

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

AFFIDAVIT

NADIA SUZANNE BRAAD of Level 22, Waterfront Place, 1 Eagle Street, Brisbane in the State of Queensland, Solicitor, states on oath:

Introduction

1. I am a Solicitor employed by Minter Ellison, solicitors for the Applicant. I am duly authorised to swear this affidavit on behalf of the Applicant.

Solicitors' correspondence

2. On 28 May 2015, I received an email from Stephanie Williamson of Russells, the solicitors acting for the liquidators of LM Investment Management Limited (Receivers and Managers Appointed)(In Liquidation) ("LMIM"). Exhibit 'NSB-1' is a true copy of that email.
3. On 28 May 2015, I was copied to an email sent by David O'Brien of Minter Ellison to Stephanie Williamson of Russells attaching a letter dated 28 May 2015. Exhibit 'NSB-2' is a true copy of that email with the attached letter.
4. On 1 June 2015, I sent an email to Stephanie Williamson of Russells, a true copy of which is exhibit 'NSB-3'.

Page 1

Signed:

N. Braad

Taken by:

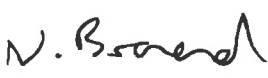
D. O'Brien

AFFIDAVIT OF NADIA SUZANNE
BRAAD
Filed on behalf of the Applicant

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NYB DOB 407747737

Form 47 Rule 431

5. On 1 June 2015, I received an email from Stephanie Williamson of Russells attaching a letter dated 1 June 2015. Exhibit '**NSB-4**' is a true copy of that email and attached letter.
6. On 2 June 2015, I sent an email attaching, by way of notice, the following documents in pdf format:
 - (a) Originating Application for directions pursuant to section 96 of the *Trusts Act 1973* (Qld) filed 29 May 2015 ("**S 96 Application**");
 - (b) Application within the S 96 Application for directions about service filed 29 May 2015;
 - (c) Order made on 29 May 2015; and
 - (d) Affidavit of Jarrod Villani sworn and filed 1 June 2015,to Stephanie Williamson of Russells, and to Jacqueline Ogden of Gadens. Exhibit '**NSB-5**' is a true copy of that email without its attachments.
7. On 2 June 2015, I sent an email to Stephanie Williamson of Russells attaching, by way of service, a copy of the Order made on 29 May 2015 in this proceeding. Exhibit '**NSB-6**' is a true copy of that email without its attachments.
8. On 4 June 2015 at 10.55 am, I received an email from Stephanie Williamson of Russells. Exhibit '**NSB-7**' is a true copy of that email.
9. On 4 June 2015 at 10.57 am, I received an email from Stephanie Williamson of Russells. Exhibit '**NSB-8**' is a true copy of that email.
10. On 5 June 2015, I caused a CD-Rom containing the following documents in pdf format:
 - (a) Affidavit of David Thomas O'Brien sworn 4 June 2015;
 - (b) Statement of Facts drawn pursuant to section 96(1) of the *Trusts Act 1973* (Qld) for Proceeding No. 8032 of 2014;

Signed: 

Page 2

Taken by: 

- (c) Statement of Facts drawn pursuant to section 96(1) of the *Trusts Act 1973* (Qld) for Proceeding No. 8034 of 2014; and
- (d) Affidavit of Jarrod Villani sworn 4 June 2015 in support of the Section 96 Application,

under cover of a letter dated 5 June 2015, to be sent by express post to Gadens and Russells. Exhibit 'NSB-9' is a true copy of the covering letter dated 5 June 2015 (without the enclosure).

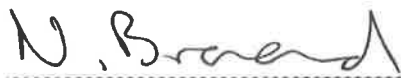
11. Exhibit 'NSB-10' is an indexed bundle of relevant correspondence that has passed between Minter Ellison and Gadens, Russells and/or Tucker and Cowen Solicitors between 10 June 2015 and the time of swearing this my affidavit.

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 NADIA SUZANNE BRAAD on 16 July 2015

at Brisbane

in the presence of:



Deponent



Solicitor/Commissioner for

Declarations/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

CERTIFICATE OF EXHIBITS

Exhibit 'NSB-1' to 'NSB-10' to the affidavit of NADIA SUZANNE BRAAD sworn
16 July 2015



Deponent



Solicitor/~~Commissioner~~ for

~~Declarations/Justice of the Peace~~

CERTIFICATE OF EXHIBIT

Filed on behalf of the Applicant

Form 47 Rule 435

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NVB DOB 407747737

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

LIST OF EXHIBITS

Exhibit	Document	Pages
NSB-1	Email of 28 May 2015 from Russells to Minter Ellison with attached letter dated 28 May 2015	1-4
NSB-2	Email of 28 May 2015 from Minter Ellison to Russells with attached letter dated 28 May 2015	5-7
NSB-3	Email of 1 June 2015 from Minter Ellison to Russells without attachments	8-9
NSB-4	Email of 1 June 2015 from Russells to Minter Ellison with attached letter dated 1 June 2015	10-14
NSB-5	Email of 2 June 2015 from Minter Ellison to Russells and Gadens without attachments	15
NSB-6	Email of 2 June 2015 from Minter Ellison to Russells without attachments	16
NSB-7	Email received at 10.55 am on 4 June 2015 from Russells to Minter Ellison	17-18
NSB-8	Email received at 10.57 am on 4 June 2015 from Russells to Minter Ellison	19-20
NSB-9	Letter dated 5 June 2015 from Minter Ellison to Russells and Gadens without enclosure	21
NSB-10	Indexed bundle of correspondence from 10 June 2015 to 16 July 2015	22-102

LIST OF EXHIBITS

Filed on behalf of the Applicant

Form 47 Rule 435

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NVB DOB 407747737

Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Thursday 28 May 2015 05:41 pm
To: David O'Brien; Nadia Braad
Cc: Stephanie Williamson
Subject: LMIM ats KordaMentha as Trustee for the MPF
Attachments: SJW_20150266_005.pdf

Dear Colleagues

Please refer to our attached correspondence dated 28 May, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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RUSSELLS

28 May, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
email: Nadia.Braad@minterellison.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14**

**LMIM ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
Supreme Court of Queensland Proceeding No. 8034/14**

("Proceedings")

From our review of the Queensland Courts website eCourts portal, it has come to our attention that interlocutory applications in the Proceedings are listed before the Supreme Court at 10:00am tomorrow. We have obtained a copy of some documents from the Court in respect of each matter, namely:

1. Claim and Statement of Claim filed 27 August, 2014 ("Claims");
2. Application filed 11 May, 2015, initially listed for hearing on 26 May, 2015 ("Service Application"); and
3. Application filed 11 May, 2015, listed for hearing on 17 June, 2015 ("Application for s96 Orders").

Our clients, the liquidators of LMIM, have not been served, nor provided with any notice of the Proceedings or the interlocutory applications to be heard tomorrow morning.

Our clients are most cognisant of the need to ensure the maximum return to investors in the various LMIM funds. Given the long history and multiple pieces of litigation between our respective clients, this will be assisted by frank and constructive communication between the parties in the lead up to and during the course of Court proceedings. Our clients view such consultation as essential in ensuring that issues and procedures are defined and where possible streamlined to obviate unnecessary cost to investors.

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FW Catalyst Church Incorporated Sale To Associated Equity Pty Ltd 130130_20150313160648.msg.docm

It occurs to us that there are a number of threshold issues with the Proceedings which will likely impact upon the procedure which your client may wish to follow to move the Proceedings forward.

Most pressing is the question how your client proposes to address its failure to obtain leave of the Court prior to commencing the Proceedings against LMIM. It occurs to us that the most efficient path to cure this situation would be to bring a concurrent application pursuant to s500(2) of the *Corporations Act* with the pending Application for s96 Orders.

Our clients, once having considered the allegations in the Proceedings, would then appear upon the applications on 17 June, 2015, being the date already set down for the listing of the Application for s96 Orders, and, if so advised, consent where appropriate so as to not waste resources or court time. Should your clients be amenable to such a course, please serve us with an amended application and your client's supporting material.

If your client is not so agreeable, we are instructed to appear tomorrow in the Queensland Supreme Court to submit that this course ought to be adopted in the interests of saving time and resources in respect of both matters.

Secondly, our clients raise the following for your client's consideration:

1. neither the Service Application or the Application for s96 Orders, or supporting material, are proposed to be served upon LMIM, the receivers and managers of LMIM or Mr Whyte as the court appointed receiver of LMIM;
2. paragraph 2 of the orders sought in the Service Application does not propose to serve a copy of the requisite Statement of Facts (required by s96 of the *Trusts Act*) upon the members of the MPF, or any other party (you may recall the comments made by Justice Martin in *Kordamentha Pty Ltd & Calibre Capital Ltd v LM Investment Management Ltd (in liq) & Anor; Park & Muller & Anor v Kordamentha Pty Ltd & Calibre Capital Ltd* [2015] QSC 4 in this regard; noting your firm's involvement in that matter); and
3. paragraph 2(a) of the orders sought in the Service Application does not include a draft form of the notice to be provided to the members, or any other party, nor specifies to which website address the documents will be uploaded. We again draw to your attention the comments of Justice Martin referred to above.

In light of tomorrow's listing of the Proceedings, we await your urgent responses in relation to:

- (a) the amendment of the Application for s96 Orders to include a granting of leave pursuant to s500(2) of the *Corporations Act*; and
- (b) confirmation that our clients will be served with a copy of the Application for s96 Orders, as amended, together with all supporting material including the requisite Statement of Facts.

Yours faithfully

Williamson

Stephanie Williamson

Lawyer

Direct (07) 3004 8833

Mobile 0438 347 638

SWilliamson@RussellsLaw.com.au

Nicole Hamrosi

From: David O'Brien [David.O'Brien@minterellison.com]
Sent: Thursday 28 May 2015 09:15 pm
To: Stephanie Williamson; Nadia Braad
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]
Attachments: 280515 - Letter to Russells.PDF

Dear Colleagues

Please see **attached** correspondence.

Regards

David O'Brien Partner
t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939
Minter Ellison Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000
david.obrien@minterellison.com www.minterellison.com

From: Stephanie Williamson [<mailto:swilliamson@russellslaw.com.au>]
Sent: Thursday 28 May 2015 05:41 pm
To: David O'Brien; Nadia Braad
Cc: Stephanie Williamson
Subject: LMIM ats KordaMentha as Trustee for the MPF

Dear Colleagues

Please refer to our attached correspondence dated 28 May, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

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swilliamson@russellslaw.com.au

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MinterEllison

28 May 2015

Mr Ashley Tiplady
Russells
GPO Box 1402
BRISBANE QLD 4001

Dear Sirs

**KordaMentha Pty Ltd in its capacity as Trustee of the LM Managed Performance Fund v
LM Investment Management Limited (Receivers and Managers Appointed) (In
Liquidation)
Supreme Court of Queensland Proceeding No. 8032/14**

**KordaMentha Pty Ltd in its capacity as Trustee of the LM Managed Performance Fund v
LM Investment Management Limited (Receivers and Managers Appointed) (In
Liquidation)
Supreme Court of Queensland Proceeding No. 8034/14**

We refer to your letter of 28 May 2015, received by email this evening.

The applications listed for hearing tomorrow are ex parte applications for orders for substituted service of applications made under s96 of the *Trusts Act* 1973 (Qld). The applications under s96 are not being heard tomorrow.

Thank you for indicating that your clients wish to ensure that issues and procedures are defined and where possible streamlined to avoid unnecessary cost to investors. Our client trustee has the same wish.

Our client:

1. Accepts that applications under s500(2) of the *Corporations Act* 2001 (Cth) need to be brought, and it will do so;
2. You assume that our client's foreshadowed application under s500 will require an amendment to its s96 applications. Our client proposes to bring its s500 applications separately;
3. If you have instructions to accept service of the s500 applications, we will serve you with them. Please confirm that you do have these instructions.

4. we will notify you of the s96 applications by providing you with a copy of the applications, the affidavits in support and the Statements of Facts. We will not provide a copy of Counsels' opinions about the s96 applications.

Assuming that our client serves its Claims and Statements of Claim, please would you inform us whether your client liquidators or the Court appointed receivers of LMIM for whom you do not act, are the appropriate persons to conduct the defences of these actions, and why.

Given the short timeframe available for response, we reserve our client's rights to respond more fully to your letter should that become necessary.

