REGISTRY:

Brisbane

NUMBER:

11593 of 2013

First Applicants

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

AND

Second Applicant

KORDAMENTHA PTY LTD ACN 100 169 391

AND

Third Applicant

CALIBRE CAPITAL LTD ACN 108 318 985

AND

First Respondents

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

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)

ACN 077 208 461

AND

Third Respondent

THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND

AFFIDAVIT

PAUL SPRINGTHORPE of Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales, solicitor, states on oath as follows:

I am an employed solicitor of Piper Alderman and have the carriage of this Proceeding on behalf 1. of the Applicants under the supervision of Amanda Banton (Ms Banton), the solicitor on record for the Applicants.

Page 1

Signed

Taken by

Affidavit

Filed on behalf of the Applicants

Form 46 (Rule 431)

Piper Alderman

Level 23

Governor Macquarie Tower

1 Farrer Place

Sydney NSW 2000 Tel: +61 2 9253 9999

Fax: +61 2 9253 9900 AKB.AKD.386376 Ref:

28747682v1

- I am authorised to swear this affidavit on behalf of the Applicants.
- 3. I make this affidavit from my own knowledge and from my review of Piper Alderman's file in relation to this Proceeding and the other matters in which Piper Alderman act for the applicants.
- 4. Throughout this affidavit, I make reference to various documents that are contained in a paginated bundle of documents exhibited to this affidavit and marked "PS-1" (the Exhibit). The pages that I refer to are pages in the Exhibit.
- 5. On 16 December 2013, Piper Alderman received a letter by email from Ari Jenshel (**Mr Jenshel**), a solicitor, in which he states that he represents and is taking instructions from an association of over 200 members of the Third Respondent in relation to this Proceeding. A copy of the email is pages 1 to 3 of the Exhibit.
- 6. On the same day, Piper Alderman sent a letter to Mr Jenshel advising him that the applicants would be seeking substituted service orders at the hearing of the application on 17 December 2013 and otherwise seeking to have it adjourned. A copy of that letter is pages 4 to 5 of the Exhibit.
- 7. On the same day, Piper Alderman received an email from Mr Jenshel which states that, on the basis that the Applicants would be seeking an adjournment of the substantive hearing of the Proceeding, he will not arrange the attendance of counsel at the 17 December Hearing on behalf of his clients. A copy of the email is page 6 of the Exhibit
- 8. On the same day, I sent a letter by email to the solicitors for the First and Second Respondents, Russells Solicitors (**Russells**) which, *inter alia*:
 - 8.1 states that Piper Alderman has been instructed to apply at the 17 December Hearing for orders for substituted service on the members of the Third Respondent; and
 - attaches a copy of an amended application in this Proceeding that the Applicants intend to file in Court on 17 December 2013 along with draft orders proposed by the Applicants.
- 9. A copy of my email to Russells is pages 7 to 14 of the Exhibit.
- 10. On the same day, Piper Alderman sent an email to Mr Jenshel advising him that the matter is already listed for hearing from 10 February 2013 to 12 February 2013 for various other matters relating to the LM Managed Performance Fund and that the Applicants intend to retain those dates for efficiency and cost reasons.

Page 2

Signed

Taken by

Mr. L. Ack

11. A copy of the email is page 15 of the Exhibit. Sworn by Paul Springthorpe on 17 December 2013 at Brisbane in	the presence of:
Signed Witnessed who certifies that the affidavit was read in the presence of the department of the de	Carry

REGISTRY:

Brisbane

NUMBER:

11593 of

2013

First Applicants

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

AND

Second Applicant

KORDAMENTHA PTY LTD ACN 100 169 391

AND

Third Applicant

CALIBRE CAPITAL LTD ACN 108 318 985

AND

First Respondents

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

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)

ACN 077 208 461

AND

Third Respondent

THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND

EXHIBIT CERTIFICATE

This is the Exhibit marked "PS-1" referred to in the affidavit of Paul Springthorpe sworn 17

December 2013.

