recover>>
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>
>

David O'Brien

From: rosemary yates <yates.rosemary@gmail.com>
Sent: Thursday 22 November 2018 04:31 pm
To: lminvestors
Subject: Re: Matter number BS1076/17 – Prepayments claim

Hahaha -



Grow. Protect. Recover.

- but only for yourselves.

You greedy parasites make me sick.

On 22 Nov 2018, at 12:43, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("Trustee") is the trustee of the LM Managed Performance Fund ("MPF").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

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- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;

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The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

Website | Blog | LinkedIn | Twitter

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David O'Brien

From: Christine Armstrong <christine@mediate-health.co.uk>
Sent: Thursday 22 November 2018 07:08 pm
To: lminvestors
Subject: Re: Matter number BS1076/17 – Prepayments claim

well done

You have spent all our money getting nowhere. The usual tactic for lawyers.

It was always going to end this way.

Christine Armstrong

From: lminvestors
Sent: 22 November 2018 04:45:43
To: lminvestors
Subject: Matter number BS1076/17 – Prepayments claim

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**"). The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**"). The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

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You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday 23 November 2018 02:35 pm
To: Hazel France-Hall
Subject: RE: Matter number BS1076/17 – Prepayments claim

Dear Hazel,

Thank you for your email.

The email of 22 November 2018 is in relation to the discontinuance of a claim by the Trustee against LM Investment Management Ltd (Receivers and Managers Appointed) (in Liquidation) and has been sent to comply with the Trustee's obligations to serve notice on unitholders of the application to court for directions in relation to the discontinuance.

As per previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
[Website](#) | [Blog](#) | [LinkedIn](#) | [Twitter](#)



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From: Hazel France-Hall <hazelfrancehall@icloud.com>
Sent: Thursday, 22 November 2018 8:30 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

I am sick and tired of this ongoing recovery of funds, and the jargon used to confuse those of us who have been coned over the whole affair.

When am I going to get some sort of payment/ refund

Sent from my iPhone

On 22 Nov 2018, at 04:45, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act*

1973 (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

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The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

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You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

<image001.png>

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

Website | Blog | LinkedIn | Twitter

<image002.png>

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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Friday 23 November 2018 02:35 pm
To: Anthony Somerset
Subject: RE: Matter number BS1076/17 – Prepayments claim

Dear Anthony,

Thank you for your email.

The email of 22 November 2018 is in relation to the discontinuance of a claim by the Trustee against LM Investment Management Ltd (Receivers and Managers Appointed) (in Liquidation) and has been sent to comply with the Trustee's obligations to serve notice on unitholders of the application to court for directions in relation to the discontinuance.

As per previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
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From: Anthony Somerset <anthony.somerset@gmail.com>
Sent: Thursday, 22 November 2018 9:06 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

Dear Anonymous trustee,

So in plain English can you please explain what we all want to know: what the investors can anticipate by way of return and approximately when. Giving all this legalistic narrative while saying nothing about what progress is being achieved towards making a return to investors, is frustrating. There is an accountability duty owed and discharging it with at least a little plain English would be helpful.

Regards

Anthony Somerset
Director
A-Team Edventures Limited
+852 9126 1248

On 22 Nov 2018, at 12:35, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act* 1973 (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

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The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act* 1973 (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

<image001.png>

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

Website | Blog | LinkedIn | Twitter

<image002.png>

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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Wednesday 5 December 2018 10:50 am
To: James Best
Subject: RE: Matter number BS1076/17 – Prepayments claim
Attachments: Update to Investors - 19.pdf; Update to Investors - 18.PDF; Update to Investors - 17.pdf

Dear James,

Thank you for your email.

The Trustee has undertaken a number of reviews into the collapse of the Fund and has provided an overview of this in prior updates to Unitholders.

Please see attached the last three updates to investors for your reference. If you require any further updates, please advise accordingly.

The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
Website | Blog | LinkedIn | Twitter



Grow. Protect. Recover.

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From: James Best <james.best@abm.co.th>
Sent: Friday, 23 November 2018 2:58 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

Interesting reading.

So Mr Drake did not according to the court break any laws. I see- suppose that gives little comfort to anyone considering investing in Australia.

Are they then saying that all unitholders losing at best 95% of their investment is per Australian law part and parcel of routine business and that no illegal actions were ever undertaken leading to this debacle?

Have you or any other organization documented your view as to what led to this loss in monies among unitholders.

Please advice if this rudimentary point has ever been tabled?

A final point- I am absolutely not of the view that all business-financial losses are the result of fraud. By all accounts however, The LM debacle is a rancid affair, anything but "in the normal course of business"

Thank you.

James

Mail from:

James Best

Communications Director

ABM Connect Co., Ltd.

Bangkok, Thailand

Tel: +66 (0) 2252 9871 ext. 577

Fax: +66 (0) 2254 8353

Mobile: +66 (0) 8 3198 4722

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=====

On Fri, Nov 23, 2018 at 11:44 AM lminvestors <lminvestors@kordamentha.com> wrote:

Dear James,

Thank you for your email.

The Australian Securities and Investments Commission has taken action against Peter Drake and former directors of LM Investment Management Ltd. Further information regarding this action can be found here - <https://asic.gov.au/about-asic/media-centre/key-matters/lm-investment-management-limited/>.

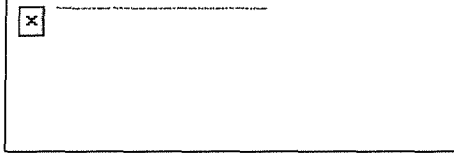
Detailed fee summaries can be located in updates to investors. Please see attached the most recent update to investors.

The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up by the end of the year.

Kind regards,



Level 14, 12 Creek Street, Brisbane QLD 4000, Australia



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From: James Best <james.best@abm.co.th>
Sent: Friday, 23 November 2018 12:13 PM
To: Iminvestors <iminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

Kindly advise your total fees to date and how much money you have recovered.

If the standard "it's all in our reports" response is forthcoming I would welcome your directing me to such reports.

Best Regards,

James Best

Mail from:

James Best

Communications Director

ABM Connect Co., Ltd.

Bangkok, Thailand

Tel: +66 (0) 2252 9871 ext. 577

Fax: +66 (0) 2254 8353

Mobile: +66 (0) 8 3198 4722

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On Thu, Nov 22, 2018 at 11:45 AM lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
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- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act 1973* (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
Website | Blog | LinkedIn | Twitter

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LM Managed Performance Fund (‘the Fund’ or ‘MPF’)

28 June 2018 | Update to Unitholders 19

This is the Trustee's nineteenth Update to Unitholders.

This report contains confidential and commercially sensitive information. No part of this document can be reproduced for any purpose. KordaMentha as trustee for the MPF (‘the Trustee’) reserves its rights in relation to any unauthorised use or reproduction of this report.

All values in this document are in Australian Dollars.

1 Overview

1.1 Purpose of this update

The purpose of this update is to provide information to Unitholders in relation to developments in the winding up of the MPF. This includes the following:

- Progress of recovery action and litigation, including:
 - recovery of withholding tax remitted to the Australian Taxation Office (‘ATO’) prior to March 2013
 - recovery of loan to 457-459 Lygon Street Pty Ltd
 - claim by the Trustee in relation to loans to Barly Wood Pty Ltd (‘Barly Wood’) and The Lifestyle Investment Company Pty Ltd (‘Lifestyle’)
 - claim by the Trustee in relation to a loan to Australian International Investment Services Pty Ltd (‘AIIS’)
 - potential claim against the auditor of the Fund
 - the Bankrupt Estate of Peter Charles Drake
 - recovery of funding advanced to the Liquidator of Bellpac Pty Ltd (‘Bellpac’).
- Defence of claim against the Fund by the Receiver of LM Investment Management Limited (Receivers and Managers Appointed) as responsible entity of the LM First Mortgage Income Fund (‘FMIF’)
- Fund management matters, including the update regarding distribution process and update of the Unitholder register.

1.2 Prior update reports

This update to Unitholders should be read in conjunction with prior update reports issued by the Trustee. Should you wish to obtain a copy of any previous update reports, please contact the Trustee via the email address contained in section 4.4 of this report.

1.3 Summary of work undertaken and key developments

Key developments since the Trustee's last update to Unitholders are summarised as follows:

- The Trustee together with its tax advisers has been successful in securing further refunds of \$3.2 million from the ATO in respect to withholding tax remitted in the period July 2007 to June 2010. This is in addition to the \$4.6 million previously refunded in respect to the period July 2010 to March 2013.
- Realisation of properties securing a loan by MPF to 457-459 Lygon Street Pty Ltd has completed. Proceeds of approximately \$830,000 will be returned to the Fund.
- Since July 2016, the Trustee has been involved in settlement negotiations with a number of parties including LM Investment Management Limited (‘LMIM’), FMIF and the directors of LMIM. These settlement negotiations impacted the

litigation between the parties. These settlement negotiations at the request of the FMIF have now concluded and no settlement has been reached.

- Following conclusion of settlement negotiations, the litigation funding agreement in respect to the Barly Wood and Lifestyle court proceedings has been terminated. On the basis that the Trustee has insufficient funds to continue to prosecute the proceedings, these actions have been terminated.
- Following conclusion of settlement negotiations, the Receiver of FMIF is continuing to pursue a claim against LMIM, six current or former directors of LMIM and the MPF. The Trustee continues to defend this action.
- The Trustee has provided funding to the Trustee of the Bankrupt Estate of Peter Charles Drake to assist in realisation of a property in Fiji. Realisation of this property is ongoing, and we understand that the Trustee of the Bankrupt Estate is preparing to commence an advertising campaign for the property in the short term.
- The Trustee has commenced preparation of materials required to obtain Court directions regarding the process for distribution to Unitholders and methodology for calculating distributions.

2 Recovery action and litigation

2.1 Recovery of withholding tax remitted to the ATO

Background

During the period prior to the appointment of the Trustee, a significant amount of withholding tax was remitted to the ATO in respect to amounts withheld from unitholder distributions. These remittances were made on the basis that unitholder distributions were a distribution of profits generated by the Fund. Based on investigations undertaken by the Trustee, proper assessment of carrying values of mortgage loans during the period should have resulted in additional provisions being raised which would have caused losses in the fund for the period. As a result, unitholder distributions during this period should not be considered as distributions of profit and no withholding tax should have been payable to the ATO.

The Trustee has previously been successful in receiving a refund of \$4.6 million from the ATO, reflecting withholding tax remitted to the ATO in the period July 2010 to March 2013.

Recent developments

The Trustee has recently been successful in receiving further refunds from the ATO of:

- \$2.8 million reflecting withholding tax remitted to the ATO in the period July 2008 to June 2010
- \$0.4 million reflecting withholding tax remitted to the ATO in the period July 2007 to June 2008.

Refunds received from the ATO in respect to withholding tax remitted total \$7.8 million.

Net refund amount of \$6.54 million (net of costs associated with recovery) is currently being held for distribution to Unitholders.

2.2 Lygon Street

Background

Upon appointment of the Trustee, MPF held a second ranking mortgage over the property 457-459 Lygon Street, Brunswick East, Victoria. At the time of the Trustee's appointment, preliminary earthworks were being undertaken on the site. Following review, the Trustee determined that the best opportunity for recovery of monies loaned by the MPF (being approximately \$0.9 million at the time) was to assist in ensuring that the development was funded through to completion. MPF's remaining funding obligations at 8 May 2013 were assumed by LMIM in its capacity as responsible entity of the LM Australian Income Fund ('AIF') in exchange for a new deed of priority ('the Priority and Subordination Deed') being entered into and a release from any breach of trust claims in relation to the development. As a result of these negotiations, the development was completed and the borrower commenced a sale process for the developed properties.

Following initial success by the borrower in selling the properties, settlements began to stagnate from around June 2016 and the Trustee considered that in the absence of enforcement action being taken by one of the mortgagees, it would be unlikely that the remainder of security properties would be sold in an acceptable timeframe. Also contributing to the Trustee's concerns

regarding the borrower, a winding up application lodged against the borrower by the ATO was heard on 20 September 2016 and an order was made that 457-459 Lygon Street Pty Ltd be wound up.

After obtaining consent from the AIF (as required by the Priority and Subordination Deed), the Trustee issued necessary enforcement notices and entered into possession of six unsold properties on 2 November 2016, comprising five residential properties and one retail property.

Recent developments

The Trustee has now finalised realisation of the security properties.

The Trustee has realised a total amount of \$2.62 million (excl. GST) and has remitted a total of \$1.39 million to AIF in full repayment of its debt. Costs associated with the realisation of security properties totalled approximately \$410,000, including agent commissions, advertising, legal fees, statutory liabilities and fees of the Trustee appointed agent for the mortgagee in possession, which are detailed further in section 4.3 of this report.

