

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants

KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

**CALIBRE CAPITAL LTD (ABN 66 108 318 985) IN THEIR
CAPACITY AS TRUSTEES FOR THE LM MANAGED
PERFORMANCE FUND**

AND

First Respondent

**THE MEMBERS OF THE LM MANAGED
PERFORMANCE FUND**

AND

Second Respondent

**JOHN RICHARD PARK AND GINETTE MULLER IN
THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT MANAGEMENT
LIMITED (IN LIQUIDATION) ACN 077 208 461**

AFFIDAVIT

I, **LISA NAOMI GALLATE** of Level 23, 1 Farrer Place, Sydney NSW 2000, Solicitor, say on oath:

1. I am an employed solicitor of Piper Alderman, solicitors for the Applicants, and I have carriage of this matter under the supervision of Amanda Banton, who is the solicitor for the Applicants.
2. I am authorised to make this affidavit on the Applicants' behalf.
3. Now produced and shown to me and marked "LNG1" is an indexed, paginated bundle of documents to which I shall refer in this affidavit. References in this affidavit are to the pages in the Exhibit.
4. On 12 November 2013, I caused to be sent by email to Mr Ashley Tiplady and Mr Sean Russell of Russells, the solicitors for the Second Respondent a letter and copies of 2 draft

Page 1

Signed



Taken by



Affidavit

Filed on behalf of the Applicants
Form 46 (Rule 431)

Piper Alderman
Level 23, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Tel: +61 2 9253 9999
Fax: +61 2 9253 9900
Ref: AKB.LG.ST.386376

applications to be filed with the Registry that day, seeking orders for the winding up of the LM Managed Performance Fund ("the Trust") and orders in respect of the books and records of the Trust ("Applications"). At page 1 of the Exhibit is a true copy of the email and the draft Applications.

5. Later on 12 November 2013, I caused to be sent to Mr Ashley Tiplday and Mr Sean Russell of Russells, the solicitors for the Second Respondent, an email and copies of the filed Applications. At page 12 of the Exhibit is a true copy of the email and the Applications as filed.
6. On 12 November 2013, I caused to be sent by email to Mr David Clout, in his capacity as the Liquidator of LM Administration Pty Ltd, a copy of the application for orders in respect of the books and records of the Trust. At page 20 of the Exhibit is a true copy of the email and the application as emailed to Mr Clout.
7. On 13 November 2013, I caused to be sent by email to Mr David Whyte of BDO, Receiver of the LM First Mortgage Income Fund ("FMIF"), a copy of the application for orders in respect of the books and records of the Trust. At page 24 of the Exhibit is a true copy of the email and the application as emailed to Mr Whyte.
8. On 13 November 2013, I caused to be sent by email to Mr Hugh Copley of the Australian Securities and Investments Commission, a letter and copies of the Applications. At page 28 of the Exhibit is a true copy of the email and copies of the Applications as emailed to Mr Copley.
9. I am informed by Ms Amanda Banton and verily believe that on 13 November 2013, Ms Banton sent an email to Mr Joseph Hayes of McGrathNicol, Receivers appointed by Deutsche Bank as secured creditor of the FMIF, together with the application for orders in respect of the books and records of the Trust. At page 37 of the Exhibit is a copy of the email and application as sent to Mr Hayes.
10. All the facts and circumstances deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by LISA NAOMI GALLATE

on 14 November 2013

at SYDNEY, NEW SOUTH WALES, in the presence of:


.....
Signed


.....
[Person taking the affidavit to sign -
Commissioner for
Declarations/Solicitor/J.P.]

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants: **KORDAMENTHA PTY LTD (ACN 100 169 391)**

AND

**CALIBRE CAPITAL LTD (ABN 66 108 318 985) IN THEIR CAPACITY
AS TRUSTEES FOR THE LM MANAGED PERFORMANCE FUND**

AND

First Respondents: **THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND**

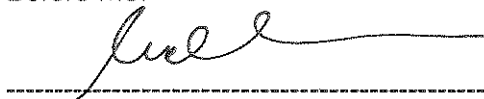
AND

Second Respondents **JOHN RICHARD PARK AND GINETTE MULLER IN THEIR
CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS
APPOINTED) ACN 077 208 461**

EXHIBIT CERTIFICATE

Bound and marked LNG1 is the Exhibit to the affidavit of Lisa Naomi Gallate sworn on 14 November 2013.

Before me:



Deponent



Solicitor

Page 1

Signed

Taken by

Affidavit of Lisa Naomi Gallate
Filed on behalf of the Applicants
Form 46 (Rule 431)

Piper Alderman
Level 23, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Tel: +61 2 9253 9999
Fax: +61 2 9253 9900
Ref: AKB.LG.380287-0001

INDEX TO EXHIBIT LNG-1

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Lisa Gallate

From: Davina Holland on behalf of Amanda Banton
Sent: Tuesday, 12 November 2013 11:03 AM
To: Ashley Tiplady (atiplady@russellslaw.com.au); seanrussell@russellslaw.com.au
Cc: Amanda Banton; Lisa Gallate; Jasmin Shaw
Subject: John Richard Park and Ginette Dawn Muller & Anor v KordaMentha Pty Ltd & Anor
- Supreme Court of Queensland Proceeding No. 9550 of 2013
Attachments: letter & enclosure.pdf

Please find attached our letter dated 12 November 2013 together with enclosures.

