

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

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

AND

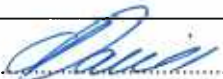
Defendant: **LM INVESTMENT MANAGEMENT
LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN
LIQUIDATION) (ACN 077 208 461)**

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

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

Reference NYB DOB 407747963

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 5 July 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 3.40pm on 17 July 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 (CFI 1);
 - (b) the order of the Honourable Justice Daubney made on 22 November 2016, granting leave to proceed against a company in liquidation (CFI 8);
 - (c) the S 96 Application (CFI 9);
 - (d) the application for directions about service (CFI 10);
 - (e) the affidavit of Jarrod Villani sworn and filed on 10 July 2018 (CFI 11);
 - (f) the affidavit of David Thomas O'Brien sworn and filed on 11 July 2018 (CFI 12);
 - (g) the order of the Honourable Justice Jackson made on 16 July 2018, regarding service (CFI 15); and
 - (h) the Statement of Facts drawn pursuant to s 96(1) of the *Trusts Act* 1973 (Qld) (CFI 16 and CFI 17).
5. Exhibit 'JV-1' is a copy of the relevant page of the Trustee's Website printed on 31 July 2018

Signed: 

Page 2

Taken by: 

6. At approximately 3:50pm on 17 July 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 been called upon by Mr Whyte on behalf of the FMIF, to either prosecute BS12716/15 or discontinue it;
 - (b) the Trustee has insufficient funds to prosecute BS12716/15 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;
 - (c) as a consequence the Trustee has formed the view that proceeding BS12716/15 ought be discontinued if this Honourable Court so directs;
 - (d) the Trustee has applied to this Honourable Court for directions that it would be justified in discontinuing proceeding BS12716/15; and
 - (e) 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 3:50pm on 17 July 2018, to each of the unitholders on the Email mail-out list.
8. On 17 July 2018, a copy of the Email was sent by pre-paid post to 576 separate addresses, covering 739 unitholders from whom an undeliverable response to a previous email had been received and for whom the Trustee held a postal address.
9. The Trustee has so far received 5 substantive responses to its Email notification of 17 May 2018. Exhibit 'JV-3' is a copy of those responses, together with the Trustee's replies to them.
10. In addition to the 5 substantive responses referred to in the previous paragraph of this affidavit, the Trustee has received other emails from unitholders in response to its Email notification of 17 July 2018, but these emails are administrative in nature (for example, updating unitholder email addresses; and, requesting to be unsubscribed to further notifications) or relate to the MPF more generally rather than the S 96 Application.

Signed:  Page 3 Taken by: 

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.
13. 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 31 July 2018

at Brisbane

Deponent

in the presence of:


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

SUPREME COURT OF QUEENSLAND

REGISTRY Brisbane
NUMBER 12716/15

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 31 July 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

Form 47 Rule 435

Reference NYB DOB 407747963

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 12716/15

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 31 July 2018	1 – 4
JV-2	Trustee's notice to unitholders dated 17 July 2018	5 – 6
JV-3	Five substantive responses to the Trustee's notice dated 17 July 2018	7 – 45

LIST OF EXHIBITS

Filed on behalf of the Plaintiff

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

ME_151879400_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 NYB DOB 407747729



Home | Creditors

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.

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

Download Documents

General Information	▼
Updates to Investors - Five to Nineteen	▼
Applications	▼
Matter number 11917/2015 - Trustee interlocutory application for fee approval (third application for fee approval)	▼
Matter Number BS12716/15 AIIIS 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 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	▼

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General Information



Updates to Investors - Five to Nineteen



Applications



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



Matter Number BS12716/15 AIIIS action



01. Orders of the Honourable Justice Daubney made on 22
November 2016

17/07/18 | 59kb



02. The S 96 Application

17/07/18 | 78kb



03. Application for directions about service of the S 96
Application

17/07/18 | 137kb



04. Affidavit of Jarrod Villani sworn on 10 July 2018

17/07/18 | 10997kb



05. Affidavit of David O'Brien sworn on 11 July 2018

17/07/18 | 3951kb



06. Orders of the Honourable Justice Jackson made on 16 July
2018

17/07/18 | 104kb



07. Statement of Facts prepared pursuant to S 96 (1) of the
Trusts Act 1973 (Qld)

17/07/18 | 22876kb



08. The claim and statement of claim in BS 12716/15

17/07/18 | 2321kb



David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Tuesday 17 July 2018 03:53 pm
Subject: Matter BS12716/15 - FMIF 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 5 July 2018, filed an application within proceeding BS12716/15 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**") and Mr David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgaged Income Fund ("**FMIF**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LMIM as responsible entity for the LM First Mortgaged Income Fund.