Yours faithfully

MINTER ELLISON



Contact: David O'Brien T: +61 7 3119 6159
F: +61 7 3119 1159 david.obrien@minterellison.com
OUR REF: 40-7747737

Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Monday 1 June 2015 04:50 pm
To: Stephanie Williamson
Cc: srussell@russellslaw.com.au; David O'Brien
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]
Attachments: Sealed section 500(2) application 8032_14.PDF; Sealed section 500(2) application 8034_14.PDF

Dear Ms Williamson

We refer to your letter dated 28 May 2015 and our response of the same date.

Please let us know if you have instructions to accept service of the **attached**:

1. application within a proceeding filed in Supreme Court of Queensland proceeding number 8032/14; and or
2. application within a proceeding filed in Supreme Court of Queensland proceeding number 8034/14,

on behalf of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461).

You will note that the date for the hearing of these applications is, as you requested, 17 June 2015.

These applications have been filed urgently to secure the return date of 17 June 2015. Affidavits in support of these applications will be filed and served shortly.

We look forward to hearing from you about whether you have instructions to accept service of these documents.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

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

Sent: Thursday 28 May 2015 09:15 pm

To: Stephanie Williamson; Nadia Braad

Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]

Dear Colleagues

Please see **attached** correspondence.

Regards

David O'Brien Partner

t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939

Minter Ellison Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

david.obrien@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]

Sent: Thursday 28 May 2015 05:41 pm

To: David O'Brien; Nadia Braad

Cc: Stephanie Williamson

Subject: LMIM ats KordaMentha as Trustee for the MPF

Dear Colleagues

Please refer to our attached correspondence dated 28 May, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Monday 1 June 2015 06:32 pm
To: Nadia Braad
Cc: Ashley Tiplady; David O'Brien
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599] ~20150640~
Attachments: sjw_20150640_005_002.pdf

Dear Colleagues

Please refer to our attached correspondence dated 1 June, 2015.

Regards

RUSSELLS

Stephanie Williamson
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From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]
Sent: Monday, 1 June 2015 4:50 PM
To: Stephanie Williamson
Cc: Stephen Russell; David O'Brien
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]

Dear Ms Williamson

We refer to your letter dated 28 May 2015 and our response of the same date.

Please let us know if you have instructions to accept service of the **attached**:

1. application within a proceeding filed in Supreme Court of Queensland proceeding number 8032/14; and or
2. application within a proceeding filed in Supreme Court of Queensland proceeding number 8034/14,

on behalf of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461).

You will note that the date for the hearing of these applications is, as you requested, 17 June 2015.

These applications have been filed urgently to secure the return date of 17 June 2015. Affidavits in support of these applications will be filed and served shortly.

We look forward to hearing from you about whether you have instructions to accept service of these documents.

Kind regards
Mrs Nadia Braad Senior Associate
t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Thursday 28 May 2015 09:15 pm
To: Stephanie Williamson; Nadia Braad
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]

Dear Colleagues

Please see **attached** correspondence.

Regards

David O'Brien Partner
t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939
Minter Ellison Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000
david.obrien@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Thursday 28 May 2015 05:41 pm
To: David O'Brien; Nadia Braad
Cc: Stephanie Williamson
Subject: LMIM ats KordaMentha as Trustee for the MPF

Dear Colleagues

Please refer to our attached correspondence dated 28 May, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

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RUSSELLS

1 June, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
Nadia.Braad@minterellison.com

Dear Colleagues

LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") at KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14

LMIM at KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
Supreme Court of Queensland Proceeding No. 8034/14

("Proceedings")

We refer to your letter dated 28 May, 2015 and also to the discussions between the writer and Mr Peden, of Counsel, and your Ms Braad and Mr Goodwin, of Counsel, before the directions hearings of the Proceedings on 28 May, 2015.

As discussed between our respective Counsel, we consider that your client is required to bring its applications under s500(2) of the *Corporations Act 2001* (Cth) ("s500(2) Applications") prior to, or conjointly with, your client's applications under s96 of the *Trusts Act* ("s96 Applications"). Please let us know if you disagree with this position.

In any event, we have received your confirmation that your client has filed its s500(2) Applications made returnable on 17 June, 2015.

We hold instructions on behalf of the liquidators of LMIM to accept service of documents in the Proceedings. Accordingly, we accept service of your client's s500(2) Applications, received at 4:50pm today, 1 June, 2015.

To ensure there becomes no need for the parties to seek any adjournment of the hearing date of 17 June, 2015, please immediately serve us with:

1. a copy of the orders made on 28 May, 2015 in the Proceedings;

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Brisbane / Sydney

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RussellsLaw.com.au

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-
2. the affidavits in support and the Statements of Fact (withholding a copy of Counsels' opinions) relating to the s96 Applications; and
 3. a copy of the affidavits of Mr Villani, once sworn, in support of the s500(2) Applications.

We look forward to receiving your earliest response.

Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8833
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Tuesday 2 June 2015 09:53 am
To: Jacqueline Ogden; Stephanie Williamson
Cc: Scott Couper; ssrussell@russellsllaw.com.au; Ashley Tiplady; David O'Brien
Subject: KordaMentha Pty Ltd ats the LM Managed Performance Fund - Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599]
Attachments: Affidavit of Jarrod Villani 5329_15.PDF; Kordamentha Pty Ltd Order - 29 May 2015 5329_15.PDF; Originating application 29 05 15 in 5329_15.PDF; Application for substituted service 29.05.15 in 5329_15.PDF

Dear Ms Ogden and Ms Williamson

We act for KordaMentha Pty Ltd as trustee for the LM Managed Performance Fund in Supreme Court of Queensland proceeding number 5329/15 which was filed on 29 May 2015 ('the proceeding').

The proceeding is in respect of directions sought by our client pursuant to s96 of the *Trusts Act 1973* (Qld).

Attached is a copy of the Originating Application filed on 29 May 2015 in the proceeding. The Originating Application provides that each of your clients are to be given notice of it. Please advise whether you have instructions to accept notice of the proceeding on behalf of your respective clients.

We also **attach** the following documents in the proceeding:

1. Application for substituted service filed 29 May 2015;
2. Order made by the Honourable Justice Peter Lyons on 29 May 2015;
3. Affidavit of Jarrod Villani sworn 1 June 2015.

We propose to give notice of the other material which will be filed in the proceeding by way of email. Please advise if you object to that course.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

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Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Tuesday 2 June 2015 06:47 pm
To: Stephanie Williamson
Cc: David O'Brien
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 [ME-ME.FID2395599]
Attachments: Kordamentha Pty Ltd Order - 29 May 2015 5329_15.PDF

Dear Ms Williamson

As you are aware we act for the Trustee in the above matter.

We have previously provided copies of documents in this matter by way of notice.

We note that the Order made on 29 May 2015 (copy **attached**) also requires our client to serve a copy of the Order on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) ('LMIM').

In an effort to keep costs to a minimum, we would be grateful if you would advise whether:

1. you have instructions to accept service of the attached Order on behalf of LMIM; and
2. you are content that this email is sufficient service.

We look forward to hearing from you.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com **www.minterellison.com**

Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Thursday 4 June 2015 10:55 am
To: Nadia Braad -
Cc: David O'Brien; Ashley Tiplady
Subject: RE: KordaMentha Pty Ltd ats the LM Managed Performance Fund - Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599] ~20150640~

Dear Ms Braad

We confirm we hold instructions to accept notice of proceeding no. 5329/15 ("Proceeding") on behalf of the liquidators of, and on behalf of, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 077 208 461 ("LMIM") and to accept notice of the further material filed in the Proceeding by way of email sent to myself (swilliamson@russellslaw.com.au) and Mr Tiplady (atiplady@russellslaw.com.au).

It occurs to us, in light of the Originating Application and Application for substituted service filed in the Proceeding, that the applications filed in proceedings 8032/14 and 8034/14 on 11 May 2015 may no longer be pressed by your client. Would you inform us whether those applications have been dismissed.

We look forward to receiving a copy of the affidavits of Mr Villani and Mr O'Brien and the Statement of Facts without delay.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]
Sent: Tuesday, 2 June 2015 9:53 AM
To: Jacqueline Ogden; Stephanie Williamson
Cc: Scott Couper; ssrussell@russellslaw.com.au; Ashley Tiplady; David O'Brien
Subject: KordaMentha Pty Ltd ats the LM Managed Performance Fund - Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599]

Dear Ms Ogden and Ms Williamson

We act for KordaMentha Pty Ltd as trustee for the LM Managed Performance Fund in Supreme Court of Queensland proceeding number 5329/15 which was filed on 29 May 2015 ('the proceeding').

The proceeding is in respect of directions sought by our client pursuant to s96 of the *Trusts Act 1973* (Qld).

Attached is a copy of the Originating Application filed on 29 May 2015 in the proceeding. The Originating Application provides that each of your clients are to be given notice of it. Please advise whether you have instructions to accept notice of the proceeding on behalf of your respective clients.

We also **attach** the following documents in the proceeding:

1. Application for substituted service filed 29 May 2015;
2. Order made by the Honourable Justice Peter Lyons on 29 May 2015;
3. Affidavit of Jarrod Villani sworn 1 June 2015.

We propose to give notice of the other material which will be filed in the proceeding by way of email. Please advise if you object to that course.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com



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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Thursday 4 June 2015 10:57 am
To: Nadia Braad
Cc: David O'Brien; Ashley Tiplady
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 [ME-ME.FID2395599] ~20150640~
Attachments: Kordamentha Pty Ltd Order - 29 May 2015 5329_15.pdf

Dear Ms Braad

We confirm we hold instructions to accept service, by way of email, of the Order on behalf of LMIM.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000
Telephone (07) 3004 8888 / Facsimile (07) 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]
Sent: Tuesday, 2 June 2015 6:47 PM
To: Stephanie Williamson
Cc: David O'Brien
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 [ME-ME.FID2395599]

Dear Ms Williamson

As you are aware we act for the Trustee in the above matter.

We have previously provided copies of documents in this matter by way of notice.

We note that the Order made on 29 May 2015 (copy **attached**) also requires our client to serve a copy of the Order on LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) ('LMIM').

In an effort to keep costs to a minimum, we would be grateful if you would advise whether:

1. you have instructions to accept service of the attached Order on behalf of LMIM; and
2. you are content that this email is sufficient service.

We look forward to hearing from you.

Kind regards
Mrs Nadia Braad Senior Associate
t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279



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MinterEllison

5 June 2015

BY EXPRESS POST TO

Ms Stephanie Williamson
Russells
Level 18
300 Queen Street
BRISBANE QLD 4000

AND TO

Ms Jacqueline Ogden
Gadens
Level 11
111 Eagle Street
BRISBANE QLD 4000

Dear Colleagues

KordaMentha Pty Ltd in its capacity as Trustee of the LM Managed Performance Fund v LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) - Supreme Court of Queensland Proceeding No. 5329/15

We refer to our email of 2 June 2015, which provided copies of documents in this matter by way of notice.

We **enclose**, by way of notice to you of the material in this matter, a CD containing documents in pdf format as follows:

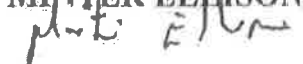
1. Affidavit of David Thomas O'Brien sworn 4 June 2015;
2. Statement of Facts drawn pursuant to section 96(1) of the *Trusts Act 1973* (Qld) (Proceeding No. 8032 of 2014);
3. Statement of Facts drawn pursuant to section 96(1) of the *Trusts Act 1973* (Qld) (Proceeding No. 8034 of 2014); and
4. Affidavit of Jarrod Villani sworn 4 June 2015 in support of the Section 96 Application.

A further affidavit as to compliance with the service order will be provided to you in due course.

We refer to our letter to Russells dated 28 May 2015, a copy of which was sent to Gadens on 29 May 2015. We again ask that you inform us whether the liquidators or the Court appointed receivers of LMIM are the appropriate persons to conduct the defences of these actions, and why.