Before me:

Solicitor/Justice of the Peace

Deponent

Name

Affidavit of Paul Springthorpe

MARK KENNETH ASSIN

Filed on behalf of the Applicants

Form 46 (Rule 431)

Piper Alderman

Level 23, Governor Macquarie Tower

1 Farrer Place

SYDNEY NSW 2000 +61 2 9253 9999

Tel: Fax: Ref:

+61 2 9253 9900 AKB.PS.MB.386376

28747723v1

INDEX TO EXHIBIT PS-1

Description	Date	Page
Email from Ari Jenshel to Amanda Banton	16 December 2013	1-3
Email from Amanda Banton to Ari Jenshel	16 December 2013	4-5
Email from Ari Jenshel to Amanda Banton	16 December 2013	6
Email from Amanda Banton to Stephen Russell	16 December 2013	7-14
Email from Amanda Banton to Ari Jenshel	16 December 2013	15

Subject:

FW: LM/MPF Supreme Court Qld 11593/13

Attachments:

2013_12_13 Letter to Piper Alderman.pdf; 20131210 EMAIL from

km.meidation.supreme.court.docx

Importance:

High

From: Ari Jenshel [mailto:ajenshel@internode.on.net]

Sent: Monday, 16 December 2013 3:03 PM

To: Amanda Banton

Cc: srussell@russellslaw.com.au

Subject: LM/MPF Supreme Court Qld 11593/13

Importance: High

Dear Ms Banton,

Please see attached letter of this date and the further attachment to which it refers.

A

Click here to report this email as spam.

ARI JENSHEL

lawyer + consultant

LEVEL 10 50 MARKET STREET MELBOURNE VIC 3000 AUSTRALIA

- +61 3 9008 5983
- +61 3 8678 1269 61 +61 409 371 575

important NOTE: The contents of this email are confidential and privileged and are intended only for the named addressee. If you have received this email in error any copying and distribution is prohibited. You are requested immediately to inform me of such an error by return of email. No responsibility for the security or integrity of this email is accepted.

REGISTRY:

Brisbane

NUMBER:

11593 of 2013

First Applicants

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

AND

Second Applicant

KORDAMENTHA PTY LTD ACN 100 169 391

AND

Third Applicant

CALIBRE CAPITAL LTD ACN 108 318 985

AND

First Respondents

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

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)

ACN 077 208 461

AND

Third Respondent

THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND

AFFIDAVIT

PAUL SPRINGTHORPE of Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales, solicitor, states on oath as follows:

I am an employed solicitor of Piper Alderman and have the carriage of this Proceeding on behalf 1. of the Applicants under the supervision of Amanda Banton (Ms Banton), the solicitor on record for the Applicants.

Page 1

Signed

Taken by

Affidavit

Filed on behalf of the Applicants

Form 46 (Rule 431)

Piper Alderman

Level 23

Governor Macquarie Tower

1 Farrer Place

Sydney NSW 2000 Tel: +61 2 9253 9999 Fax: +61 2 9253 9900

Ref:

AKB.AKD.386376

28747682v1

- 2. I am authorised to swear this affidavit on behalf of the Applicants.
- I make this affidavit from my own knowledge and from my review of Piper Alderman's file in relation to this Proceeding and the other matters in which Piper Alderman act for the applicants.
- 4. Throughout this affidavit, I make reference to various documents that are contained in a paginated bundle of documents exhibited to this affidavit and marked "PS-1" (the Exhibit). The pages that I refer to are pages in the Exhibit.
- On 16 December 2013, Piper Alderman received a letter by email from Ari Jenshel (Mr Jenshel), a solicitor, in which he states that he represents and is taking instructions from an association of over 200 members of the Third Respondent in relation to this Proceeding. A copy of the email is pages 1 to 3 of the Exhibit.
- 6. On the same day, Piper Alderman sent a letter to Mr Jenshel advising him that the applicants would be seeking substituted service orders at the hearing of the application on 17 December 2013 and otherwise seeking to have it adjourned. A copy of that letter is pages 4 to 5 of the Exhibit.
- 7. On the same day, Piper Alderman received an email from Mr Jenshel which states that, on the basis that the Applicants would be seeking an adjournment of the substantive hearing of the Proceeding, he will not arrange the attendance of counsel at the 17 December Hearing on behalf of his clients. A copy of the email is page 6 of the Exhibit
- 8. On the same day, I sent a letter by email to the solicitors for the First and Second Respondents, Russells Solicitors (**Russells**) which, *inter alia*:
 - 8.1 states that Piper Alderman has been instructed to apply at the 17 December Hearing for orders for substituted service on the members of the Third Respondent; and
 - 8.2 attaches a copy of an amended application in this Proceeding that the Applicants intend to file in Court on 17 December 2013 along with draft orders proposed by the Applicants.
- A copy of my email to Russells is pages 7 to 14 of the Exhibit.
- 10. On the same day, Piper Alderman sent an email to Mr Jenshel advising him that the matter is already listed for hearing from 10 February 2013 to 12 February 2013 for various other matters relating to the LM Managed Performance Fund and that the Applicants intend to retain those dates for efficiency and cost reasons.

