

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**

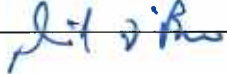
AND

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

AFFIDAVIT

DAVID THOMAS O'BRIEN of MinterEllison, Level 22, Waterfront Place, 1 Eagle Street
Brisbane in the State of Queensland, solicitor, states on oath:

1. I am a member of the firm MinterEllison, the solicitors for KordaMentha Pty Ltd (ACN 100 169 391) in its capacity as trustee for the LM Managed Performance Fund ("**Trustee**"). I have the conduct of this proceeding on behalf of the Trustee, and I am duly authorised to swear this affidavit on its behalf.
2. I seek leave to refer to my affidavit sworn and filed in this proceeding on 15 November 2018 (CFI 11) ("**previous affidavit**").
3. To my previous affidavit is exhibited relevant correspondence passing between my firm and the solicitors for the defendant, Clayton Utz, concerning this proceeding up to 15 November 2018. The purpose of this affidavit is to exhibit relevant

Signed:  Page 1
Taken by: 

AFFIDAVIT OF DAVID THOMAS O'BRIEN

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX102 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 431

correspondence passing between my firm and Clayton Utz since the last hearing in this proceeding on 20 November 2018.

4. At 7.45pm on 21 November 2018, I sent by email to Clayton Utz a Court sealed copy of the order (CFI 13) made by the Honourable Justice Applegarth on 20 November 2018. Exhibit "**DOB-1**" is a copy of my email dated 21 November 2018 to Clayton Utz.
5. At 3.50pm on 22 November 2018, I sent by email to Clayton Utz a Court sealed copy of the Statement of Facts (CFI 14). Exhibit "**DOB-2**" is a copy of my email (excluding the attached Statement of Facts) dated 22 November 2018, to Clayton Utz.
6. At 12.41pm on 17 December 2018, I sent by email to Clayton Utz a copy of the affidavit of Jarrod Villani (CFI 15). Exhibit "**DOB-3**" is a copy of my email (excluding the attached affidavit) dated 17 December 2018 to Clayton Utz.
7. I seek to leave to refer to paragraph 15 of the affidavit of Jarrod Villani sworn and filed in this proceeding on 17 December 2018 (CFI 15). I confirm that my 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.
8. 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 DAVID THOMAS O'BRIEN on 17 December 2018

at Brisbane



Deponent

in the presence of:



Solicitor/Commissioner for
Declarations/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 1076/17

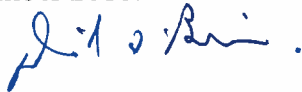
**Plaintiff: KORDAMENTHA PTY LTD (ACN 100 169 391) IN ITS
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PERFORMANCE FUND**

AND

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

CERTIFICATE OF EXHIBIT

Exhibit **DOB-1** to exhibit **DOB-3** the affidavit of DAVID THOMAS O'BRIEN sworn 17
December 2018.



Deponent



Solicitor/Commissioner for
Declarations/Justice of the Peace

AFFIDAVIT OF DAVID THOMAS O'BRIEN

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX102 BRISBANE

Filed on behalf of the Plaintiff

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

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SUPREME COURT OF QUEENSLAND

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LIST OF EXHIBITS

Exhibit	Document	Pages
DOB-1	Email MinterEllison to Clayton Utz dated 21 November 2018	1-6
DOB-2	Email (excluding attachment) MinterEllison to Clayton Utz dated 22 November 2018	7
DOB-3	Email (excluding attachment) MinterEllison to Clayton Utz dated 17 December 2018	8-9

"DOB - 1"

David O'Brien

From: Golinelli, Will <wgolinelli@claytonutz.com>
Sent: Wednesday 21 November 2018 07:47 pm
To: David O'Brien
Cc: Waller, Mark; Erfurt, Chris; Nadia Braad; Claire Davies
Subject: RE: KM (MPF) v LMIM: BS1076/17 [ME-ME.FID3078676]

Thanks David.

Will Golinelli, Senior Associate
Clayton Utz

Level 28, Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7067 | F +617 3221 9669 | wgolinelli@claytonutz.com | www.claytonutz.com



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From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Wednesday, 21 November 2018 7:45 PM
To: Golinelli, Will
Cc: Waller, Mark; Erfurt, Chris; Nadia Braad; Claire Davies
Subject: RE: KM (MPF) v LMIM: BS1076/17 [ME-ME.FID3078676]

Dear Will,

Attached for your information is a sealed copy of the substituted service order made by Justice Applegarth yesterday.

We will keep you informed of the progress of the s.96 application.

Regards

David O'Brien

Partner
T +61 7 3119 6159 M +61 401 148 939
david.obrien@minterellison.com
MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000
minterellison.com Follow us on **LinkedIn** and **Twitter**



From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Thursday 15 November 2018 10:48 am
To: Golinelli, Will <wgolinelli@claytonutz.com>; Nadia Braad <Nadia.Braad@minterellison.com>
Cc: Waller, Mark <mwaller@claytonutz.com>; Erfurt, Chris <CErfurt@claytonutz.com>
Subject: RE: KM (MPF) v LMIM: BS1076/17 [ME-ME.FID3078676]

Dear Will,

Attached for your information (but not by way of service) is my affidavit sworn this morning in support of the substituted service application.

Regards

David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

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From: David O'Brien

Sent: Thursday 15 November 2018 09:25 am

To: 'Golinelli, Will' <wgolinelli@claytonutz.com>; Nadia Braad <Nadia.Braad@minterellison.com>

Cc: Waller, Mark <mwaller@claytonutz.com>; Erfurt, Chris <CErfurt@claytonutz.com>

Subject: RE: KM (MPF) v LMIM: BS1076/17 [ME-ME.FID3078676]

Dear Will,

Please see **attached** correspondence.