Yours faithfully

MINTER ELLISON



Contact: Nadia Braad T: +61 7 3119 6641
F: +61 7 3119 1641 nadia.braad@minterellison.com
Partner: David O'Brien T: +61 7 3119 6159
OUR REF: DOB NYB 407747737

'NSB-10'

Index to Exhibit NSB-10

No.	Document	Pages
1	Email of 10 June 2015 at 7.56 am from Gadens to Minter Ellison	24-25
2	Email of 10 June 2015 at 11.57 am from Tucker and Cowen Solicitors to Minter Ellison with attached letter dated 10 June 2015	26-27
3	Email of 10 June 2015 at 4.01 pm from Minter Ellison to Tucker and Cowen Solicitors	28-29
4	Email of 12 June 2015 at 12.56 pm from Minter Ellison to Tucker and Cowen Solicitors without attachments	30-31
5	Email of 12 June 2015 at 1.01 pm from Minter Ellison to Russells	32-34
6	Email of 15 June 2015 at 12.18 pm from Russells to Minter Ellison with attached letter dated 15 June 2015	35-37
7	Email of 15 June 2015 at 2.24 pm from Minter Ellison to Russells and copied to Tucker and Cowen Solicitors with attachments	38-43
8	Email of 15 June 2014 at 2.37 pm from Russells to Minter Ellison	44-45
9	Email of 15 June 2015 at 2.56 pm from Minter Ellison to Russells and copied to Tucker and Cowen Solicitors	46-48
10	Email of 15 June 2015 at 3.11 pm from Tucker and Cowen Solicitors to Minter Ellison and copied to Russells	49-52
11	Email of 15 June 2015 at 3.26 pm from Russells to Minter Ellison with attachments	53-57
12	Email of 6 July 2015 at 9.05 am from Tucker and Cowen Solicitors to Minter Ellison and copied to Russells with attached letter dated 6 July 2015	58-60
13	Email of 6 July 2015 at 9.08 am from Tucker and Cowen Solicitors to Minter Ellison with attached letter dated 6 July 2015	61-63
14	Email of 6 July 2015 at 10.46 am from Russells to Minter Ellison with attached letter dated 6 July 2015	64-66

15	Email of 7 July 2015 at 11.01 am from Minter Ellison to Russells with attachments	67-72
16	Email of 7 July 2015 at 3.58 pm from Russells to Minter Ellison with attachments	73-76
17	Email of 7 July 2015 at 4.55pm from Minter Ellison to Tucker and Cowen Solicitors without attachments	77-78
18	Email of 7 July 2015 at 5.09pm from Russells to Minter Ellison	79-81
19	Email of 7 July 2015 at 5.26 pm from Minter Ellison to Russells	82-84
20	Email of 8 July 2015 at 4.40pm from Minter Ellison to Russells with attachments	85-89
21	Email of 9 July 2015 at 9.21 am from Russells to Minter Ellison	90-91
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23	Email of 10 July 2015 at 12.20 pm from Russells to Minter Ellison	94
24	Email of 13 July 2015 at 5.55 pm from Minter Ellison to Russells	95-96
25	Email of 15 July 2015 at 12.34 pm from Russells to Minter Ellison and copied to Tucker and Cowen Solicitors with attached letter dated 15 July 2015	97-99
26	Email of 15 July 2015 at 5.03 pm from Minter Ellison to Russells	100
27	Email of 16 July 2015 at 4.47pm from Minter Ellison to Russells	101-102

Nicole Hamrosi

From: Jacqueline Ogden [Jacqueline.Ogden@gadens.com]
Sent: Wednesday 10 June 2015 07:56 am
To: Nadia Braad
Cc: David O'Brien; ATiplady@RussellsLaw.com.au; srussell@russellslaw.com.au; Stephanie Williamson <swilliamson@russellslaw.com.au> (swilliamson@russellslaw.com.au); Scott Couper
Subject: KordaMentha Pty Ltd ats the LM Managed Performance Fund - Supreme Court of Queensland Proceeding No. 5329/15 [GQ-BD.FID1006751]
Attachments: Affidavit of Jarrod Villani 5329_15.PDF; Kordamentha Pty Ltd Order - 29 May 2015 5329_15.PDF; Originating application 29 05 15 in 5329_15.PDF; Application for substituted service 29.05.15 in 5329_15.PDF

Dear Ms Braad,

We refer to your email **below** and your correspondence dated 5 June 2015 (received by post on 9 June 2015).

We do not hold instructions to act for Mr Whyte in relation to these proceedings. We have passed on your correspondence to Mr Whyte for his information.

We are instructed that all future correspondence in relation to these proceedings (and proceedings numbered 8032/14 and 8034/14) should be directed to Tucker & Cowen Solicitors.

Yours faithfully,

Jacqueline Ogden | Associate | gadens
jacqueline.ogden@gadens.com | T +61 7 3231 1688 | F +61 7 3229 5850
Level 11, 111 Eagle Street, Brisbane, QLD, Australia 4000

gadens.com

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Think before you print.

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]
Sent: 02/06/2015 9:53 AM
To: Jacqueline Ogden; Stephanie Williamson
Cc: Scott Couper; ssrussell@russellslaw.com.au; Ashley Tiplady; David O'Brien
Subject: KordaMentha Pty Ltd ats the LM Managed Performance Fund - Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599]

Dear Ms Ogden and Ms Williamson

We act for KordaMentha Pty Ltd as trustee for the LM Managed Performance Fund in Supreme Court of Queensland proceeding number 5329/15 which was filed on 29 May 2015 ('**the proceeding**').

The proceeding is in respect of directions sought by our client pursuant to s96 of the *Trusts Act 1973* (Qld).

Attached is a copy of the Originating Application filed on 29 May 2015 in the proceeding. The Originating Application provides that each of your clients are to be given notice of it. Please advise whether you have instructions to accept notice of the proceeding on behalf of your respective clients.

We also **attach** the following documents in the proceeding:

1. Application for substituted service filed 29 May 2015;
2. Order made by the Honourable Justice Peter Lyons on 29 May 2015;

3. Affidavit of Jarrod Villani sworn 1 June 2015.

We propose to give notice of the other material which will be filed in the proceeding by way of email. Please advise if you object to that course.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

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nadia.braad@minterellison.com www.minterellison.com



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Nicole Hamrosi

From: Alison Woodbury [awoodbury@tuckercowen.com.au] on behalf of David Schwarz [dschwarz@tuckercowen.com.au]
Sent: Wednesday 10 June 2015 11:57 am
To: David O'Brien; Nadia Braad
Cc: David Schwarz; Geoff Hancock
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed); Supreme Court of Queensland Proceeding No. 5329/15
Attachments: letter to Minter Ellison (TCS00992260).pdf

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury
Personal Assistant

E: awoodbury@tuckercowen.com.au
D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

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Tucker&CowenSolicitors.

Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / www.tuckercowen.com.au

Partners.
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Geoff Hancock.

Associates.
Dan Ryan.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Our reference: Mr Schwarz / Mr Hancock

10 June 2015

Your reference: Mr O'Brien / Mrs Braad

Minter Ellison
Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane QLD 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Dear Colleagues

LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) ("LMIM") as Responsible Entity for the LM First Mortgage Income Fund (Receiver Appointed) ("FMIF")
KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") – Supreme Court of Queensland Proceeding No. 5329/15

We refer to your email to (among others) Mr Scott Couper and Ms Jacqueline Ogden, of Gadens, sent on 2 June 2015 and attaching a copy of certain documents in the above proceeding.

As you know, we act for Mr David Whyte, the person appointed by Order dated 21 August 2013 as the person responsible for ensuring the winding up of the FMIF and as receiver of the FMIF, in respect of certain matters.

We are instructed to act for Mr Whyte in relation to the above proceeding.

We would be grateful if you would direct future correspondence in relation to this matter, insofar as it concerns Mr Whyte, to this firm. Should you have any queries, please do not hesitate to contact us.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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Nicole Hamrosi

From: David O'Brien [David.O'Brien@minterellison.com]
Sent: Wednesday 10 June 2015 04:01 pm
To: 'David Schwarz'; Nadia Braad
Cc: 'Geoff Hancock'
Subject: RE: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed); Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599]

Dear Mr Schwartz,

Thank you for your email.

In addition to proceeding 5329/15, by which our client seeks leave to proceed under s500(2) of the *Corporations Act* 2001 (Cth) and directions under s96 of the *Trusts Act* 1973(Qld), there are two proceedings 8032/15 and 8034/15, in respect of which that leave and directions are sought.

We have sent Gadens copies of the Court documents in these three matters. They have informed us that they have in turn forwarded that material to Mr Whyte.

As you may be aware, Russells act for the liquidators of LMIM. We have asked them and Gadens the question, who will be the solicitors on the record for the defendant in the abovementioned proceedings? To date, no one has been able to answer this question.

Please would you let us know what Mr Whyte's instructions are regarding who will represent the defendant in proceedings 8032/15 and 8034/15.

Regards

David O'Brien Partner
t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939
Minter Ellison Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000
david.obrien@minterellison.com www.minterellison.com

From: Alison Woodbury [<mailto:awoodbury@tuckercowen.com.au>] **On Behalf Of** David Schwarz
Sent: Wednesday 10 June 2015 11:57 am
To: David O'Brien; Nadia Braad
Cc: David Schwarz; Geoff Hancock
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed); Supreme Court of Queensland Proceeding No. 5329/15

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury
Personal Assistant

E: awoodbury@tuckercowen.com.au
D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

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Richard Cowen, David Tucker and David Schwarz have been singled out in Doyle's Guide and Justin Marschke has again been recognised as one of Australia's Best Lawyers for litigation by **Best Lawyers® International 2016**

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Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Friday 12 June 2015 12:56 pm
To: 'David Schwarz'
Cc: 'Geoff Hancock'; David O'Brien
Subject: RE: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed); Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599]
Attachments: Affidavit of Jarrod Villani 11.6.15 - 8032_14.PDF; Affidavit of Jarrod Villani 11.6.15 - 8034_14.PDF; 007. Application for s500(2) leave 8034_14.PDF; 007. Application for leave under s500(2).PDF

Dear Mr Schwarz

We refer to your letter dated 10 June 2015, and to your telephone conversation with Mr O'Brien this morning.

We **attach**, by way of notice, the following:

1. Affidavit of Jarrod Villani sworn 11 June 2015 in support of the application filed in proceeding 8032/14;
2. Affidavit of Jarrod Villani sworn 11 June 2015 in support of the application filed in proceeding 8034/14; and
3. Copies of the two applications referred to above.

Please would you let us know of your client's attitude to the two applications by 15 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

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

Sent: Wednesday 10 June 2015 04:01 pm

To: 'David Schwarz'; Nadia Braad

Cc: 'Geoff Hancock'

Subject: RE: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed); Supreme Court of Queensland Proceeding No. 5329/15 [ME-ME.FID2395599]

Dear Mr Schwartz,

Thank you for your email.

In addition to proceeding 5329/15, by which our client seeks leave to proceed under s500(2) of the *Corporations Act* 2001 (Cth) and directions under s96 of the *Trusts Act* 1973(Qld), there are two proceedings 8032/15 and 8034/15, in respect of which that leave and directions are sought.

We have sent Gadens copies of the Court documents in these three matters. They have informed us that they have in turn forwarded that material to Mr Whyte.

As you may be aware, Russells act for the liquidators of LMIM. We have asked them and Gadens the question, who will be the solicitors on the record for the defendant in the abovementioned proceedings? To date, no one has been able to answer this question.

Please would you let us know what Mr Whyte's instructions are regarding who will represent the defendant in proceedings 8032/15 and 8034/15.

Regards

David O'Brien Partner

t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939

From: Alison Woodbury [mailto:awoodbury@tuckercowen.com.au] **On Behalf Of** David Schwarz
Sent: Wednesday 10 June 2015 11:57 am
To: David O'Brien; Nadia Braad
Cc: David Schwarz; Geoff Hancock
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed); Supreme Court of Queensland Proceeding No. 5329/15

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury
Personal Assistant

E: awoodbury@tuckercowen.com.au
D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001.

Tucker&CowenSolicitors.

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Nicole Hamrosi

From: Nicole Hamrosi on behalf of Nadia Braad
Sent: Friday 12 June 2015 01:01 pm
To: Stephanie Williamson
Cc: Ashley Tiplady; David O'Brien
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599] ~20150640~
Attachments: Affidavit of Jarrod Villani 11.6.15 - 8032_14.PDF; Affidavit of Jarrod Villani 11.6.15 - 8034_14.PDF

Dear Colleagues

We refer to your letter dated 1 June 2015 confirming your instructions to accept service on behalf of LMIM.

We **attach**, by way of service, the following:

1. Affidavit of Jarrod Villani sworn 11 June 2015 in support of the application filed in proceeding 8032/14; and
2. Affidavit of Jarrod Villani sworn 11 June 2015 in support of the application filed in proceeding 8034/14.

