

Amended pursuant to GCR Order 20, Rule 1

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 310 OF 2009

BETWEEN:

CALEDONIAN TRUST (CAYMAN) LIMITED  
(in its sole capacity as Trustee of the K1 Global Sub-trust,  
a Sub-trust of the Panacea Trust)

Plaintiff

AND:

- (1) X1 FUND ALLOCATION GmbH  
(a company incorporated under the laws of Germany)
- (2) HELMUT KIENER (an individual)

Defendants

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**AMENDED WRIT OF SUMMONS**

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- TO: (1) X1 Fund Allocation GmbH, of Roedingsmarkt 39, 20459 Hamburg, Germany
- (2) Mr Helmut Kiener, Yorckstraße 32a, 63739 Aschaffenburg, Germany

THIS **AMENDED** WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within **28** ~~28~~ days after the service of this **Amended** Writ on you, counting the day of service, you must either satisfy the claim or return it to the Court Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 29th day of June, 2009

NOTE – This **Amended** Writ may not be served later than 6 months beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

## GENERAL INDORSEMENT

The Plaintiff's claim against the First Defendant is for:

- 1 Damages ~~and/or equitable compensation~~ and/or an account of profits in respect of the First Defendant's breaches of contract ~~and/or breaches of its duties of due skill, care and diligence~~ and/or breaches of its fiduciary duties owed to the Plaintiff during the period in which it was engaged as investment manager to the K1 Global Sub-Trust pursuant to a written investment management agreement with the Plaintiff dated 24 February 2006, from time to time amended, and terminated on 26 February 2009;
- 2 Payment of all sums due on the taking of such account;
- 3 Interest on sums so awarded;
- 4 Such further or other relief as may be just;
- 5 Costs.

The Plaintiff's claim against the Second Defendant is for:

- 6 Damages and/or equitable compensation ~~and/or an account of profits~~ in respect of the Second Defendant's procurement of the First Defendant's breaches of contract ~~and/or breaches of his duties of due skill, care and diligence~~ and/or his dishonest assistance in the First Defendant's breaches of its fiduciary duties owed to the Plaintiff ~~and/or knowing receipt of trust property~~, during the period when he acted as de facto controller of and/or agent for the First Defendant in furtherance of its duties as investment manager of the K1 Global Sub-Trust;
- 7 Payment of all sums due on the taking of such account;
- 8 Interest on sums so awarded;
- 9 Such further or other relief as may be just;
- 10 Costs.

DATED this 29th day of June 2009

~~DATED this 4th day of August 2009~~

*Maples and Calder*

**Maples and Calder**

THIS **AMENDED** WRIT was issued by Maples and Calder, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: CDM/MCK/649501.03/17157461)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 310 OF 2009

BETWEEN:

**CALEDONIAN TRUST (CAYMAN) LIMITED**  
(in its sole capacity as Trustee of the K1 Global Sub-trust,  
a Sub-trust of the Panacea Trust)

Plaintiff

AND:

- (1) **X1 FUND ALLOCATION GmbH**  
(A company incorporated under the laws of Germany)
- (2) **HELMUT KIENER (an individual)**

Defendants

---

**ACKNOWLEDGMENT OF SERVICE OF AMENDED WRIT OF SUMMONS**

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Amended Writ of Summons is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick where appropriate*)

yes

no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiffs (*tick box*)

yes

no

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Service of the Amended Writ is acknowledged accordingly

(Signed) .....  
Attorney for

Dated:

**Please complete overleaf**

**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiffs' attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Maples and Calder  
Ugland House  
PO Box 309  
George Town  
Grand Cayman  
KY1-1104  
Cayman Islands

Ref: CDM/MCK/649501-03

Indorsement by the First Defendant's attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

Indorsement by the Second Defendant's attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF AMENDED WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

4. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiffs (or on the Plaintiffs if acting in person).

If a Statement of Claim is indorsed on the Amended Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Amended Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Amended Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiffs may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

### **Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 28 days for acknowledging service, a Amended Writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Amended Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

## GENERAL INDORSEMENT

The Plaintiff's claim against the First Defendant is for:

- 1 Damages ~~and/or equitable compensation~~ and/or an account of profits in respect of the First Defendant's breaches of contract ~~and/or breaches of its duties of due skill, care and diligence~~ and/or breaches of its fiduciary duties owed to the Plaintiff during the period in which it was engaged as investment manager to the K1 Global Sub-Trust pursuant to a written investment management agreement with the Plaintiff dated 24 February 2006, from time to time amended, and terminated on 26 February 2009;
- 2 Payment of all sums due on the taking of such account;
- 3 Interest on sums so awarded;
- 4 Such further or other relief as may be just;
- 5 Costs.

The Plaintiff's claim against the Second Defendant is for:

- 6 Damages and/or equitable compensation ~~and/or an account of profits~~ in respect of the Second Defendant's procurement of the First Defendant's breaches of contract ~~and/or breaches of his duties of due skill, care and diligence~~ and/or his dishonest assistance in the First Defendant's breaches of its fiduciary duties owed to the Plaintiff ~~and/or knowing receipt of trust property~~, during the period when he acted as de facto controller of and/or agent for the First Defendant in furtherance of its duties as investment manager of the K1 Global Sub-Trust;
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DATED this 29th day of June 2009

DATED this 4th day of August 2009

*Maples and Calder*  
Maples and Calder

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1. State the full name of the Defendant by whom or on whose behalf the service of the Amended Writ of Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick where appropriate*)

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiffs (*tick box*)

yes

no

Service of the Amended Writ is acknowledged accordingly

(Signed) .....  
Attorney for

Dated:

**Please complete overleaf**

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**Indorsement by Plaintiffs' attorney (or by Plaintiffs if suing in person)** of his name, address and reference, if any, in the box below.

Maples and Calder  
Ugland House  
PO Box 309  
George Town  
Grand Cayman  
KY1-1104  
Cayman Islands  
  
Ref: CDM/MCK/649501-03

**Indorsement by the First Defendant's attorney (or by Defendant if suing in person)** of his name, address and reference, if any, in the box below.

[Empty box for First Defendant's attorney indorsement]

**Indorsement by the Second Defendant's attorney (or by Defendant if suing in person)** of his name, address and reference, if any, in the box below.

[Empty box for Second Defendant's attorney indorsement]

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF AMENDED WRIT OF SUMMONS**

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