

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

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

1. I am a member of the firm Minter Ellison, the solicitors for KordaMentha Pty Ltd (ACN 100 169 391) in its capacity as trustee for the LM Managed Performance Fund ("**Trustee**"). I have the conduct of this proceeding on behalf of the Trustee and I am duly authorised to swear this affidavit on its behalf.
2. The purpose of this affidavit is to provide an estimate of the future costs that might be incurred by the Trustee if this Honourable Court determines that the Trustee would be justified in prosecuting:
 - (a) Supreme Court of Queensland Proceeding number 8032/14; and
 - (b) Supreme Court of Queensland Proceeding number 8034/14collectively, 'the proceedings'.
3. I was admitted as a solicitor of this Honourable Court on 24 February 1986, and have since continuously practised as a corporate and commercial litigation solicitor in Queensland, including in this Honourable Court.

Signed: 

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Taken by: 

AFFIDAVIT OF DAVID THOMAS
O'BRIEN
Filed on behalf of the applicant

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Reference NYB DOB 407747729

4. It is not possible to very precisely estimate the fees and outlays the Trustee might incur should it prosecute the proceedings to the conclusion of trials because that depends upon many variables presently unknown to me. For example, I presently do not know:
 - (a) the defendant's attitude to the Trustee's claims; and
 - (b) how many witnesses the defendant might seek to call at any trial.
5. However, assuming that the defendant defends the Trustee's claim in Proceeding 8032/14, I estimate that the Trustee might incur future legal fees and outlays of about \$687,981 (including GST). Exhibit **DOB-1** is a calculation I have prepared that better particularises this estimate.
6. Assuming that the defendant defends the Trustee's claim in Proceeding 8034/14, I estimate that the Trustee might incur future legal fees and outlays of about \$687,981 (including GST). The calculation in exhibit DOB-1 also particularises this estimate.
7. My estimates assume that, apart from listing applications and subsequent directions hearings, there is no need for interlocutory applications. The occurrence of any interlocutory application would increase costs.
8. The Trustee's legal costs of and incidental to the proceedings to date invoiced, are \$199,057.30 (inclusive of GST). I estimate the Trustee's legal costs of and incidental to its section 96 application and its applications for leave under s500(2) of the *Corporations Act* 2001 (Cth) to be an additional \$65,000 (including GST).
9. All the facts and circumstances deposed to in this affidavit are within my own knowledge except where they have been deposed to from information only and my means of knowledge and sources of information appear in my affidavit.

SWORN by DAVID THOMAS O'BRIEN on 4 June 2015

at Brisbane



Deponent

in the presence of:



Solicitor/Commissioner for

Declarations/Justice of the Peace

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5329/14

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

CERTIFICATE OF EXHIBIT

Exhibit **DOB-1** to the affidavit of DAVID THOMAS O'BRIEN sworn 4 June 2015



Deponent



Solicitor/Commissioner for

Declarations/Justice of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the applicant

Form 47 Rule 435

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"DOB-1"

Costs Estimate¹

Pleadings	Outlays	Fees
Counsels' fees: Reviewing defence and drawing Reply <ul style="list-style-type: none"> • Andrew Crowe QC (1 day x \$8,800) • Ed Goodwin (1 day x \$4,675) 	\$8,800 \$4,675	
Solicitors' fees: filing and serving Statement of Claim; receiving and considering defence; preparing brief to Counsel to draw Reply; receiving instructions on Reply; filing and serving Reply <ul style="list-style-type: none"> • Partner (3 hours x \$781) • Senior Associate (5 hours x \$594) 		\$2,343 \$2,970
Other outlays	\$500	
Subtotal	\$13,975	\$5,313
TOTAL		\$19,288

Disclosure	Outlays	Fees
Solicitors' fees: identifying documents for disclosure, drafting, filing and serving list of documents <ul style="list-style-type: none"> • Partner (2 hours x \$781) • Senior Associate (15 hours x \$594) 		\$1,562 \$8,910
Solicitors' fees: Receiving and considering defendant's lists of documents; inspection <ul style="list-style-type: none"> • Partner (2 hours x \$781) • Senior Associate (20 hours x \$594) 		\$1,562 \$11,880
Solicitors' fees: Non-party disclosure – drawing, filing and serving non-party disclosure; corresponding with recipients of notices; reading documents produced in response to notice <ul style="list-style-type: none"> • Partner (4 hours x \$781) • Senior Associate (25 hours x \$594) 		\$3,124 \$14,850
TOTAL		\$41,888

