

15 December 2022

US Masters Residential Property Fund (Fund)

ASX Code: URF

Originating application, affidavit and orders filed in New South Wales Supreme Court

Further to the announcement made by E&P Investments Limited (**RE**) as the responsible entity of the US Masters Residential Property Fund (**Fund**) on 14 December 2022, the RE has filed an application in the Supreme Court of New South Wales under sections 1322(2) and 1324 of the *Corporations Act 2001* (Cth) (**Act**), sections 66 and 75 of the *Supreme Court Act 1970* (NSW) and the Court's inherent jurisdiction seeking declaratory and injunctive relief in relation to a purported Notice of Meeting of members of the Fund issued by Keybridge Capital Limited and certain others¹ (**Defendants**).

Attached to this announcement are:

1. Originating Process dated 15 December 2022
2. Affidavit of Patrick Broger, Director – E&P Funds, dated 14 December 2022 (excluding annexures) (**Affidavit**)
3. Orders of the Supreme Court of New South Wales (Equity Division) dated 15 December 2022.

Should any Defendants wish to access copies of the exhibits to the Affidavit accompanying this announcement, they are advised to contact the responsible entity on 1300 454 801.

For questions regarding this announcement, please contact our Investor Relations team at 1300 454 801.

Media Enquiries: James Strong, Citadel Magnus + 61 448 881 174 jstrong@citadelmagnus.com

Authorised for release by E&P Investments Limited (ACN 152 367 649 | AFSL 410 433), the responsible entity of US Masters Residential Property Fund.

¹ The defendants are:

1st Defendant: Keybridge Capital Limited (ACN 088 267 190)

2nd Defendant: Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for HHY Fund

3rd Defendant: Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for Aurora Dividend Investment Trust

4th Defendant: Australian Style Holdings Pty Ltd ATF NFJB Superfund (ACN 108 602 491)

5th Defendant: Mr Roger Hearnden

- 6th Defendant: Peter Davies Pty Ltd (ACN 138 794 555)
- 7th Defendant: Roadnight Super Nominees Pty Ltd (ACN 135 247 497)
- 8th Defendant: Tall Cam Pty Ltd (ACN 160 862 886)
- 9th Defendant Mr Victor Fred Siciliano
- 10th Defendant: Mr Vittorio Siciliano + Mrs Gina Siciliano ATF VFS Superfund
- 11th Defendant: Miss Cassandra Leigh Hancock
- 12th Defendant A & G Siciliano Superannuation Pty Ltd (ACN 601 060 646)
- 13th Defendant: Wonfair Investments Pty Ltd (ACN 612 982 939)
- 14th: Defendant: Mr Tim Sanderman Staermose
- 15th Defendant: 343 Pty Ltd (ACN 621 408 839)
- 16th Defendant: 38 Pty Ltd (ACN 606 868 606)
- 17th Defendant: Mr Christopher Carron + Mr Dennis Carron ATF D A CARRON SUPER FUND
- 18th Defendant: JMA International Pty Ltd (ACN 601 958 016)
- 19th Defendant: Benkar Trading Pty Ltd (ACN 112 327 205)
- 20th Defendant: Shanteer Pty Ltd ATF Ian Jeffrey Super Fund (ACN 052 348 197)
- 21st Defendant: LIS Private Pty Ltd ATF The LIS Private Unit Trust (ACN 603 787 668)
- 22nd Defendant: Pitteuchar Pty Limited (ACN 004 901 571)
- 23rd Defendant: Maxim Financial, LLC
- 24th Defendant: Mr Richard Philip Wilkins
- 25th Defendant: Hoff Company No 1 Pty Limited (ACN 083 096 922)
- 26th Defendant: Hoff Company No 3 Pty Ltd ATF Berend Hoff Super Fund (ACN 617 261 033)
- 27th Defendant: UWA Capital Management Pty Ltd ATF UWA Master Fund (ACN 616 242 329)
- 28th Defendant: Mr Christof Burlefinger
- 29th Defendant: Astonby Capital Management Pty Ltd ATF Indigo Trust (ACN 625 752 687)
- 30th Defendant: Mr Sunny Yang & Mrs Connie Yang