In proceeding BS12716/15, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$16,820,356.30; and, a declaration that LMIM as trustee for FMIF holds a further \$3,905,721.81 on constructive trust for the Trustee.

The claim and statement of claim relied upon by the Trustee in BS12716/15 was filed on 16 December 2015 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 22 November 2016, 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 been called upon by Mr Whyte, on behalf of the FMIF, to either prosecute BS12716/15 or discontinue it. The Trustee has insufficient funds to prosecute BS12716/15 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. 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 BS12716/15.

On 7 June 2018, the Supreme Court of Queensland made a similar direction in relation to two other proceedings commenced by the Trustee: BS8032/14 and BS 8034/14.

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

- The order of the Honourable Justice Daubney made on 22 November 2016;
- The S 96 Application;
- The Application for directions about service of the S 96 application;
- The affidavit of Jarrod Villani sworn and filed on 10 July 2018, in support of the application for directions about service;
- The affidavit of David O'Brien sworn and filed on 11 July 2018, in support of the application for directions about service;
- The order of the Honourable Justice Jackson made on 16 July 2018, regarding service;
- A Statement of Facts prepared pursuant to S 96 (1) of the *Trusts Act 1973* (Qld) ;
- The claim and statement of claim in BS 12716/15.

The S 96 Application is set to be heard commencing at 10.00am on 9 August 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: Thursday 26 July 2018 09:37 am
To: 'A B'
Subject: RE: RE: RE: Matter BS12716/15 - AIIS claim
Attachments: 180627-Update 19 to Unitholders-RST-SC.pdf

Dear Angela

As per our Updates, the Trustee has been pursuing Court approved recovery actions via litigation in a view of mitigating the material losses and limited returns expected from the loans and mortgage security held.

Given the circumstances, the Trustee has formed the view that we have insufficient funds to prosecute BS12716/15 and simultaneously defend a claim made by Mr Whyte.

Accordingly, we are applying to the Supreme Court of Queensland for a direction, that it would be justified in discontinuing BS12716/15.

Included in the latest Update to investor dated 28 June 2018 are details regarding the work undertaken as well as recoveries to date, this is attached for your reference.

Kind Regards

KordaMentha

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



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From: A B [mailto:angelabliss63@yahoo.co.uk]
Sent: 25 July 2018 8:00 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: RE: RE: Matter BS12716/15 - AIIS claim

Hi Korda Mentha,

I was making the point that there seems to be money to pay your fees "in total"?

I am not exactly sure what this statement from your email means, "in order to maximise realisations and recover funds for the benefit of the members"?.....does this mean you have maximised something and actually recovered a whole 5 cents in the dollar for us, the investors?

This does not seem fair or right to me?

Regards,

Angela

On Tuesday, 24 July 2018, 5:02:34 pm AEST, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Angela

These fees reflect the work undertaken by KordaMentha during the period since our previous application.

All the tasks detailed in the affidavit and the documents in the Exhibit were necessary for the proper administration of the MPF, in order to maximise realisations and recover funds for the benefit of the members.

Kind Regards

KordaMentha

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

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



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From: A B [<mailto:angelabliss63@yahoo.co.uk>]
Sent: 23 July 2018 4:32 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: RE: Matter BS12716/15 - AIIIS claim

Hi Korda Mentha,

Thank you for the reply.

So, if I understand correctly, the only money I "may" receive after all this time is....perhaps, 5 cents in the dollar of my original investment?

Is this correct?

And, Korda Mentha are hoping to receive approximately \$756,066.00 for fees from Aug 2016 to May 2018?