Regards

David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

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From: Golinelli, Will [<mailto:wgolinelli@claytonutz.com>]

Sent: Thursday 15 November 2018 07:32 am

To: David O'Brien <David.O'Brien@minterellison.com>; Nadia Braad <Nadia.Braad@minterellison.com>

Cc: Waller, Mark <mwaller@claytonutz.com>; Erfurt, Chris <CErfurt@claytonutz.com>

Subject: RE: KM (MPF) v LMIM: BS1076/17 [ME-ME.FID3078676]

Dear David and Nadia,

Please see **attached**.

Kind regards,

Will Golinelli, Senior Associate

Clayton Utz

Level 28, Riparian Plaza, 71 Eagle Street, Brisbane QLD 4000 Australia | D +617 3292 7067 | F +617 3221 9669 |

wgolinelli@claytonutz.com | www.claytonutz.com



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ASIA-PACIFIC
AWARDS 2018**

Australian Law Firm of the Year

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From: David O'Brien [<mailto:David.O'Brien@minterellison.com>]

Sent: Thursday, 8 November 2018 9:57 AM

To: Golinelli, Will

Cc: Waller, Mark; Nadia Braad

Subject: KM (MPF) v LMIM: BS1076/17 [ME-ME.FID3078676]

Dear Mr Golinelli,

Please see **attached** correspondence and enclosures.

Regards

David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

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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)**

ORDER

Before: Justice Applegarth

Date: 20 November 2018

Initiating document: Application filed 8 November 2018

THE ORDER OF THE COURT IS THAT:

1. The plaintiff serve the application for direction under section 96 of the *Trusts Act* 1973 (Qld) on unitholders of the Managed Performance Fund ("MPF") in accordance with this order.
2. By 4.00pm on 22 November 2018, the plaintiff is to email to the MPF unitholders a notice informing them that the plaintiff has applied ("S 96 Application") to this Honourable Court for direction under section 96 of the *Trusts Act* 1973 (Qld) to discontinue this proceeding, and that they may view all substantive Court documents upon which the plaintiff intends to rely in support of its S 96

ORDER

Filed on behalf of the plaintiff

MINTER ELLISON
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email
david.obrien@minterellison.com
Reference DOB 1109005



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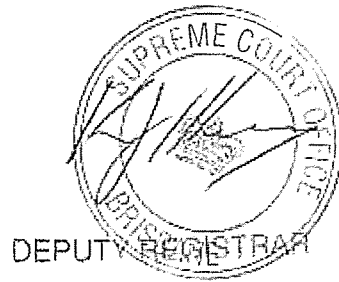
Application on the web-site the address of which is:

<http://www.kordamentha.com/creditor-information/australia/109> ("Website").

3. Where the plaintiff receives a response to an email that indicates the email was not received and the plaintiff has a postal address for any relevant MPF unitholder or unitholders, the plaintiff is to post the email to the postal address of the MPF unitholder.
4. Service of the S 96 Application be deemed to be effective on each of the MPF unitholders as of 29 November 2018.
5. Before sending the emails referred to in paragraph 2 of this order, the plaintiff is to upload to the Website, copies of:
 - (a) the S 96 Application;
 - (b) the application for directions about service;
 - (c) the affidavit of Jarrod Villani filed 14 November 2018;
 - (d) the affidavit of David Thomas O'Brien filed 15 November 2018;
 - (e) this order;
 - (f) the Statement of Facts to be prepared pursuant to section 96 (1) of the *Trusts Act 1973 (Qld)*; and
 - (g) any substantive affidavits (including all the exhibits) that the plaintiff intends to reply upon in support of its S 96 Application.
6. Where the plaintiff proposes to rely on further material in support of its S 96 Application, it may serve that material by uploading the material to the Website, sending letters to a postal address to unitholders to whom order 3 applies, and otherwise by email to the unitholders.
7. The plaintiff is not required to take further steps to serve MPF unitholders whose email addresses return permanent undeliverable receipts and for which the plaintiff does not have a postal address.
8. The plaintiff's costs and expenses of and incidental to its application for this order be paid on the indemnity basis out of the MPF.

9. The plaintiff is to serve a copy of this order on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461).

Signed:



David O'Brien

From: David O'Brien <David.O'Brien@minterellison.com>
Sent: Thursday 22 November 2018 03:50 pm
To: Golinelli, Will
Cc: Waller, Mark
Subject: KM(MPF) v LMIM : BS1076/17 [ME-ME.FID3078676]
Attachments: Statement of Facts of the Plaintiff.pdf

Dear Will,

Attached for your information is our client's Statement of Facts, filed today.

Regards

David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

MinterEllison Waterfront Place 1 Eagle Street Brisbane QLD 4000

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David O'Brien

From: Golinelli, Will <wgolinelli@claytonutz.com>
Sent: Monday 17 December 2018 12:49 pm
To: David O'Brien
Cc: Waller, Mark; Nadia Braad
Subject: RE: KM(MPF) v LMIM : BS1076/17 [ME-ME.FID3078676]

Thanks David

Will Golinelli, Senior Associate
Clayton Utz

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wgolinelli@claytonutz.com | www.claytonutz.com



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Please consider the environment before printing this e-mail

From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Monday, 17 December 2018 12:41 PM
To: Golinelli, Will
Cc: Waller, Mark; Nadia Braad
Subject: RE: KM(MPF) v LMIM : BS1076/17 [ME-ME.FID3078676]

Dear Will,

Attached for your information is the affidavit of Mr Villani sworn today in support of the KM(MPF)'s section 96 application.

We will keep you informed of the progress of the application.

Regards

David O'Brien

Partner

T +61 7 3119 6159 M +61 401 148 939

david.obrien@minterellison.com

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