Please would you inform us of your client's attitude to these applications by 15 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Monday 1 June 2015 06:32 pm
To: Nadia Braad
Cc: Ashley Tiplady; David O'Brien
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599] ~20150640~

Dear Colleagues

Please refer to our attached correspondence dated 1 June, 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872

Mobile 0438 347 638

swilliamson@russellslaw.com.au

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Postal—GPO Box 1402, Brisbane QLD 4001 / Street—Level 18, 300 Queen Street, Brisbane QLD 4000

Telephone (07) 3004 8888 / Facsimile (07) 3004 8899 / ABN 38 332 782 534

RussellsLaw.com.au

From: Nadia Braad [mailto:Nadia.Braad@minterellison.com]
Sent: Monday, 1 June 2015 4:50 PM

To: Stephanie Williamson
Cc: Stephen Russell; David O'Brien
Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]

Dear Ms Williamson

We refer to your letter dated 28 May 2015 and our response of the same date.

Please let us know if you have instructions to accept service of the **attached**:

1. application within a proceeding filed in Supreme Court of Queensland proceeding number 8032/14; and or
2. application within a proceeding filed in Supreme Court of Queensland proceeding number 8034/14,

on behalf of LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461).

You will note that the date for the hearing of these applications is, as you requested, 17 June 2015.

These applications have been filed urgently to secure the return date of 17 June 2015. Affidavits in support of these applications will be filed and served shortly.

We look forward to hearing from you about whether you have instructions to accept service of these documents.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

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

Sent: Thursday 28 May 2015 09:15 pm

To: Stephanie Williamson; Nadia Braad

Subject: RE: LMIM ats KordaMentha as Trustee for the MPF [ME-ME.FID2395599]

Dear Colleagues

Please see **attached** correspondence.

Regards

David O'Brien Partner

t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939

Minter Ellison Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

david.obrien@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]

Sent: Thursday 28 May 2015 05:41 pm

To: David O'Brien; Nadia Braad

Cc: Stephanie Williamson

Subject: LMIM ats KordaMentha as Trustee for the MPF

Dear Colleagues

Please refer to our attached correspondence dated 28 May, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Monday 15 June 2015 12:18 pm
To: David O'Brien; Nadia Braad
Cc: Ashley Tiplady; Stephanie Williamson
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15
Attachments: SJW_20150640_006.pdf

Dear Colleagues

Please refer to our attached correspondence dated 15 June, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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RUSSELLS

15 June, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
Nadia.Braad@minterellison.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14 ("Proceeding 8032/14")**

**LMIM ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
Supreme Court of Queensland Proceeding No. 8034/14 ("Proceeding 8034/14")**

**RE: KordaMentha Pty Ltd ACN 100 169 391 as trustee of the LM Managed Performance Fund ("Trustee")
Supreme Court of Queensland Proceeding No. 5329/15 ("Proceeding 5329/15")**

("the Proceedings")

We refer to the Affidavit of Mr Villani sworn 4 June, 2015 in Proceeding 5329/15, the Affidavit of Mr Villani sworn 11 June, 2015 in Proceeding 8032/14 and the Affidavit of Mr Villani sworn 11 June, 2015 in Proceeding 8034/14 ("Affidavits of Mr Villani").

The Affidavits of Mr Villani swears to the following circumstances:

1. the Trustee is seeking litigation funding for Proceeding 8032/14 and Proceeding 8034/14;
2. if litigation funding cannot be obtained on satisfactory terms, it is likely that the Trustee will not prosecute those proceedings; and
3. it may be necessary to adjourn the 's96 Application' and the 's500 Applications'.

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Brisbane / Sydney

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RussellsLaw.com.au

SJW_20150640_006.docm

Your email of 12 June, 2015 requests our client's position in response to your client's application for leave to proceed pursuant to s500(2) of the *Corporations Act 2001* (Cth) by today, 15 June, 2015.

Our client should not be put to the cost of responding and preparing for the listing of the Proceedings on Wednesday 17 June, 2015 unless your client has obtained the necessary litigation funding it says is required. Accordingly, we request that you inform us as to the current status of any litigation funding being considered by your client.

If your client is unable to confirm it has obtained litigation funding to its satisfaction by 4:00pm today, the Proceedings ought to be adjourned to the Court Registry until such funding has been obtained. The members of the MPF should not be put to \$65,000.00 of expense regarding this Wednesday's hearing if the ultimate litigation will not be proceeding.

Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8822
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

Nicole Hamrosi

From: Debbie D'Alton on behalf of Nadia Braad
Sent: Monday 15 June 2015 02:24 pm
To: 'Stephanie Williamson'
Cc: Ashley Tiplady; 'dschwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15
Attachments: SJW_20150640_006.pdf; Consent Adjournment Application - 803214 (3).pdf; Consent Adjournment Application - 803414 (3).pdf

Dear Ms Williamson

We refer to your letter dated 15 June 2015 **attached**.

You previously requested that these applications be heard on the same date as our client's s96 Application in proceeding number 5329/15. As foreshadowed in paragraph 45 of Mr Villani's 4 June 2015 Affidavit in that proceeding, it has become necessary to adjourn that application to allow further evidence to be filed regarding litigation funding.

Accordingly, we are in the process of adjourning that application to 13 July 2015. In view of your previous request that the s500(2) applications be heard on the same day, we **attach** a request for consent adjournment in each of the 8032/14 and 8034/14 proceedings adjourning those hearings to 13 July 2015.

We would be grateful if you would urgently sign and return both requests for a consent adjournment so as to avoid the unnecessary costs of an appearance on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [<mailto:swilliamson@russellslaw.com.au>]
Sent: Monday 15 June 2015 12:18 pm
To: David O'Brien; Nadia Braad
Cc: Ashley Tiplady; Stephanie Williamson
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Colleagues

Please refer to our attached correspondence dated 15 June, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872

Mobile 0438 347 638

swilliamson@russellslaw.com.au

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RUSSELLS

15 June, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
Nadia.Braad@minterellison.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") at KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14 ("Proceeding 8032/14")**

**LMIM at KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
Supreme Court of Queensland Proceeding No. 8034/14 ("Proceeding 8034/14")**

**RE: KordaMentha Pty Ltd ACN 100 169 391 as trustee of the LM Managed Performance Fund ("Trustee")
Supreme Court of Queensland Proceeding No. 5329/15 ("Proceeding 5329/15")**

("the Proceedings")

We refer to the Affidavit of Mr Villani sworn 4 June, 2015 in Proceeding 5329/15, the Affidavit of Mr Villani sworn 11 June, 2015 in Proceeding 8032/14 and the Affidavit of Mr Villani sworn 11 June, 2015 in Proceeding 8034/14 ("Affidavits of Mr Villani").

The Affidavits of Mr Villani swears to the following circumstances:

1. the Trustee is seeking litigation funding for Proceeding 8032/14 and Proceeding 8034/14;
2. if litigation funding cannot be obtained on satisfactory terms, it is likely that the Trustee will not prosecute those proceedings; and
3. it may be necessary to adjourn the 's96 Application' and the 's500 Applications'.

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Your email of 12 June, 2015 requests our client's position in response to your client's application for leave to proceed pursuant to s500(2) of the *Corporations Act 2001* (Cth) by today, 15 June, 2015.

Our client should not be put to the cost of responding and preparing for the listing of the Proceedings on Wednesday 17 June, 2015 unless your client has obtained the necessary litigation funding it says is required. Accordingly, we request that you inform us as to the current status of any litigation funding being considered by your client.

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Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8822
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8032/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

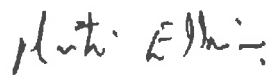
AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 17 June 2015 to 13 July 2015.

Signed: 

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 15 June 2015

Signed:

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 15 June 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30**

ME_122340255_1 (W2003x)

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NVB DOB 407747729

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8034/14

**Plaintiffs: KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

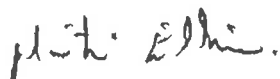
AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 17 June 2015 to 13 July 2015.

Signed: 

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 15 June 2015

Signed:

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 15 June 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30**

ME_122339819_1 (W2003x)

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NVB DOB 407747737

Nicole Hamrosi

From: Ashley Tiplady [atiplady@russellslaw.com.au]
Sent: Monday 15 June 2015 02:37 pm
To: Nadia Braad
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

If this covers both s96 and s500 applications this would be a sensible approach.

Please facilitate.

We will need to deal with T&C later this afternoon too. I have that on my 'to do' list.

Thanks.

RUSSELLS

Ashley Tiplady
Partner

Direct (07) 3004 8833
Mobile 0419 727 626
atiplady@russellslaw.com.au

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RussellsLaw.com.au

From: Debbie D'Alton [mailto:Debbie.D'Alton@minterellison.com] **On Behalf Of** Nadia Braad
Sent: Monday, 15 June 2015 2:24 PM
To: Stephanie Williamson
Cc: Ashley Tiplady; 'dschwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Ms Williamson

We refer to your letter dated 15 June 2015 **attached**.

You previously requested that these applications be heard on the same date as our client's s96 Application in proceeding number 5329/15. As foreshadowed in paragraph 45 of Mr Villani's 4 June 2015 Affidavit in that proceeding, it has become necessary to adjourn that application to allow further evidence to be filed regarding litigation funding.

Accordingly, we are in the process of adjourning that application to 13 July 2015. In view of your previous request that the s500(2) applications be heard on the same day, we **attach** a request for consent adjournment in each of the 8032/14 and 8034/14 proceedings adjourning those hearings to 13 July 2015.

We would be grateful if you would urgently sign and return both requests for a consent adjournment so as to avoid the unnecessary costs of an appearance on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Monday 15 June 2015 12:18 pm
To: David O'Brien; Nadia Braad
Cc: Ashley Tiplady; Stephanie Williamson
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Colleagues

Please refer to our attached correspondence dated 15 June, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
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swilliamson@russellslaw.com.au

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Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Monday 15 June 2015 02:56 pm
To: Stephanie Williamson
Cc: David O'Brien; Ashley Tiplady; 'David Schwarz'; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~ [ME-ME.FID2395599]

Dear Ms Williamson

The s96 application has been confirmed as being listed on 13 July 2015 including confirmation that no appearance is required on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Monday 15 June 2015 02:53 pm
To: Nadia Braad
Cc: David O'Brien; Ashley Tiplady; 'David Schwarz'; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~

Dear Ms Braad

Please confirm once your client's s96 Application in proceeding number 5329/15 has been adjourned to 13 July 2015.

Once we have received that confirmation, we anticipate our clients' position being to consent to the adjournment of your client's s500(2) Applications in each of the 8032/14 and 8034/14 proceedings to 13 July 2015.

Regards

RUSSELLS

Stephanie Williamson

Lawyer

Direct 07 3004 8872

Mobile 0438 347 638

swilliamson@russellslaw.com.au

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RussellsLaw.com.au

From: Debbie D'Alton [mailto:Debbie.D'Alton@minterellison.com] **On Behalf Of** Nadia Braad
Sent: Monday, 15 June 2015 2:24 PM
To: Stephanie Williamson

Cc: Ashley Tiplady; 'dschwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Ms Williamson

We refer to your letter dated 15 June 2015 **attached**.

You previously requested that these applications be heard on the same date as our client's s96 Application in proceeding number 5329/15. As foreshadowed in paragraph 45 of Mr Villani's 4 June 2015 Affidavit in that proceeding, it has become necessary to adjourn that application to allow further evidence to be filed regarding litigation funding.

Accordingly, we are in the process of adjourning that application to 13 July 2015. In view of your previous request that the s500(2) applications be heard on the same day, we **attach** a request for consent adjournment in each of the 8032/14 and 8034/14 proceedings adjourning those hearings to 13 July 2015.

We would be grateful if you would urgently sign and return both requests for a consent adjournment so as to avoid the unnecessary costs of an appearance on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [<mailto:swilliamson@russellslaw.com.au>]

Sent: Monday 15 June 2015 12:18 pm

To: David O'Brien; Nadia Braad

Cc: Ashley Tiplady; Stephanie Williamson

Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Colleagues

Please refer to our attached correspondence dated 15 June, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson

Lawyer

Direct 07 3004 8872

Mobile 0438 347 638

swilliamson@russellslaw.com.au

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Nicole Hamrosi

From: David Schwarz [dschwarz@tuckercowen.com.au]
Sent: Monday 15 June 2015 03:11 pm
To: Nadia Braad; Stephanie Williamson
Cc: David O'Brien; Ashley Tiplady; Alex Nase
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~ [ME-ME.FID2395599]

Dear Mrs Braad,

Thank you for your email. Our client, Mr Whyte, has no objection to the adjournment of the applications to 13 July, 2015.