Regards,

Angela Bliss

On Monday, 23 July 2018, 2:40:00 pm AEST, lminvestors <lminvestors@kordamentha.com> wrote:

Dear Angela

Thank you for your email.

The purpose of the below email is to advise unitholders that the Trustee will be seeking direction from the Court to discontinue the proceedings, on the basis that the Trustee has insufficient funds.

We understand the frustration experienced by the unitholders of the LM MPF due to the significant delays in receiving any distribution from the winding up. However, due largely to an action being taken against the Fund by the Receiver of the LM First Mortgage Income Fund, the Trustee has not been able to make any distribution from cash holdings.

Prior to making any distributions the Trustee first needs to seek directions from the Court on a number of matters which were outlined in the previous Update to Unitholders.

As per the Update, the return to Unitholders is likely to be less than five cents in the dollar. This estimate remains unchanged.

The Trustee will keep Unitholders updated in respect to this process and we appreciate the patience of Unitholders in this matter.

Kind Regards

KordaMentha

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

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



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From: A B [<mailto:angelabliss63@yahoo.co.uk>]

Sent: 20 July 2018 2:10 PM

To: lminvestors <lminvestors@kordamentha.com>

Subject: Re: Matter BS12716/15 - FMIF claim

Hi,

I have no idea what the latest correspondence actually means?

Does it mean that I will not be receiving any of my investment back because the case against LM is going to be dropped??

Please answer me in very plain English that I can understand?

Regards,

Angela Bliss

On Tuesday, 17 July 2018, 3:56:53 pm AEST, 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 5 July 2018, filed an application within proceeding BS12716/15 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**”) and Mr David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgaged Income Fund (“**FMIF**”).

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LMIM as responsible entity for the LM First Mortgage Income Fund.

In proceeding BS12716/15, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$16,820,356.30; and, a declaration that LMIM as trustee for FMIF holds a further \$3,905,721.81 on constructive trust for the Trustee.

The claim and statement of claim relied upon by the Trustee in BS12716/15 was filed on 16 December 2015 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 22 November 2016, 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 been called upon by Mr Whyte, on behalf of the FMIF, to either prosecute BS12716/15 or discontinue it. The Trustee has insufficient funds to prosecute BS12716/15 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. 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 BS12716/15.

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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 S 96 Application;
- The Application for directions about service of the S 96 application;
- The affidavit of Jarrod Villani sworn and filed on 10 July 2018, in support of the application for directions about service;
- The affidavit of David O'Brien sworn and filed on 11 July 2018, in support of the application for directions about service;
- The order of the Honourable Justice Jackson made on 16 July 2018, regarding service;
- A Statement of Facts prepared pursuant to S 96 (1) of the *Trusts Act* 1973 (Qld) ;
- The claim and statement of claim in BS 12716/15.

The S 96 Application is set to be heard commencing at 10.00am on 9 August 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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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 (\$)
3-Dec-2017	15.3	6,096.50
10-Dec-17	10.2	4,181.00
17-Dec-17	18.5	8,116.00
24-Dec-17	10.7	4,592.50
31-Dec-17	-	-
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

Week ended	Hours	Amount (\$)
6-May-18	17.6	7,237.50
13-May-18	36.7	17,327.50
20-May-18	30.9	13,404.00
27-May-18	27.3	12,818.00
	335.2	141,571.00

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.
	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. • Various discussions with third party registry system regarding potential update and maintenance of the investor register.
	Engagement Planning	• Engagement planning and management meetings. • Ongoing review and update of task lists. • Ongoing maintenance of priority investigations and allocation of resources.
	Other Administration	• 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 sin 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.

From: lminvestors <lminvestors@kordamentha.com>
Sent: Monday 23 July 2018 02:51 pm
To: 'Jenda McSwiggan'
Cc: Andrew Brown; Karin Schoner
Subject: RE: Matter BS12716/15 - AII claim

Dear Jenda

Thank you for your email.

As per our previous Updates to investors, The Trustee estimates that the return to unitholders is likely to be less than five cents in the dollar. This estimate remains unchanged.