It is expected that following payment of final costs, the return to the MPF will be approximately \$830,000.

2.3 Barly Wood and Lifestyle claims

Background

In August 2008, MPF entered into an agreement with FMIF which involved the assignment of several loans from FMIF to MPF. This transaction included the FMIF loans to Barly Wood and Lifestyle. The Trustee claims that LMIM, then the trustee of both MPF and FMIF, breached a number of duties owed to the MPF in the course of these transactions, which ultimately benefited FMIF at the expense of the MPF.

The primary claim was for equitable compensation against LMIM for losses suffered as a result of its breach of trust. However, the Trustee also sought a declaration that LMIM was entitled to an indemnity out of the assets of FMIF and that the Trustee was entitled to exercise the right to this indemnity ('the Indemnity Claim'). This is of particular importance as LMIM is in liquidation and of its own substance would be unable to make any significant payment to the MPF if it were successful in its claim.

Due to the expected significant costs of litigation and the ongoing demands on the cash reserves of the Fund, the Trustee entered into a litigation funding agreement with IMF Bentham Limited ('IMF') for the Barly Wood and Lifestyle matters in 2015.

Recent developments

These proceedings were previously adjourned to allow for the continuation of settlement negotiations between MPF, FMIF and a number of other parties, including the directors of LMIM, following mediation of the FMIF Receiver claim on 12 July 2016. It became apparent early this year that settlement negotiations would not be successful.

The Trustee then approached the Receiver of the FMIF regarding potential settlement, however no settlement was able to be reached.

On 17 April 2018, IMF gave 14 days' notice of termination of the funding agreement for the Barly Wood and Lifestyle claims. This left the Trustee with two options in relation to the claims:

- continue to pursue the claims with ongoing costs being paid by the Fund, or
- discontinue the actions.

Due to the financial position of the Fund, the Trustee considered that the Fund could not afford to continue to pursue the claims and that the most appropriate course of action would be to discontinue the proceedings.

The Trustee applied for directions from the Supreme Court of Queensland under section 96 of the *Trusts Act 1973* (Qld) ('the Trust Act') that the Trustee would be justified in discontinuing the two claims. This application was heard on 7 June 2018 and Justice Boddice made these orders regarding discontinuance.

Notices of discontinuance have now been filed and the actions have been discontinued.

2.4 AIIS claim

Background

In January 2005, the MPF entered into a loan agreement with Australian International Investment Services Pty Ltd ('AIIS') where it took a first ranking security position. Subsequently, in or around November 2008, a deed of priority was entered into where the first ranking security was in effect transferred to FMIF. Draw downs on the MPF loan, both before and after November 2008, included payments to FMIF in respect to interest accruing on the FMIF loan to AIIS.

The Trustee alleges that LMIM breached a number of duties it owed to the MPF and claims equitable compensation against LMIM in the sum of \$16.8 million; and, a declaration that the Trustee is entitled to be indemnified out of the assets of the FMIF in respect to the amount of \$3.9 million (paid to FMIF from the MPF as draw downs on the AIIS loan).

A statement of claim for this matter was filed in the Supreme Court of Queensland on 16 December 2015, however the Trustee has not yet obtained a direction from the Court under section 96 of the Trust Act, that it would be justified in prosecuting this proceeding.

Pursuant to an order made by Justice Daubney on 22 November 2016, the defendant is not required to file a defence and any counterclaim until 28 days after the Trustee gives written notice to the defendant's solicitors and to the solicitors for the Receiver of the FMIF that a defence and any counterclaim is required to be filed. To date, no such notice has been given.

Recent developments

This action was subject to settlement negotiations which concluded earlier this year.

The Trustee is currently assessing its options in relation to this claim, with consideration being given to the current financial position of the MPF and its ability to fund the action.

2.5 Prepaid management fees claim

Background

At the time of the Trustee's appointment, the accounts of the Fund indicated that an amount of \$12.3 million had been prepaid by MPF to LM Administration Pty Ltd ('LMA') for management fees.

Further investigations were undertaken by the Trustee which show:

- during the period 1 July 2008 and 12 April 2013, \$52 million was paid from the MPF to LMA in respect of management fees
- an amount of \$27 million was expensed in management fees during the same period
- after other repayments and adjustments, the balance of the prepaid management fees account at 12 April 2013 was \$12.3 million.

The Trustee alleges that this prepayment or overpayment of management fees to LMA constituted a breach of trust by LMIM.

Recent developments

A statement of claim has been prepared and was filed in the Supreme Court of Queensland on 6 February 2017.

Earlier this year, the Trustee made an application for leave to proceed pursuant to section 500(2) of the *Corporations Act 2001* (Cth) ('the Act'). This application was heard on 1 February 2018 and Justice Atkinson made an order that the Trustee be granted leave to proceed. Shortly thereafter, the statement of claim was served on LMIM. Justice Atkinson also ordered that the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant's solicitors that a defence and any counterclaim is required to be filed. If this notice is not given by 31 January 2019 then the leave to proceed is withdrawn.

The Trustee is currently assessing its options in relation to this claim, with consideration being given to the ability of MPF to fund the action and the avenues for recovery as both LMIM and LMA are in liquidation.

2.6 Auditor action

Background

Williams Partners Independent Audit Specialists ('WPIAS') provided audit services to the Fund in 2011 and 2012. The Trustee has been undertaking investigations into a possible claim against WPIAS relating to audit services provided. In order to progress these investigations, the Trustee filed an application in the Federal Court of Australia for an order summoning key parties for examinations and orders for the production of documents. This application was heard on 21 October 2016 and the orders for production and examination summonses were granted.

The examinations have been deferred to date.

Recent developments

Earlier this year, a detailed letter of demand was sent to WPIAS. The Trustee is currently in discussions regarding this claim.

2.7 Bankrupt Estate of Peter Charles Drake

Background

On 20 November 2014, the Trustee was successful in its application for judgment on the amount loaned to Peter Drake. On 9 January 2015, Mr Drake submitted a debtors petition and Jason Bettles and Raj Khatri of Worrells Solvency & Forensic Accountants were appointed as Trustees of his bankrupt estate.

Recent developments

The Trustees of the Bankrupt Estate are currently pursuing realisation of a property located in Fiji. To assist them in their efforts, the Trustee has provided some funding for:

- repairs and maintenance of the property
- legal fees associated with having the bankruptcy recognised in Fiji and to transfer the titles of the property to the Trustee of the Bankrupt Estate
- other costs including: insurance and valuation.

We understand that the Trustees of the Bankrupt Estate are currently preparing a marketing campaign for the property which is expected to commence in the short term. Following realisation of the property, a dividend is likely to be paid to the MPF in respect to its claim against the Bankrupt Estate. In addition, funding advanced to the Trustees of the Bankrupt Estate will be repaid to the MPF from proceeds of sale of the property, as will the Trustee's costs of bankruptcy proceedings against Mr Drake.

2.8 Funding provided to Bellpac Pty Ltd (In Liquidation)

Background

Over the period 2010 to 2013, funding of approximately \$680,000 was provided by MPF to the Liquidator of Bellpac to fund litigation in respect to convertible bonds issued by Wollongong Coal Limited to Bellpac in 2008. The provision of this funding has resulted in significant recoveries by Bellpac.

Recent developments

The Trustee has requested payment from the Liquidator of Bellpac of the funding provided, from proceeds in priority to any other secured or unsecured creditor. However, the Receiver of the FMIF has objected to any payment being made to MPF in respect to this claim. No resolution between the parties has been reached at this stage and the Trustee is currently assessing its options in respect to this claim.

3 Defence of claims against the Fund

Background

On 23 December 2014, LMIM as responsible entity of the FMIF commenced proceedings in the Supreme Court of Queensland against six current or former directors ('the Directors') of LMIM, LMIM itself and the Trustee of the MPF. FMIF alleges that the Directors breached duties owed to LMIM and FMIF in relation to the distribution of proceeds of the settlement of a legal action. The FMIF further alleges that LMIM was knowingly involved in those breaches and that the proceeds of the breaches were paid to the MPF. FMIF seeks to recover, from the Directors, LMIM and the MPF, \$15,546,147.85 plus interest on this sum and legal costs.

Recent developments

On 12 July 2016 a mediation was held to attempt to settle this action. As no settlement was reached, the mediation was adjourned. Settlement negotiations continued throughout 2017, however have ultimately been unsuccessful.

Following the unsuccessful conclusion to the settlement negotiations, the Receiver of the FMIF has continued to pursue this action which is being defended by the Directors and by the MPF. The parties are currently preparing for trial and it is expected that this action may be heard before the Courts in the first half of 2019.

Despite many attempts by the Trustee to have this claim discontinued against MPF, and despite the limited resources of the MPF compared to the FMIF (which has recently reported net assets attributable to unitholders of approximately \$68 million) the Receiver of the FMIF insists on continuing to pursue this claim.

Whilst this action is ongoing the Trustee is prevented from finalising the winding up of the MPF.

4 Fund management

4.1 Return of monies to Unitholders

As outlined in Update 18 to Unitholders issued on 30 November 2017, following receipt of the withholding tax refund from the ATO, the Trustee considers it likely that a distribution will be made to Unitholders.

The timing of such distribution is still to be determined and prior to any distribution being made, the Trustee considers it necessary to obtain advice from the Court in relation to a number of matters including the following:

- investor register and update process
- the treatment of unitholder liability accounts
- the treatment of unit holdings which may have been due to mature prior to closure of the fund, in accordance with unitholder instructions, however where redemption was not processed
- appropriate apportionment and calculation of distribution amount amongst unitholders
- appropriate treatment of the ATO refund amount distinct from general Fund distributions
- the treatment of potential fund creditors, including financial advisers.

The Trustee is currently preparing materials required to obtain these directions.

In previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. This estimate of return to unitholders remains unchanged.

4.2 Update to Unitholder details

Since appointment of the Trustee on 12 April 2013, there has been a freeze on changes to the investor database. Due to a number of factors, including expected costs associated with managing and maintaining the database, the Trustee has continued the freeze on changes to the investor database to date.

Prior to any distribution being made by the Trustee, Unitholders will be given the opportunity to update certain personal details to enable distribution to be made based on current details.

In order to update details, supporting documentation will need to be provided. Unitholders will be contacted by the Trustee in due course to outline the register update process, which will likely be managed by a third party.

4.3 Management fees

This report outlines much of the work undertaken by the Trustee during the period since the last update to Unitholders.

An application to Court for fee approval for the period 15 August 2016 to 27 May 2018 is currently being prepared and is expected to be made in the coming weeks.

Fees for the 15-month period 15 August 2016 to 26 November 2017 total \$443,199 (excl. GST), being an average of approximately \$30,000 per month, and were detailed in the Trustee's Update 18 to Unitholders issued on 30 November 2017.

Fees for the 6-month period 27 November 2017 to 27 May 2018 total \$141,571 (excl. GST), being an average of approximately \$25,000 per month. A summary of these fees by task area, week and employee is included as Appendix A and detailed narrations are included as Appendix B.

In addition to the above, the Trustee will also be seeking approval for fees incurred in its capacity as agent for the mortgagee in possession of the security properties located at 457-459 Lygon Street, Brunswick East, Victoria, totalling \$171,296 over the 19-month period 2 November 2016 to 27 May 2018 being an average of approximately \$9,000 per month. A summary of these fees by task area, week and employee is included as Appendix C and detailed narrations are included as Appendix D.

Total amount of fees for which approval is being sought is \$756,066 for the 21-month period, being an average of approximately \$36,000 per month. Unitholders will receive further correspondence regarding this fee approval prior to the hearing.

4.4 Investor communication

The Trustee will continue to communicate to Unitholders regarding significant changes to the status of the Fund or any recovery actions.

In the interim, Unitholders can obtain further information by:

- accessing the KordaMentha website at <https://www.kordamentha.com/creditors/lm-managed-performance-fund>
- if you are unable to find the answer to your query in any of our updates or frequently asked questions, then you may email lminvestors@kordamentha.com

The Trustee makes every attempt to answer your enquiries on a regular basis, however due to the number of queries received and our focus on managing costs of the Fund, there may be some delay in responding to your individual requests. We appreciate your patience whilst we manage the large volume of emails received.