On undertaking as to (the fees
to be paid in (c)
13/12/2022 AJP/cl

IN THE SUPREME COURT OF NEW SOUTH WALES

No 377907 of 2022

DIVISION: EQUITY

REGISTRY: SYDNEY

**IN THE MATTER OF E&P INVESTMENTS LIMITED AS RESPONSIBLE ENTITY OF THE
US MASTERS RESIDENTIAL PROPERTY FUND**

ACN: 152 367 649; ARSN: 150 256 161

**E&P INVESTMENTS LIMITED (ACN 152 367 649) AS RESPONSIBLE ENTITY OF THE US
MASTERS RESIDENTIAL PROPERTY FUND (ARSN 150 256 161)**

FILED IN COURT

Plaintiff

13 DEC 2022



KEYBRIDGE CAPITAL LIMITED (ACN 088 267 190) & OTHERS

Defendants

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 1322(2) and 1324 of the *Corporations Act* 2001 (Cth) (**Act**), sections 66 and 75 of the *Supreme Court Act* 1970 (NSW) and the Court's inherent jurisdiction for declaratory and injunctive relief in relation to a notice of meeting issued by the Defendants dated 9 December 2022 (**Purported Notice**) purporting to call a meeting of the members of the registered managed investment scheme known as the US Masters Residential Property Fund (ARSN 150 256 161) (**Fund**) to be held at 3.00pm (Melbourne time) on 30 December 2022 (**Proposed Meeting**).

On the facts stated in the supporting affidavit, the plaintiff claims:

Ex parte interlocutory relief

1. This originating process is made returnable immediately.
2. The time for service of this originating process and the supporting affidavit is abridged and service is to be effected by 4.00pm on 15 December 2022.
3. This originating process and the supporting affidavit be taken to be served on the Defendants upon a sealed copy being sent by email to the solicitors for the First Defendant, Allen & Overy.

Other interlocutory relief

4. That the hearing of these proceedings be expedited.
5. Further, or in the alternative to prayer 4, on the plaintiff proffering the usual undertaking as to damages, an interlocutory injunction, pending determination of the prayers for final relief,

restraining the Defendants, whether by themselves, their servants or agents or howsoever otherwise, from holding the Proposed Meeting.

Final relief

6. A declaration that, on the proper construction of the Constitution of the Fund, once a responsible entity of the Fund has set an "Issuer Conversion Date" by releasing an announcement to the ASX under clause 4.2 of Schedule 1 of the Constitution stating that all perpetual cumulative convertible step-up preference units (**CPUs**) will be converted to "Ordinary Units" on a specified "Issuer Conversion Date", a responsible entity of the Fund has no power to cancel or delay the conversion of CPUs to Ordinary Units on the Issuer Conversion Date.
7. A declaration that the Purported Notice is invalid.
8. An injunction restraining the Defendants, whether by themselves, their servants or agents or howsoever otherwise, from holding the Proposed Meeting.
9. An order that the Defendants pay the Plaintiff's costs of the proceeding.
10. Such further or other orders as the Court thinks fit.

Date: 15 December 2022

pp 

Domenic Mathew Gatto
P0019114 (Vic)
King & Wood Mallesons
Solicitors for the Plaintiff

This application will be heard by the Supreme Court of New South Wales at Law Courts Building, Queens Square Sydney at on December 2022.

B. NOTICE TO DEFENDANT(S)

TO:

First Defendant

Keybridge Capital Limited (ACN 088 267 190)
Wilson Hanna Suite 614, Level 6, 370 St Kilda Road Melbourne VIC 3004

Second Defendant

Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for HHY Fund
Suite 613, Level 6, 370 St Kilda Road, Melbourne VIC 3004

Third Defendant

Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for Aurora Dividend Investment Trust

Suite 613, Level 6, 370 St Kilda Road, Melbourne VIC 3004

Fourth Defendant

Australian Style Holdings Pty Ltd ATF NFJB Superfund (ACN 108 602 491)
Sayers Partners Pty Ltd, Level 4, 112 Wellington Parade, East Melbourne VIC 3002