Kind regards

Amanda Banton
Partner | Piper Alderman



Piper Alderman

t +61 2 9253 9929 | m +61 424 156 859 | f +61 2 9253 9900
abanton@piperalderman.com.au | www.piperalderman.com.au

Our Ref: AKB.LNG.386376
Your Ref:



12 November 2013

By Email: atiplady@russellsllaw.com.au ;
seanrussell@russellsllaw.com.au

Russells
GPO Box 1402
Brisbane QLD 4001

Attention: Sean Russell/Ashley Tiplady

Dear Sirs

John Richard Park and Ginette Muller & Anor v KordaMentha Pty Ltd and Calibre Capital Limited in their capacity as trustees of the LM Managed Performance Fund ABN 96 596 833 174: Supreme Court of Queensland Proceedings 9550/2013 (Application)

1. We refer to your clients' application filed 10 October 2013, your letters of 18 October and 7 November 2013 and our letter of 16 October 2013.

Applications

2. We enclose by way of service a copy of the following applications which will be filed today, and which will be returnable for interlocutory orders regarding service on members of the Fund on Thursday 14 November 2013:
 - 2.1 Application for the delivery up of the books and records; and
 - 2.2 Application for the winding up of the fund, and for orders in respect of the quarantined funds.
3. We consider that these applications should be heard together with your clients' application filed 10 October 2013, if your clients' application and our clients' application in respect of the Books and Records and quarantined funds cannot be resolved by the parties in the interim.
4. In any event, although your clients' affidavit evidence in support of their application filed 10 October 2013 has not yet been delivered, we think it is unlikely that that application can be heard and determined in two hours in Applications on 18 November 2013, as it raises complicated questions both of fact and law. In our view, if the parties cannot resolve the issues, all applications in relation to the Fund should be listed for hearing on the Civil list either later this month or next month.

Lawyers

Sydney • Melbourne
Brisbane • Adelaide

ABN 42 843 327 183

Level 23

Governor Macquarie Tower

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www.piperalderman.com.au

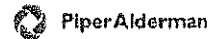
Special Counsel:

Lisa Gallate

t +61 2 9253 3855

lgallate@piperalderman.com.au

To: Sean Russell/Ashley Tiplady
Date: 12 November 2013
Our Ref: AKB:LNG:388376
Page: 2



5. In that regard we note as follows:

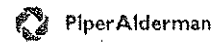
- 5.1 Order 1(a) and 1(iv) of the Orders made on 23 May 2013 provided that our clients could use the trust assets in the ordinary course and that upon the provision of the books and records of the trust and written details of any such lien or right of indemnity being provided to our clients, that the parties would work cooperatively to agree a process that allows the parties to determine the quantum and priority with respect to any such lien, charge or right of indemnity.
- 5.2 Notwithstanding the Court's orders, your clients have filed an application for the determination of the priority and quantum of their lien in circumstances where they have not yet provided all the books and records of the Trust to the New Trustees.
- 5.3 We have already attended a meeting with you and your clients to seek to resolve the Administrators' indemnity claim, without success.
- 5.4 We wrote a substantial and carefully considered letter to you on 23 August 2013 which set out our clients' position in relation to the indemnity and lien claims of the Administrators and LMIM. We have not to date received a substantive response to our letter, nor have we received a counter offer from you in respect of the amount claimed by the Administrators.
- 5.5 We likewise did not receive a substantive response to our letter dated 23 August 2013 prior to receipt of your clients' current application.

- 6. In the circumstances set out in the preceding paragraph we do not consider our clients should have paid the sum in trust to your clients.
- 7. In the circumstances, and in light of your letter of 7 November 2013, we suggest that at the first directions hearing for our clients' application, orders be made for our clients' applications and your clients' application be referred to mediation on a date to be fixed in the week of 18 November 2013.

Accounting Relationship and payment of our clients' remuneration

- 8. We note that you have not articulated why you assert our clients are in an accounting relationship with your clients. Further having regard to order 1(a) which was made by consent of your clients, we do not understand on what basis our clients are required to account to your clients in respect of their remuneration and expenses.
- 9. In circumstances where our clients have complied with the Courts order to hold (and continue to hold) the amount of \$1,364,299 from the balance of the trust assets on account of your clients' liens, we do not consider we are required to specify how much remuneration our clients have drawn, what expenses they have paid and what they have otherwise paid out of the trust fund.

To: Sean Russell/Ashley Tiplady
Date: 12 November 2013
Our Ref: AKB:LNG.366376
Page: 3



10. We do not consider that our clients are obliged to provide any management accounts to your clients at this time.

Priority of your clients' liens

We do not accept the priorities asserted in your letter and in any event note that the quantum of any amount owed to your clients is in dispute.