In relation to options left to individual unitholders, we would encourage unitholders to seek their own independent advice.

Kind Regards

KordaMentha

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



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From: Jenda McSwiggan [mailto:jenda@saxcoburg.com]
Sent: 19 July 2018 5:21 PM
To: lminvestors <lminvestors@kordamentha.com>
Cc: Andrew Brown <andrew.brown@creechurchcapital.com>; Karin Schoner <karinschoner@gmail.com>
Subject: Re: Matter BS12716/15 - FMIF claim

Dear all, can you please advise if the guidance received from the court is to discontinue your claim where this leaves the investors?

Many thanks in advance.

On Tue, 17 Jul 2018 at 07:05, 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 5 July 2018, filed an application within proceeding BS12716/15 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**") and Mr David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgaged Income Fund ("**FMIF**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LMIM as responsible entity for the LM First Mortgage Income Fund.

In proceeding BS12716/15, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$16,820,356.30; and, a declaration that LMIM as trustee for FMIF holds a further \$3,905,721.81 on constructive trust for the Trustee.

The claim and statement of claim relied upon by the Trustee in BS12716/15 was filed on 16 December 2015 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 22 November 2016, 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 been called upon by Mr Whyte, on behalf of the FMIF, to either prosecute BS12716/15 or discontinue it. The Trustee has insufficient funds to prosecute BS12716/15 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. 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 BS12716/15.

On 7 June 2018, the Supreme Court of Queensland made a similar direction in relation to two other proceedings commenced by the Trustee: BS8032/14 and BS 8034/14.

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

- The order of the Honourable Justice Daubney made on 22 November 2016;
- The S 96 Application;
- The Application for directions about service of the S 96 application;
- The affidavit of Jarrod Villani sworn and filed on 10 July 2018, in support of the application for directions about service;
- The affidavit of David O'Brien sworn and filed on 11 July 2018, in support of the application for directions about service;
- The order of the Honourable Justice Jackson made on 16 July 2018, regarding service;
- A Statement of Facts prepared pursuant to S 96 (1) of the *Trusts Act 1973* (Qld) ;
- The claim and statement of claim in BS 12716/15.

The S 96 Application is set to be heard commencing at 10.00am on 9 August 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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--

Jenda McSwiggan

Senior Partner

Tel: +44 28796 31054

Cell: +44 7522 174 713

Skype: jenda.mcswiggan

www.saxcoburg.com



David O'Brien

From: lminvestors <lminvestors@kordamentha.com>
Sent: Wednesday 18 July 2018 02:30 pm
To: 'Colin Cooke'
Subject: RE: Matter BS12716/15 - FMIF claim

Dear Colin

The purpose of the below email is to advise unitholders that the Trustee will be seeking direction from the Court to discontinue the proceedings.

This notification is required to be provided by the Trustee to unitholders.

In relation to the likelihood of a distribution to unitholders, this information was included in the Trustees most recent update dated 28 June 2018.

At this stage, we are unable to provide an estimated timeframe for the distribution.

Kid Regards

KordaMentha

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



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From: Colin Cooke [mailto:cookieboy69@hotmail.co.uk]
Sent: 17 July 2018 4:09 PM
To: lminvestors <lminvestors@kordamentha.com>
Subject: Re: Matter BS12716/15 - FMIF claim

Hello,

Can someone put this email into plain English?

I have no clue as to what you have sent me here but all I wish to know is if we're getting any investment back?

Mr Colin Cooke

Sent from my Samsung Galaxy smartphone.

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

From: lminvestors <lminvestors@kordamentha.com>
Date: 17/07/2018 12:58 (GMT+07:00)
To:
Subject: Matter BS12716/15 - FMIF 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 5 July 2018, filed an application within proceeding BS12716/15 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**") and Mr David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgaged Income Fund ("**FMIF**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LMIM as responsible entity for the LM First Mortgage Income Fund.

In proceeding BS12716/15, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$16,820,356.30; and, a declaration that LMIM as trustee for FMIF holds a further \$3,905,721.81 on constructive trust for the Trustee.