Fifth Defendant

Mr Roger Hearnden
2 Jones Street, Avenel VIC 3664

Sixth Defendant

Peter Davies Pty Ltd (ACN 138 794 555)
105 Finch Street, Malvern East VIC 3145

Seventh Defendant

Roadnight Super Nominees Pty Ltd (ACN 135 247 497)
105 Finch Street, Malvern East VIC 3145

Eighth Defendant

Tall Cam Pty Ltd (ACN 160 862 886)
105 Finch Street, Malvern East VIC 3145

Ninth Defendant

Mr Victor Fred Siciliano
13 Cummins Grove, Malvern VIC 3144

Tenth Defendant

Mr Vittorio Siciliano + Mrs Gina Siciliano ATF VFS Superfund
Pooles Accountants & Tax Specialists, 402 Campbell Street, Swan Hill VIC 3585

11th Defendant

Miss Cassandra Leigh Hancock
24 Rainy Hill Rd, Cockatoo VIC 3781

12th Defendant

A & G Siciliano Superannuation Pty Ltd (ACN 601 060 646)
Pooles Accountants & Tax Specialists, 402 Campbell Street, Swan Hill VIC 3585

13th Defendant

Wonfair Investments Pty Ltd (ACN 612 982 939)
W. D. Hall & Associates, Unit 9, 21 Peachester Road, Beerwah QLD 4519

14th Defendant

Mr Tim Sanderman Staermose
GPO Box 6746, Central, Hong Kong

15th Defendant

343 Pty Ltd (ACN 621 408 839)
Suite 14, 13 Church Street, Hawthorn Vic 3122

16th Defendant

38 Pty Ltd (ACN 606 868 606)
Cotsford & Ma Pty Ltd, Suite 14, 13 Church Street, Hawthorn Vic 3122

17th Defendant

Mr Christopher Carron + Mr Dennis Carron ATF D A CARRON SUPER FUND
20 Williams Road, Prahran Vic 3181

18th Defendant

JMA International Pty Ltd (ACN 601 958 016)
Level 7, 612-616 St Kilda Road, Melbourne VIC 3004

19th Defendant

Benkar Trading Pty Ltd (ACN 112 327 205)
2 Cope Street, Preston VIC 3072

20th Defendant

Shanteer Pty Ltd ATF Ian Jeffrey Super Fund (ACN 052 348 197)
C/- Ian Jeffrey, 54 Clowes Street, South Yarra VIC 3141

21st Defendant

LIS Private Pty Ltd ATF The LIS Private Unit Trust (ACN 603 787 668)
6 Fairleigh Avenue Beaumaris VIC 3193

22nd Defendant

Pitteuchar Pty Limited (ACN 004 901 571)
Casey Partners Pty Ltd 67-69 High Street Berwick VIC 3806

23rd Defendant

Maxim Financial, LLC
27865 Clemens Rd Ste 2 Westlake, OH, 44145-1114 United States

24th Defendant

Mr Richard Philip Wilkins
29 Reed Street, CREMORNE NSW 2090

25th Defendant

Hoff Company No 1 Pty Limited (ACN 083 096 922)
Berend John Phillip Hoff, 18 Talbot Street, Forrest ACT 2603

26th Defendant

Hoff Company No 3 Pty Ltd ATF Berend Hoff Super Fund (ACN 617 261 033)
18 Talbot Street Forrest, ACT 2603

27th Defendant

UWA Capital Management Pty Ltd ATF UWA Master Fund (ACN 616 242 329)
Dixon Advisory, Level 7, 250 Victoria Parade, East Melbourne VIC 3002

28th Defendant

Mr Christof Burlefinger
Martinstr 10, Stolberg NRW 52222, Germany

29th Defendant

Astonby Capital Management Pty Ltd ATF Indigo Trust (ACN 625 752 687)
Business Depot, Level 22, 500 Collins Street, Melbourne VIC 3000

30th Defendant

Mr Sunny Yang & Mrs Connie Yang
55 Warrangi St, Turramurra NSW 2074

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. APPLICATION FOR WINDING UP ON GROUNDS OF INSOLVENCY

Not applicable.

D FILING

Date of filing: 15 December 2022

This originating process is filed by Domenic Mathew Gatto of King & Wood Mallesons, solicitor for the Plaintiff.