Yours faithfully
Piper Alderman

Per: 

Amanda Banton
Partner

Encs.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
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Applicants KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

CALIBRE CAPITAL LTD (ABN 66 108 318 985)
IN THEIR CAPACITY AS TRUSTEES FOR THE
LM MANAGED PERFORMANCE FUND

AND

First Respondents JOHN RICHARD PARK AND GINETTE MULLER
IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461

AND

Second Respondent LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) ACN 077 208 461

AND

Third Respondent DAVID CLOUT IN HIS CAPACITY AS
LIQUIDATOR OF LM ADMINISTRATION PTY
LTD ACN 055 691 426

APPLICATION

To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for the following orders:

1. That the Respondents deliver up to the Applicants all books, records and documents pertaining to the LM Managed Performance Fund ("**the Trust**"), pursuant to clause 23.3 of the Constitution of the Trust, within seven days of the Court's order;

APPLICATION
Filed on Behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

PIPER ALDERMAN:
Level 23, Governor Macquarie Tower
1 Farrer Place, SYDNEY NSW 2000
Phone No: (02) 9253 9999
Fax No: (02) 9253 9900
Ref: AKB.LG.386376

2. That, to the extent that the books, records and documents of the Trust may be intermingled with the books, records and documents of other trusts of which LM Investment Management Ltd (in liq) is trustee, the Applicants be permitted to inspect and copy the books, records and documents of the Trust.
3. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
4. Any further or other orders as the Court thinks fit.

This application will be heard by the Court at
on:

Filed in the Brisbane Registry on

Registrar:

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn

THE APPLICANTS ESTIMATE THE HEARING SHOULD BE ALLOCATED 2 HOURS

PARTICULARS OF THE APPLICANTS:

Applicants' Names:	KORDA MENTHA PTY LTD (ACN 100 169 391) AND CALIBRE CAPITAL LIMITED (ABN 66 108 318 985)
Applicants' residential or business address:	Level 14, 12 Creek Street, BRISBANE QLD 4000
Applicants' solicitor's name and firm name:	Amanda Kim Banton Piper Alderman
Solicitor's business address:	Level 23, Governor Macquarie Tower 1 Farrer Place, Sydney NSW 2000
Address for service:	Level 36, 123 Eagle Street Brisbane Qld 4000
DX:	10216 Sydney Stock Exchange
Telephone:	+61 2 9253 9999

Fax: +61 2 9253 9900

Email address: abanton@piperaiderman.com.au

Signed:

Description: Solicitor for the Applicants by her employed solicitor

Dated: November 2013.

This application is intended to be served on the Respondents

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

CALIBRE CAPITAL LTD (ABN 66 108 318 985)
IN THEIR CAPACITY AS TRUSTEES FOR THE
LM MANAGED PERFORMANCE FUND

AND

First Respondent THE MEMBERS OF THE LM MANAGED
PERFORMANCE FUND

AND

Second Respondent JOHN RICHARD PARK AND GINETTE MULLER
IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461

APPLICATION

To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for the following orders:

Winding up

1. That the LM Managed Performance Fund ("the Trust") be wound up;
2. That the Applicants be directed to wind up the Trust, pursuant to clause 15.2(c) of the Constitution of the Trust;

APPLICATION
Filed on Behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

PIPER ALDERMAN:
Level 23, Governor Macquarie Tower
1 Farrer Place, SYDNEY NSW 2000
Phone No: (02) 9253 9999
Fax No: (02) 9253 9900
Ref: AKB.LG.386376

3. Without derogating in any way from orders (1) and (2), that the Applicants be authorised to exercise the powers contained in clauses 12 and 15.6 of the Constitution of the Trust, until such time as all winding up procedures have been completed;
4. Without derogating in any way from in any way from the Applicants' powers pursuant to these Orders, the Applicants are authorised to bring, defend or maintain any proceedings on behalf of the Trust as are necessary for the winding up of the Trust and the realisation of its assets (including any legal claims the Trust may have), including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions.

Quarantined Funds

5. Directions pursuant to s.96 of the Trusts Act 1973 (Qld) as to whether the Applicants are justified in repaying to the persons, who sought to invest in the Trust, to whom no units were issued.

Interlocutory orders - service on the members of the First Respondent

6. That notice of this Application be effected on the members of the First Respondent by:
 - (a) sending a notice of the Application by e-mail to all members at their last known email address; and
 - (b) posting a notice of the Application in a prominent location on the website <http://www.kordamentha.com/creditor-information/australia/109>.
7. That service of:
 - (a) The application and supporting affidavit of Simon Vertullo;
 - (b) Any further court documents to be filed by the Applicants in these proceedings; and
 - (c) Any orders made in respect of this Application;

be deemed effective on each of the members of the First Respondent five (5) days after those documents are made available in PDF on the website <http://www.kordamentha.com/creditor-information/australia/109>.

Other

8. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
9. Such further or other orders as the Court sees fit.

This application will be heard by the Court at Brisbane on: Thursday 13 November 2013 for interlocutory orders as to service of the Application on the members of the Respondents, and any other appropriate directions.

Filed in the Brisbane Registry on

Registrar:

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn.