Page 2

Taken by

Signed

M & Askx

11. A copy of the email is page 15 of the Exhibit.	\wedge \wedge
Sworn by Paul Springthorpe on 17 December 2013 at	Brisbane in the presence of:
Signed	Witnessed (which are seed to understand it
who certifies that the affidavit was read in the presence and signified that that person made the affidavit.	e of the deponent who seemed to understand it,
	·

REGISTRY:

Brisbane

NUMBER:

11593 of

2013

First Applicants

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

AND

Second Applicant

KORDAMENTHA PTY LTD ACN 100 169 391

AND

Third Applicant

CALIBRE CAPITAL LTD ACN 108 318 985

AND

First Respondents

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

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)

ACN 077 208 461

AND

Third Respondent

THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND

EXHIBIT CERTIFICATE

This is the Exhibit marked "PS-1" referred to in the affidavit of Pay Springthorpe sworn 17

December 2013.

Before me

Deponent

Name

Affidavit of Paul Springthorpe

KENNETH ASKIN

Filed on behalf of the Applicants

Form 46 (Rule 431)

Piper Alderman

Level 23, Governor Macquarie Tower

1 Farrer Place

SYDNEY NSW 2000

Tel:

+61 2 9253 9999

Fax: Ref:

+61 2 9253 9900 AKB.PS.MB.386376

28747723v1

INDEX TO EXHIBIT PS-1

Description	Date	Page
Email from Ari Jenshel to Amanda Banton	16 December 2013	1-3
Email from Amanda Banton to Ari Jenshel	16 December 2013	4-5
Email from Ari Jenshel to Amanda Banton	16 December 2013	6
Email from Amanda Banton to Stephen Russell	16 December 2013	7-14
Email from Amanda Banton to Ari Jenshel	16 December 2013	15

Subject:

FW: LM/MPF Supreme Court Qld 11593/13

Attachments:

2013_12_13 Letter to Piper Alderman.pdf; 20131210 EMAIL from

km.meidation.supreme.court.docx

Importance:

High

From: Ari Jenshel [mailto:ajenshel@internode.on.net]

Sent: Monday, 16 December 2013 3:03 PM

To: Amanda Banton

Cc: srussell@russellslaw.com.au

Subject: LM/MPF Supreme Court Qld 11593/13

Importance: High

Dear Ms Banton,

Please see attached letter of this date and the further attachment to which it refers.

Α

Click here to report this email as spam.

ARIJENSHEL

lawyer + consultant

LEVEL 10 SO MARKET STREET MELBOURNE VIC 3000 AUSTRALIA

Equality participation of this email in error any copying and distribution is prohibited. You are requested immediately to inform me of such an error by return of email. No responsibility for the security or integrity of this email is accepted.

ARIJENSHEL

barrister + solicitor

LEVEL 10 50 MARKET STREET MELBOURNE VIC 3000 AUSTRALIA

URGENT

T 03 9008 5983 F 03 8678 1269 M 0409 371575 E ajenshei@internode.on.net

Monday, 16 December 2013

Amanda Banton

Partner

Piper Alderman

Level 23

Governor Macquarie Tower

1 Farrer Place

SYDNEY NSW 2000

by email

abanton@piperalderman.com.au

Dear Ms Banton

LM MANAGED PERFORMANCE FUND - SUPREME COURT OF QLD 11593/13

I refer to the above matter and to your application on behalf of the Applicants, returnable tomorrow morning.

I represent an association of over 200 investors in the Managed Performance Fund, being members of the Third Respondent.

I note that:

- 1. The originating application dated 2 December was filed on 3 December;
- 2. Korda Mentha notified investors only on 10 December (see attached email);
- Of the two supporting affidavits foreshadowed in the originating application and the above email, one of those (Vertullo) was uploaded to Korda Mentha's website at some time on 13 December.