E SERVICE

The Plaintiff's address for service is

Domenic Gatto / Connor Stagg
King & Wood Mallesons
Level 27 Collins Arch
447 Collins Street
Melbourne VIC 3000

It is intended to serve a copy of this originating process on each defendant, including in the manner provided for by any orders made for substituted service.

FILED IN COURT

13 DEC 2022



leave to rely on copy of which
15/12/2022
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Form 40 (version 6)
UCPR 35.1

**AFFIDAVIT OF PATRICK BROGER
AFFIRMED 14 DECEMBER 2022**

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity Division
List Corporations
Registry Sydney
Case number 2022/377907.

TITLE OF PROCEEDINGS

Plaintiff **E&P Investments Limited (ACN 152 367 649)**
First defendant **Keybridge Capital Limited (ACN 088 267 190)**
Number of defendants **30**

FILING DETAILS

Filed for **E&P Investments Limited, the Plaintiff**
Filed in relation to **Plaintiff's Originating Process**
Legal representative **Domenic Gatto, King & Wood Mallesons**
Legal representative reference **602-0036650**
Contact name and telephone **Connor Stagg +61 7 3244 8077**
Contact email **connor.stagg@au.kwm.com**

Red
gills

AFFIDAVIT

Name Patrick Broger
Address c/ Level 32 1 O'Connell St Sydney NSW 2000
Occupation Director – E&P Funds
Date 14 December 2022

I affirm:

- 1 I am a Director - E&P Funds at the Plaintiff. I am authorised to make this affidavit on behalf of the Plaintiff.
- 2 Exhibited to me at the time of making this affidavit and marked “**PB-1**” is a paginated bundle of documents which contains true copies of certain documents I refer to in this affidavit. Where I refer to a document, a copy of which is in **PB-1**, I do so by reference to the numbered Tab at which that copy appears in **PB-1**.
- 3 Throughout this affidavit, I refer to matters from my own personal knowledge unless otherwise indicated. Where I rely on information drawn from business records of the Plaintiff to which I have access in the course of my role as Director – E&P Funds, I identify that as the basis for my knowledge in this affidavit.

Background

- 4 The Plaintiff is currently the appointed responsible entity (**RE**) of the US Master Residential Property Fund (**the Fund**).
- 5 The Fund is a registered managed investment scheme established in or around June 2011, which is listed on the Australian Stock Exchange (**ASX**). The Fund is one of the largest Australian-listed property trusts with a primary strategy of investing in United States residential property assets, primarily focused in the New York metropolitan area.
- 6 The Fund comprises a mixture of ordinary units and convertible preference units (**CPUs**). The CPUs were first issued on 22 December 2017 pursuant to a Product Disclosure Statement dated 1 December 2017. A copy of the Product Disclosure Statement is at **Tab 1 of Exhibit PB-1**.
- 7 Based on the business records of the Plaintiff, as at 7:00pm (close of business) on 8 December 2022, there were 1,809,580 CPUs on issue, which are held by both Australia-based and foreign unitholders and 383,089,242 ordinary units on issue. I confirmed with Geoff Noonan (Client Services Manager, Boardroom Pty Ltd) on 14 December 2022 that there was no

changes to the register until the following day. A copy of the Plaintiff's registers as at close of business on 8 December 2022 is at **Tab 2** and **Tab 3** of **Exhibit PB-1**.

Conversion of CPUs

- 8 The terms of issue of the CPUs (**CPU Terms**) are set out in Schedule 1 of the Funds Constitution dated January 2013 (as amended by an amendment deed dated 8 December 2017). A copy of the Constitution is at **Tab 4** of **Exhibit PB-1**.
- 9 Under the CPU Terms, there is a fixed conversion ratio of 205 ordinary units per CPU if the ordinary units are trading below \$0.50. On the date of affirming this affidavit, the ordinary units were trading at \$0.27 at approximately 11:14am (AEDT). An extract of the ASX website is at **Tab 5** of **Exhibit PB-1**.
- 10 On 14 June 2022, the Fund issued an ASX Announcement, which addressed (amongst other matters) the likelihood of the conversion of CPUs:

[I]n calculating the Fund's NAV it is necessary to make an assumption on the treatment of URF Convertible Preference Units (CPUs or URFPAs) beyond 1 January 2023 (being the first possible conversion date). While no final decision has yet been made by the Board of the Responsible Entity, based on current factors the Responsible Entity is likely to convert the CPUs into ordinary URF units per the terms of the CPUs under the Fund's constitution. This does not definitively mean that the CPUs will be converted; a final decision will be made not later than 10 business days prior to the date for conversion. The likelihood of CPU conversion is based on the Fund's stabilised free cash flow being insufficient to cover the increased distribution rate of 8.75%, which will be payable on the CPUs from 1 January 2023 onwards. (emphasis added)

- 11 A copy of the ASX Announcement dated 14 June 2022 is at **Tab 6** of **Exhibit PB-1**. ✓ PG 64
- 12 On 28 November 2022, the Fund issued an ASX Announcement, which addressed the decision by the Plaintiff (as RE of the Fund) to convert all of the CPUs into fully paid ordinary units. A copy of the ASX Announcement dated 28 November 2022 is at **Tab 7** of **Exhibit PB-1**.

Correspondence with First Defendant & Mr Bolton

- 13 Based on the business records of the Plaintiff, as at close of business on 8 December 2022, the First Defendant held a total of 39,692 CPUs (refer to **Tab 2** of **Exhibit PB-1**).

- 14 Based on my searches of the First Defendant's website (<https://www.keybridge.com.au/board.php>), I understand the Mr Nicholas Bolton is the Managing Director and Chief Executive Officer of the First Defendant. An extract of the First Defendant's website is at **Tab 8 of Exhibit PB-1**.
- 15 On 6 December 2022, Mr Bolton issued a letter to Mr Ben Boyd (Managing Director, Moelis Australia), which provided a proposal in relation to the conversion of CPUs into fully paid ordinary units. A copy of the letter is at **Tab 9 of Exhibit PB-1**.
- 16 Moelis Australia acts as advisor and agent of the Plaintiff for the purpose of assisting with the Fund.
- 17 On 7 December 2022, Mr Bolton sent an email to Mr Boyd which provided a draft section 252D notice. Mr Bolton stated: *Please note that the convenors are over 25 members, so it's not just KBC acting as a difficult member.* A copy of the email and attachment is at **Tab 10 of Exhibit PB-1**.
- 18 On 8 December 2022 at 10:48am, Mr Boyd responded to Mr Bolton's email, stating:

Thanks for your proposal and the draft s252D notice.

I don't think the proposal is in a form that the board can act on. It is really a request for the RE to come up with a new structure for the CPUs and put that to special resolution by CPU holders and unitholders as a whole. After considering your proposal the board remains of the view that conversion of the CPUs on 3 January is still the best option considering unitholders interests, as a whole.

There also appears to be a range of issues with the draft Notice, which we think impact its validity and effectiveness.

- 19 Mr Bolton responded at approximately 12:54pm, requesting that Mr Boyd detail any concerns he had about the draft notice by no later than 5pm that day. A copy of the email chain is at **Tab 11 of Exhibit PB-1**.
- 20 On 9 December 2022, Mr Bolton sent a further email to Mr Boyd, enclosing a copy of a notice of meeting under section 252D(1) and section 601FM(1A)(b) of the Corporations Act 2001 (Cth) (**Keybridge Notice**) issued by the Defendants. A copy of the email and Keybridge Notice is at **Tab 12 of Exhibit PB-1**.



- 21 On the same day, Ms Caroline Purtell (Corporate Secretary, Plaintiff) was separately provided a copy of the Keybridge Notice by Mr Anthony Loizou (Corporate Counsel, First Defendant). A copy of the email and attachment is at **Tab 13 of Exhibit PB-1**.
- 22 Following provision of the Keybridge Notice, Mr Boyd and Mr Bolton exchanged emails on 11 December 2022 regarding the validity of the notice, including in relation to:
- (a) whether the Convenors identified in the Keybridge Notice collectively held the threshold proportion of votes (5%) required to call a general meeting under section 252D of the Corporations Act; and
- (b) whether copies of the Keybridge Notice were dispatched to all members of the Fund and other required recipients in accordance with section 252G(1) of the Corporations Act.
- 23 Mr Bolton also raised the prospect of representative proceedings in relation to the conversion of the CPUs if the Plaintiff did not endorse the proposed resolutions in the Keybridge Notice stating: *we believe the democratic vote (if endorsed by the RE) could be a mechanism for the RE to avoid \$80m+ of damages claims from the CPU class holders (which we will bring on their behalf if conversion occurs)*.
- 24 A copy of the emails and attachment is at **Tab 14 of Exhibit PB-1**.