THE APPLICANTS ESTIMATE THAT THE INTERLOCUTORY APPLICATION SHOULD BE ALLOCATED 45 MINUTES FOR SERVICE ORDERS AND DIRECTIONS

PARTICULARS OF THE APPLICANTS:

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Solicitor's business address:	Level 23, Governor Macquarie Tower 1 Farrer Place, Sydney NSW 2000

Address for service: Level 36, 123 Eagle Street
Brisbane Qld 4000

DX: 10216 Sydney Stock Exchange

Telephone: +61 2 9253 9999

Fax: +61 2 9253 9900

Email address: abanton@piperalderman.com.au

Signed:

Description: Solicitor for the Applicants by her employed solicitor

Dated: November 2013.

This application is intended to be served on the Respondents

Lisa Gallate

From: Jasmin Shaw on behalf of Amanda Banton
Sent: Tuesday, 12 November 2013 5:41 PM
To: atiplady@russellslaw.com.au; srussell@russellslaw.com.au
Cc: Amanda Banton; Lisa Gallate; Jasmin Shaw
Subject: LM Investment Management Limited
Attachments: SKMBT_C452 13111214550.pdf; SKMBT_C452 13111214560.pdf

Dear Sir/Madam,

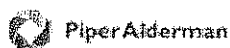
We refer to our letter of earlier today. Please find attached the Applications in respect of:

1. Orders for the winding up of the trust; and
2. Orders in respect of Books and records for the Trust.

Both Applications are listed for directions only on Thursday 14 November 2013 (we have confirmed that is the correct date with the Court notwithstanding that the Applications refer to 13 November 2013).

Kind regards

Amanda Banton
Partner | Piper Alderman



t +61 2 9253 9929 | m +61 424 156 859 | f +61 2 9253 9900
abanton@piperalderman.com.au | www.piperalderman.com.au

SUPREME COURT OF QUEENSLAND

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KORDAMENTHA PTY LTD (ACN 100 169 391)

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AND

First Respondents

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ACN 077 208 461

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) ACN 077 208 461

AND

Third Respondent

DAVID CLOUT IN HIS CAPACITY AS
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LTD ACN 055 691 426

APPLICATION

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1. That the Respondents deliver up to the Applicants all books, records and documents pertaining to the LM Managed Performance Fund ("the Trust"), pursuant to clause 23.3 of the Constitution of the Trust, within seven days of the Court's order;

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Phone No: (02) 9253 9999
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2. That, to the extent that the books, records and documents of the Trust may be intermingled with the books, records and documents of other trusts of which LM Investment Management Ltd (in liq) is trustee, the Applicants be permitted to inspect and copy the books, records and documents of the Trust.
3. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
4. Any further or other orders as the Court thinks fit.

This application will be heard by the Court at *Bris*
on: *13/11/13*

Filed in the Brisbane Registry on 12 NOV 2013

Registrar: *JB*

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Telephone:	+61 2 9253 9999

Fax:

+61 2 9253 9900

Email address:

abanton@piperalderman.com.au

Signed:

Piper Alderman

Description: Solicitor for the Applicants by her employed solicitor

Dated: *12* November 2013.

This application is intended to be served on the Respondents

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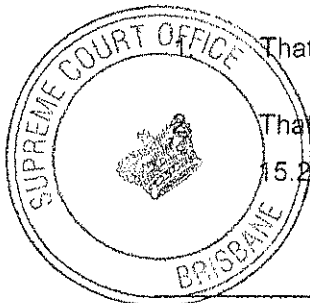
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That the LM Managed Performance Fund ("the Trust") be wound up;

That the Applicants be directed to wind up the Trust, pursuant to clause 15.2(c) of the Constitution of the Trust;

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Phone No: (02) 9253 9999
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3. Without derogating in any way from orders (1) and (2), that the Applicants be authorised to exercise the powers contained in clauses 12 and 15.6 of the Constitution of the Trust, until such time as all winding up procedures have been completed;
4. Without derogating in any way from in any way from the Applicants' powers pursuant to these Orders, the Applicants are authorised to bring, defend or maintain any proceedings on behalf of the Trust as are necessary for the winding up of the Trust and the realisation of its assets (including any legal claims the Trust may have), including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions.

Quarantined Funds

5. Directions pursuant to s.96 of the Trusts Act 1973 (Qld) as to whether the Applicants are justified in repaying to the persons, who sought to invest in the Trust, to whom no units were issued.

Interlocutory orders - service on the members of the First Respondent

6. That notice of this Application be effected on the members of the First Respondent by:
 - (a) sending a notice of the Application by e-mail to all members at their last known email address; and
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7. That service of:
 - (a) The application and supporting affidavit of Simon Vertullo;
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Other

8. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
9. Such further or other orders as the Court sees fit.

This application will be heard by the Court at Brisbane on: Thursday 13 November 2013 for interlocutory orders as to service of the Application on the members of the Respondents, and any other appropriate directions.

Filed in the Brisbane Registry on 12 NOV 2013

Registrar:



On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn.