I am currently taking instructions from my clients as to the matters the subject of this application. Obviously, my clients have not yet had an adequate opportunity to consider their position and are unlikely to be able to do so by tomorrow.

Yours sincerely.

Ari Jenshel

Stephen Russell <u>sruss</u>

srussell@srussellslaw.com.au

From: Iminvestors [mailto:Iminvestors@kordamentha.com]

Sent: Tuesday, December 10, 2013 1:46 PM

To: Iminvestors

Subject: LM Managed Performance Fund

Dear Unitholders

As you may be aware from our earlier circulars, the Administrators of the former trustee of the LM Managed Performance Fund (the Fund) hold a claim over the assets of the Fund for work undertaken predominately prior to the appointment of KordaMentha Pty Ltd and Calibre Capital Limited (collectively the Current Trustees). This position has been referred to as the Administrators Lien in 'Update 10' and was discussed in that update.

On Friday, 29 November 2013 the Current Trustees and the Administrators of the former trustee attended a mediation to resolve the value of their claim. At the mediation an amount was agreed.

In order to finalise the matter, all parties have agreed to apply to the Supreme Court of Queensland for ratification of the settlement. Accordingly, we hereby give you notice of the application for the Approval of Settlement Agreement and have made the Originating Application available on our website: http://www.kordamentha.com/creditor-information/australia/109. All supporting documentation filed by the Current Trustees will be uploaded to this website as it becomes available.

Unitholders are not obliged to take any action in response to this matter, however investors are welcome to engage their own legal counsel in this matter at their discretion.

Should you have any queries regarding the above, please contact the Trustees on +61 7 3338 0286 or liminvestors@kordamentha.com. Please note we are receiving a large number of requests to this email address covering a variety of matters and therefore it is taking some time to move through the backlog. We appreciate your patients in the time taken to respond.

Regards,

KordaMentha | Level 14, 12 Creek Street, Brisbane QLD 4000 t+61 7 3338 0286 e Iminvestors@kordamentha.com | w www.kordamentha.com

From:

Lisa Tessier on behalf of Amanda Banton

Sent:

Monday, 16 December 2013 5:35 PM

To:

ajenshel@internode.on.net

Cc: Subject: Amanda Banton; Paul Springthorpe; Michael Baltins; Davina Holland LM Managed Performance Fund - Supreme Court of QLD 11593/13

Attachments:

Letter Ari Jenshel 16.12.13.pdf

Please find attached our letter dated 16 December 2013.

Kind regards

Amanda Banton Partner | Piper Alderman



Piper Alderman

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

AKB.PS.386376

Your Ref:

PiperAlderman

16 December 2013

By Email: ajenshel@internode.on.net Original forwarded by Post

Ari Jenshel Barrister & Solicitor Level 10, 50 Market Street MELBOURNE VIC 3000

Dear Sir

LM Managed Performance Fund - Supreme Court of QLD 11593/13

We refer to your letter of 16 December 2013. Please identify each of the members of the LM Managed Performance Fund (MPF) that you act for.

We have been instructed to apply tomorrow for orders for substituted service on the members of the LM of the originating application and supporting material in proceeding BS11593/2013. We will also apply to have the substantive hearing of the application adjourned to allow the proposed orders for substituted service to take effect.

We will advise you in due course of the outcome of the application for substituted service, including the date on which the application is to be finally heard. We anticipate that this is likely to be in February 2014. We request that if your clients intend to be represented at the hearing of the application you file a notice of address for service pursuant to UCPR 29(2).

Yours faithfully Piper Alderman

Per:

Amanda Banton

Partner

Lawyers

Sydney • Melbourne Brisbane • Adelaide

ABN 42 843 327 183

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

DX 10216 Sydney Stock Exchange

t +61 2 9253 9999 f +61 2 9253 9900

www.piperalderman.com.au

Partner: Amanda Banton

t +61 2 9253 9929 abanton@piperalderman.com.au

Contact:

Paul Springthorpe Senior Associate t +61 2 9253 3865 pspringthorpe@piperalderman.com.au

From:

Ari Jenshel <ajenshel@internode.on.net>

Sent:

Monday, 16 December 2013 7:11 PM

To:

Amanda Banton

Cc:

Paul Springthorpe; Michael Baltins; Davina Holland

Subject:

Re: LM Managed Performance Fund - Supreme Court of QLD 11593/13

Attachments:

Letter Ari Jenshel 16.12.13.pdf

Dear Ms Banton,

Thank you for your letter.