The claim and statement of claim relied upon by the Trustee in BS12716/15 was filed on 16 December 2015 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 22 November 2016, 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 been called upon by Mr Whyte, on behalf of the FMIF, to either prosecute BS12716/15 or discontinue it. The Trustee has insufficient funds to prosecute BS12716/15 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. 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 BS12716/15.

On 7 June 2018, the Supreme Court of Queensland made a similar direction in relation to two other proceedings commenced by the Trustee: BS8032/14 and BS 8034/14.

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

- The order of the Honourable Justice Daubney made on 22 November 2016;
- The S 96 Application;
- The Application for directions about service of the S 96 application;
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- The affidavit of David O'Brien sworn and filed on 11 July 2018, in support of the application for directions about service;
- The order of the Honourable Justice Jackson made on 16 July 2018, regarding service;
- A Statement of Facts prepared pursuant to S 96 (1) of the *Trusts Act 1973* (Qld) ;
- The claim and statement of claim in BS 12716/15.

The S 96 Application is set to be heard commencing at 10.00am on 9 August 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

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From: Michael Seabrook <seabrook@jiibfinancial.com>
Sent: Tuesday 17 July 2018 04:22 pm
To: lminvestors
Subject: Re: Matter BS12716/15 - FMIF claim

Follow Up Flag: Follow up
Flag Status: Flagged

So as a creditor of this mess I have been waiting over 5 years and watched Korda Menta achieve nothing but a great big load of fees. Maybe ask the judge for a ruling on that.

Sent from my iPhone

On 17 Jul 2018, at 12.54, 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 5 July 2018, filed an application within proceeding BS12716/15 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**") and Mr David Whyte in his capacity as Court appointed receiver of the property of the LM First Mortgaged Income Fund ("**FMIF**").

The claim relates to transactions entered into by, among others, LMIM as the former trustee of the MPF and LMIM as responsible entity for the LM First Mortgage Income Fund.

In proceeding BS12716/15, the Trustee seeks, among other things, to recover from LMIM in its personal capacity, \$16,820,356.30; and, a declaration that LMIM as trustee for FMIF holds a further \$3,905,721.81 on constructive trust for the Trustee.

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The Trustee has been called upon by Mr Whyte, on behalf of the FMIF, to either prosecute BS12716/15 or discontinue it. The Trustee has insufficient funds to prosecute BS12716/15 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. 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 BS12716/15.

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The S 96 Application is set to be heard commencing at 10.00am on 9 August 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>

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<image002.png>

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From: Victor John <vjohn121@gmail.com>
Sent: Tuesday 24 July 2018 06:04 pm
To: Stacey Clisby
Cc: Adrian Thomson; John Wright; Gordon Reid; Jacqueline Mansfield; Jarrod Villani
Subject: Re: Dropped Claim Summary
Attachments: image002.png

Dear Stacey,

thank you for your response to the LMIVC request for a 'Dropped Claim Summary' made via email dated July 19th 2018.

At this stage LMIVC were not intending to provide you with a specific instruction regarding the discontinuance of the AIIS proceeding. The July 19th 'Dropped Claim Summary' request was and still is in place in attempt to understand the strategic, overarching dimension of dropped claims. ie their original potential recovery value, reason for dropping, and their current status. I'd imagined a 4 column table (claim name, potential recovery value, reason for dropping, status) with a couple of precis style sentences in the reason for dropping column for each line item.

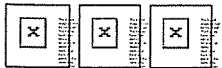
LMIVC appreciate the detail you have provided on AIIS. We acknowledge the position is complex and a proper description of the position will need to weave it's way through that complexity.

Upon the above explanation of our thinking we hope you are able to understand and help with the request for a Dropped Claim Summary, as we've called it.

I appreciate your reason for requesting information around the portion of unit holders LMIVC may embody and can provide further data to establish and substantiate that as and when there is a request that needs to go in front of the court.

Thank you in advance for your help in understanding the holistic dropped claim position and your continued help in pressing for the best possible recovery.