THE APPLICANTS ESTIMATE THAT THE INTERLOCUTORY APPLICATION SHOULD BE ALLOCATED 45 MINUTES FOR SERVICE ORDERS AND DIRECTIONS

PARTICULARS OF THE APPLICANTS:

Applicants' Names:

KORDA MENTHA PTY LTD
(ACN 100 169 391)
AND
CALIBRE CAPITAL LIMITED
(ABN 66 108 318 985)

Applicants' residential or business address:

Level 14, 12 Creek Street,
BRISBANE QLD 4000

Applicants' solicitor's name and firm name:

Amanda Kim Banton
Piper Alderman

Solicitor's business address:

Level 23, Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000

Address for service:

Level 36, 123 Eagle Street
Brisbane Qld 4000

DX:

10216 Sydney Stock Exchange

Telephone:

+61 2 9253 9999

Fax:

+61 2 9253 9900

Email address:

abanton@piperaIderman.com.au

Signed:

Piper Alderman

Description: Solicitor for the Applicants by her employed solicitor

Dated: 12 November 2013.

This application is intended to be served on the Respondents

Lisa Gallate

From: Jasmin Shaw on behalf of Amanda Banton
Sent: Tuesday, 12 November 2013 5:44 PM
To: dclout@cloutsinsolvency.com.au
Cc: Amanda Banton; Lisa Gallate; Jasmin Shaw
Subject: LM Investment Management Limited
Attachments: SKMBT_C452 13111214550.pdf

Dear Sir,

Please find attached by way of service, Application filed in the Supreme Court of QLD today, 12 November 2013.

This Application is listed for directions only on Thursday 14 November 2013 (we have confirmed that is the correct date with the Court notwithstanding that the Application refers to 13 November 2013).

Kind regards

Amanda Banton
Partner | Piper Alderman



PiperAlderman

t +61 2 9253 9929 | m +61 424 156 859 | f +61 2 9253 9900
abanton@piperalderman.com.au | www.piperalderman.com.au

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants

KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

CALIBRE CAPITAL LTD (ABN 66 108 318 985)
IN THEIR CAPACITY AS TRUSTEES FOR THE
LM MANAGED PERFORMANCE FUND

AND

First Respondents

JOHN RICHARD PARK AND GINETTE MULLER
IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461

AND

Second Respondent

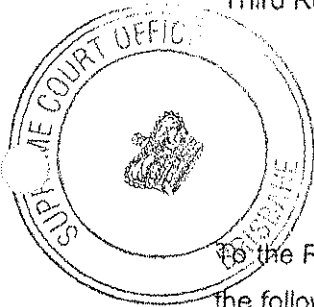
LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) ACN 077 208 461

AND

Third Respondent

DAVID CLOUT IN HIS CAPACITY AS
LIQUIDATOR OF LM ADMINISTRATION PTY
LTD ACN 055 691 426

APPLICATION



To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for the following orders:

1. That the Respondents deliver up to the Applicants all books, records and documents pertaining to the LM Managed Performance Fund ("the Trust"), pursuant to clause 23.3 of the Constitution of the Trust, within seven days of the Court's order;

APPLICATION

Filed on Behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

PIPER ALDERMAN:

Level 23, Governor Macquarie Tower
1 Farrer Place, SYDNEY NSW 2000
Phone No: (02) 9253 9999
Fax No: (02) 9253 9900
Ref: AKB.LG.386376

2. That, to the extent that the books, records and documents of the Trust may be intermingled with the books, records and documents of other trusts of which LM Investment Management Ltd (in liq) is trustee, the Applicants be permitted to inspect and copy the books, records and documents of the Trust.
3. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
4. Any further or other orders as the Court thinks fit.

This application will be heard by the Court at *Bris*.
on: *13/11/13*

Filed in the Brisbane Registry on 12 NOV 2013

Registrar: *JB*

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn

THE APPLICANTS ESTIMATE THE HEARING SHOULD BE ALLOCATED 2 HOURS

PARTICULARS OF THE APPLICANTS:

Applicants' Names:	KORDA MENTHA PTY LTD (ACN 100 169 391) AND CALIBRE CAPITAL LIMITED (ABN 66 108 318 985)
Applicants' residential or business address:	Level 14, 12 Creek Street, BRISBANE QLD 4000
Applicants' solicitor's name and firm name:	Amanda Kim Banton Piper Alderman
Solicitor's business address:	Level 23, Governor Macquarie Tower 1 Farrer Place, Sydney NSW 2000
Address for service:	Level 36, 123 Eagle Street Brisbane Qld 4000
DX:	10216 Sydney Stock Exchange
Telephone:	+61 2 9253 9999

Fax:

+61 2 9253 9900

Email address:

abanton@piperalderman.com.au

Signed:

Piper Alderman

Description: Solicitor for the Applicants by her employed solicitor

Dated: 12 November 2013.

This application is intended to be served on the Respondents

Lisa Gallate

From: Jasmin Shaw on behalf of Amanda Banton
Sent: Wednesday, 13 November 2013 5:08 PM
To: david.whyte@bdo.com.au
Cc: Amanda Banton; Lisa Gallate; Jasmin Shaw
Subject: LM Managed Performance Fund
Attachments: SKMBT_C452 13111214550.pdf

Dear David,

Please find enclosed copy of Application filed with the Supreme Court of QLD on 12 November 2013 which is returnable on 14 November 2013.