Mediation	Outlays	Fees
Counsel's fees: preparing for and attending at mediation <ul style="list-style-type: none"> • Andrew Crowe QC (1.5 days x \$8,800) • Ed Goodwin (1.5 days x \$4,675) 	\$13,200 \$7,012.50	
Solicitors' fees: Briefing counsel to appear at mediation, considering position papers, advising Trustee <ul style="list-style-type: none"> • Partner (4 hours x \$781) • Senior Associate (5 hours x \$594) 		\$3,124 \$2970
Solicitors' fees: attending at mediation <ul style="list-style-type: none"> • Partner (8 hours x \$781) • Senior Associate (8 hours x \$594) 		\$6,248 \$4,752

Mediator's fees and other disbursements (share)	\$3,000	
Subtotal	\$23,212.50	\$17,094
TOTAL		\$40,306.50

Commercial List Application and Directions Hearings (x5)	Outlays	Fees
Counsel's fees: <ul style="list-style-type: none"> Andrew Crowe QC (5 x 1/2 day hearings x \$8,800) Ed Goodwin (5 x 1/2 day hearings x \$4,675) 	\$22,000 \$11,687.50	
Solicitors' fees: Producing material required for supervised case listing; liaising with other parties, briefing Counsel; instructing Counsel at hearings <ul style="list-style-type: none"> Partner (2 hours per hearing, 10 hours x \$781) Senior Associate (10 hours per hearing, 50 hours x \$594) 		\$7,810 \$29,700
Other outlays	\$500	
Subtotal	\$34,187.50	\$37,510
TOTAL		\$71,697.50

Expert Evidence	Outlays	Fees
Counsels' fees: Preparation of instructions to expert, conferences, consideration of report <ul style="list-style-type: none"> Andrew Crowe QC (2 days x \$8,800) Ed Goodwin (3 days x \$4,675) 	\$17,600 \$14,025	
Solicitors' fees: briefing Counsel to draft instructions to expert; engaging expert to prepare report attendance at Counsels' chambers for conferences <ul style="list-style-type: none"> Partner (10 hours x \$781) Senior Associate (20 hours x \$594) 		\$7,810 \$11,880
Expert fees	\$25,000	
Other outlays	\$500	
Subtotal	\$57,125	\$19,690
TOTAL		\$76,815

Evidence and witnesses (assume 4)	Outlays	Fees
Counsels' fees: Preparation of witness summaries; interview with witnesses; advice on evidence <ul style="list-style-type: none"> Andrew Crowe QC (4 days x \$8,800) Ed Goodwin (4 days x \$4,675) 	\$35,200 \$18,700	
Solicitors' fees: Witness interviews; drafting statements; briefing Counsel to draft evidence		\$19,525 \$29,700

summaries; attendance at Counsel's chambers for witness interviews		
<ul style="list-style-type: none"> • Partner (25 hours x \$781) • Senior Associate (50 hours x \$594) 		
Other outlays	\$500	
Subtotal	\$54,400	\$49,225
TOTAL		\$103,625

Preparation for trial (assuming 7 days)	Outlays	Fees
Counsels' fees: Preparing cross-examination, preparing submissions, settling chronology; settling a tender bundle; reading trial brief		
<ul style="list-style-type: none"> • Andrew Crowe QC (7 days x \$8,800) • Ed Goodwin (7 days x \$4,675) 	\$61,600 \$32,725	
Solicitors' fees: Preparing chronology; preparing tender bundle; preparing trial brief; responding to Counsel's requests; organising witness attendance		
<ul style="list-style-type: none"> • Partner (14 hours x \$781) • Senior Associate (70 hours x \$594) 		\$10,934 \$41,580
Other outlays	\$5,000	
Subtotal	\$99,325	\$52,514
TOTAL		\$151,839

Trial (assuming 7 days)	Outlays	Fees
Counsels' fees:		
<ul style="list-style-type: none"> • Andrew Crowe QC (7 days x \$8,800) • Ed Goodwin (7 days x \$4,675) 	\$61,600 \$32,725	
Solicitors' fees:		
<ul style="list-style-type: none"> • Partner (25 hours x \$781) • Senior Associate (70 hours x \$594) 		\$19,525 \$41,580
Other outlays (including assuming 7 days of transcript at \$1,500 per day)	\$15,000	
Hearing Fees	\$12,092	
Subtotal	\$121,417	\$61,105
TOTAL		\$182,522
GRAND TOTAL		\$687,981

Note

1. All figures are inclusive of GST