Regards

David Schwarz
Partner

E: dschwarz@tuckercowen.com.au

D: 07 3210 3506 | M: 0438 400 348 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

First Tier for Insolvency - Doyle's Guide to the Australian Legal Profession 2015

Richard Cowen, David Tucker and David Schwarz have been singled out in Doyle's Guide and Justin Marschke has again been recognised as one of Australia's Best Lawyers for litigation by **Best Lawyers® International 2016**

Member of MSI Global Alliance



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From: Nadia Braad [mailto:Nadia.Braad@minterellison.com]
Sent: Monday, 15 June 2015 2:56 PM
To: Stephanie Williamson
Cc: David O'Brien; Ashley Tiplady; David Schwarz; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~ [ME-ME.FID2395599]

Dear Ms Williamson

The s96 application has been confirmed as being listed on 13 July 2015 including confirmation that no appearance is required on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate
t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279
Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000
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Cc: David O'Brien; Ashley Tiplady; 'David Schwarz'; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15
~20150640~

Dear Ms Braad

Please confirm once your client's s96 Application in proceeding number 5329/15 has been adjourned to 13 July 2015.

Once we have received that confirmation, we anticipate our clients' position being to consent to the adjournment of your client's s500(2) Applications in each of the 8032/14 and 8034/14 proceedings to 13 July 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

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Mobile 0438 347 638
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Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Ms Williamson

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Cc: Ashley Tiplady; Stephanie Williamson
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Dear Colleagues

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Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Monday 15 June 2015 03:26 pm
To: Nadia Braad
Cc: David O'Brien; Ashley Tiplady; 'David Schwarz'; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~ [ME-ME.FID2395599]
Attachments: Consent Adjournment of Application - S803414.pdf; Consent Adjournment of Application - S803214.pdf

Ms Braad

Please find enclosed the executed consent adjournment of applications in proceedings 8032/14 and 8034/14 on behalf of our client.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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From: Nadia Braad [mailto:Nadia.Braad@minterellison.com]
Sent: Monday, 15 June 2015 2:56 PM
To: Stephanie Williamson
Cc: David O'Brien; Ashley Tiplady; 'David Schwarz'; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~ [ME-ME.FID2395599]

Dear Ms Williamson

The s96 application has been confirmed as being listed on 13 July 2015 including confirmation that no appearance is required on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate
t +61 7 3119 6641 f +61 7 3119 1641 m +61-466 306 279
Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000
nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Monday 15 June 2015 02:53 pm
To: Nadia Braad
Cc: David O'Brien; Ashley Tiplady; 'David Schwarz'; Geoff Hancock
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640~

Dear Ms Braad

Please confirm once your client's s96 Application in proceeding number 5329/15 has been adjourned to 13 July 2015.

Once we have received that confirmation, we anticipate our clients' position being to consent to the adjournment of your client's s500(2) Applications in each of the 8032/14 and 8034/14 proceedings to 13 July 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

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Mobile 0438 347 638
swilliamson@russellslaw.com.au

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From: Debbie D'Alton [mailto:Debbie.D'Alton@minterellison.com] **On Behalf Of** Nadia Braad
Sent: Monday, 15 June 2015 2:24 PM
To: Stephanie Williamson
Cc: Ashley Tiplady; 'dschwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Ms Williamson

We refer to your letter dated 15 June 2015 **attached**.

You previously requested that these applications be heard on the same date as our client's s96 Application in proceeding number 5329/15. As foreshadowed in paragraph 45 of Mr Villani's 4 June 2015 Affidavit in that proceeding, it has become necessary to adjourn that application to allow further evidence to be filed regarding litigation funding.

Accordingly, we are in the process of adjourning that application to 13 July 2015. In view of your previous request that the s500(2) applications be heard on the same day, we **attach** a request for consent adjournment in each of the 8032/14 and 8034/14 proceedings adjourning those hearings to 13 July 2015.

We would be grateful if you would urgently sign and return both requests for a consent adjournment so as to avoid the unnecessary costs of an appearance on 17 June 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Monday 15 June 2015 12:18 pm
To: David O'Brien; Nadia Braad

Cc: Ashley.Tiplady; Stephanie Williamson

Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15

Dear Colleagues

Please refer to our attached correspondence dated 15 June, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson

Lawyer

Direct 07 3004 8872

Mobile 0438 347 638

swilliamson@russellslaw.com.au

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SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8032/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 17 June 2015 to 13 July 2015.

Signed: *[Signature]*

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 15 June 2015

Signed: *Russells*

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 15 June 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30**

ME_122340255_1 (W2003x)

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NVB DOB 407747729

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8034/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

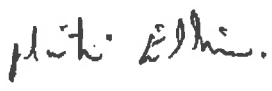
AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 17 June 2015 to 13 July 2015.

Signed: 

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 15 June 2015

Signed: 

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 15 June 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30**

ME_12239819_1 (W2003x)

MINTER ELLISON

Waterfront Place, 1 Eagle Street

BRISBANE QLD 4000

DX 102 BRISBANE

Telephone (07) 3119 6000

Facsimile (07) 3119 1000

Email david.obrien@minterellison.com

Reference NVB DOB 407747737

Nicole Hamrosi

From: Alison Woodbury [awoodbury@tuckercowen.com.au] on behalf of David Schwarz [dschwarz@tuckercowen.com.au]
Sent: Monday 6 July 2015 09:05 am
To: David O'Brien; Nadia Braad
Cc: atiplady@russellslaw.com.au; David Schwarz; Alex Nase
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) - Supreme Court of Queensland Proceedings No. 5329/15 and No. 8032/14 and 8034/14 letter to Minter Ellison (TCS01004948).pdf
Attachments:
Categories: Purple Category

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury
Personal Assistant

E: awoodbury@tuckercowen.com.au
D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

First Tier for Insolvency - Doyle's Guide to the Australian Legal Profession 2015

Richard Cowen, David Tucker and David Schwarz have been singled out in Doyle's Guide and Justin Marschke has again been recognised as one of Australia's Best Lawyers for litigation by **Best Lawyers® International 2016**

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Tucker & Cowen Solicitors.

Level 15, 15 Adelaide St. Brisbane, Qld, 4000 / GPO Box 345, Brisbane, Qld, 4001.
Telephone: 07 300 300 00 / Facsimile: 07 300 300 33 / www.tuckerandcowen.com.au

Our reference: Mr Schwarz / Mr Nase

6 July 2015

Your reference: Mr O'Brien / Mrs Braad

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Partners.
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David Schwarz.
Justin Marschke.

Special Counsel.
Geoff Hancock.

Associates.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Dear Colleagues

LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) ("LMIM") as Responsible Entity for the LM First Mortgage Income Fund (Receiver Appointed) ("FMIF")
KordaMentha Pty Ltd atf the LM Managed Performance Fund ("MPF") – Supreme Court of Queensland Proceeding No. 5329/15
KordaMentha Pty Ltd and Calibre Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14

We refer to the above matter, and to your client's applications for directions under s 96 of the Trusts Act 1973, and leave to proceed with proceedings 8032/14 and 8034/14.

As you know, by orders of Justice Dalton on 21 August 2013, our client was appointed as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution. Our client's powers include to bring, maintain or defend, any proceedings on behalf of the FMIF in the name of LMIM.

We have been instructed by Mr Whyte to act for LMIM, in its capacity as responsible entity of the FMIF.

We note that your client requires litigation funding to proceed with its claims, and applications have been adjourned to 13 July 2015 to allow your client more time to seek such funding.

Until it is clear whether or not your client is proceeding with the applications, our client does not wish to incur any unnecessary costs considering its position in relation to the applications.

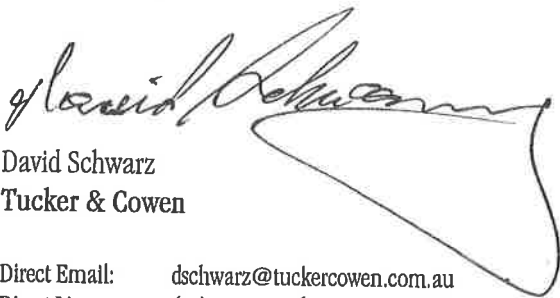
Would you please let us know, by no later than Wednesday, 7 July 2015, whether or not litigation funding has been obtained and whether or not your client will be proceeding with the applications on 13 July 2015 or seeking a further adjournment of the applications.

We will give further consideration to and revert to you in relation to our client's attitude to the applications, once it is known whether or not your client will be proceeding with the applications.

We note that Russells Lawyers have suggested that they should have the day-to-day conduct of the Defence of the claims, on behalf of LMIM. Our client does not necessarily concur with that view, and is giving further consideration to his position. If the claims proceed, it may be that direction from the Court will be required in relation to the conduct of the Defence.

We therefore ask that a copy of any further applications, affidavits, or other documents or correspondence to be served on LMIM is sent to us as well as Russells.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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cc.: Russells Lawyers Email: atiplady@russellslaw.com.au

Nicole Hamrosi

From: Alison Woodbury [awoodbury@tuckercowen.com.au] on behalf of David Schwarz [dschwarz@tuckercowen.com.au]
Sent: Monday 6 July 2015 09:08 am
To: David O'Brien; Nadia Braad
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) - Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14
Attachments: letter to Minter Ellison (TCS01004962).pdf
Categories: Purple Category

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury
Personal Assistant

E: awoodbury@tuckercowen.com.au
D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33
Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

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Richard Cowen, David Tucker and David Schwarz have been singled out in Doyle's Guide and Justin Marschke has again been recognised as one of Australia's Best Lawyers for litigation by **Best Lawyers® International 2016**

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Level 15, 15 Adelaide St. Brisbane, Qld. 4000 / GPO Box 345, Brisbane, Qld. 4001.
Telephone: 07 300 300 00 / Facsimile: 07 300 300 33 / www.tuckercowen.com.au

Our reference: Mr Schwarz / Mr Nase
Your reference: Mr O'Brien / Mrs Braad

6 July 2015

Minter Ellison
Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane QLD 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Partners.
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Geoff Hancock.

Associates.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Davey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Dear Colleagues

LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) ("LMIM") as Responsible Entity for the LM First Mortgage Income Fund (Receiver Appointed) ("FMIF")
KordaMentha Pty Ltd and Calibre Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14

We refer to the above matters, and to the Affidavits sworn by Mr Villani on 11 June 2015 in the above proceedings.

We note that Mr Villani says in paragraphs 18 to 20 of his Affidavits that:-

- "18. I am aware that LMIM holds insurance policies that might respond in whole or in part to the Claim made in this proceeding, but I do not have a copy of those policies.
19. The relevant source of my knowledge in relation to the insurance policies is the affidavit of Mr David Whyte, the Court appointed receiver of LMIM in its capacity as responsible entity for the FMIF, sworn and filed on 4 February 2015 in Queensland Supreme Court Proceeding No. 12317/14. Mr Whyte's affidavit refers to the insurance policies. Exhibit JV-5 is a copy of Mr Whyte's affidavit.
20. On 5 July 2013, I instructed the Trustees' solicitors, Minter Ellison, to send a letter to LMIM's insurance broker, Action Insurance Brokers Pty Ltd, putting it on notice of potential claims under the policies. Those claims included the claim the subject of this proceeding. Exhibit JV-6 is a copy of Minter Ellison's letter (with enclosures) dated 5 July 2013, to Action Insurance Brokers Pty Ltd."

We note that, whilst Mr Whyte says in his Affidavit filed in proceeding 12317/14 that he holds copies of insurance policies, and that he believes they will respond to the circumstances pleaded in the claim in proceedings 12317/14, he does not say or in any way suggest that he believes the insurance policies might respond to the claims made by your client which are the subject of Mr Villani's affidavits. Accordingly, Mr Whyte's Affidavit is no basis for any suggestion that the insurance policies might respond to the claims made by your client.