On the basis that you will be seeking an adjournment tomorrow I will NOT arrange the attendance of counsel. I will, however, provide counsel's unavailable dates for February in the meantime and would be very grateful if these could be accommodated.

I will revert to you shortly about the balance of your letter.

Is it presently intended that there will be additional affidavits in support of the application, or other information provided to the investors?

Best,

Α

ARI JENSHEL

lawyer + consultant

LEVEL 10 SO MARKET STREET MELBOURNE VIC 3000 AUSTRALIA

+61 3 9008 5983 --+61 3 8678 1269

+61 409 371 575 alenshel@internode.on.net www.arljenshel.com

IMPORTANT NOTE: The contents of this email are confidential and privileged and are intended only for the named addressee. If you have received this email in error any copying and distribution is prohibited. You are requested immediately to inform me of such an error by return of email. No responsibility for the security or integrity of this email is accepted.

On 16/12/2013, at 5:35 PM, Amanda Banton < ABanton@piperalderman.com.au > wrote:

Please find attached our letter dated 16 December 2013.

Kind regards

Amanda Banton Partner | Piper Alderman

Click here to report this email as spam.



From:

Paul Springthorpe

Sent:

Monday, 16 December 2013 6:15 PM

To:

Sean Russell [Srussell@russellslaw.com.au]

Cc:

atiplady@russellslaw.com.au; Amanda Banton; Michael Baltins

Subject:

LM MPF

Attachments:

Ssyd-copier13121618110.pdf; Ssyd-copier13121618111.pdf; Ssyd-

copier13121618112.pdf

Dear Colleagues

Please find our correspondence and its enclosures attached.

Regards

Paul Springthorpe Senior Associate | Piper Alderman



t +61 2 9253 3865 | f +61 2 9253 9900 pspringthorpe@piperalderman.com.au | www.piperalderman.com.au Our Ref:

AKB.LNG.386376

Your Ref.

PiperAlderman

16 December 2013

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

Private & Confidential

Russells Level 21 300 Queen Street Brisbane QLD 4000

Attention: Mr Sean Russell / Mr Ashley Tiplady

Dear Sirs

LM Managed Performance Fund - Supreme Court of Queensland Proceedings 11593 of 2013 (the application)

We refer to the above.

Section 96 of the *Trusts Act 1973* (Qld) provides that a trustee's application for directions pursuant to that section 'shall be served upon... all persons interested in the application or such of them as the court thinks expedient'.

The members of the MPF are persons interested in the application. The originating application and material in the application must therefore be served on them.

There are approximately 4500 members of the MPF, most of whom live overseas. It is neither practicable nor (in our view) necessary for each member to be personally served. It is appropriate, in our clients' view, that the court make orders for substituted service of the application and supporting material on the members.

Our clients have already made the application and the affidavit of Simon Michael Vertullo sworn 13 December 2013 available on the website maintained by them for the provision of information to the members. Emails have been sent to the most recent email addresses held by our clients for the members notifying them of this. We are instructed to seek orders from the court that this mechanism will suffice for substituted service of the application and supporting material.

Obviously the substituted service orders will need to be obtained before the application can proceed. We therefore propose that the hearing tomorrow be used to seek these orders. We **enclose** an Application proposed to be filed by

Lawyers

Sydney • Melbourne Brisbane • Adelaide

ABN 42 843 327 183

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

DX 10216 Sydney Stock Exchange

t +61 2 9253 9999 f +61 2 9253 9900

www.piperalderman.com.au

Partner: Amanda Banton t +61 2 9253 9929 sbanton@piperalderman.com.au

Contact:
Lisa Gallate
Special Counsel
L +61 2 9253 3855
Igallate@piperalderman.com.au



To:

Russells

Date: Our Ref: 16 December 2013 AKB.LNG.386376

Page:

2

leave tomorrow and a draft order for substituted service and request that you confirm whether your clients will consent to the court making orders in this form.

Our clients' position is that there should be no order made as to your clients' costs for tomorrow, as is contemplated by clause 9 of the binding Heads of Settlement entered into between the parties on 29 November 2013, by which your clients agreed that they would meet their own costs of this application.