We enclose this application because we think that your trust records might be intermingled with the trust records of the LM Managed Performance Fund which we are seeking.

Please advise if you will be in attendance at Court tomorrow.

Could you also please advise us of the relevant contact person at Deutsche Bank to whom we should forward a copy of this Application.

Thank you and kind regards,

Amanda Banton
Partner | Piper Alderman



PiperAlderman

t +61 2 9253 9929 | m +61 424 156 859 | f +61 2 9253 9900
abanton@piperalderman.com.au | www.piperalderman.com.au

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants

KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

**CALIBRE CAPITAL LTD (ABN 66 108 318 985)
IN THEIR CAPACITY AS TRUSTEES FOR THE
LM MANAGED PERFORMANCE FUND**

AND

First Respondents

**JOHN RICHARD PARK AND GINETTE MULLER
IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461**

AND

Second Respondent

**LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) ACN 077 208 461**

AND

Third Respondent

**DAVID CLOUT IN HIS CAPACITY AS
LIQUIDATOR OF LM ADMINISTRATION PTY
LTD ACN 055 691 426**

APPLICATION

To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for the following orders:

1. That the Respondents deliver up to the Applicants all books, records and documents pertaining to the LM Managed Performance Fund ("the Trust"), pursuant to clause 23.3 of the Constitution of the Trust, within seven days of the Court's order;

APPLICATION
Filed on Behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

PIPER ALDERMAN:
Level 23, Governor Macquarie Tower
1 Farrer Place, SYDNEY NSW 2000
Phone No: (02) 9253 9999
Fax No: (02) 9253 9900
Ref: AKB.LG.386376

2. That, to the extent that the books, records and documents of the Trust may be intermingled with the books, records and documents of other trusts of which LM Investment Management Ltd (in liq) is trustee, the Applicants be permitted to inspect and copy the books, records and documents of the Trust.
3. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
4. Any further or other orders as the Court thinks fit.

This application will be heard by the Court at *Bris*
on: *13/11/13*

Filed in the Brisbane Registry on 12 NOV 2013

Registrar: *JB*

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn

THE APPLICANTS ESTIMATE THE HEARING SHOULD BE ALLOCATED 2 HOURS

PARTICULARS OF THE APPLICANTS:

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DX:	10216 Sydney Stock Exchange
Telephone:	+61 2 9253 9999

Fax:

+61 2 9253 9900

Email address:

abanton@piperalderman.com.au

Signed:

Piper Alderman

Description: Solicitor for the Applicants by her employed solicitor

Dated:

12

November 2013.

This application is intended to be served on the Respondents

Lisa Gallate

From: Jasmin Shaw on behalf of Amanda Banton
Sent: Wednesday, 13 November 2013 6:05 PM
To: Hugh.Copley@asic.gov.au
Cc: Amanda Banton; Lisa Gallate; Jasmin Shaw
Subject: Application to Wind Up LM Managed Performance Fund
Attachments: Ssyd-copier13111317560.pdf

Please find attached our letter dated 13 November 2013.

Kind regards

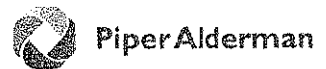
Amanda Banton
Partner | Piper Alderman



PiperAlderman

t +61 2 9253 9929 | m +61 424 156 859 | f +61 2 9253 9900
abanton@piperalderman.com.au | www.piperalderman.com.au

Our Ref: AKB.LNG.386376
Your Ref:



13 November 2013

By Email: Hugh.Copley@asic.gov.au

Australian Securities and Investments Commission
Level 20
240 Queen Street
BRISBANE QLD 4000

Attention: Mr Hugh Copley

Dear Sir

Application to Wind Up LM Managed Performance Fund

We refer to the above matter and enclose copies of Applications filed in the Supreme Court of Queensland on 12 November 2013 in respect of:

1. Orders for the winding up of the LM Managed Performance Fund ("the Trust"); and
2. Orders in respect of books and records for the Trust.

We note that given the Trust is not a registered scheme, a section 601NC notice is not required. However given ASIC's prior involvement in matters related to the Trust, we enclose by way of courtesy a copy of the Applications for your information.

Please advise if ASIC has any interest in either of these Applications.

If you have any queries please contact Lisa Gallate on (02) 9253 3855.

Yours faithfully
Piper Alderman

Per:


Amanda Banton
Partner

Enc.