Yours faithfully

KordaMentha
Trustee of the MPF

Appendix A – Detailed fee summaries

Fees by task area – hours

For the period 27 November 2017 to 27 May 2018

Task	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
Risk management (litigation & legal), investigations and administration	2.7	17.8	20.5	14.7	4.0	18.2	34.7
Assets	-	-	-	-	-	0.5	7.7
Investors	8.4	18.5	27.4	22.2	18.0	14.5	53.9
Investigations	0.3	2.9	3.4	1.25	4.0	1.8	2.1
Fund management and other	-	4.1	7.1	4.6	5.8	2.7	11.5
	11.4	43.3	58.4	42.7	31.8	37.7	109.9

Fees by task area – amount (\$)

For the period 27 November 2017 to 27 May 2018

Task	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
Risk management (litigation & legal), investigations and administration	1,196.50	9,937.50	11,627.50	6,987.50	1,987.50	9,275.50	19,039.50
Assets	-	-	-	-	-	247.50	3,912.50
Investors	3,180.00	6,330.00	9,542.50	7,545.00	6,372.50	5,137.50	22,365.00
Investigations	82.50	1,097.50	997.50	355.00	1,515.00	520.00	607.50
Fund management and other	-	1,162.00	2,420.00	1,495.00	1,970.00	877.50	3,787.50
	4,459.00	18,527.00	24,587.50	16,382.50	11,845.00	16,058.00	49,712.00



Fees by week

For the period 27 November 2017 to 27 May 2018

Week ended	Hours	Amount (\$)	Week ended	Hours	Amount (\$)
3-Dec-2017	15.3	6,096.50	6-May-18	17.6	7,237.50
10-Dec-17	10.2	4,181.00	13-May-18	36.7	17,327.50
17-Dec-17	18.5	8,116.00	20-May-18	30.9	13,404.00
24-Dec-17	10.7	4,592.50	27-May-18	27.3	12,818.00
31-Dec-17	-	-		335.2	141,571.00
7-Jan-18	-	-			
14-Jan-18	11.1	4,137.50			
21-Jan-18	3.2	1,505.00			
28-Jan-18	23.6	10,210.00			
4-Feb-18	25.0	10,622.50			
11-Feb-18	11.4	4,067.50			
18-Feb-18	11.8	4,495.00			
25-Feb-18	8.4	3,792.50			
4-Mar-18	8.2	2,655.00			
11-Mar-18	6.6	2,230.00			
18-Mar-18	8.4	3,320.00			
25-Mar-18	5.7	1,842.50			
1-Apr-18	9.5	3,937.50			
8-Apr-18	11.3	4,247.50			
15-Apr-18	3.5	1,137.50			
22-Apr-18	9.3	4,637.50			
29-Apr-18	11.0	4,960.50			



Fees by person

For the period 27 November 2017 to 27 May 2018

Name	Position	Hourly rate (\$)	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
JARROD VILLANI	Partner	575	4.3	16.3	18.5	4.0	1.0	10.8	21.8
STACEY CLISBY	Director	550	-	-	-	-	-	-	35.1
DAVID JOHNSTONE	Associate Director	495	-	6.0	4.5	6.5	7.5	7.0	5.0
PATRICK QUIGLEY	Senior Executive Analyst	350	-	-	13.5	17.4	1.0	-	2.0
NADINE D'ABRERA	Senior Executive Analyst	350	-	-	-	-	-	-	0.8
MELISSA LOURENS	Senior Executive Analyst	350	-	-	-	-	-	-	0.8
JULIEN CARTRON	Executive Analyst	300	-	-	-	-	-	-	1.1
AIDA VUCIC	Executive Analyst	325	-	-	19.5	14.1	21.5	18.5	39.2
AIDA VUCIC	Executive Analyst	300	6.0	18.7	-	-	-	-	-
ADAM JOSE	Senior Business Analyst	300	-	-	-	-	-	-	1.7
ADMINISTRATION	Client Accounting Administration	275	0.3	1.9	2.4	0.7	0.8	1.3	1.5
ADMINISTRATION	Various	130	0.8	0.4	-	-	-	0.1	0.9
Total professional fees (excl. GST)			11.4	43.3	58.4	42.7	31.8	37.7	109.9



Appendix B – Detailed narrations

For the period 27 November 2017 to 27 May 2018

Task area	Sub category	Description
Risk management (litigation & legal), investigations and administration	Litigation/Legal	• Ongoing discussions with legal advisors with respect to, but not limited to: – obligations and processes to be undertaken to release security over certain property – planned dealings of assets by first mortgagors and ability to secure value of such assets to the Fund – ongoing research of historic fund documentation in light of breach of trust claims. Detailed discussion internally and legal advisors regarding claims and required supporting documentation. – current and potential litigation, including: i. Barly Wood and Lifestyle ii. AIIS iii. Bellpac FMIF Receiver's action iv. Auditor claim v. Bellpac funding claim • Ongoing review and management of litigation strategy. • Review of trust compliance. • Discussions with various parties regarding potential settlement of several claims. • Consideration and preparation of material required for Court directions regarding distribution methodology. • Review of various affidavit materials for ongoing litigation. • Arranging for substituted service to Unitholders and review of responses for inclusion in affidavit materials. • Correspondence with FMIF regarding breach of trust claims. • Correspondence and review of documentation regarding Bellpac defence and disclosure process. • Correspondence with Liquidators of Bellpac regarding funding provided. • Ongoing correspondence with IMF Bentham regarding Barly Wood and Lifestyle claims. • Detailed analysis of potential outcomes with IMF. • Correspondence with solicitors in respect to the discontinuance of Barly Wood and Lifestyle claims. • Investigations and correspondence with solicitors regarding potential auditor claim and access to audit files. • Detailed analysis of impact of litigation on the MPF's financial position.
		• Ongoing update and maintenance of the Fund's dedicated website. • Uploading documents in relation to various court applications for service of notice on unitholders. • Various discussions with third party registry system regarding potential update and maintenance of the investor register.
		• Engagement planning and management meetings. • Ongoing review and update of task lists. • Ongoing maintenance of priority investigations and allocation of resources.
		• Word processing and finalisation of formal correspondence.

Task area	Sub category	Description
Assets	Loans/Property	• Ongoing review and monitoring of current status with realisation of security property. • Liaising with various parties regarding releases of mortgage security. • Monitoring of sale and settlement of Lygon Street security property. • Correspondence with Trustee of Peter Drake bankrupt estate.
	Cash on hand	• Management of the Fund's cash flow. • Various correspondence with banks regarding account maintenance.
	Withholding tax recovery	• Correspondence with taxation advisers regarding withholding tax recovery. • Investigations and analysis to support withholding tax recovery. • Meetings and strategy discussions regarding withholding tax claims. • Calculation of net refund amount.
Investors/Creditors	Reports/Circulars	• Preparation, finalisation and distribution of Update 18 to Unitholders.
	Investor Communication	• Continued communication support for Unitholders and investor support groups via email and telephone. • Various correspondence with investors regarding current litigation. • Mail out of correspondence for those investors where emails undeliverable. • Review of investor responses regarding various litigation for inclusion in affidavit material.
	Investor Information	• Ongoing refinement of internal model for Unitholder data. • Maintenance of Unitholder email distribution list. • Consideration of process for allowing update to investor register. • Correspondence with third party registry service regarding options for investor register. • Review of holding currency of units in the Fund and value differentiation.
	Advisor Communication	• Ongoing dealings and support to financial advisors regarding current progress of the winding up of the Fund.
Statutory Compliance	ATO	• Ongoing review of tax position of the Fund and consideration of lodgement requirements. • Preparation and lodgement of Business Activity Statements for current periods.
	Books and Records	• Books and records management and archiving.
Fund management and other	Fund Management	• Review, approval and payment of invoices payable by the Fund. • Ongoing cash flow management.
	Fund Accounting	• Maintenance of cash book for the Fund. • Reconciliation of Fund bank accounts. • Review of carrying value of loan assets and assessment of appropriate amount and timeframe for provisioning and write-offs.

Appendix C – Detailed fee summaries (Lygon Street)

Fees by task area - hours

For the period 2 November 2016 to 27 May 2018

Task Area	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17
Administration and risk management	6.3	4.2	0.6	0.1	0.5	0.1	2.8	3.2	1.5	4.3
Assets	12.7	7.2	22.7	26.1	30.4	25.1	27.2	31.3	29.9	23.5
Creditors	3.1	-	0.3	1.4	0.5	0.2	0.6	0.5	-	0.9
Statutory Compliance	12.4	4.3	1.5	3.4	3.4	2.6	5.7	2.7	1.8	3.4
Trading	0.4	0.2	1.5	3.7	3.7	1.5	4.0	0.5	4.3	3.0
	34.9	15.9	26.6	34.7	38.5	29.5	40.3	38.2	37.5	35.1

Task Area	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
Administration and risk management	2.1	1.2	2.1	0.2	1.0	0.3	-	0.6	1.5
Assets	3.8	3.4	0.6	4.9	6.3	13.4	5.9	10.0	32.9
Creditors	-	1.4	-	-	-	-	-	-	-
Statutory Compliance	2.3	0.9	7.0	0.7	1.1	1.3	1.0	1.6	1.8
Trading	2.7	-	3.8	1.2	1.0	0.5	-	1.0	1.9
	10.9	6.9	13.5	7.0	9.4	15.5	6.9	13.2	38.1



Fees by task area – amount (\$)

For the period 2 November 2016 to 27 May 2018

Task Area	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17
Administration and risk management	2,432.50	1,607.50	390.00	65.00	225.00	15.00	920.00	620.00	417.50	1,690.00
Assets	6,055.00	3,030.00	8,650.00	10,640.00	11,755.00	9,562.50	10,502.50	12,232.50	10,942.50	8,810.00
Creditors	1,115.00	-	195.00	910.00	325.00	130.00	390.00	207.50	-	585.00
Statutory Compliance	3,822.50	1,640.00	430.00	1,090.00	997.50	645.00	1,762.50	882.50	566.00	887.50
Trading	260.00	130.00	747.50	1,365.00	1,365.00	487.50	1,332.50	162.50	1,495.00	1,267.50
	13,685.00	6,407.50	10,412.50	14,070.00	14,667.50	10,840.00	14,907.50	14,105.00	13,421.00	13,240.00

Task Area	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
Administration and risk management	630.00	302.50	1,040.00	80.00	375.00	195.00	-	202.50	562.50
Assets	1,410.00	1,505.00	252.50	1,792.50	2,445.00	5,410.00	2,432.50	3,887.50	12,805.00
Creditors	-	455.00	-	-	-	-	-	-	-
Statutory Compliance	692.50	267.50	2,147.50	202.50	352.50	382.50	335.00	452.50	550.00
Trading	942.50	-	1,392.50	390.00	375.00	187.50	-	375.00	712.50
	3,675.00	2,530.00	4,832.50	2,465.00	3,547.50	6,175.00	2,767.50	4,917.50	14,630.00



Fees by week

For the period 2 November 2016 to 27 May 2018

Week ended	Hours	Amount (\$)	Week ended	Hours	Amount (\$)	Week ended	Hours	Amount (\$)
6-Nov-16	10.1	2,990.00	16-Apr-17	1.4	770.00	24-Sep-17	0.1	27.50
13-Nov-16	5.4	2,512.50	23-Apr-17	12.7	4,512.50	1-Oct-17	1.6	540.00
20-Nov-16	7.6	3,365.00	30-Apr-17	9.5	3,380.00	8-Oct-17	0.9	267.50
27-Nov-16	5.5	2,035.00	7-May-17	15.7	5,937.50	15-Oct-17	1.2	362.50
4-Dec-16	8.6	3,615.00	14-May-17	12.2	4,585.00	22-Oct-17	2.7	1,217.50
11-Dec-16	5.9	2,505.00	21-May-17	3.4	1,175.00	29-Oct-17	2.1	682.50
18-Dec-16	6.7	2,567.50	28-May-17	8.0	2,835.00	5-Nov-17	2.2	740.00
25-Dec-16	1.0	502.50	4-Jun-17	4.6	1,752.50	12-Nov-17	3.7	1,085.00
1-Jan-17	-	-	11-Jun-17	9.5	3,422.50	19-Nov-17	1.2	580.00
8-Jan-17	-	-	18-Jun-17	11.2	4,120.00	26-Nov-17	0.1	27.50
15-Jan-17	6.0	2,387.50	25-Jun-17	4.6	1,665.00	3-Dec-17	6.3	2,400.00
22-Jan-17	7.7	2,802.50	2-Jul-17	9.3	3,520.00	10-Dec-17	3.5	1,152.50
29-Jan-17	8.2	3,130.00	9-Jul-17	6.9	2,618.50	17-Dec-17	2.0	750.00
5-Feb-17	8.9	3,770.00	16-Jul-17	10.5	3,813.00	24-Dec-17	1.5	562.50
12-Feb-17	11.4	4,582.50	23-Jul-17	11.7	4,082.00	31-Dec-17	-	-
19-Feb-17	6.6	2,630.00	30-Jul-17	8.0	2,787.50	7-Jan-18	-	-
26-Feb-17	7.9	3,152.50	6-Aug-17	4.8	1,580.00	14-Jan-18	1.6	540.00
5-Mar-17	7.9	3,305.00	13-Aug-17	8.9	3,467.50	21-Jan-18	3.8	1,507.50
12-Mar-17	6.6	2,712.50	20-Aug-17	-	-	28-Jan-18	3.5	1,312.50
19-Mar-17	13.3	5,045.00	27-Aug-17	13.0	4,855.00	4-Feb-18	1.5	562.50
26-Mar-17	6.0	2,232.50	3-Sep-17	9.1	3,602.50	11-Feb-18	1.4	485.00
2-Apr-17	9.3	3,400.00	10-Sep-17	5.6	1,935.00	18-Feb-18	3.9	1,710.00
9-Apr-17	5.9	2,177.50	17-Sep-17	3.3	1,027.50	25-Feb-18	4.4	1,760.00