On 12 December 2013 we sent an email to your office setting out certain material which our clients proposed to include in their affidavit material in support of the application. You responded to our email the same day. While both emails were marked 'without prejudice', this was due to references they contained to events during the mediation held between the parties on a without prejudice basis on 29 November 2013. The references in this letter are to the non-privileged settlement agreement which resulted from those negotiations, and are therefore not subject to any privilege. This letter is written on an open basis.

Your email indicated that the handwritten 'Heads of Settlement' and the draft settlement deed should be confidential exhibits to our clients' material. While our clients do not consider that there is any requirement of confidentiality in relation to the terms of settlement, we were instructed to accede to your clients' request in order to avoid any dispute about this issue at the hearing of the application. As there is no effective way to maintain the confidentiality of material once it has been posted on the website, our clients have not yet provided the members with access to this material.

We understand that as of this morning your clients may not require that either of these documents, or the terms of settlement, be kept confidential. Please confirm that our understanding of your clients' position is correct so that our clients can give the members notice of this material and make it available to them on the website.

Yours faithfully

Piper Alderman

Amanda Banton

Partner

REGISTRY:

Brisbane

NUMBER:

11593 of 2013

First Applicants

KORDAMENTHA PTY LTD ACN 100 169 391 AND CALIBRE CAPITAL LTD ACN 108 318 985 IN THEIR CAPACITY AS TRUSTEES OF THE LM MANAGED

PERFORMANCE FUND

AND

Second Applicant

KORDAMENTHA PTY LTD ACN 100 169 391

AND

Third Applicant

CALIBRE CAPITAL LTD ACN 108 318 985

AND

First Respondents

JOHN RICHARD PARK AND GINETTE DAWN
MULLER IN THEIR CAPACITY AS LIQUIDATORS
OF LM INVESTMENT MANAGEMENT LIMITED (IN

LIQUIDATION) ACN 077 208 461

AND

Second Respondent

LM INVESTMENT MANAGEMENT LIMITED (IN

LIQUIDATION) ACN 077 208 461

AND

Third Respondent

THE MEMBERS OF THE LM MANAGED

PERFORMANCE FUND

ORDER

Before:

Justice

Date:

17 December 2013

Initiating document:

Originating Application filed 3 December 2013

THE COURT ORDERS THAT:

- The applicants post the second affidavit of Simon Vertullo sworn 13 December 2013 in PDF form on the website "http://www.kordamentha.com/creditorinformation/australia/109", by 4pm on 17 December 2013.
- 2. The applicants post:

- (a) any further court documents to be filed by the Applicants in these proceedings; and
- (b) any orders made in respect of the Application;

in PDF form on the website "http://www.kordamentha.com/creditor-information/australia/109", by 4pm on the next business day after such documents are filed in Court.

- That service of:
 - (a) the originating application filed 3 December 2013;
 - (b) the affidavit of Simon Vertullo filed 13 December 2013;
 - (c) the further affidavit of Simon Vertullo sworn 13 December 2013;
 - (d) any further court documents to be filed by the Applicants in these proceedings;
 - (e) any orders made in respect of the Application and not required to be served personally;

be deemed effected on each of the members of the Third Respondent five days after the applicants:

- (f) post such documents in PDF form on the website "http://www.kordamentha.com/creditor-information/australia/109"; and
- (g) send an email to all the members of the Third Respondent at their last known email addresses, notifying them of the general nature of the Court documents and that the documents have been posted on that website.
- 4. The originating application filed 3 December 2013 be adjourned to the Civil List, to be heard from 10 to 12 February 2014.
- That the applicants' costs of this application be paid from the assets of the LM Managed Performance Fund on an indemnity basis.

Signed:

REGISTRY: NUMBER:

BRISBANE 11593/2013

First Applicants:

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

PERFORMANCE FUND

AND

Second Applicant:

KORDAMENTHA PTY LTD ACN 100 169 391

AND

Third Applicant:

CALIBRE CAPITAL LTD ACN 108 318 985

AND

First Respondents:

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

AND

Second Respondent:

LM INVESTMENT MANAGEMENT LIMITED (IN

LIQUIDATION) ACN 077 208 461

AND

Third Respondent:

THE MEMBERS OF THE LM MANAGED PERFORMANCE

FUND

APPLICATION

TAKE NOTICE that the applicants are applying to the Court for the following orders:

- The applicants post the second affidavit of Simon Vertullo sworn 13 December 2013 in 1. PDF form on the website "http://www.kordamentha.com/creditorinformation/australia/109", by 4pm on 17 December 2013.
- 2 The applicants post:
 - any further court documents to be filed by the Applicants in these proceedings; (a) and
 - (b) any orders made in respect of the Application;

in PDF form on the website "http://www.kordamentha.com/creditorinformation/australia/109", by 4pm on the next business day after such documents are filed in Court.