ASX Announcements – Keybridge Notice

- 25 On 12 December 2022, the Fund issued an ASX Announcement, which addressed the Keybridge Notice. A copy of the ASX Announcement dated 12 December 2022 is at **Tab 15 of Exhibit PB-1**.
- 26 On 14 December 2022, the Fund issued a further ASX Announcement, which addressed in detail its concerns with the Keybridge Notice. A copy of the ASX Announcement dated 14 December 2022 is at **Tab 16 of Exhibit PB-1**.
- 27 The ASX Announcement raised several concerns with the Keybridge Notice, including the following:

The proposed resolutions, even if passed, will not delay or prevent conversion of the CPUs on 3 January 2023. The Notice incorrectly represents that if the resolutions are passed, the conversion of the Convertible Preference Units (CPUs) into ordinary units in URF can be delayed. Now that the conversion date for the CPUs has been decided and announced, under the Fund's constitution, the conversion is to occur on

3 January 2023 (Conversion Date), and the RE does not have the discretion under the Fund's constitution to change that outcome. Even if the appointment of a new RE could be effected, there does not appear to be a proper basis for that new responsible entity to decide in its discretion to delay conversion.

No replacement responsible entity has been identified, and there is a risk of wind up which could lead to significant losses. The Notice proposes the removal of the RE without identifying who the new responsible entity will be. Unitholders have no basis to form a view at present on the capability or intentions of a new responsible entity (or even whether a new responsible entity will, in fact, be appointed). If the RE is removed and no new responsible entity is appointed, under the Corporations Act and the Fund's constitution the Fund will need to be wound up over a short period of time in a manner that the RE believes is likely to disadvantage Unitholders. This could result in significant losses to Unitholders.

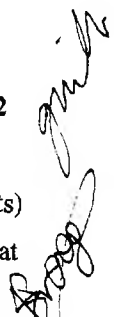
The Notice is defective in material respects and may be invalid. There are a number of ways in which, in the RE's view, the Notice is not consistent with the Corporations Act and proper meeting procedure, including that it has not been convened by the required percentage of Unitholders; does not provide a sufficient period of notice; and contains a resolution recommending the RE delays conversion of CPU's which cannot be validly put to Unitholders. The RE intends to initiate court proceedings in relation to these deficiencies and will keep Unitholders informed of the outcome of these proceedings, which may result in the Meeting not going ahead, or proceeding on different terms than anticipated in the Notice.

Keybridge is making it difficult for Unitholders to participate. The meeting is being held on 30 December 2022 at the building of Keybridge's registered office in Melbourne. This is Australia's traditional holiday period when many Unitholders will not be able to attend. There is also no ability to participate in the meeting on-line.

- 28 Based on my current position and access to the Plaintiff's business records as the appointed RE, I address a number of the matters raised in the ASX Announcement.

Vote proportion issue

- 29 Based on the Plaintiff's registers as at close of business on 8 December 2022 (refer to **Tab 2** and **Tab 3** of **Exhibit PB-1**), I caused Aditya Thakur and Thomas Harding of Moelis Australia to prepare a spreadsheet which identified the interests (CPUs and ordinary interests) of the entities listed as the 'Convenors' in the Keybridge Notice. This analysis identified that



the Convenors listed in the Keybridge Notice collectively held 4.3% of votes. Therefore, as at close of business on 8 December 2022, the Convenors did not hold the threshold proportion of votes (5%) required to call a general meeting under section 252D of the Corporations Act. A copy of the spreadsheet is at **Tab 17 of Exhibit PB-1**.