Week ended	Hours	Amount (\$)
4-Mar-18	6.8	2,665.00
11-Mar-18	3.9	1,572.50
18-Mar-18	0.5	187.50
25-Mar-18	-	-
1-Apr-18	0.5	187.50
8-Apr-18	2.2	942.50
15-Apr-18	4.0	1,500.00
22-Apr-18	4.0	1,350.00
29-Apr-18	2.0	750.00
6-May-18	8.6	3,342.50
13-May-18	18.9	7,417.50
20-May-18	6.1	2,182.50
27-May-18	5.5	2,062.50
	452.6	171,296.00



Fees by person

For the period 2 November 2016 to 27 May 2018

Name	Position	Hourly rate (\$)	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17
TOM DAVIS	Partner	650	7.4	2.2	2.2	4.7	2.1	0.4	1.0	0.7	0.5	3.0
STACEY CLISBY	Director	595	-	-	-	-	-	-	-	-	0.8	-
STACEY CLISBY	Director	550	1.5	2.4	0.2	1.2	1.6	1.4	2.3	3.3	-	-
DAVID JOHNSTONE	Associate Director	500	1.0	-	-	-	-	-	-	-	-	-
BELINDA REES	Executive Analyst	375	8.0	6.0	22.2	22.0	26.0	20.5	25.0	24.5	20.5	21.5
AIDA VUCIC	Executive Analyst	325	-	-	0.7	5.2	6.8	5.1	9.1	5.6	13.8	8.0
AIDA VUCIC	Executive Analyst	275	15.1	4.9	-	-	-	-	-	-	-	-
ADMINISTRATION	Client Accounting Administration	275	0.9	-	1.0	1.4	1.3	1.2	1.8	1.7	1.3	1.9
ADMINISTRATION	Various	130	1.0	0.4	0.3	0.2	0.7	0.9	1.1	2.4	0.6	0.7
Total professional fees (excluding GST)			34.9	15.9	26.6	34.7	38.5	29.5	40.3	38.2	37.5	35.1

Name	Position	Hourly rate (\$)	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18
TOM DAVIS	Partner	650	0.2	1.0	1.3	0.1	0.3	1.7	0.8	0.5	1.7
AIDA VUCIC	Executive Analyst	375	-	-	-	-	3.0	2.0	1.2	5.0	9.4
BELINDA REES	Executive Analyst	375	3.5	1.5	0.5	4.0	5.5	11.0	4.5	6.5	26.0
MELISSA LOURENS	Senior Executive Analyst	375	-	-	2.5	-	-	-	-	-	-
AIDA VUCIC	Executive Analyst	325	5.8	3.4	7.4	2.3	-	-	-	-	-
ADMINISTRATION	Client Accounting Administration	275	1.1	0.5	1.5	0.5	0.6	0.6	0.4	0.8	0.8
ADMINISTRATION	Various	130	0.3	0.5	0.3	0.1	-	0.2	-	0.4	0.2
Total professional fees (excluding GST)			10.9	6.9	13.5	7.0	9.4	15.5	6.9	13.2	13.2



Appendix D – Detailed narrations (Lygon Street)

Task area	Sub category	Description
Administration & Risk Mitigation	Litigation/Legal	- Discussions with various parties regarding access issues. - Discussion with various parties regarding process of evicting tenants and variation to lease. - Discussion with various parties regarding licence agreement over grease trap, condensers and bins. - Review of licence agreement for the use of common property for air conditioning, bins and grease trap. - Review of Deed of Variation for retail shop lease. - Discussion with legal advisors regarding residential and commercial sale and tenant matters.
	Reports/Updates/Meetings	- Ongoing update and maintenance of the status of the job. - Correspondence with AIF regarding status of the sale process. - Preparation of internal update reports.
	Engagement Planning	- Job acceptance and job set up. - Discussion with director regarding access to the properties. - Engagement planning and management meetings. - Ongoing review and update of task lists.
	Other Administration	Word processing and finalisation of formal correspondence.
Assets	Properties	- Liaising with various parties regarding releases of mortgage security. - Preparing for the sale and settlement of Lygon Street security property. - Correspondence with Agent regarding the sale process and market update. - Review of marketing material used in respect to properties. - Correspondence with owner's corporation regarding properties. - Discussion with legal advisor regarding amendments to sale contracts. - Correspondence with essential service providers. - Discussion with legal advisors in respect to bank guarantee and settlement agreement with tenant. - Review of tenant arrears position.
	Bank accounts	Reconciliation of bank accounts and management of cash flow.
Creditors	Reports/Circulars	- Preparation of notices to various stakeholders regarding our appointment. - Preparation of update report for Mortgagees on progress. - Review of debt amount and update to various parties.
Statutory Compliance	ASIC Correspondence	- Attending to statutory obligation in respect to appointment, including but not limited to the following: - lodgement of notice of appointment - lodgement of directors RATA - preparation of six monthly cashbooks - preparation of the Controllers RATA - Ongoing correspondence with ASIC and compliance with various requests.

Task area	Sub category	Description
	ATO	Preparation and lodgement of Business Activity Statements for current periods.
	Books and Records	Books and records management and archiving.
Trading	Account management	- Review, approval and payment of invoices payable. - Attending to receipts and payments. - Review of expenses and ongoing management of cash flow.

LM Managed Performance Fund (‘the Fund’ or ‘MPF’)

30 November 2017 | Update to Unitholders No. 18

This is the Trustee’s eighteenth Update to Unitholders.

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1 Overview

1.1 Purpose of this update

The purpose of this update is to provide information to Unitholders in relation to developments in the winding up of the MPF. This includes the following:

- The progress of settlement negotiations involving a number of matters between the MPF and related parties.
- Recovery of withholding tax from the Australian Taxation Office (‘ATO’).
- Progress of recovery actions taken to date on the loan facility to 457-459 Lygon Street Pty Ltd (‘Lygon Street’).
- Work undertaken to date in a potential claim against the auditor of the MPF in the years ended 30 June 2011 and 30 June 2012.
- Fund management matters.

All values in this document are in Australian Dollars.

1.2 Prior update reports

This update to Unitholders should be read in conjunction with prior update reports issued by the Trustee.

1.3 Summary of work undertaken/key developments

Key developments over the last twelve months are summarised as follows:

- Negotiations are ongoing with LM Investment Management Limited (‘LMIM’), the Receiver of LM Investment Management Limited as responsible entity of the LM First Mortgage Income Fund (‘FMIF’) and the directors of LMIM in relation to potential settlement of all claims between the parties. These discussions are predominately being managed by the FMIF on behalf of the abovementioned LM funds, over recent months negotiations have stalled and we are awaiting a further update from FMIF which we understand will be available prior to the end of this year.
- The Trustee has been successful in obtaining a refund of \$4.6 million from the ATO in relation to withholding tax payments made in the period from July 2011 to March 2013. As a result of this recovery, it is now likely that a distribution will be made to unitholders of the MPF. Timing of this distribution remains uncertain as we continue to pursue additional recoveries, we are however hopeful that a distribution will be possible during 2018.
- The Trustee entered into contracts for sale for five of the six properties which secure the debt owed to the Fund by Lygon Street. To date, all of these properties have settled with net sale proceeds being paid to LMIM as Responsible Entity for the LM Australian Income Fund (‘AIF’). Following repayment of the AIF, a return on the Lygon Street loan is expected to be received by the Fund during 2018.
- Substantial information and documentation has been received from former auditors of the Fund, WPIAS, and associated parties. Public examinations of three individuals involved in the WPIAS audit of the Fund have been postponed to date, pending further investigations regarding the viability of the claim against the auditors.

2 Settlement negotiations

On 12 July 2016, a mediation was held to settle an action being pursued by the Receivers of LMIM as responsible entity of the FMIF against six current or former directors of LMIM, LMIM itself and the Trustee of the MPF. No settlement was reached at mediation, however since this date the parties have been negotiating amongst themselves outside of the Court process. These negotiations impact current and potential litigation between the parties, including:

- FMIF claim against the Fund (referred to above).
- MPF claim against LMIM and FMIF regarding loans to Barly Wood Pty Ltd and The Lifestyle Investment Company Pty Ltd.
- MPF claim against LMIM regarding a loan to Australian International Investment Services Pty Ltd.
- Potential claim by MPF in respect to management fees prepaid to LM Administration Pty Ltd ('LMA').

In order to minimise costs across the abovementioned funds, the negotiations on behalf of the FMIF, MPF and AIF are being managed by the Trustee of FMIF. The large number of parties involved in the negotiations and the complexities of any potential settlement have led to a protracted negotiation timeframe. The Trustee will continue to update Unitholders as the matter progresses.

At this stage, whilst settlement negotiations are ongoing, the above matters are on hold.

3 Recovery of withholding tax remitted to the ATO

3.1 Background

During the period July 2011 to March 2013, \$4.6 million was remitted to the ATO in respect to amounts withheld from unitholder distributions (both cash distributions and reinvestments). These remittances were made on the basis that unitholder distributions were a distribution of profits generated by the Fund. Based on investigations undertaken by the Trustee, proper assessment of carrying values of mortgage loans during the period should have resulted in additional provisions being raised which would have caused losses in the Fund for the period. As a result, unitholder distributions during this period should not be considered as distributions of profit and no withholding tax should have been payable to the ATO.

In order to progress this matter with the ATO, the Trustee prepared re-stated financial accounts for the year ended 30 June 2012 to reflect appropriate provisions and also prepared management accounts for the years ended 30 June 2013, 30 June 2014 and 30 June 2015. Tax returns were then lodged with the ATO for these periods.

3.2 Recent developments

Over the past nine months, the Trustee has been working with a tax advisor and with the ATO regarding the matter and to establish that no withholding tax should have been payable by the Fund over the period from June 2011. Further investigative and analytical work has been required by the Trustee over this period to support this claim. As a result of this work, the ATO has agreed to revise the Fund's business activity statements lodged in respect to the periods from July 2011 and has now refunded an amount of \$4.6 million to the Fund.

The Trustee will hold net funds received (less associated costs) in a high interest deposit account until such time as a distribution is made to unitholders.

3.3 Next steps

Based on advice from our tax advisors, the Trustee considers that there is potential for further recovery from the ATO in relation to withholding tax amounts remitted in periods prior to July 2011. We are currently working with our tax advisors in relation to this potential claim, documents have been submitted with the ATO and further information will be made available to Unitholders once those negotiations have advanced further.

4 Lygon Street

4.1 Background

Upon appointment of the Trustee, MPF held a second ranking mortgage over the property 457-459 Lygon Street, Brunswick East, Victoria. At the time of the Trustee's appointment, preliminary earthworks were being undertaken on the site. Following review, the Trustee determined that the best opportunity for recovery of monies loaned by the MPF (being approximately \$0.9 million at the time) was to assist in ensuring that the development was funded through to completion. MPF's remaining funding obligations at 8 May 2013 were assumed by the AIF in exchange for a new deed of priority ('the Priority and Subordination Deed') being entered into and a release from any breach of trust claims in relation to the development. As a result of these negotiations, the development was completed and the borrower commenced a sale process for the developed properties.

Following initial success by the borrower in selling the properties, settlements began to stagnate from around June 2016 and the Trustee considered that in the absence of enforcement action being taken by one of the mortgagees, it would be unlikely that the remainder of security properties would be sold in an acceptable timeframe. Also contributing to the Trustee's concerns regarding the borrower, a winding up application lodged against Lygon Street by the ATO was heard on 20 September 2016 and an order was made that Lygon Street be wound up.

After obtaining consent from the AIF (as required by the Priority and Subordination Deed), the Trustee issued necessary enforcement notices and entered into possession of six unsold properties on 2 November 2016, comprising five residential properties and one retail property.

4.2 Recent developments

Upon taking possession of the six properties, the Trustee commenced a process to physically inspect the properties and prepare them for a sale campaign. This process has involved vacating tenants from three of the five residential properties, obtaining valuations for the properties and ongoing dealings with appointed real estate agents.