APPLICATION

Filed on Behalf of the Applicants

Form 5, Version 1

Uniform Civil Procedure Rules 1999

Rule 26

PIPER ALDERMAN:

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

Phone No: (02) 9253 9999

Fax No:

(02) 9253 9900

Ref: AKB.LG,386376

- 3. That service of:
 - (a) the originating application filed 3 December 2013;
 - (b) the affidavit of Simon Vertulio filed 13 December 2013;
 - (c) the further affidavit of Simon Vertullo sworn 13 December 2013;
 - (d) any further court documents to be filed by the Applicants in these proceedings;
 and
 - (e) any orders made in respect of the Application and not required to be served personally;

be deemed effected on each of the members of the Third Respondent five days after the applicants:

- (f) post such documents in PDF form on the website "http://www.kordamentha.com/creditor-information/australia/109"; and
- (g) send an email to all the members of the Third Respondent at their last known email addresses, notifying them of the general nature of the Court documents and that the documents have been posted on that website.
- 4. The originating application filed 3 December 2013 be adjourned to the Civil List, to be heard from 10 to 12 February 2014.
- 5. That the applicants' costs of this application be paid from the assets of the LM Managed Performance Fund on an indemnity basis.

This application will be heard by the Court at Brisbane. on: 17 December 2013 at 10 am

Filed in the Brisbane Registry on

Registrar: (registrar to sign and seal)

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

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

Affidavit of Simon Michael Vertullo to be sworn

Affidavit of Simon Michael Vertullo filed 13 December 2013.

Further affidavit of Simon Michael Vertullo sworn 13 December 2013.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 30 minutes

Signed:

Description: Solicitor for the applicants

Dated:

16 December 2013

This application is to be served on:

The First and Second Respondents c/o Russells Solicitors Level 21, 300 Queen Street Brisbane QLD 4000

APPLICATION Filed on Behalf of the Applicants Form 5, Version 1 Uniform Civil Procedure Rules 1999 Rule 26

PIPER ALDERMAN:

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

Fax No:

Phone No: (02) 9253 9999 (02) 9253 9900

Ref: AKB.LG.386376

From:

Amanda Banton

Sent:

Monday, 16 December 2013 7:32 PM

To:

Ari Jenshel

Cc:

Paul Springthorpe; Michael Baltins; Davina Holland

Subject:

Re: LM Managed Performance Fund - Supreme Court of QLD 11593/13

Mr Jenshel,

The matter is already listed 10 to 12 February for various other fund related matters and those are the dates we intend to seek for efficiency and cost reasons.

Amanda Banton

Partner | Piper Alderman

t +61 2 9253 9929

f +61 2 9253 9900

abanton@piperalderman.com.au|www.piperalderman.com.au

On 16 Dec 2013, at 7:11 pm, "Ari Jenshel" <a jenshel@internode.on.net > wrote:

Dear Ms Banton,

Thank you for your letter.

On the basis that you will be seeking an adjournment tomorrow I will NOT arrange the attendance of counsel. I will, however, provide counsel's unavailable dates for February in the meantime and would be very grateful if these could be accommodated.

I will revert to you shortly about the balance of your letter.

Is it presently intended that there will be additional affidavits in support of the application, or other information provided to the investors?

Best,

A

ARIJENSHEL

lawyer + consultant

LEVEL 10 50 MARKET STREET MELBOURNE VIC 3000 AUSTRALIA

+61 3 9008 9983

- +61 3 8676 1269 - +61 409 371 575

ajenshel@internode.on.net

IMPORTANT NOTE: The contents of this email are confidential and privileged and are intended only for the named addressee. If you have received this email in error any copying and distribution is prohibited. You are requested immediately to inform me of such an error by return of email. No responsibility for the security or integrity of this email is accepted.