Best Regards,
Victor John



On Fri, Jul 20, 2018 at 6:10 PM Stacey Clisby <sclisby@kordamentha.com> wrote:

Dear Victor,

As you are seeking to provide directions to the Trustee regarding the winding up process being undertaken, it would be appropriate for us to understand the proportion of unitholders which you represent. This information may also assist the Court in considering any response that LMIVC provide regarding the discontinuance of the AIIS proceeding.

In relation to your initial request for a layman's summary, I assume that your request relates to the AIIIS action for which notification was sent to the unitholders earlier this week. As you are no doubt aware, the matter is complex, however we have done our best to summarise for you. This summary is attached for your information.

Given the time frames that we are currently working within, I request that if LMIVC wish to tender a response which is to be considered by the Trustee and/or the Court in relation to the discontinuance of this matter, that this response is provided no later than **26 July 2018**.

Regards,

Stacey Clisby | Director | KordaMentha Restructuring



T +61 7 3338 0276

M +61 408 063 559

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

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



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From: Victor John <vjohn121@gmail.com>

Sent: Thursday, 19 July 2018 4:55 PM

To: Stacey Clisby <sclisby@kordamentha.com>

Cc: Adrian Thomson <javea02@yahoo.co.uk>; John Wright <johnoscar@hotmail.com>; Gordon Reid <gdreid51@yahoo.co.uk>; Jacqueline Mansfield <jacquelinemansfield@gmail.com>; Jarrod Villani <jvillani@kordamentha.com>

Subject: Re: Dropped Claim Summary

Dear Stacey,

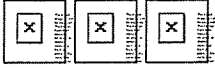
I don't have a list that fits that precise description.

However if you wish a list of registrants that support the LMIVC work in general I can, subject to LMIVC data privacy requirements, provide you with such.

What is your concern?

Regards,

Victor John.



On Thu, Jul 19, 2018 at 1:45 PM Stacey Clisby <sclisby@kordamentha.com> wrote:

Dear Victor,

We will provide a response to your email shortly.

However, in the meantime would you please provide a listing of unitholders who have confirmed in writing that you are to act as their representative.

Regards,

Stacey Clisby | Director | KordaMentha Restructuring
Error! Filename not specified.

T +61 7 3338 0276

M +61 408 063 559

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

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From: Victor John <vjohn121@gmail.com>

Sent: Thursday, 19 July 2018 3:51 PM

To: Jarrod Villani <jvillani@kordamentha.com>

Cc: Adrian Thomson <javea02@yahoo.co.uk>; John Wright <johnoscar@hotmail.com>; Gordon Reid <gdreid51@yahoo.co.uk>; Jacqueline Mansfield <jacquelinemansfield@gmail.com>

Subject: Dropped Claim Summary

Dear Jarrod,

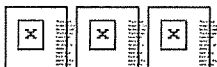
can you please provide a layman's summary of claims / recovery pursuits (inclusive of potential recovery value and current status) that you have decided to drop with reason why?

I have many investor inputs that claim the legalise wrapped notices are difficult for the average investor to understand and digest which I also agree with (remember we are conned retail investors not conned sophisticated investors)!

LMIVC request that no further steps are taken to close down recovery actions until the layman's summary has been provided and remarked upon by LMIVC.

Rgds,

VJ



LM Managed Performance Fund ('MPF')

Summary of AIIS claim and status

The claim

This is only a summary. It is not a replacement for reading all of the relevant material uploaded on the Trustee's website.

The Trustee claims that the former trustee of the MPF - LM Investment Management Ltd ('LMIM'), breached a number of duties which were owed to the MPF. The Trustee claims that these breaches of duty arose as a result of loan agreements between MPF and Australian International Investment Services Pty Ltd ('AIIS') and also between another LM fund - the First Mortgage Income Fund ('FMIF') and AIIS.

The breach of duties can be summarised as follows:

- LMIM as trustee for MPF loaned money to AIIS in 2009, 2010 and 2011 using a valuation from February 2008 and that this valuation was out of date and should not have been relied on.
- Amounts advanced by LMIM and AIIS exceeded a value of 100% of the underlying security property.
- LMIM as trustee for MPF paid \$3.9 million to LMIM as trustee for FMIF on account of interest owed by AIIS under the FMIF loan.
- LMIM as trustee for MPF loaned more money to AIIS than it was likely to recover.
- LMIM as trustee for MPF failed to obtain necessary internal approvals before entering into a Deed of Variation to increase the loan amount to \$24 million.