Lawyers

Sydney • Melbourne
Brisbane • Adelaide

ABN 42 843 327 183

Level 23
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
Australia

DX 10216 Sydney Stock Exchange

t +61 2 9253 9999

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www.piperalderman.com.au

Partner:

Amanda Banton

t +61 2 9253 9929

abanton@piperalderman.com.au

Contact:

Lisa Gallate

Special Counsel

t +61 2 9253 3855

lgallate@piperalderman.com.au

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants

KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

CALIBRE CAPITAL LTD (ABN 66 108 318 985)
IN THEIR CAPACITY AS TRUSTEES FOR THE
LM MANAGED PERFORMANCE FUND

AND

First Respondents

JOHN RICHARD PARK AND GINETTE MULLER
IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) ACN 077 208 461

AND

Third Respondent

DAVID CLOUT IN HIS CAPACITY AS
LIQUIDATOR OF LM ADMINISTRATION PTY
LTD ACN 055 691 426

APPLICATION

To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for the following orders:

1. That the Respondents deliver up to the Applicants all books, records and documents pertaining to the LM Managed Performance Fund ("the Trust"), pursuant to clause 23.3 of the Constitution of the Trust, within seven days of the Court's order;

APPLICATION
Filed on Behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

PIPER ALDERMAN:
Level 23, Governor Macquarie Tower
1 Farrer Place, SYDNEY NSW 2000
Phone No: (02) 9253 9999
Fax No: (02) 9253 9900
Ref: AKB.LG.386376

2. That, to the extent that the books, records and documents of the Trust may be intermingled with the books, records and documents of other trusts of which LM Investment Management Ltd (in liq) is trustee, the Applicants be permitted to inspect and copy the books, records and documents of the Trust.
3. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
4. Any further or other orders as the Court thinks fit.

This application will be heard by the Court at *Bris*.
on: *13/11/13*

Filed in the Brisbane Registry on 12 NOV 2013

Registrar: *JB*

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn

THE APPLICANTS ESTIMATE THE HEARING SHOULD BE ALLOCATED 2 HOURS
PARTICULARS OF THE APPLICANTS:

Applicants' Names:	KORDA MENTHA PTY LTD (ACN 100 169 391) AND CALIBRE CAPITAL LIMITED (ABN 66 108 318 985)
Applicants' residential or business address:	Level 14, 12 Creek Street, BRISBANE QLD 4000
Applicants' solicitor's name and firm name:	Amanda Kim Banton Piper Alderman
Solicitor's business address:	Level 23, Governor Macquarie Tower 1 Farrer Place, Sydney NSW 2000
Address for service:	Level 36, 123 Eagle Street Brisbane Qld 4000
DX:	10216 Sydney Stock Exchange
Telephone:	+61 2 9253 9999

Fax: +61 2 9253 9900

Email address: abanton@piperAlderman.com.au

Signed: *Piper Alderman*

Description: Solicitor for the Applicants by her employed solicitor

Dated: *12* November 2013.

This application is intended to be served on the Respondents

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants

KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

CALIBRE CAPITAL LTD (ABN 66 108 318 985)
IN THEIR CAPACITY AS TRUSTEES FOR THE
LM MANAGED PERFORMANCE FUND

AND

First Respondent

THE MEMBERS OF THE LM MANAGED
PERFORMANCE FUND

AND

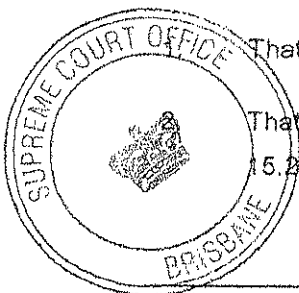
Second Respondent

JOHN RICHARD PARK AND GINETTE MULLER
IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF LM INVESTMENT
MANAGEMENT LIMITED (IN LIQUIDATION)
ACN 077 208 461

APPLICATION

To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for
the following orders:

Winding up



That the LM Managed Performance Fund ("the Trust") be wound up;

That the Applicants be directed to wind up the Trust, pursuant to clause
15.2(c) of the Constitution of the Trust;

APPLICATION

Filed on Behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

PIPER ALDERMAN:

Level 23, Governor Macquarie Tower
1 Farrer Place, SYDNEY NSW 2000
Phone No: (02) 9253 9999
Fax No: (02) 9253 9900
Ref: AKB.LG.386376

3. Without derogating in any way from orders (1) and (2), that the Applicants be authorised to exercise the powers contained in clauses 12 and 15.6 of the Constitution of the Trust, until such time as all winding up procedures have been completed;
4. Without derogating in any way from in any way from the Applicants' powers pursuant to these Orders, the Applicants are authorised to bring, defend or maintain any proceedings on behalf of the Trust as are necessary for the winding up of the Trust and the realisation of its assets (including any legal claims the Trust may have), including the execution of any documents as required and providing instructions to solicitors in respect of all matters in relation to the conduct of such proceedings including, if appropriate, instructions in relation to the settlement of those actions.

Quarantined Funds

5. Directions pursuant to s.96 of the Trusts Act 1973 (Qld) as to whether the Applicants are justified in repaying to the persons, who sought to invest in the Trust, to whom no units were issued.

Interlocutory orders - service on the members of the First Respondent

6. That notice of this Application be effected on the members of the First Respondent by:
 - (a) sending a notice of the Application by e-mail to all members at their last known email address; and
 - (b) posting a notice of the Application in a prominent location on the website <http://www.kordamentha.com/creditor-information/australia/109>.
7. That service of:
 - (a) The application and supporting affidavit of Simon Vertullo;
 - (b) Any further court documents to be filed by the Applicants in these proceedings; and
 - (c) Any orders made in respect of this Application;

be deemed effective on each of the members of the First Respondent five (5) days after those documents are made available in PDF on the website <http://www.kordamentha.com/creditor-information/australia/109>.