To date, sale contracts have been entered for five of the six properties (being the residential properties) and all of these sales have now completed. Net sale proceeds to date have been remitted to AIF and they have now been repaid in full. We estimate that the return to the MPF from the Lygon Street recovery action will be approximately \$1,000,000 and will be finalised in the first quarter of 2018.

5 Auditor action

5.1 Background

Williams Partners Independent Audit Specialists ('WPIAS') provided audit services to the Fund in 2011 and 2012. The Trustee has been undertaking investigations into a possible claim against WPIAS relating to audit services provided. In order to progress these investigations, the Trustee filed an application in the Federal Court of Australia for an order summoning key parties for examinations and orders for the production of documents. This application was heard on 21 October 2016 and the orders for production and examination summonses were granted.

The examinations have continued to be deferred as the Trustee wishes to first ensure the commercial viability of progressing with a claim against the WPIAS. The Trustee continues to gather information in this regard to better inform ourselves of the merits of any recovery action against WPIAS.

5.2 Recent developments

In response to the orders for production, a number of documents were received from Mr Reginald Lance Williams, WPIAS Forensic & Consulting Pty Ltd and Williams Partners Independent Audit Specialists ('the Producing Parties') in December 2016. Following review of these documents, it became apparent that certain requested documents had not been produced by the Producing Parties. In the absence of these documents, the Trustee was unable to finalise preparation for the examinations and were also unable to make any assessment regarding potential recoveries from an action against WPIAS.

Further documents were provided by the Producing Parties in late-January 2017 and early-February 2017, which left insufficient time to review and properly consider in advance of the examinations in February. Accordingly, notice was provided

to the Court of the need to adjourn the examinations. Examinations were re-listed by the Court for 15 and 16 May 2017 and 31 May 2017.

Following a review of the further produced documents, it again became apparent that certain information had not been provided which was required for the Trustee to make an assessment regarding potential recoveries from any action against WPIAS. Further documentation was requested from the Producing Parties and a further application was made for orders for production from a number of parties, for documentation relating to insurance policies held by WPIAS in the relevant period. The Court made the requested orders on 24 February 2017 and additional documents were produced in late-March 2017.

In the following months, the Trustee's legal advisors undertook a detailed review of the produced documents. Further investigations were also undertaken by the Trustee in relation to various matters relevant to the examinations and the potential claim against WPIAS in general. Whilst considerable progress was made with these investigations, the Trustee determined in early June, that additional time would be required to continue investigations before the conducting the examinations. As a result, a further adjournment to the examinations was requested.

5.3 Next steps

The Trustee has requested a deferral of the Examinations and the Courts have now confirmed that this hearing will occur in February 2018.

Given the cost of undertaking examinations, the Trustee must ensure that sufficient preparation has been undertaken to optimise the outcomes of the examinations. The Trustee and its legal advisors are also utilising disclosed information to commence preparations for a potential claim against WPIAS and to assess likely recoveries should the action be successful. The economic viability of this potential claim remains subject to ongoing consideration.

6 Fund management

6.1 Return of monies to Unitholders

Following receipt of the withholding tax refund from the ATO, the Trustee considers it likely that a distribution will be made to unitholders. Due to the expected cost of administering a distribution to unitholders, the Trustee intends on delaying such distribution until substantially all possible recovery actions and litigation is complete.

Prior to any distribution to unitholders, the Trustee intends to seek directions from the Court in respect to a number of matters regarding appropriate apportionment of distribution amount, distribution methodology and administration.

In previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. This estimate of return to unitholders remains unchanged.

6.2 Unitholder details

Since appointment of the Trustee on 12 April 2013, there has been a freeze on changes to the investor database. Due to a number of factors, including expected costs associated with managing and maintaining the database, the Trustee has made the decision to continue the freeze on changes to the investor database to date.

Due to the likelihood of a distribution being made to unitholders, the Trustee is currently assessing this decision and considering the most appropriate time to commence the unitholder register update process. It is highly likely that this process will be commenced in the next 6 months and unitholders will be contacted once the process has commenced.

We understand that many unitholders wish to change certain details associated with their unit holdings and appreciate your patience during this time.

6.3 Management fees

During the period 15 August 2016 to 26 November 2017, the trustee's role has been largely focussed on:

- Settlement negotiations regarding the FMIF claim against the fund and other actions between related parties.
- Monitoring and realisations of remaining underlying assets which were held as security for the Fund's loans (including Lygon Street).
- Review of the Fund's current income tax and withholding tax positions.
- Preparation of materials and ongoing dealings with tax advisors to assist with recovery of withholding tax paid to the ATO.
- Investigations and ongoing dealing with legal advisors regarding potential claim against the auditor of the Fund.

Fees for this period total \$443,199 (Excl. GST) plus disbursements of \$2,796.23 (Excl. GST).

A summary of fees by task area, by week and by employee is included at Appendix A and a copy of detailed narrations is included at Appendix B.

An application to Court for fee approval for this period is expected to be made in the coming weeks. Unitholders will receive further correspondence regarding this fee approval prior to the hearing.

6.4 Investor communication

The Trustee will continue to communicate to Unitholders significant changes to the status of the Fund or any recovery actions.

In the interim, Unitholders are able to obtain further information by:

- Accessing the KordaMentha website at <http://www.kordamentha.com/creditor-information/australia/109>.
- If you are unable to find the answer to your query in any of our Updates or Frequently Asked Questions listing then you may email linvestors@kordamentha.com; (In order to manage the ongoing management costs of the Fund, due to the high volume of enquires made via email the Trustee will only review and respond to emails on a fortnightly basis).

Please note that the Trustee makes every attempt to answer your enquiries on a regular basis however due to the number of queries received and our focus on managing costs of the Fund there may be some delay in responding to your individual requests. We appreciate your patience whilst we manage the large volume of emails and telephone calls received during this time.

Yours faithfully

KordaMentha
Trustee of the Fund

Appendix A – Detailed fee summaries

Fees by task area – hours

For the period 15 August 2016 to 26 November 2017

Task Area	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17
Administration and risk management	12.7	28.1	13.4	26.2	6.7	27.5	27.6	30.7	14	24.1	15	11.3	44.4	25	18.5	7.8
Assets	1.8	14	6.8	7.9	0.9	6.3	8.3	71.7	15.9	16.7	25.4	10.4	20.5	1.5	0	6
Investors	3.2	13.3	9.9	18.5	25.6	9.8	6.9	16.7	14.9	15.5	49.9	31.6	10.4	22.9	30	14.2
Investigations	2.9	2.3	2	8	1.7	4	26.6	33.9	1.2	3.6	3.8	4.1	15	8.2	5.7	1.7
Fund trading management and other	3.2	3.9	5.9	3.8	3.5	10.7	29.4	4.9	2.3	10.1	5.7	3.5	8.7	9.3	7	1.2
	23.8	61.6	38	64.4	38.4	58.3	98.8	157.9	48.3	70	99.8	60.9	99	66.9	61.2	30.9

Fees by task area – amount (\$)

For the period 15 August 2016 to 26 November 2017

Task Area	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17
Administration and risk management	6,814.50	12,374.00	6,872.50	12,438.00	2,785.50	14,256.00	14,801.00	14,822.00	7,021.50	12,877.00	6,909.00	4,673.00	17,617.50	8,948.50	7,648.00	2,785.00
Assets	891.00	6,487.50	3,236.00	3,910.50	445.50	3,118.50	4,108.50	30,345.00	7,870.50	8,096.50	12,415.50	5,212.50	10,147.50	742.50	--	2,970.00
Investors	960.00	4,835.50	3,010.50	5,886.00	9,679.50	3,122.00	2,112.50	6,260.50	4,493.50	5,889.50	22,077.50	14,205.00	3,270.00	8,045.00	10,780.00	4,260.00
Investigations	1,219.50	865.00	719.00	2,445.00	577.50	1,254.00	8,755.00	10,336.00	374.00	1,130.00	1,249.00	1,301.50	6,162.50	3,310.00	1,817.50	517.50
Fund trading management and other	960.00	1,445.00	1,770.00	1,140.00	1,040.00	3,545.50	10,728.00	1,592.50	735.00	3,282.50	1,847.50	1,125.00	3,812.50	2,995.00	2,260.00	360.00
	10,845.00	26,007.00	15,608.00	25,819.50	14,528.00	25,296.00	40,505.00	63,356.00	20,494.50	31,275.50	44,498.50	26,517.00	41,010.00	24,041.00	22,505.50	10,892.50



Fees by week

	Week ended	Hours	Fee value (\$)		Week ended	Hours	Fee value (\$)
Week 179	21-Aug-16	10.2	4,033.50	Week 213	16-Apr-17	11.4	5,106.50
Week 180	28-Aug-16	6.4	3,153.50	Week 214	23-Apr-17	8.3	2,917.50
Week 181	4-Sep-16	7.8	3,857.50	Week 215	30-Apr-17	5.4	2,337.50
Week 182	11-Sep-16	7	3,128.00	Week 216	7-May-17	12.6	5,580.50
Week 183	18-Sep-16	22.1	10,470.50	Week 217	14-May-17	22.3	9,629.50
Week 184	25-Sep-16	10.6	4,844.00	Week 218	21-May-17	12.8	5,787.00
Week 185	2-Oct-16	21.3	7,365.00	Week 219	28-May-17	19	8,529.00
Week 186	9-Oct-16	17.4	7,084.50	Week 220	4-Jun-17	10.7	5,390.50
Week 187	16-Oct-16	10.5	4,129.50	Week 221	11-Jun-17	15.4	6,178.00
Week 188	23-Oct-16	3	1,075.50	Week 222	18-Jun-17	29.3	13,497.00
Week 189	30-Oct-16	4.5	2,025.00	Week 223	25-Jun-17	30.1	13,364.50
Week 190	6-Nov-16	12.5	4,972.00	Week 224	2-Jul-17	17.6	7,818.00
Week 191	13-Nov-16	12.8	5,287.00	Week 225	9-Jul-17	23.5	11,525.00
Week 192	20-Nov-16	19.2	6,889.50	Week 226	16-Jul-17	16.7	7,548.00
Week 193	27-Nov-16	13.2	5,657.00	Week 227	23-Jul-17	11.5	4,274.00
Week 194	4-Dec-16	12.8	5,689.00	Week 228	30-Jul-17	9.2	3,170.00
Week 195	11-Dec-16	9.9	4,045.50	Week 229	6-Aug-17	6.4	2,660.00
Week 196	18-Dec-16	16	6,164.50	Week 230	13-Aug-17	11.3	5,275.00
Week 197	25-Dec-16	9	2,936.50	Week 231	20-Aug-17	14.2	6,140.00
Week 198	1-Jan-17	0	-	Week 232	27-Aug-17	24.1	9,847.50
Week 199	8-Jan-17	0.5	137.50	Week 233	3-Sep-17	50.1	19,515.00
Week 200	15-Jan-17	6	2,076.00	Week 234	10-Sep-17	20.6	7,417.50
Week 201	22-Jan-17	32.1	13,809.00	Week 235	17-Sep-17	5.3	1,985.00
Week 202	29-Jan-17	11.6	5,521.00	Week 236	24-Sep-17	18.7	6,528.50
Week 203	5-Feb-17	24.3	10,619.50	Week 237	1-Oct-17	15.2	5,682.50
Week 204	12-Feb-17	20	8,446.00	Week 238	8-Oct-17	10	3,330.00
Week 205	19-Feb-17	34.7	14,362.50	Week 239	15-Oct-17	14.6	5,272.50
Week 206	26-Feb-17	19	7,456.00	Week 240	22-Oct-17	10.2	4,367.50
Week 207	5-Mar-17	27.2	11,510.00	Week 241	29-Oct-17	14.2	4,935.50
Week 208	12-Mar-17	38.5	13,968.50	Week 242	5-Nov-17	19.8	6,962.50
Week 209	19-Mar-17	26.8	11,475.50	Week 243	12-Nov-17	13.7	5,367.50
Week 210	26-Mar-17	43.6	17,680.50	Week 244	19-Nov-17	6.5	2,095.00
Week 211	2-Apr-17	30.7	12,095.00	Week 245	26-Nov-17	3.1	1,067.50
Week 212	9-Apr-17	23.2	10,133.00	Total		1078.2	443,199.00