The claim amount (as against LMIM) ('compensation claim') is \$16.8 million which is calculated as follows:

	(\$)
Payments to AIIS	11,385,582
Less: receipts applied to principal	3,609,649
Net loss	7,775,633
Plus: lost opportunity interest	9,044,723
	16,820,356

The constructive trust claim and the indemnity claim

In simple terms, the constructive trust claim and the indemnity claim seek to recover the amount of \$3,905,722 from the FMIF, being the amount which was paid by MPF to FMIF on account of interest owed by AIIS under the FMIF loan.

The Trustee seeks a declaration that LMIM as trustee for FMIF holds the amount of \$3,905,722 on constructive trust for LMIM as trustee for MPF ('the constructive trust claim').

The Trustee also seeks a declaration that LMIM is entitled to be indemnified out of the assets of the FMIF in relation to the amount of \$3,905,722 and has a lien or charge over the assets of the FMIF in this respect. The Trustee then seeks to be subrogated to the rights of LMIM ('the indemnity claim').

Possible Recoveries

LMIM is in liquidation. It is unlikely that any recovery will be obtained from LMIM in relation to the compensation claim.

It is possible that LMIM holds insurance policies that might respond to the compensation claim if successful, but the Trustee knows that those policies have and continue to be drawn upon by the directors of LMIM in litigation.

It is likely that recoveries would be limited to the constructive trust claim or the indemnity claim against the FMIF (\$3,905,722 plus interest and costs) if successful.

Status

The financial position of the MPF is not strong and the Fund cannot afford to run multiple legal actions. The MPF is currently involved in the defence of a claim by FMIF against a number of parties including the MPF, which has been and continues to put a significant strain on the cash position of the Fund. However, if this claim were not defended appropriately, it is possible that all remaining cash holdings of the MPF would need to be distributed to FMIF.

The AIIS claim formed part of settlement negotiations which were ongoing from July 2016 until earlier this year (2018). These settlement negotiations were not successful. Following conclusion of these negotiations, the Trustee has been under increasing pressure from the receiver of the FMIF to either progress the claim or to discontinue the proceeding. As a result, the Trustee considers that it is now necessary to make a decision as to whether to progress the claim.

It is estimated that the Trustee's costs of prosecuting the proceeding to the conclusion of trial will be approximately \$1.2 - \$1.35 million (excl. GST). In addition, the MPF may also have to pay the defendants' costs (assuming the FMIF is joined) if it were unsuccessful in the action. MPF cannot afford to fund the AIIS claim and defend the claim brought by the FMIF.

The Trustee has previously obtained funding from a litigation funder in relation to two separate claims. The Trustee has not sought litigation funding in relation to this claim because it costs money to seek funding and the Trustee is of the opinion that it would not be able to obtain funding. The following principal matters have been considered by the Trustee in coming to this view:

- LMIM is in liquidation.
- The receiver of the FMIF has commenced two claims against LMIM which may impact on the indemnity claim. The receiver of the FMIF has also raised in correspondence defences to the constructive trust claim and the indemnity claim.
- The funding agreement between the Trustee and litigation funder IMF Bentham in relation to the two separate claims has recently been terminated.

Further, the Supreme Court has recently directed that the Trustee would be justified in discontinuing the two separate claims, which it has done.

In the circumstances, the Trustee is of the opinion that it is in the best interests of the unitholders of the MPF for the AIIS claim to be discontinued.

The Trustee remains of the view that it has an arguable claim in relation to this matter, however it is not in a financial position to progress a legal proceeding against LMIM and FMIF.

If you wish to fund the AIIS claim please let us know urgently. You should take your own legal and financial advice.

The Supreme Court will hear the Trustee's application at the QE11 Courts of Law Complex 415 George Street, Brisbane, Queensland, Australia at 10.00am on 8 August 2018. You can attend the hearing and seek to be heard.