Other

8. An order that the Applicants' costs of this application be paid from the assets of the Fund on an indemnity basis.
9. Such further or other orders as the Court sees fit.

This application will be heard by the Court at Brisbane on: Thursday 13 November 2013 for interlocutory orders as to service of the Application on the members of the Respondents, and any other appropriate directions.

Filed in the Brisbane Registry on 12 NOV 2013

Registrar: 

On the hearing of the application the applicant intends to rely on the following affidavits:

1. Affidavit of Simon Vertullo to be sworn.

THE APPLICANTS ESTIMATE THAT THE INTERLOCUTORY APPLICATION SHOULD BE ALLOCATED 45 MINUTES FOR SERVICE ORDERS AND DIRECTIONS

PARTICULARS OF THE APPLICANTS:

Applicants' Names:	KORDA MENTHA PTY LTD (ACN 100 169 391) AND CALIBRE CAPITAL LIMITED (ABN 66 108 318 985)
Applicants' residential or business address:	Level 14, 12 Creek Street, BRISBANE QLD 4000
Applicants' solicitor's name and firm name:	Amanda Kim Banton Piper Alderman
Solicitor's business address:	Level 23, Governor Macquarie Tower 1 Farrer Place, Sydney NSW 2000

Address for service:

Level 36, 123 Eagle Street
Brisbane Qld 4000

DX:

10216 Sydney Stock Exchange

Telephone:

+61 2 9253 9999

Fax:

+61 2 9253 9900

Email address:

abanton@piperAlderman.com.au

Signed:

Piper Alderman

Description: Solicitor for the Applicants by her employed solicitor

Dated:

12

November 2013.

This application is intended to be served on the Respondents

Lisa Gallate

From: Amanda Banton
Sent: Thursday, 14 November 2013 7:34 AM
To: Lisa Gallate
Subject: Fwd: LM Managed Performance Fund
Attachments: image001.jpg; ATT00001.htm; SKMBT_C452 13111214550.pdf; ATT00002.htm

Amanda Banton
Partner | Piper Alderman

t [+61 2 9253 9929](tel:+61292539929)
f [+61 2 9253 9900](tel:+61292539900)
abanton@piperalderman.com.au | www.piperalderman.com.au

Begin forwarded message:

From: Amanda Banton <ABanton@piperalderman.com.au>
Date: 13 November 2013 8:09:38 pm AEDT
To: Mr Joseph Hayes <jhayes@mcgrathnicol.com>
Subject: Fwd: LM Managed Performance Fund

Hi Joseph,

Please see attached applications served on David Whyte in respect of the lm managed performance fund.

Mr Whyte has advised you may have an interest in them.

We propose tomorrow to simply get directions for evidence and a hearing.

Please call me in the morning to discuss and let me know if you intend to get involved.

Amanda Banton
Partner | Piper Alderman

t [+61 2 9253 9929](tel:+61292539929)
f [+61 2 9253 9900](tel:+61292539900)
abanton@piperalderman.com.au | www.piperalderman.com.au

Begin forwarded message:

From: Amanda Banton <ABanton@piperalderman.com.au>
Date: 13 November 2013 5:07:35 pm AEDT
To: "david.whyte@bdo.com.au" <david.whyte@bdo.com.au>
Cc: Amanda Banton <ABanton@piperalderman.com.au>, Lisa Gallate <LGallate@piperalderman.com.au>, Jasmin Shaw <JShaw@piperalderman.com.au>
Subject: LM Managed Performance Fund

Dear David,

Please find enclosed copy of Application filed with the Supreme Court of QLD on 12 November 2013 which is returnable on 14 November 2013.

We enclose this application because we think that your trust records might be intermingled with the trust records of the LM Managed Performance Fund which we are seeking.

Please advise if you will be in attendance at Court tomorrow.

Could you also please advise us of the relevant contact person at Deutsche Bank to whom we should forward a copy of this Application.

Thank you and kind regards,

Amanda Banton
Partner | Piper Alderman

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013

Applicants

KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

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ACN 077 208 461**

AND

Second Respondent

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LIQUIDATION) ACN 077 208 461**

AND

Third Respondent

**DAVID CLOUT IN HIS CAPACITY AS
LIQUIDATOR OF LM ADMINISTRATION PTY
LTD ACN 055 691 426**

APPLICATION

To the Respondents: TAKE NOTICE that the Applicants are applying to the Court for the following orders:

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APPLICATION

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Form 9, Version 1
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PIPER ALDERMAN:

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4. Any further or other orders as the Court thinks fit.

This application will be heard by the Court at *Bris* on: *13/11/13*

Filed in the Brisbane Registry on 12 NOV 2013

Registrar: *JB*

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1. Affidavit of Simon Vertullo to be sworn

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DX:	10216 Sydney Stock Exchange
Telephone:	+61 2 9253 9999

Fax:

+61 2 9253 9900

Email address:

abanton@piperaideman.com.au

Signed:

Piper Alderman

Description: Solicitor for the Applicants by her employed solicitor

Dated:

12

November 2013.

This application is intended to be served on the Respondents