We also note that, given that Mr Villani deposes to instructing your firm to send letters to LMIM's insurance broker, Action Insurance Brokers Pty Ltd on 5 July 2013 (before the date of Mr Whyte's Affidavit) purporting to put it on notice of potential

claims under the insurance policies, it seems clear that your client knew about the insurance policies, before Mr Whyte swore his Affidavit.

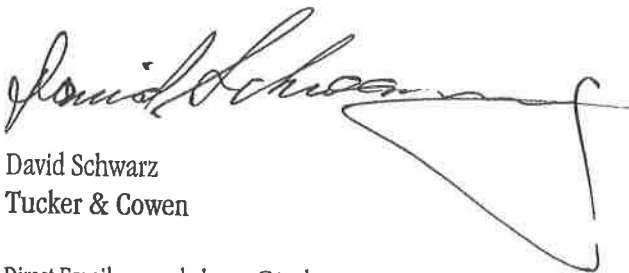
It would therefore seem to us that Mr Villani's Affidavit is not entirely accurate and complete, in so far as it seems to suggest that:

1. Mr Whyte's Affidavit provides a basis for Mr Villani's belief that the insurance policies might respond to the claims made by your client (when Mr Whyte's Affidavit provides no basis for such a belief); and
2. the source of your client's knowledge of the insurance policies was Mr Whyte's Affidavit (when your client was plainly aware of the insurance policies before Mr Whyte swore his Affidavit).

While our client expects that the statements in Mr Villani's Affidavits were not intended to convey an inaccurate impression, our client requests that, in the interests of ensuring that the evidence before the Court is accurate and complete, further Affidavits of Mr Villani be filed in the proceedings correcting these inaccuracies or, alternatively, exhibiting this letter.

We look forward to receiving your confirmation that your client will accede to the above request.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Monday 6 July 2015 10:46 am
To: David O'Brien; Nadia Braad
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640 ~20150640~
Attachments: SJW_20150640_011.pdf

Dear Colleagues

Please refer to our attached correspondence dated 6 July, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct (07) 3004 8872
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

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RUSSELLS

6 July, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
Nadia.Braad@minterellison.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14 ("Proceeding 8032/14")**

**LMIM ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
Supreme Court of Queensland Proceeding No. 8034/14 ("Proceeding 8034/14")**

**RE: KordaMentha Pty Ltd ACN 100 169 391 as trustee of the LM Managed Performance Fund ("Trustee")
Supreme Court of Queensland Proceeding No. 5329/15 ("Proceeding 5329/15")**

("the Proceedings")

We refer to our letter of 15 June, 2015 and to the adjournment of the Proceedings listed on Wednesday, 17 June, 2015. We note that the Proceedings were relisted for Monday, 13 July, 2015.

Please let us know whether your client intends to proceed with the hearing of its applications in the Proceedings on Monday, 13 July, 2015 or whether a further adjournment of the Proceedings will be sought.

Our client should not be put to the cost of responding and preparing for the hearings in the Proceedings on Monday, 13 July, 2015 unless your client has obtained the necessary litigation funding it says is required. Accordingly, we again request that you inform us as to the current status of any litigation funding being considered by your client.

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If your client is unable to confirm it has obtained litigation funding to its satisfaction by 4:00pm today, the Proceedings ought to be adjourned to the Court Registry until such funding has been obtained.

Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8822
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

Cc Tucker and Cowen Solicitors
email: DSchwarz@tuckercowen.com.au /
GHancock@tuckercowen.com.au

Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Tuesday 7 July 2015 11:01 am
To: 'Stephanie Williamson'
Cc: 'DSchwarz@tuckerowen.com.au'; 'GHancock@tuckerowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640 ~20150640~ [ME-ME.FID2395599]
Attachments: SJW_20150640_011.pdf; 7.7.15 Consent Adjournment Application - 8034_14 (3).PDF; 7.7.15 Consent Adjournment Application - 8032_14.PDF

Dear Ms Williamson

We refer to your letter dated 6 July 2015 (**attached**).

It has become necessary to adjourn the S 96 application (in proceeding S5329/15) to allow further evidence to be filed regarding litigation funding.

Accordingly, we are in the process of adjourning the s 96 application to 23 July 2015. In view of your previous request that the s 500(2) applications be heard on the same day, we **attach** a request for consent adjournment in each of the 8032/14 and 8034/14 proceedings adjourning those hearings to 23 July 2015.

We would be grateful if you would urgently sign and return both requests for a consent adjournment so as to avoid the unnecessary costs of an appearance on 13 July 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

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Sent: Monday 6 July 2015 10:46 am
To: David O'Brien; Nadia Braad
Cc: 'DSchwarz@tuckerowen.com.au'; 'GHancock@tuckerowen.com.au'
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640 ~20150640~

Dear Colleagues

Please refer to our attached correspondence dated 6 July, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct (07) 3004 8872

Mobile 0438 347 638

SWilliamson@RussellsLaw.com.au

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RUSSELLS

6 July, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
Nadia.Braad@minterellison.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14 ("Proceeding 8032/14")**

**LMIM ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
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Supreme Court of Queensland Proceeding No. 5329/15 ("Proceeding 5329/15")**

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Our client should not be put to the cost of responding and preparing for the hearings in the Proceedings on Monday, 13 July, 2015 unless your client has obtained the necessary litigation funding it says is required. Accordingly, we again request that you inform us as to the current status of any litigation funding being considered by your client.

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SJW_20150640_011.docm

If your client is unable to confirm it has obtained litigation funding to its satisfaction by 4:00pm today, the Proceedings ought to be adjourned to the Court Registry until such funding has been obtained.

Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8822
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

Cc Tucker and Cowen Solicitors
email: DSchwarz@tuckercowen.com.au /
GHancock@tuckercowen.com.au

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8034/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 13 July 2015 to 23 July 2015.

Signed:

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 7 July 2015

Signed:

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 7 July 2015

CONSENT ADJOURNMENT OF
APPLICATION

Filed on behalf of the plaintiffs

Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30

ME_122997655_1 (W2003x)

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NVB DOB 407747737

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8032/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 13 July 2015 to 23 July 2015.

Signed:

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 7 July 2015

Signed:

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 7 July 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30**

ME_122340255_1 (W2003x)

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NVB DOB 407747729

Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Tuesday 7 July 2015 03:58 pm
To: Nadia Braad
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 [ME-ME.FID2395599]
Attachments: 8034.pdf; 8032.pdf

Dear Ms Braad

Please find enclosed the executed consent adjournment of applications in proceedings 8032/14 and 8034/14 on behalf of our client.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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Telephone (07) 3004 8888 / Facsimile (07) 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Nicole Hamrosi [<mailto:Nicole.Hamrosi@minterellison.com>] **On Behalf Of** Nadia Braad
Sent: Tuesday, 7 July 2015 11:01 AM
To: Stephanie Williamson
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; David O'Brien
Subject: RE: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640 ~20150640~ [ME-ME.FID2395599]

Dear Ms Williamson

We refer to your letter dated 6 July 2015 (**attached**).

It has become necessary to adjourn the S 96 application (in proceeding S5329/15) to allow further evidence to be filed regarding litigation funding.

Accordingly, we are in the process of adjourning the s 96 application to 23 July 2015. In view of your previous request that the s 500(2) applications be heard on the same day, we **attach** a request for consent adjournment in each of the 8032/14 and 8034/14 proceedings adjourning those hearings to 23 July 2015.

We would be grateful if you would urgently sign and return both requests for a consent adjournment so as to avoid the unnecessary costs of an appearance on 13 July 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [<mailto:swilliamson@russellslaw.com.au>]
Sent: Monday 6 July 2015 10:46 am
To: David O'Brien; Nadia Braad
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: KordaMentha Pty Ltd atf the LM MPF - Supreme Court of Queensland Proceeding No 5329/15 ~20150640 ~20150640~

Dear Colleagues

Please refer to our attached correspondence dated 6 July, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

Direct (07) 3004 8872
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

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Brisbane / Sydney

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RussellsLaw.com.au

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SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8034/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 13 July 2015 to 23 July 2015.

Signed:

Minter Ellison

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 7 July 2015

Signed:

Russells

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 7 July 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30
ME_122997655_1 (W2003x)**

**MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NVB DOB 407747737**

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8032/14

Plaintiffs: **KORDAMENTHA PTY LTD (ACN 100 169 391) AND
CALIBRE CAPITAL PTY LTD (ACN 108 318 985) IN THEIR
CAPACITY AS TRUSTEES OF THE LM MANAGED
PERFORMANCE FUND**

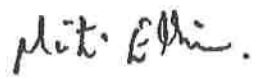
AND

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

CONSENT ADJOURNMENT OF APPLICATION

Filing date of application: 1 June 2015

The parties consent to adjournment of the hearing of the application filed 1 June 2015 from 13 July 2015 to 23 July 2015.

Signed: 

Description: MINTER ELLISON
Solicitors for the plaintiff

Dated: 7 July 2015

Signed: 

Description: RUSSELLS LAW
Solicitors for the defendant

Dated: 7 July 2015

**CONSENT ADJOURNMENT OF
APPLICATION**

Filed on behalf of the plaintiffs

**Form 11, Version 1
Uniform Civil Procedure Rules 1999
Rule 30**

ME_122340255_1 (W2003b)

MINTER ELLISON
Waterfront Place, 1 Eagle Street
BRISBANE QLD 4000
DX 102 BRISBANE
Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference NVB DOB 407747729

Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Tuesday 7 July 2015 04:55 pm
To: 'David Schwarz'
Cc: David O'Brien
Subject: FW: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) - Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14 [ME-ME.FID2395599]
Attachments: letter to Minter Ellison (TCS01004962).pdf

Dear Mr Schwarz

We refer to your letter dated 6 July 2015 a copy of which is **attached**.

In our view, Mr Villani's affidavits do not, and certainly were not intended to, convey an inaccurate impression. However, we have no difficulty putting your attached letter before the Court and will include it as part of the material filed on behalf of our client.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Alison Woodbury [<mailto:awoodbury@tuckercowen.com.au>] **On Behalf Of** David Schwarz
Sent: Monday 6 July 2015 09:08 am
To: David O'Brien; Nadia Braad
Cc: David Schwarz; Alex Nase
Subject: LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) - Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14

Please see attached, forwarded on behalf of David Schwarz.

Regards

Alison Woodbury

Personal Assistant

E: awoodbury@tuckercowen.com.au

D: 07 3210 3517 | T: 07 300 300 00 | F: 07 300 300 33

Level 15, 15 Adelaide Street, Brisbane | GPO Box 345, Brisbane Qld 4001

Tucker&CowenSolicitors.

First Tier for Insolvency - Doyle's Guide to the Australian Legal Profession 2015

Richard Cowen, David Tucker and David Schwarz have been singled out in Doyle's Guide and Justin Marschke has again been recognised as one of Australia's Best Lawyers for litigation by **Best Lawyers® International 2016**

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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Tuesday 7 July 2015 05:09 pm
To: Nadia Braad
Cc: David O'Brien; 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: RE: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14 and 8034/14 [ME-ME.FID2395599]

Dear Ms Braad

We await your confirmation that the related proceeding number 5329/15 has similarly been adjourned to 23 July 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872
Mobile 0438 347 638
swilliamson@russellslaw.com.au

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Telephone (07) 3004 8888 / Facsimile (07) 3004 8899 / ABN 38 332 782 534
RussellsLaw.com.au

From: Apn Manager [mailto:ApnManager@justice.qld.gov.au]
Sent: Tuesday, 7 July 2015 4:33 PM
To: Nadia Braad
Cc: David O'Brien; Ashley Tiplady; Stephanie Williamson; 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: RE: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14 and 8034/14 [ME-ME.FID2395599]

Good afternoon,

Please be advised the above matters have been adjourned to 23 July 2015.

No appearance is required on 13 July 2015.

Kind Regards

Louie Thorogood
Supreme Court, Application List Manager
Brisbane Supreme, District and Land Court Services
P: APN 324 74310
P: (07) 324 74313
E: apnmanager@justice.qld.gov.au



**QUEENSLAND
COURTS**

From: Nicole Hamrosi [mailto:Nicole.Hamrosi@minterellison.com] **On Behalf Of** Nadia Braad
Sent: Tuesday, 7 July 2015 4:20 PM
To: Apn Manager
Cc: David O'Brien; Ashley Tiplady; 'Stephanie Williamson'; 'DSchwarz@tuckercowen.com.au';
'GHancock@tuckercowen.com.au'
Subject: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14
and 8034/14 [ME-ME.FID2395599]

Dear Sir/Madam

We act for KordaMentha Pty Ltd (ACN 100 169 391) in Supreme Court of Queensland Proceedings numbered
8032/14 and 8034/14.