- 30 Mr Bolton produced a mark-up of the spreadsheet which indicated collective interest of approximately 5.14% (refer to **Tab 14 of Exhibit PB-1**). However, the figure represented by Mr Bolton included indirect interests held via custodians.
- 31 On 13 December 2022, a 'Notice of initial substantial holder' (Form 603) was lodged on behalf of the First Defendant, which indicated voting power of 5.21%. A copy of the notice is at **Tab 18 of Exhibit PB-1**. This notice also included interests of UWA Capital Management Pty Ltd (ACN 616 242 329) ATF UWA Master Fund and also Astonby Capital Management Pty Ltd ATF Indigo Trust (ACN 625 752 687).

Timing and location of proposed meeting

- 32 The Keybridge Notice is dated 9 December 2022 and the details of dispatch to members of the Fund remain unconfirmed by the First Defendant at the date of affirming this affidavit.
- 33 Based on my searches, ASIC has provided the following recommendation on its website regarding meetings during the holiday period (<https://asic.gov.au/about-asic/corporate-publications/newsletters-asic-corporate-finance-update/corporate-finance-update-issue-10/#blackout-period>):

We recommend companies avoid holding members' meetings between Monday 19 December 2022 and Friday 13 January 2023 (inclusive).

This view is based on the requirement in section 249R of the Corporations Act that 'a meeting of a company's members must be held at a reasonable time and place'. This means that a company should provide an opportunity for the maximum number of shareholders to attend and consider resolutions and any other matters that are to be put to the meeting.

- 34 An extract of ASIC's website is at **Tab 19 of Exhibit PB-1**.
- 35 Further, Australia Post is currently providing the following estimated delivery times for regular and priority letters on its website (<https://auspost.com.au/service-updates/domestic-delivery-times>):

	Regular letters ¹	Priority letters ¹
Same state	Up to 4 business days (depending on origin and destination)	Up to 2 business days
Interstate	3-6 business days (depending on origin and destination)	2-4 business days

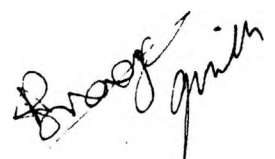
36 An extract of Australia Post's website is at **Tab 20 of Exhibit PB-1**.

Urgency of application to Court

37 There are a number of reasons why the issues concerning the Keybridge Notice and proposed meeting on 30 December 2022 need to be determined by a Court before the meeting occurs:

- (a) if the RE is removed and no new responsible entity is appointed, under the Corporations Act and the Fund's constitution the Fund will need to be wound up over a short period of time in a manner that could result in significant losses to current unitholders;
- (b) if the RE is removed before the matter is determined, it will likely result in future proceedings of the validity of the appointment which will cause significant inconvenience and disruption to the Plaintiff and its employees; and
- (c) liability of the Fund if no conversion occurs on 3 January 2023, the Fund would be required to pay an increased distribution rate on CPUs and its stabilised cashflow will be insufficient to cover these increased distributions; and
- (d) if the RE is removed before the matter is determined arrangements with third parties are at risk of being adversely effected, including the upcoming appointment of Brooksville (refer to **Tab 16 of Exhibit PB-1**).

38 On 14 December 2022, representatives of Allen & Overy confirmed that they had instructions to accept service on behalf of Keybridge Capital Limited. A copy of the email is at **Tab 21 of Exhibit PB-1**.



AFFIRMED at Sydney

Signature of deponent 

Name of witness Georgia Anne Mills

Address of witness 1 Farrer Place
Sydney NSW 2000

Capacity of witness Solicitor

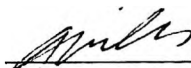
And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

DRIVERS LICENCE

Identification document relied on (may be original or certified copy)

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.



Issued: 15 December 2022 10:43 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2022/00377907

TITLE OF PROCEEDINGS

First Plaintiff	E & P Investments Limited (ACN 152 367 649) as responsible entity of the US Masters Residential Property Fund (ARSN 150 256 161)
First Defendant	Keybridge Capital Limited (ACN 088 267 190)
Second Defendant	Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for HHY Fund
Number of Defendants	30
Corporation subject of the proceeding	E & P Investments Limited (ACN 152 367 649) as responsible entity of the US Masters Residential Property Fund (ARSN 150 256 161) Refer to Party Details at rear for full list of parties

DATE OF JUDGMENT/ORDER

Date made or given	15 December 2022
Date entered	15 December 2022

TERMS OF JUDGMENT/ORDER

This matter is listed for Directions on 16 December 2022 2:00 PM before the Supreme Court - Civil at Supreme Court Sydney.
Estimated duration: 30 Minutes
Filed in Court for Plaintiff: Originating Process dated 15 December 2022; Affidavit of Patrick Broger affirmed 14 December 2022.