Fees by person

Name	Position	Hourly rate	27 Aug 16	10 Sep 16	24 Sep 16	8 Oct 16	22 Oct 16	5 Nov 16	19 Nov 16	3 Dec 16	17 Dec 16	31 Dec 16
JARROD VILLANI	Partner	\$575	3.0	6.5	4.3	5.4	2.8	5.5	3.1	4.0	0.0	0.0
BRIAN WOOD	Partner	\$575	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.2	0.0	0.0
STACEY CLISBY	Director	\$495	7.1	3.9	22.1	8.9	2.1	3.1	10.2	10.8	13.0	1.7
RICHARD BARTLETT	Associate Director	\$450	0.0	0.0	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
VISHKA PEIRIS	Executive Analyst	\$325	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.0	3.5	0.0
REBECCA CLARK	Senior Business Analyst	\$300	3.4	2.3	1.7	2.1	4.9	1.3	2.7	0.4	2.1	0.0
MELISSA LOURENS	Senior Business Analyst	\$300	3.0	2.0	0.0	13.4	3.3	4.1	5.4	6.0	0.0	3.5
ZACHARY VOLL	Senior Business Analyst	\$300	0.0	0.0	2.3	1.2	0.0	0.0	0.0	0.0	0.0	0.0
AIDA VUCIC	Business Analyst	\$275	0.0	0.0	1.2	5.9	0.0	0.0	5.1	0.0	3.1	0.0
JULIEN CARTRON	Business Analyst	\$275	0.0	0.0	0.0	0.0	0.1	0.0	0.7	0.0	0.0	0.0
ADAM JOSE	Business Analyst	\$275	0.0	0.0	0.0	0.0	0.0	2.0	4.0	1.5	3.5	3.7
ANGELA PANUCCIO	Senior Client Services Admin	\$275	0.1	0.1	0.7	0.5	0.2	0.0	0.8	0.1	0.7	0.1
ADMINISTRATION	Various	\$130	0.0	0.0	0.0	1.3	0.1	1.0	0.0	0.0	0.0	0.0
Total professional fees (excluding GST)			16.6	14.8	32.7	38.7	13.5	17.0	32.0	26.0	25.9	9.0

Name	Position	Hourly rate	14 Jan 17	28 Jan 17	11 Feb 17	25 Feb 17	11 Mar 17	25 Mar 17	8 Apr 17	22 Apr 17	6 May 17	20 May 17	3 Jun 17
JARROD VILLANI	Partner	\$575	0.0	10.3	10.8	7.5	5.9	5.7	9.5	4.3	2.8	4.7	9.8
STACEY CLISBY	Director	\$550	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
STACEY CLISBY	Director	\$495	1.3	16.0	12.4	15.3	28.6	34.8	21.7	5.2	9.0	17.7	11.1
DAVID JOHNSTONE	Associate Director	\$495	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DAVID JOHNSTONE	Associate Director	\$450	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
VISHKA PEIRIS	Senior Executive Analyst	\$350	0.0	2.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4
PATRICK QUIGLEY	Senior Executive Analyst	\$350	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
MELISSA LOURENS	Executive Analyst	\$325	2.8	9.7	18.3	28.7	15.2	17.3	11.0	4.9	3.0	9.2	6.8
AIDA VUCIC	Senior Business Analyst	\$300	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.5	0.0	0.0
ADAM JOSE	Business Analyst	\$275	1.5	4.2	2.0	0.0	5.4	9.0	6.2	4.0	2.0	2.0	0.0
ADMINISTRATION	Client Accounting Administration	\$275	0.9	0.6	0.8	2.2	0.4	0.6	0.2	0.8	0.6	1.5	1.6
ADMINISTRATION	Various	\$130	0.0	0.0	0.0	0.0	9.8	3.0	5.3	0.5	0.1	0.0	0.0
Total professional fees (excluding GST)			6.5	43.7	44.3	53.7	65.7	70.4	53.9	19.7	18.0	35.1	29.7



Name	Position	Hourly rate	17 Jun 17	1 Jul 17	15 Jul 17	29 Jul 17	12 Aug 17	26 Aug 17	9 Sep 17	23 Sep 17	7 Oct 17	21 Oct 17	4 Nov 17	18 Nov 17	25 Nov 17
JARROD VILLANI	Partner	\$575	4.1	0.0	0.0	0.0	5.0	0.0	0.0	0.0	1.5	0.5	0.0	0.5	0.5
STACEY CLISBY	Director	\$550	0.0	0.0	24.8	4.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
STACEY CLISBY	Director	\$495	22.0	34.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
DAVID JOHNSTONE	Associate Director	\$495	0.0	0.0	4.5	0.0	6.0	20.5	20.5	7.0	4.5	10.0	7.0	6.0	0.0
DAVID JOHNSTONE	Associate Director	\$450	3.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
VISHKA PEIRIS	Senior Executive Analyst	\$350	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
PATRICK QUIGLEY	Senior Executive Analyst	\$350	0.0	0.0	0.0	0.0	0.0	3.5	31.1	0.0	0.0	0.0	0.0	0.0	0.0
MELISSA LOURENS	Executive Analyst	\$325	14.0	9.4	5.0	10.5	4.3	13.0	8.0	7.3	6.5	5.0	14.2	4.5	0.0
AIDA VUCIC	Senior Business Analyst	\$300	0.0	0.2	1.8	1.3	1.3	1.3	9.9	7.3	12.7	8.8	12.5	8.5	2.6
ADAM JOSE	Business Analyst	\$275	0.0	3.5	2.0	3.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
ADMINISTRATION	Client Accounting Administration	\$275	1.1	0.1	1.5	1.1	1.1	0.0	1.2	1.2	0.0	0.5	0.2	0.7	0.0
ADMINISTRATION	Various	\$130	0.0	0.0	0.6	0.3	0.0	0.0	0.0	1.2	0.0	0.0	0.1	0.0	0.0
Total professional fees (excluding GST)			44.7	47.7	40.2	20.7	17.7	38.3	70.7	24.0	25.2	24.8	34.0	20.2	3.1



Fee summary

		\$
Professional fees (excluding GST)		\$443,199.00
Disbursements		
Taxi	\$58.71	
Storage of B&R	\$1,198.93	
Searches	\$231.47	
Postage	\$1,307.12	
Total disbursements (excluding GST)		\$2,796.23
GST on professional fees and disbursements		\$44,599.52
Total professional fees and disbursements (including GST)		\$490,594.75

Appendix B – Detailed narrations

Task area	Sub category	Description
Risk Management (Litigation/Legal) & Administration	Forensic & Investigations	• Forensic review and capture of file server data and email server data. • Forensic input into various legal matters and discovery processes. • Investigations for various legal matters.
	Litigation/Legal	• Ongoing discussions with legal advisors with respect to, but not limited to: – obligations and processes to be undertaken to release security over certain property – enforcement options against non-performing loans – planned dealings of assets by first mortgagors and ability to secure value of such assets to the Fund – ongoing research of historic fund documentation in light of breach of trust claims. Detailed discussion internally and legal advisors regarding claims and required supporting documentation. – current and potential litigation, including: i. Barly Wood and Lifestyle ii. AIIS iii. Bellpac FMIF Receiver's action iv. Auditor claim • Discussions with various parties regarding the potential claim against the Directors and Officers insurance policy • Undertake detailed forensic analysis of certain loans for evidence preparation regarding breach of trust claims. • Correspondence and meetings with the Australian Securities and Investments Commission (ASIC) regarding the conduct of the former trustee's directors, various breaches of trust and ongoing investigations. • Correspondence with ASIC seeking copies of documents in their possession that would be books and records of the fund. • Correspondence with FMIF regarding breach of trust claims. • Issue various instructions to the Fund's custodian regarding various legal matters. • Attendance in Chambers and in Court for various matters where attendance required. • Correspondence and review of documentation regarding Bellpac defence and disclosure process. • Correspondence with Liquidators of Bellpac regarding agreements to which the Fund is party too. • Ongoing correspondence with IMF Bentham regarding Barly Wood and Lifestyle claims. • Detailed analysis of potential outcomes with IMF. • Investigations and correspondence with solicitors regarding potential auditor claim and access to audit files. • Correspondence with solicitors and forensic team to enable review of potentially privileged documentation in ASIC's claim against Peter Drake. • Detailed analysis of impact of litigation on the MPF's financial position. • Review of various affidavit materials for ongoing litigation.
	Media	• Correspondence with media outlets as required.

Task area	Sub category	Description
	Investor Information Management	• Ongoing update and maintenance of the Fund's dedicated website. • Uploading documents in relation to various court applications for service of notice on unitholders. • Preparation of update reports to investors.
	Engagement Planning	• Engagement planning and management meetings. • Ongoing review and update of task lists. • Ongoing maintenance of priority investigations and allocation of resources. • Ongoing management of cash flow forecasts and expense accruals.
	Other Administration	• Word processing and finalisation of formal correspondence.
Assets	Loans/Property	• Ongoing review and monitoring of current status with realisation of security property. • Liaising with various parties regarding releases of mortgage security. • Monitoring of sale and settlement of Lygon Street security property. • Correspondence with the borrower regarding timely repayment of Lygon Street facility and negotiations regarding applicable fees. • Correspondence with various parties regarding recovery action against guarantors of impaired loans. • Correspondence with Trustee of Peter Drake bankrupt estate. • Correspondence with Trustee of David Hawes bankrupt estate.
	Bank accounts	• Reconciliation of bank accounts and management of the Fund's cash flow. • Various correspondence with banks regarding account maintenance.
	Withholding tax recovery	• Correspondence with taxation advisers regarding withholding tax recovery. • Investigations and analysis to support withholding tax recovery. • Meetings and strategy discussions regarding withholding tax claims. • Detailed review of prior Fund tax records to identify withholding tax issues for potential secondary claim.
Investors/Creditors	Reports/Circulars	• Preparation, finalisation and distribution of update 17 to Unitholders. • Preparation, finalisation of update 18 to Unitholders.
	Investor Communication	• Continued communication support for Unitholders and investor support groups via email and telephone. • Various correspondence with investors regarding current litigation. • Mail out of correspondence for those investors where emails undeliverable. • Review of investor responses regarding various litigation for inclusion in affidavit material. • Consideration of correspondence from Unitholders regarding compensation schemes.
	Investor Information	• Ongoing refinement of internal model for Unitholder data. • Maintenance of Unitholder email distribution list. • Consideration of process for allowing update to investor register and discussions with internal technology team. • Correspondence with third party registry service regarding options for investor register.
	Advisor Communication	• Ongoing dealings and support to financial advisors regarding current progress of the winding up of the Fund.
Statutory Compliance	ASIC Correspondence	• Ongoing correspondence with ASIC and compliance with various requests.

Task area	Sub category	Description
	ATO	• Review of overall tax position of the Fund. • Ongoing correspondence with the ATO regarding lodgement requirements. • Preparation and lodgement of Business Activity Statements for current periods.
	Books and Records	• Books and records management and archiving. •
	Trade-on Management	• Review, approval and payment of invoices payable by the Fund • Ongoing cash flow management. • Correspondence with various creditors of the Fund. • Ongoing calculation and accrual of loan balances due to the Fund.
Trading	Fund Accounting	• Maintenance of cash book for the Fund. • Review of carrying value of loan assets and assessment of appropriate amount and timeframe for provisioning and write-offs.

LM Managed Performance Fund (‘the Fund’ or ‘MPF’)

20 December 2016 | Update to Unitholders No. 17

This is our seventeenth Update to Unitholders.

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1 Overview

1.1 Purpose of update

The purpose of this update is to provide information to Unitholders in relation to developments in the winding up of the MPF. This includes the following:

- Update on the progress of recovery action and litigation, including:
 - Barly Wood & Lifestyle court proceedings
 - AIIS court proceedings
 - potential auditor action
 - recovery of the Lygon Street loan
 - withholding tax remitted to the Australian Taxation Office (‘ATO’)
- Defence of claims against the MPF by the Receiver of LM Investment Management Limited (Receivers and Managers Appointed) as responsible entity of the LM First Mortgage Income Fund (‘FMIF’)
- Potential settlement of a number of claims by and against the MPF
- Fund management matters

All values in this document are in Australian Dollars.

1.2 Prior update reports

This update to Unitholders should be read in conjunction with prior update reports issued by the Trustee.

1.3 Summary of work undertaken / key developments

Key developments during the last six months are summarised as follows:

- Mediation of the FMIF claim against the Fund and other parties has led to negotiations regarding settlement of all present and future claims against the MPF and most claims by the MPF against LM Investment Management Limited (‘LMIM’), FMIF and the directors of LMIM.
- The Trustee has been successful in defending a strike out application made by a defendant in the Barly Wood and Lifestyle claims. Further action has been suspended in relation to this matter whilst we await the outcome of settlement negotiations referred to above.
- Leave to proceed under Section 500 of the *Corporations Act 2001 (Cth)* (‘the Corporations Act’) has been obtained for the AIIS matter and the claim and statement of claim have been served on LMIM. Further action has been suspended on this matter whilst we await the outcome of the settlement negotiations mentioned above.

- The Trustee has obtained copies of records pertaining to the WPIAS audit of the Fund for the years ended 30 June 2011 and 30 June 2012. Public examinations of three individuals involved in the WPIAS audit of the Fund are scheduled for February and March 2017.
- The Trustee's tax advisors have commenced discussions with the ATO regarding recovery of withholding tax paid to the ATO in the period September 2008 to December 2013.