We **attach** a Consent Adjournment of Application in respect of each of the applications in these proceedings which
are currently listed for Monday, 13 July 2015. Both Consent documents have been signed by Russells which has
accepted service of the applications for the Defendant.

We would be grateful if you could please confirm that each of the applications has been adjourned to Thursday, 23
July 2015.

Please do not hesitate to contact us if you have any queries.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com



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Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Tuesday 7 July 2015 05:26 pm
To: Stephanie Williamson
Cc: David O'Brien; 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: RE: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14 and 8034/14 [ME-ME.FID2395599]

Dear Ms Williamson

Our client's originating application with proceeding number 5329/15 has also been adjourned to 23 July 2015.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Tuesday 7 July 2015 05:09 pm
To: Nadia Braad
Cc: David O'Brien; 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: RE: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14 and 8034/14 [ME-ME.FID2395599]

Dear Ms Braad

We await your confirmation that the related proceeding number 5329/15 has similarly been adjourned to 23 July 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

Direct 07 3004 8872

Mobile 0438 347 638

swilliamson@russellslaw.com.au

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RussellsLaw.com.au

From: Apn Manager [mailto:ApnManager@justice.qld.gov.au]
Sent: Tuesday, 7 July 2015 4:33 PM
To: Nadia Braad
Cc: David O'Brien; Ashley Tiplady; Stephanie Williamson; 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: RE: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14 and 8034/14 [ME-ME.FID2395599]

Good afternoon,

Please be advised the above matters have been adjourned to 23 July 2015.

No appearance is required on 13 July 2015.

Kind Regards

Louie Thorogood
Supreme Court, Application List Manager
Brisbane Supreme, District and Land Court Services
P: APN 324 74310
P: (07) 324 74313
E: apnmanager@justice.qld.gov.au



From: Nicole Hamrosi [<mailto:Nicole.Hamrosi@minterellison.com>] **On Behalf Of** Nadia Braad
Sent: Tuesday, 7 July 2015 4:20 PM
To: Apn Manager
Cc: David O'Brien; Ashley Tiplady; 'Stephanie Williamson'; 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'
Subject: Listing Monday 13 July 2015 - Adjournment of application in Supreme Court Proceeding Numbers 8032/14 and 8034/14 [ME-ME.FID2395599]

Dear Sir/Madam

We act for KordaMentha Pty Ltd (ACN 100 169 391) in Supreme Court of Queensland Proceedings numbered 8032/14 and 8034/14.

We **attach** a Consent Adjournment of Application in respect of each of the applications in these proceedings which are currently listed for Monday, 13 July 2015. Both Consent documents have been signed by Russells which has accepted service of the applications for the Defendant.

We would be grateful if you could please confirm that each of the applications has been adjourned to Thursday, 23 July 2015.

Please do not hesitate to contact us if you have any queries.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

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Nicole Hamrosi

From: David O'Brien [David.O'Brien@minterellison.com]
Sent: Wednesday 8 July 2015 04:40 pm
To: 'Stephanie Williamson'
Cc: Nadia Braad
Subject: Lifestyle and Barly Wood [ME-ME.FID2395599]
Attachments: letter to Minter Ellison (TCS01004962).pdf; Subpoena for Production.PDF

Dear Ms Williamson

In view of the **attached** correspondence from Tucker & Cowen, we have today caused the attached subpoena addressed to your client liquidators, to be issued from the Supreme Court's registry.

We thought we should provide you with a copy of the subpoena before we personally served it upon the liquidators tomorrow.

Please let us know of any objections your clients have to responding to the subpoena.

Regards

David O'Brien Partner
t +61 7 3119 6159 f +61 7 3119 1159 m +61 401 148 939
Minter Ellison Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000
david.obrien@minterellison.com www.minterellison.com

Our reference: Mr Schwarz / Mr Nase
Your reference: Mr O'Brien / Mrs Braad

6 July 2015

Minter Ellison
Lawyers
Level 22 Waterfront Place
1 Eagle Street
Brisbane QLD 4000

Email:
david.obrien@minterellison.com
nadia.braad@minterellison.com

Partners.
David Tucker.
Richard Cowen.
David Schwarz.
Justin Marschke.

Special Counsel.
Geoff Hancock.

Associates.
Sylvia Lopez.
Marcelle Webster.
Alex Nase.
Emily Anderson.
Daniel Duvey.
Dugald Hamilton.
Olivia Roberts.
Ashley Moore.

Dear Colleagues

LM Investment Management Ltd (In Liquidation) (Receivers & Managers Appointed) ("LMIM") as Responsible Entity for the LM First Mortgage Income Fund (Receiver Appointed) ("FMIF")
KordaMentha Pty Ltd and Calibre Pty Ltd atf the LM Managed Performance Fund ("MPF") v LM Investment Management Ltd (Receivers & Managers Appointed) (In Liquidation) – Supreme Court of Queensland Proceedings No. 8032/14 and 8034/14

We refer to the above matters, and to the Affidavits sworn by Mr Villani on 11 June 2015 in the above proceedings.

We note that Mr Villani says in paragraphs 18 to 20 of his Affidavits that:-

- "18. I am aware that LMIM holds insurance policies that might respond in whole or in part to the Claim made in this proceeding, but I do not have a copy of those policies.
19. The relevant source of my knowledge in relation to the insurance policies is the affidavit of Mr David Whyte, the Court appointed receiver of LMIM in its capacity as responsible entity for the FMIF, sworn and filed on 4 February 2015 in Queensland Supreme Court Proceeding No. 12317/14. Mr Whyte's affidavit refers to the insurance policies. Exhibit JV-5 is a copy of Mr Whyte's affidavit.
20. On 5 July 2013, I instructed the Trustees' solicitors, Minter Ellison, to send a letter to LMIM's insurance broker, Action Insurance Brokers Pty Ltd, putting it on notice of potential claims under the policies. Those claims included the claim the subject of this proceeding. Exhibit JV-6 is a copy of Minter Ellison's letter (with enclosures) dated 5 July 2013, to Action Insurance Brokers Pty Ltd."

We note that, whilst Mr Whyte says in his Affidavit filed in proceeding 12317/14 that he holds copies of insurance policies, and that he believes they will respond to the circumstances pleaded in the claim in proceedings 12317/14, he does not say or in any way suggest that he believes the insurance policies might respond to the claims made by your client which are the subject of Mr Villani's affidavits. Accordingly, Mr Whyte's Affidavit is no basis for any suggestion that the insurance policies might respond to the claims made by your client.

We also note that, given that Mr Villani deposes to instructing your firm to send letters to LMIM's insurance broker, Action Insurance Brokers Pty Ltd on 5 July 2013 (before the date of Mr Whyte's Affidavit) purporting to put it on notice of potential

claims under the insurance policies, it seems clear that your client knew about the insurance policies, before Mr Whyte swore his Affidavit.

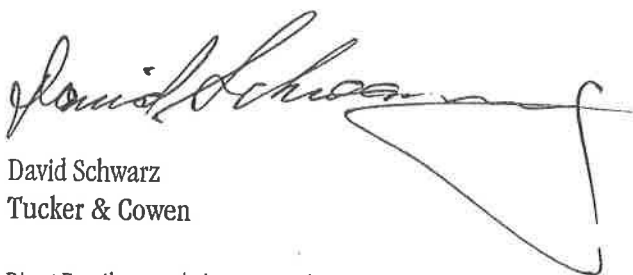
It would therefore seem to us that Mr Villani's Affidavit is not entirely accurate and complete, in so far as it seems to suggest that:

1. Mr Whyte's Affidavit provides a basis for Mr Villani's belief that the insurance policies might respond to the claims made by your client (when Mr Whyte's Affidavit provides no basis for such a belief); and
2. the source of your client's knowledge of the insurance policies was Mr Whyte's Affidavit (when your client was plainly aware of the insurance policies before Mr Whyte swore his Affidavit).

While our client expects that the statements in Mr Villani's Affidavits were not intended to convey an inaccurate impression, our client requests that, in the interests of ensuring that the evidence before the Court is accurate and complete, further Affidavits of Mr Villani be filed in the proceedings correcting these inaccuracies or, alternatively, exhibiting this letter.

We look forward to receiving your confirmation that your client will accede to the above request.

Yours faithfully



David Schwarz
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au
Direct Line: (07) 3210 3506

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SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/15

Applicant: **KORDAMENTHA PTY LTD (ACN 100 169 391) AS
TRUSTEE OF THE LM MANAGED PERFORMANCE
FUND**

SUBPOENA FOR PRODUCTION

To: John Richard Park and Ginette Dawn Muller in their capacity as liquidators of LM Investment Management Limited (receivers and managers appointed)(in liquidation)(ACN 077 208 461) of 22 Market Street, Brisbane in the State of Queensland.

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule:

- (a) before the Honourable the Applications' Judge of the Supreme Court of Queensland;
- (b) at QEII Courts of Law Complex, 415 George Street, Brisbane in the State of Queensland;
- (c) on Thursday, 23 July 2015 at 10am and until you are excused from further attending.

SUBPOENA FOR PRODUCTION



Filed on behalf of the applicant

Form 41 Rules 415(1) and 420

ME_123008220_1 (W2007)

Minter Ellison
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
DX 102 Brisbane

Telephone (07) 3119 6000
Facsimile (07) 3119 1000
Email david.obrien@minterellison.com
Reference 1095787

SCHEDULE

No. Description

1. Any policy or policies of insurance or re-insurance that you have in your possession, power or control that does or might respond to the claims made in the Claims and Statements of Claim by which Queensland Supreme Court proceedings numbered 8032/14 and 8034/14 were commenced.

TAKE NOTICE

- (1) failure to comply with this subpoena without lawful excuse is contempt of Court and may result in your arrest.
- (2) you need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of complying with the subpoena is paid, or tendered to you, not later than a reasonable time before the day on which you would be required to attend the Court.
- (3) you have the right to apply to the Court to have the subpoena set aside on any sufficient grounds including -
 - want of relevance; or
 - privilege; or
 - oppressiveness, including oppressiveness because substantial expenses may not be reimbursed; or
 - non-compliance with the Uniform Civil Procedure Rules.
- (4) if you are not a party to these proceedings, instead of attending the Court you or your agent may produce the documents and things described in the schedule to the Registry of the Court from which the subpoena was issued, not later than the day before the day on which you are required to attend.
- (5) if you are not a party to the proceeding and you incur substantial loss or expense in complying with this subpoena, you may apply to the Court for an order that the party who requested the issue of the subpoena pay to you an amount in addition to conduct money to compensate you for the loss or expense, including legal costs, incurred in responding properly to the subpoena.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

Signed:

Dated:



Issued at the request of Minter Ellison, the solicitors for the applicant.

Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Thursday 9 July 2015 09:21 am
To: David O'Brien
Cc: Nadia Braad; Ashley Tiplady
Subject: RE: Lifestyle and Barly Wood [ME-ME.FID2395599]

Dear Mr O'Brien

We are presently seeking Mr Park's and Ms Muller's instructions to accept service of the subpoena on their behalf and expect to revert back to you today.

Please confirm that you will not proceed with attempts to personally serve either Mr Park or Ms Muller at this time.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

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Mobile 0438 347 638
swilliamson@russellslaw.com.au

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RussellsLaw.com.au

From: David O'Brien [mailto:David.O'Brien@minterellison.com]
Sent: Wednesday, 8 July 2015 4:40 PM
To: Stephanie Williamson
Cc: Nadia Braad
Subject: Lifestyle and Barly Wood [ME-ME.FID2395599]

Dear Ms Williamson

In view of the **attached** correspondence from Tucker & Cowen, we have today caused the attached subpoena addressed to your client liquidators, to be issued from the Supreme Court's registry.

We thought we should provide you with a copy of the subpoena before we personally served it upon the liquidators tomorrow.

Please let us know of any objections your clients have to responding to the subpoena.

Regards

David O'Brien Partner
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david.obrien@minterellison.com www.minterellison.com



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Nicole Hamrosi

From: David O'Brien
Sent: Thursday 9 July 2015 09:55 am
To: 'Stephanie Williamson'
Cc: Nadia Braad; 'Ashley Tiplady'
Subject: RE: Lifestyle and Barly Wood [ME-ME.FID2892717]

Dear Ms Williamson,

Thank you for your email.