VERDICT, ORDER OR DIRECTION:

Short service application.

- Black J grants leave to file in Court Originating Process dated 15 December 2022 on the undertaking of the Plaintiff's solicitor to pay applicable filing fee.
- Black J grants leave to file in Court copy affidavit of Patrick Broger affirmed 14 December 2022.

Black J makes the following orders:

1. Abridge the time for service of the Originating Process dated 15 December 2022, the affidavit of Mr Broger affirmed 14 December 22 and Exhibit PB-1 to that affidavit, and a copy of these orders to 2pm today.

2. The proceedings be made returnable, in the first instance for directions, at 2pm on 16 December 2022 before Black J.

3. Note the possibility that the matter be allocated a hearing date on 19 or 21 December 2022 and direct the solicitors for the Plaintiff to advise the solicitors of the First Defendant of that possibility.

4. These orders be entered forthwith.

SEAL AND SIGNATURE



Signature D. Cafarelli (L.S.)
Capacity Chief Clerk
Date 15 December 2022

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

First Application under Corporation Law

Plaintiff(s)

First Plaintiff E & P Investments Limited (ACN 152 367 649) as responsible entity of the US Masters Residential Property Fund (ARSN 150 256 161)

Defendant(s)

First Defendant	Keybridge Capital Limited (ACN 088 267 190)
Second Defendant	Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for HHY Fund
Third Defendant	Aurora Funds Management Limited (ACN 092 626 885) as Responsible Entity for Aurora Dividend Investment Trust
Fourth Defendant	Australian Style Holdings Pty Ltd ATF NFJB Superfund (ACN 108 602 491)
Fifth Defendant	Roger Hearnden
Sixth Defendant	Peter Davies Pty Ltd (ACN 138 794 555)
Seventh Defendant	Roadnight Super Nominees Pty Ltd (ACN 135 247 497)
Eighth Defendant	Tall Cam Pty Ltd (ACN 160 862 886)
Ninth Defendant	Victor Fred Siciliano
Tenth Defendant	Mr Vittorio Siciliano + Mrs Gina Siciliano ATF VFS Superfund
Eleventh Defendant	Cassandra Leigh Hancock
Twelfth Defendant	A & G Siciliano Superannuation Pty Ltd (ACN 601 060 646)
Thirteenth Defendant	Wonfair Investments Pty Ltd (ACN 612 982 939)
Fourteenth Defendant	Tim Sanderma Staermose
Fifteenth Defendant	343 Pty Ltd (ACN 621 408 839)
Sixteenth Defendant	38 Pty Ltd (ACN 606 868 606)
Seventeenth Defendant	Mr Christopher Carron + Mr Dennis Carron ATF D A CARRON SUPER FUND
Eighteenth Defendant	JMA International Pty Ltd (ACN 601 958 016)

Nineteenth Defendant
Twentyth Defendant

21 st Defendant

22 nd Defendant

23 rd Defendant

24 th Defendant

25 th Defendant

26 th Defendant

27 th Defendant

28 th Defendant

29 th Defendant

30 th Defendant

Benkar Trading Pty Ltd (ACN 112 327 205)

Shanteer Pty Ltd ATF Ian Jeffrey Super Fund (ACN 052 348 197)

LIS Private Pty Ltd ATF The LIS Private Unit Trust (ACN 603 787 668)

Pitteuchar Pty Limited (ACN 004 901 571)

Maxim Financial, LLC

Richard Philip Wilkins

Hoff Company No 1 Pty Limited (ACN 083 096 922)

Hoff Company No 3 Pty Ltd ATF Berend Hoff Super Fund (ACN 617 261 033)

UWA Capital Management Pty Ltd ATF UWA Master Fund (ACN 616 242 329)

Christof Burlefinger

Astonby Capital Management Pty Ltd ATF Indigo Trust (ACN 625 752 687)

Mr Sunny Yang & Mrs Connie Yang