2 Recovery action and litigation

2.1 Barly Wood and Lifestyle

Background of the matter

In August 2008, LM Investment Management Limited (LMIM) entered into an agreement with FMIF which involved the assignment of a number of loans from FMIF to LMIM. This transaction included the FMIF loans to Barly Wood Pty Ltd (Barly Wood) and The Lifestyle Investment Company Pty Ltd (Lifestyle). The Trustee claims that LMIM breached a number of duties owed to the MPF in the course of these transactions. The facts of each case are very similar and are detailed at a high level in our Update to Unitholders No. 15 which was released on 3 December 2015.

Strike-out application

On 27 April 2016, the Trustee received notice that a strike out application, had been filed by the second defendant (FMIF) in relation to these proceedings. This application was heard by the Court on 31 May 2016, by the Honourable Justice Applegarth.

The judgment was delivered on 19 August 2016. FMIF was unsuccessful in its strike out application against the Fund which means that the MPF has retained its right to proceed with these claims against FMIF and LMIM.

Settlement negotiations

We have been in negotiations with a number of parties regarding the settlement of these claims. These negotiations are confidential at this stage; however further information is contained in Section 4 of this report.

Litigation funding

Due to the expected significant costs of litigation and the ongoing demands on the cash reserves of the Fund, the Trustee entered into a litigation funding agreement for the Barly Wood and Lifestyle matters to support litigation efforts and ensure preservation of claims.

Unitholders should be advised that if the Trustee is successful in its claims for Barly Wood and Lifestyle, a portion of the return to MPF will be paid to IMF Bentham under the litigation funding agreement. Further, a portion of any commercially agreed settlement amount will also be paid to IMF Bentham under the litigation funding agreement.

2.2 AIIS

Background of the matter

In January 2005, the MPF entered into a loan agreement with Australian International Investment Services Pty Ltd (AIIS) where it took a first ranking security position. Subsequently, a deed of priority was entered into where the first ranking security was in effect transferred to FMIF. The Trustee alleges that LMIM breached a number of duties owed to the MPF in the course of these transactions.

It is not expected that the MPF will receive any recovery of the outstanding loan based on the sale price of the property and the amount outstanding to FMIF pursuant to its first ranking security. The expected loss to the MPF in this transaction is approximately \$18.8 million.

A statement of claim for this matter was filed in the Supreme Court on 16 December 2015.

The Trustee did not serve the statement of claim on the defendant at the time of filing in the Supreme Court.

Recent developments

The claim in this proceeding was not served because since about March 2016, there had been a real possibility that the proceeding and a number of related proceedings between the parties, might be settled. As discussed in Section 4 below, the Trustee remains hopeful that the matters will be settled, however it became clear that settlement was unlikely to occur before the claim in this proceeding ceased to have force pursuant to Rule 24(1) of the *Uniform Civil Procedure Rules 1999* (Qld). Therefore, the Trustee filed an application for the Court's leave under Section 500(2) of the *Corporations Act* to proceed on 3 November 2016 in order to preserve the rights of the Fund to make a claim for the alleged breaches.

The application was heard on 22 November 2016 and the Court made orders that the Trustee be granted leave to proceed pursuant to Section 500 of the *Corporations Act*. The statement of claim was served on the defendant on 25 November 2016.

As well as leave to proceed under Section 500 of the *Corporations Act*, the Trustee also sought orders that the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to certain parties, that a defence and any counterclaim is required to be filed. This order was granted by the Court and will prevent any unnecessary costs being incurred whilst settlement negotiations are ongoing.

The Trustee has not yet obtained a direction from the Court under Section 96 of the *Trust Act 1973 (Qld)* ('the Trusts Act'). If settlement negotiations are unsuccessful, the Trustee expects to apply for directions under the Trusts Act.

2.3 Auditor action

Background of the matter

Williams Partners Independent Audit Specialists (WPIAS) provided audit services to the Fund in 2011 and 2012. The Trustee considers that there is a possible claim against WPIAS relating to audit services provided.

Recent developments

As advised in previous updates to Unitholders, in order to progress investigations to determine whether the Trustee has any actionable claim against WPIAS, the audit files of WPIAS will need to be reviewed by the Trustee and its legal advisors.

Over the course of the last three years, several attempts were made to WPIAS and other parties for access to the audit files. WPIAS had not complied with these requests and as a result, the Trustee has considered other available options to gain access to the audit files and progress the claim.

In order to progress investigations, the Trustee filed an application in the Federal Court of Australia for the following:

1. An order that summonses for examination be issued to:
 - Mr Reginald Lance Williams
 - Ms Andrea Blank
 - Ms Lee-Ann Dippenaar
2. Orders for the production of documents be made with respect to:

- Mr Reginald Lance Williams
 - WPIAS Forensic & Consulting Pty Ltd
 - Williams Partners Independent Audit Specialists
- (the 'Producing Parties')

This application was heard on 21 October 2016. Orders for production and examination summonses were granted following confirmation from ASIC that it does not propose to intervene or object.

The Trustee has now received a number of documents from the Producing Parties and is preparing for examinations of Mr Williams, Ms Blank and Ms Dippenaar. Examinations are scheduled for 13 and 14 February 2017 and 6 March 2017.

Following conclusion of these public examinations, the Trustee will assess its options in relation to any further action against WPIAS or associated parties.

2.4 Lygon Street

Background of the matter

Upon appointment of the Trustee, MPF held a second ranking mortgage over the property 457-459 Lygon Street, Brunswick East, Victoria. At the time of the Trustee's appointment, preliminary earthworks were being undertaken.

Following further review, the Trustee determined that the best opportunity for a full recovery of monies loaned by the MPF (being approximately \$0.9 million) was to assist in ensuring that the development was funded through to completion. MPF's remaining funding obligations at 8 May 2013 were assumed by LMIM as Responsible Entity for the LM Australian Income Fund ('AIF') in exchange for a new deed of priority ('the Priority and Subordination Deed') being entered into and a release from any breach of trust claims in relation to the development. As a result of these negotiations, the development is now complete.

Recent developments

Despite having received advice from the borrower that the majority of lots were under contract earlier in the year, property settlements began to stagnate from June 2016 and the Trustee considered that in the absence of enforcement action being taken by one of the mortgagees, it would be unlikely that the remainder of the security properties would be sold in an acceptable timeframe.

Further, a winding up application was lodged against the borrower by the ATO earlier in the year. This application was heard on 20 September 2016 and an order was made that the borrower be wound up. At the time of the winding up order being made there were seven unsold lots, comprising 5 residential lots and 2 retail lots.

Prior to the winding up order being made, the Trustee was in discussions with the AIF regarding which party was best suited to take possession of the unsold security property. Under the terms of the Priority and Subordination Deed, MPF was prevented from enforcing its rights under its security without proper written consent of the AIF. On 29 September 2016, AIF provided consent to the MPF:

- accelerating the debt owed to it by the Borrower
- issuing notices of exercise of power of sale to the Borrower in respect of the Security Property
- marketing the security property for sale
- entering into and settling contracts for the sale of the security property.

Following this consent being provided, the Trustee issued necessary enforcement notices and entered into possession of six of the unsold lots on 2 November 2016.

The seventh unsold lot, being retail Shop 2, was under contract at the time of the winding up order being made. This property settled on 25 November 2016 with net settlement proceeds being paid to AIF. Following settlement of Shop 2, the AIF have advised that their debt amount is approximately \$1.2 million.

Based on current estimates, we expect there to be a surplus following repayment of the AIF which will be received by the Fund. We will update Unitholders as the matter progresses over the coming months.

2.5 Withholding tax remitted to the ATO

Background of the matter

The Trustee has been working with a tax advisor in relation to approximately \$4 million which was paid to the ATO as withholding tax for unitholder distributions in the period from July 2011 to March 2013 and a further approximately \$3.5 million which was paid to the ATO for withholding tax for unitholder distributions in the period from September 2008 to June 2011. It is the view of the Trustee that the distributions made during these periods were not distributions of profit. Proper assessment of the carrying values of mortgage loans during the period should have resulted in additional provisions being raised which would have caused a loss in the Fund. Based on this view, some or all of these withholding tax payments may be refundable from the ATO.

Recent developments

Our tax advisors have initiated correspondence with the ATO regarding the withholding tax paid and have advised that the Trustee has identified errors made in the payment of interest withholding tax by the Fund across a number of income years.

Discussions with the ATO are currently ongoing with the Trustee's tax advisor, and the ATO has been provided with documentation to support the claim of the Trustee.

2.6 Other claims against LMIM

Previous updates have contained details of potential claims by the Fund against LMIM, including relating to management fees prepaid to LM Administration Pty Ltd ('LMA')

- As referred to above and in Section 4 below, mediation of the FMIF claim against the Fund has extended to settlement negotiations regarding claims against LMIM. Further action has been suspended on this matter whilst we await the outcome of the settlement negotiations.

3 Defence of FMIF claim against the Fund

Background of the matter

On 23 December 2014, LMIM as responsible entity of the FMIF commenced proceedings in the Supreme Court of Queensland against six current or former directors (Directors) of LMIM, LMIM itself and the Trustee of the MPF. FMIF alleges that the Directors breached duties owed to LMIM and FMIF in relation to the distribution of proceeds of the settlement of a legal action. The FMIF further alleges that LMIM was knowingly involved in those breaches and that the proceeds of the breaches were paid to the MPF. FMIF seeks to recover, from the Directors, LMIM and the MPF, \$15,546,147.85 plus interest on this sum and legal costs.

Recent developments

On 12 July 2016 a mediation was held to attempt to settle this action. As no settlement was reached, the mediation was adjourned to 3 August 2016 (which has since lapsed). Since this time, the parties have been negotiating amongst themselves outside of the Court process. Further details regarding the negotiations and impact on other matters is discussed in Section 4 below.

4 Settlement negotiations

The mediation held on 12 July 2016 (as discussed in Section 3 above) has resulted in ongoing settlement negotiations which have expanded to potentially encompass all actions between a number of parties including: LMIM, FMIF, MPF, the directors of LMIM.

A draft (presently confidential) settlement agreement has been proposed. That draft settlement agreement is still being negotiated by numerous parties and their insurers.

These settlement negotiations impact the majority of current litigation between the parties, including:

- FMIF claim against the Fund
- Barly Wood and Lifestyle
- AIIS

The settlement negotiations also impact most potential future litigation between the parties, including in respect to prepaid management fees.

The Trustee considers that a settlement is likely in the best interests of all parties, including the MPF, and is hopeful of a settlement being reached early in the new year.

5 Fund management

5.1 Unitholder details

As advised in our previous update to Unitholders, the Trustee had made the decision to continue the hold on changes to the investor database for the following reasons:

- The monthly cost would represent a minimum of approximately \$72,000 per year in additional costs to the Fund, and would likely be significantly higher.
- There is still a high degree of uncertainty regarding timeframe for conclusion of the winding up due to ongoing litigation. Once the investor database update process is commenced, it would need to run until finalisation of the winding up; resulting in the monthly cost being incurred until conclusion which could have a material impact on any potential return to Unitholders.
- Any return to Unitholders remains dependent on the outcome of litigation. The investor database update process will become redundant if there is no distribution made to Unitholders at the conclusion of the winding up.
- In the interests of preserving the remaining value of the Fund so that recovery actions may be pursued.

There has been no significant change to the above factors, and for this reason, the hold on changes to the investor database continues. The Trustee will continue to review this decision and before making any distribution from the Fund (subject to sufficient funds being held), will provide Unitholders with the opportunity to change certain details associated with their unit holdings. It is highly likely that once the Trustee is in a position to commence this process, that it will be facilitated through a third party registry service for efficiency.

5.2 Return of monies to Unitholders

In line with previous updates and comments above, the Trustee advises that the likelihood of a return to Unitholders is dependent on the outcome of recovery actions and litigation outlined above. In particular, Unitholders should be aware that the claim by the FMIF against the MPF puts at serious risk the potential of any return to MPF Unitholders. It is emphasised that a distribution, if one is to be made, will not be made until substantially all possible recovery actions and litigation is complete. Unitholders should be aware that if litigation is unsuccessful there is unlikely to be a return to Unitholders.

5.3 Management fees

During the period 1 November 2015 to 14 August 2016, the trustee's role was focussed on:

- Investigations and legal claims with respect to recovery of monies from the former trustee, directors, auditors and other LM funds
- Monitoring of realisations of remaining underlying assets which were held as security for the Fund's loans (including Lygon Street)
- Mediation and settlement negotiations regarding the FMIF claim against the fund
- Review of the Fund's current income tax and withholding tax positions
- Preparation of materials for the ATO to assist with withholding tax matter
- Continuation of the forensic investigation into the previous affairs of the fund
- Preparatory work and attendance in court for matters referred to above

Fees for this period total \$479,227 plus disbursements of \$3,662.