We will not attempt to personally serve either Mr Park or Ms Muller until after 1pm tomorrow.

Regards

David O'Brien Partner
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david.obrien@minterellison.com www.minterellison.com

From: Stephanie Williamson [<mailto:swilliamson@russellslaw.com.au>]
Sent: Thursday 9 July 2015 09:21 am
To: David O'Brien
Cc: Nadia Braad; Ashley Tiplady
Subject: RE: Lifestyle and Barly Wood [ME-ME.FID2395599]

Dear Mr O'Brien

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Please confirm that you will not proceed with attempts to personally serve either Mr Park or Ms Muller at this time.

Regards

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From: David O'Brien [<mailto:David.O'Brien@minterellison.com>]
Sent: Wednesday, 8 July 2015 4:40 PM
To: Stephanie Williamson

Cc: Nadia Braad
Subject: Lifestyle and Barly Wood [ME-ME.FID2395599]

Dear Ms Williamson

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We thought we should provide you with a copy of the subpoena before we personally served it upon the liquidators tomorrow.

Please let us know of any objections your clients have to responding to the subpoena.

Regards

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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Friday 10 July 2015 12:20 pm
To: David O'Brien
Cc: Nadia Braad; Ashley Tiplady
Subject: LMIM - Lifestyle Investment Company Pty Ltd and KPG 13th Beach Stage 1 Pty Ltd ; Supreme Court proceeding 5329/15
Attachments: Subpoena for Production - 5329 of 15 [endorsed].pdf

Dear Mr O'Brien

We refer to your email of 8 July 2015 and to the Subpoena for Production issued by the Court on 8 July 2015 to John Richard Park and Ginette Dawn Muller in their capacity as liquidators of LM Investment Management Limited (receivers and managers appointed) (in liquidation) ACN 077 208 461 ("Subpoena").

We are instructed to accept service of the Subpoena on behalf of Mr Park and Ms Muller. Accordingly, we enclose a copy of the Subpoena endorsed in accordance with rule 115 of the *Uniform Civil Procedure Rules 1999* (Qld).

It is not immediately clear to us how the existence, or otherwise, of any policies is in any way relevant in the context of a hearing of your client's Originating Application for directions pursuant to s96 of the *Trusts Act 1973* (Qld) ("Application"). Please explain to us on what basis you say documents described in the Subpoena (if they exist) are relevant to the Application.

Further, we are yet to receive confirmation as to the status of any litigation funding being sought by your client. We refer to our letters of 15 June 2015 and 6 July 2015 in this regard. Our clients are concerned by the increasing costs between our respective clients in these proceedings, particularly where your client has not indicated it has obtained the necessary litigation funding it says it requires before determining whether or not to proceed. In these circumstances, it occurs to us that the issue of the Subpoena may be premature and an abuse of process. Please explain to us for what legitimate forensic purpose the Subpoena has been issued.

We reserve our clients' rights to raise any further or other grounds in opposition to the Subpoena.

We look forward to receiving your response to the above matters by 4:00pm on Monday, 13 July 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

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swilliamson@russellslaw.com.au

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RussellsLaw.com.au

Nicole Hamrosi

From: David O'Brien [David.O'Brien@minterellison.com]
Sent: Monday 13 July 2015 05:55 pm
To: 'Stephanie Williamson'
Cc: Nadia Braad; 'Ashley Tiplady'
Subject: RE: LMIM - Lifestyle Investment Company Pty Ltd and KPG 13th Beach Stage 1 Pty Ltd ; Supreme Court proceeding 5329/15 [ME-ME.FID2395599]

Dear Ms Williamson,

We refer to your email dated 10 July 2015.

Thank you for agreeing to accept service of the subpoena to produce on behalf of Mr Park and Ms Muller.

Our client's statement of facts for proceeding BS8032/14 refers to the possible existence of an insurance policy at [129].

The existence of an insurance policy is relevant to the s96 Application because, inter alia, it goes to the capacity of the defendant to satisfy a judgment.

The same consideration applies for proceeding BS8034/14.

We know insurance policies exists because, inter alia, Mr Whyte has sworn to that fact in proceeding BS12317/14.

There is no abuse of process because the insurance policy (or policies) is relevant to the s96 Application which is set down for hearing on 23 July 2015. There is, of course, a possibility that the application will be adjourned but that possibility exists in relation to most proceedings where a subpoena has been issued. The subpoena will not be called upon on 23 July 2015, if the application is adjourned.

Regards

David O'Brien Partner
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david.obrien@minterellison.com www.minterellison.com

From: Stephanie Williamson [mailto:swilliamson@russellslaw.com.au]
Sent: Friday 10 July 2015 12:20 pm
To: David O'Brien
Cc: Nadia Braad; Ashley Tiplady
Subject: LMIM - Lifestyle Investment Company Pty Ltd and KPG 13th Beach Stage 1 Pty Ltd ; Supreme Court proceeding 5329/15

Dear Mr O'Brien

We refer to your email of 8 July 2015 and to the Subpoena for Production issued by the Court on 8 July 2015 to John Richard Park and Ginette Dawn Muller in their capacity as liquidators of LM Investment Management Limited (receivers and managers appointed) (in liquidation) ACN 077 208 461 ("Subpoena").

We are instructed to accept service of the Subpoena on behalf of Mr Park and Ms Muller. Accordingly, we enclose a copy of the Subpoena endorsed in accordance with rule 115 of the *Uniform Civil Procedure Rules* 1999 (Qld).

It is not immediately clear to us how the existence, or otherwise, of any policies is in any way relevant in the context of a hearing of your client's Originating Application for directions pursuant to s96 of the *Trusts Act*

1973 (Qld) ("Application"). Please explain to us on what basis you say documents described in the Subpoena (if they exist) are relevant to the Application.

Further, we are yet to receive confirmation as to the status of any litigation funding being sought by your client. We refer to our letters of 15 June 2015 and 6 July 2015 in this regard. Our clients are concerned by the increasing costs between our respective clients in these proceedings, particularly where your client has not indicated it has obtained the necessary litigation funding it says it requires before determining whether or not to proceed. In these circumstances, it occurs to us that the issue of the Subpoena may be premature and an abuse of process. Please explain to us for what legitimate forensic purpose the Subpoena has been issued.

We reserve our clients' rights to raise any further or other grounds in opposition to the Subpoena.

We look forward to receiving your response to the above matters by 4:00pm on Monday, 13 July 2015.

Regards

RUSSELLS

Stephanie Williamson
Lawyer

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Nicole Hamrosi

From: Stephanie Williamson [swilliamson@russellslaw.com.au]
Sent: Wednesday 15 July 2015 12:34 pm
To: David O'Brien; Nadia Braad
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; Stephanie Williamson; Ashley Tiplady
Subject: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation)
Attachments: SJW_20150640_013.pdf

Dear Colleagues

Please refer to our attached correspondence dated 15 July, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
Lawyer

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SWilliamson@RussellsLaw.com.au

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RUSSELLS

15 July, 2015

Our Ref: Mr Tiplady / Ms Williamson
Your Ref: Mr O'Brien / Ms Braad

Minter Ellison
BRISBANE

email: David.O'Brien@minterellison.com
Nadia.Braad@minterellison.com

Dear Colleagues

**LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) ("LMIM") ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the LM Managed Performance Fund ("MPF")
Supreme Court of Queensland Proceeding No. 8032/14 ("Proceeding 8032/14")**

**LMIM ats KordaMentha Pty Ltd and Calibre Capital Pty Ltd in their capacity as trustees of the MPF
Supreme Court of Queensland Proceeding No. 8034/14 ("Proceeding 8034/14")**

**RE: KordaMentha Pty Ltd ACN 100 169 391 as trustee of the LM Managed Performance Fund ("Trustee")
Supreme Court of Queensland Proceeding No. 5329/15 ("Proceeding 5329/15")**

("the Proceedings")

We refer to our letter of 15 June, 2015 and 6 July, 2015 and to the second adjournment of your client's applications in Proceeding 8032/14 and Proceeding 8034/14, respectively, and of your client's originating application, being Proceeding 5329/15, ("the Applications") which were listed on Monday, 13 July, 2015. The Applications are now listed for hearing on Thursday, 23 July, 2015.

On 10 July, 2015, we accepted service of a subpoena to produce on behalf of our clients ("Subpoena"). We are presently considering our clients' position in respect of the Subpoena. We note your email of 13 July, 2015 stating that "the subpoena will not be called upon on 23 July, 2015, if the application is adjourned".

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SJW_20150640_013.docm

Our clients will be put to significant cost and expense in preparing for the hearing of the Applications and dealing with the Subpoena on Thursday, 23 July, 2015.

Accordingly, we request that you inform us in writing by 5:00pm today, Wednesday 15 July, 2015:

1. whether your client will be proceeding with the Applications on Thursday, 23 July, 2015; and
2. whether the Subpoena will be called upon on Thursday, 23 July, 2015.

Should we not receive confirmation by 5:00pm today that your client is proceeding on Thursday, 23 July, 2015, then we will assume that your client will be seeking a further adjournment of its Applications and the Subpoena will not be called upon.

If your client confirms that it will be proceeding on Thursday, 23 July, 2015, our clients will proceed on that basis and, further, will oppose any subsequent application by your client for the adjournment of the Applications.

It remains our view that the members of the MPF should not be put to \$65,000.00 of expense for next Thursday's hearing if the substantive litigation will not be proceeding. Further, our clients should not be put to the cost of responding and preparing for the Applications (and dealing with the Subpoena) unless your client has obtained the necessary litigation funding it says is required.

We await your response.

Yours faithfully



Stephanie Williamson
Lawyer

Direct (07) 3004 8822
Mobile 0438 347 638
SWilliamson@RussellsLaw.com.au

Cc Tucker and Cowen Solicitors
email: DSchwarz@tuckercowen.com.au/
GHancock@tuckercowen.com.au

Nicole Hamrosi

From: Nadia Braad [Nadia.Braad@minterellison.com]
Sent: Wednesday 15 July 2015 05:03 pm
To: Stephanie Williamson
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; Ashley Tiplady; David O'Brien; Nicole Hamrosi
Subject: RE: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) [ME-ME.FID2395599]

Dear Ms Williamson

We are instructed that our client will be proceeding with the applications on 23 July 2015 and that our client will file and serve its further material tomorrow.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

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nadia.braad@minterellison.com www.minterellison.com

From: Stephanie Williamson [<mailto:swilliamson@russellsllaw.com.au>]
Sent: Wednesday 15 July 2015 12:34 pm
To: David O'Brien; Nadia Braad
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; Stephanie Williamson; Ashley Tiplady
Subject: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation)

Dear Colleagues

Please refer to our attached correspondence dated 15 July, 2015.

Yours faithfully

RUSSELLS

Stephanie Williamson
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Nadia Braad

From: Nadia Braad
Sent: Thursday 16 July 2015 04:27 pm
To: 'Stephanie Williamson'
Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; 'Ashley Tiplady'; 'David O'Brien'; 'Nicole Hamrosi'
Subject: RE: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) [ME-ME.FID2395599]

Dear Ms Williamson

We refer to our email below. Due to Mr Goodwin of Counsel being unexpectedly unavailable, our client's affidavit material will have to be filed tomorrow. We will provide it to you by email as soon as possible this evening.

Kind regards

Mrs Nadia Braad Senior Associate

t +61 7 3119 6641 f +61 7 3119 1641 m +61 466 306 279

Minter Ellison • Level 22 Waterfront Place • 1 Eagle Street • Brisbane • QLD 4000

nadia.braad@minterellison.com www.minterellison.com

From: Nadia Braad [<mailto:Nadia.Braad@minterellison.com>]

Sent: Wednesday 15 July 2015 05:03 pm

To: Stephanie Williamson

Cc: 'DSchwarz@tuckercowen.com.au'; 'GHancock@tuckercowen.com.au'; Ashley Tiplady; David O'Brien; Nicole Hamrosi

Subject: RE: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) [ME-ME.FID2395599]

Dear Ms Williamson

We are instructed that our client will be proceeding with the applications on 23 July 2015 and that our client will file and serve its further material tomorrow.

Kind regards

Mrs Nadia Braad Senior Associate

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Subject: LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation)

Dear Colleagues

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Yours faithfully

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