A summary of fees by task area, by week and by employee is included at Appendix B and a copy of detailed narrations is included at Appendix C.

An application to Court for fee approval was heard on 6 October 2016 and orders were made approving payment of \$479,227 from the assets of the MPF.

We will provide details in relation to fees for the period from 14 August 2016 in our next update to Unitholders.

5.4 Investor communication

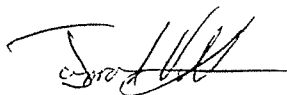
The Trustee will continue to communicate to Unitholders significant changes to the status of the Fund or any recovery actions.

In the interim, Unitholders are able to obtain further information by:

- accessing the KordaMentha website at <http://www.kordamentha.com/creditor-information/australia/109>
- if you are unable to find the answer to your query in any of our Updates or Frequently Asked Questions listing then you may email linvestors@kordamentha.com; (In order to manage the ongoing management costs of the Fund, due to the high volume of enquires made via email the Trustee will only review and respond to emails on a fortnightly basis).

Please note that the Trustee makes every attempt to answer your enquiries on a regular basis however due to the number of queries received and our focus on managing costs of the Fund there may be some delay in responding to your individual requests. We appreciate your patience whilst we manage the large volume of emails and telephone calls received during this time.

Yours sincerely



KordaMentha
Trustee of the Fund

Appendix A - Detailed fee summaries

Fees by task area - hours

For the period 1 November 2015 to 14 August 2016

Task Area	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16
Risk management (litigation and legal), investigations and administration	58.2	45.2	109.9	60.3	55	28.5	123.8	30.2	38.9	11.2
Assets	22.8	16.9	3.1	8.1	11.9	10.9	14.6	4.5	0.5	0.7
Investors	59.8	21.8	18.2	27.7	19.8	5.5	28.1	3.3	4.8	0.5
Investigations	4.8	2.1	4.4	2.7	19.6	15.3	2.4	12.2	1.7	2.2
Fund trading management and other	14.6	7.1	7.6	18.5	57.9	40.7	8	10.9	4.3	1.2
	160.2	93.1	143.2	117.3	164.2	100.9	176.9	61.1	50.2	15.8

Fees by task area - amount (\$)

For the period 1 November 2015 to 14 August 2016

Task Area	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16
Risk management (litigation and legal), investigations and administration	25,235	22,387	51,517	29,718	24,603	14,913	53,656	15,230	21,696	6,168
Assets	8855	7692.5	1516	3756	5769	4869	7,188	2227.5	247.5	347
Investors	26,090	7,208	7,969	9,700	7,381	1,723	12,538	1,146	1,616	150
Investigations	1,335	595	1,530	790	5,705	4653	685	5,649	500	1,089
Fund trading management and other	5,763	2,765	2,822	7,093	25,917	19,679	3,049	4,857	1,290	360
	67,278	40,647	65,353	51,055	69,375	45,836	77,115	29,109	25,348	8,114

Fees by week

	Week ended	Hours	Fee value (\$)
Week 136	8-Nov-15	31.5	13,709
Week 137	15-Nov-15	32.2	14,480
Week 138	22-Nov-15	51.4	19,908
Week 139	29-Nov-15	40.4	16,428
Week 140	6-Dec-15	32.8	13,070
Week 141	13-Dec-15	31.4	13,653
Week 142	20-Dec-15	18.7	8,973
Week 143	27-Dec-15	14.9	6,985
Week 144	3-Jan-16	0	0
Week 145	10-Jan-16	47.2	22,721
Week 146	17-Jan-16	27.5	11,358
Week 147	24-Jan-16	37	17,326
Week 148	31-Jan-16	31.5	13,948
Week 149	7-Feb-16	31.4	14,235
Week 150	14-Feb-16	45.5	19,540
Week 151	21-Feb-16	20.8	9,166
Week 152	28-Feb-16	17.3	7,211
Week 153	6-Mar-16	26.6	10,773
Week 154	13-Mar-16	38	15,783
Week 155	20-Mar-16	25.1	9,758
Week 156	27-Mar-16	48	20,892
Week 157	3-Apr-16	35.3	16,058
Week 158	10-Apr-16	31.4	14,202
Week 159	17-Apr-16	17.2	7,823
Week 160	24-Apr-16	27.5	12,306
Week 161	1-May-16	18.3	8,432
Week 162	8-May-16	15.8	6,798
Week 163	15-May-16	51	22,209
Week 164	22-May-16	62	27,020
Week 165	29-May-16	36.3	14,918
Week 166	5-Jun-16	21.8	11,057
Week 167	12-Jun-16	8.5	3,882
Week 168	19-Jun-16	26.7	13,272
Week 169	26-Jun-16	11.1	4,783
Week 170	3-Jul-16	8.8	4,339
Week 171	10-Jul-16	12.6	6,368
Week 172	17-Jul-16	19.8	9,969
Week 173	24-Jul-16	2.8	1,394
Week 174	31-Jul-16	11	5,430
Week 175	7-Aug-16	15.1	7,904
Week 176	14-Aug-16	0.7	1,155

Fees by person

For the period 1 November 2015 to 14 August 2016

Name	Position	Hourly Rate (\$)	Month hours										Total hours	Total (\$)
			Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16		
Jarrod Villani	Partner	575	23.4	29.5	38.9	30.0	32.8	28.1	26.9	21.7	30.5	7.8	269.6	155,020
Brendan Read	Director	550	4.5	0.0	0.0	3.5	0.0	0.0	14.0	0.0	0.0	0.0	22.0	12,100
Stacey Clisby	Associate Director	Various	78.0	34.5	55.4	26.5	51.7	40.8	60.7	24.4	9.9	6.3	388.2	187,097
Vishka Peiris	Executive Analyst	325	7.9	0.0	7.2	10.0	20.0	0.0	50.9	4.0	0.0	0.0	100.0	32,500
Rebecca Clark	Senior Business Analyst	300	7.4	4.9	6.1	6.9	8.5	3.2	6.0	6.2	4.7	1.2	55.1	16,530
Zachary Voll	Senior Business Analyst	Various	12.3	5.0	21.6	2.0	1.0	1.4	0.2	0.0	0.0	0.0	43.5	12,618
Melissa Lourens	Senior Business Analyst	Various	10.1	16.0	7.5	14.3	35.6	23.6	8.8	3.5	3.9	0.5	123.8	36,488
Other - professional staff	Various	Various	16.3	2.8	6.5	24.1	14.5	3.4	9.2	1.2	1.2	0.0	79.2	26,680
Other - administration	Various	Various	0.3	0.4	0.0	0.0	0.1	0.4	0.2	0.1	0.0	0.0	1.5	195
			160.2	93.1	143.2	117.3	164.2	100.9	176.9	61.1	50.2	15.8	1,082.9	479,227

Fee summary

		\$
Professional fees (excl. GST)		479,226.50
Disbursements		
Searches	1,538.68	
Courier	29.84	
Taxi	29.89	
Meals	34.55	
Postage	1,296.81	
Storage of B&R	732.14	
		3,661.91
GST on professional fees and disbursements		48,288.84
Total professional fees and disbursements (incl. GST)		531,177.25

David O'Brien

From: James Best <james.best@abm.co.th>
Sent: Thursday 22 November 2018 04:05 pm
To: lminvestors
Subject: Re: Matter number BS1076/17 – Prepayments claim
Attachments: image001.png

Please advise of any known criminal and/or civil proceedings against Mr Drake, the orchestrator of this fiasco.

Mail from:
James Best
Communications Director
ABM Connect Co., Ltd.
Bangkok, Thailand
Tel: +66 (0) 2252 9871 ext. 577
Fax: +66 (0) 2254 8353
Mobile: +66 (0) 8 3198 4722

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On Thu, Nov 22, 2018 at 11:45 AM lminvestors <lminvestors@kordamentha.com> wrote:

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd (“**Trustee**”) is the trustee of the LM Managed Performance Fund (“**MPF**”).

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) (“**S 96 Application**”) in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) (“**LMIM**”).

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust (“**LMA**”).

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act* 1973 (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,



Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

[Website](#) | **[Blog](#)** | **[LinkedIn](#)** | **[Twitter](#)**



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David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Wednesday 5 December 2018 10:20 am
To: Charles Hearsum
Subject: RE: Matter number BS1076/17 – Prepayments claim

Dear Charles,

Thank you for your email.

Please be advised that due to the ongoing litigation/legal matters the Trustee is unable to provide an estimated date of finalisation at this time.

As per previous updates, the Trustee has advised that the return to unitholders is likely to be less than five cents in the dollar. The Trustee intends to provide a further update to unitholders in relation to the general status of the winding up in due course.

Kind regards

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia
[Website](#) | [Blog](#) | [LinkedIn](#) | [Twitter](#)



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From: Charles Hearsum <cjmoscow@hotmail.com>
Sent: Friday, 23 November 2018 3:38 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter number BS1076/17 – Prepayments claim

Dear KordaMentha,

When are we likely to see a distribution? This matter has dragged on for years thus prolonging the pain of having lost a sizable chunk of my life savings.

Regards,

Charles Hearsum

Sent from Samsung Mobile

----- Original message -----

From: lminvestors
Date: 22/11/2018 8:38 AM (GMT+04:00)
To: lminvestors
Subject: Matter number BS1076/17 – Prepayments claim

Dear Unitholder

Application by the Trustee for directions regarding proposed discontinuance of a claim

As you know, KordaMentha Pty Ltd ("**Trustee**") is the trustee of the LM Managed Performance Fund ("**MPF**").

The purpose of this correspondence is to notify Unitholders that the Trustee has on 8 November 2018, filed an application within proceeding BS1076/17 under section 96 of the *Trusts Act 1973* (Qld) ("**S 96 Application**") in the Supreme Court of Queensland seeking directions as to whether the Trustee would be justified in discontinuing a claim against LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ("**LMIM**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LM Administration Pty Ltd (ACN 055 691 426 as trustee of the LM Administration Trust ("**LMA**").

In proceeding BS1076/178, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$12,340,378 together with interest on that sum and costs.

The claim and statement of claim relied upon by the Trustee in BS1076/17 was filed on 6 February 2017, and is the most recent pleading. A copy of each of the claim and statement of claim is being uploaded to the website referred to below.

On 1 February 2018, the Supreme Court of Queensland made an order that, relevantly, the defendant is not required to file a defence and any counterclaim until 28 days after the plaintiff gives written notice to the defendant that it is required to do so. This order was made in the circumstances of ongoing multi-party settlement negotiations which ultimately ended without success.

The Trustee has insufficient funds to prosecute BS1076/17 and simultaneously defend a claim made by Mr Whyte, the Court appointed receiver of the LM First Managed Investment Fund against eight defendants (including the Trustee as the 8th defendant) in proceeding BS12317/14 for approximately \$15,546,147.85 plus interest and costs. Therefore, the Trustee has formed the view that it ought apply to the Supreme Court of Queensland for a direction that it would be justified in discontinuing BS1076/17.

The Supreme Court of Queensland has made similar directions in relation to three other proceedings commenced by the Trustee: BS8032/14, BS8034/14 and BS12716/15.

The Trustee has lodged a proof of debt in the liquidation of LMIM in relation to, among other debts, the amount of \$12,340,378 the subject of BS1076/17.

The following information pertaining to the S 96 Application has been uploaded to our website at <http://kordamentha.com/creditor-information/australia/109>:

- The claim and statement of claim in BS1076/17;
- The affidavit of Jarrod Villani sworn and filed on 24 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The affidavit of David Thomas O'Brien sworn and filed on 31 January 2018, in support of an application for leave to proceed against a company in liquidation;
- The order of the Honourable Justice Atkinson made on 1 February 2018;
- The S 96 Application;
- The Application for directions about service of the S 96 Application;
- The affidavit of Jarrod Villani sworn and filed on 14 November 2018, in support of the application for directions about service;
- The affidavit of David Thomas O'Brien sworn and filed on 15 November 2018, in support of the application for directions about service;
- The order of the Honourable Justice Applegarth made on 20 November 2018, regarding service;
- A Statement of Facts prepared pursuant to section 96(1) of the *Trusts Act 1973* (Qld).

The S 96 Application is set to be heard commencing at 10.00am on 19 December 2018, in the Supreme Court of Queensland, 415 George Street, Brisbane, Queensland, Australia.

You are not obliged to respond to or take any action with respect to this notification.

At the hearing of the S 96 Application, the Trustee will bring to the attention of the Court any correspondence it receives from Unitholders regarding the S 96 Application.

Kind regards,

KordaMentha

Level 14, 12 Creek Street, Brisbane QLD 4000, Australia

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