

IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
CORPORATIONS LIST

No 130874 of 2022

IN THE MATTER OF APM SECURITY PLAN SICKNESS & ACCIDENT FUND

ABN: 57 413 197 086

KORDAMENTHA SHELF CO (APMSPSAF) PTY LTD ACN 642 981 799

Plaintiff

and

**CATHERINE MARGARET CONNEELY AND SCOTT DAVID HARRY LANGDON IN THEIR CAPACITY
AS JOINT AND SEVERAL LIQUIDATORS OF THE APM SECURITY PLAN SICKNESS & ACCIDENT
FUND ABN 57 413 197 086**

Applicants

AFFIDAVIT

On 23 August 2023, I, Catherine Margaret Conneely of Level 5, Chifley Tower, 2 Chifley Square, Sydney NSW 2000, registered liquidator and chartered accountant, say on oath:

A Introduction

1. I am a registered liquidator, chartered accountant and partner of KordaMentha.
2. I am also a director of the plaintiff, KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 (**New Custodian Trustee**), along with my partners of KordaMentha, Scott David Harry Langdon, Mark Anthony Korda and Mark Francis Xavier Mentha.
3. New Custodian Trustee was appointed in substitution of PP New Pty Ltd ACN 088 406 437 (**PP New**), as trustee of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 (**Fund**) trust (**Custodian Trust**), pursuant to orders made by Ward CJ in Eq (as the President then was) on 22 June 2021 in Supreme Court of New South Wales proceedings 2021/00179305 (**SC Proceedings**) (**22 June 2021 Orders**).
4. Subsequently, Mr Langdon and I were appointed as joint and several liquidators of the Fund (**Liquidators**) pursuant to orders made by Hammerschlag CJ in Eq on 6 May 2022 in these proceedings (**6 May 2022 Winding Up Orders**).
5. I make this affidavit from my own knowledge and the books and records of the Fund (**Books and Records**), except where otherwise indicated. Where I make this affidavit from facts outside of my personal knowledge, I am informed by the source stated and believe those facts to be true. Where I

Filed on behalf of: Catherine Margaret Conneely and Scott David Harry Langdon in their capacity as joint and several liquidators of the Fund, the Applicants

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refer in this affidavit to an opinion being held by me, I do so after having discussed the matter with Mr Langdon and having confirmed that he also holds the opinion to which I depose.

6. The investigations referred to in this affidavit have been carried out by me and by staff at KordaMentha who have acted on my instructions. My references to KordaMentha or New Custodian Trustee in this affidavit also include, where the context so dictates, information which I have obtained from those staff.
7. Exhibited to me at the time of swearing this affidavit are two bundles of documents titled Exhibit CMC-1. Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in Exhibit CMC-1.

B Purpose of this affidavit

8. This affidavit is filed in support of the interlocutory process dated 23 August 2023 seeking the Court's determination of the remuneration payable to the Liquidators pursuant to sections 60-10(1)(c) and 90-15 of the Insolvency Practice Schedule (Corporations) (IPS) being Schedule 2 to the *Corporations Act 2001* (Cth), in the amount of \$110,211.50 (excl. GST) from 6 May 2022 to 13 August 2023 (Period).

C Background

9. I seek leave to rely upon the following affidavits filed on behalf of New Custodian Trustee in the SC Proceedings:
 - (a) my affidavit sworn 22 June 2021 (**First Conneely Affidavit**);
 - (b) my affidavit sworn 28 October 2021 (**Second Conneely Affidavit**);
 - (c) my affidavit sworn 24 March 2022 (**Third Conneely Affidavit**);
 - (d) my affidavit sworn 3 November 2022 (**Fourth Conneely Affidavit**);
 - (e) my affidavit sworn 2 December 2022 (**Fifth Conneely Affidavit**);
 - (f) my affidavit sworn 9 December 2022 (**Sixth Conneely Affidavit**);
 - (g) my affidavit sworn 3 March 2023 (**Seventh Conneely Affidavit**); and
 - (h) my affidavit sworn 5 May 2023 (**Eighth Conneely Affidavit**).
10. I refer to paragraph 12 of the Second Conneely Affidavit where I depose to the matters leading up to the commencement of the SC Proceedings.

C1. Appointment of New Custodian Trustee

11. As a result of the matters deposed to in paragraph 12 of the Second Conneely Affidavit, on 22 June 2021, PP New and New Custodian Trustee made an application (**First Application**) before Ward CJ in Eq, seeking the appointment of New Custodian Trustee in substitution of PP New as custodian trustee of the Custodian Trust, the vesting of property held on trust for the Fund in New Custodian Trustee and consequential relief, including, the authorisation of a prescribed course of action by New Custodian Trustee (**First Course of Action**).

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C2. First Course of Action

12. Following the First Application and in accordance with the 22 June 2021 Orders, New Custodian Trustee undertook the First Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the First Course of Action in paragraphs 17 to 61 of the Second Conneely Affidavit.
13. As part of the First Course of Action, on 2 November 2021, New Custodian Trustee made an application (**Second Application**) before Ward CJ in Eq, seeking authorisation to, among other things, convene and hold a meeting of the current and past members of the Fund, creditors, claimants and contributories or potential creditors, claimants and contributories of the Fund and the persons who have been acting as officeholders on behalf of the Fund (together, **Interested Persons**) to vote on the future of the Fund (**First Meeting**), along with consequential steps to facilitate the holding of the First Meeting (**Second Course of Action**). At pages 1 to 5 of **Exhibit CMC-1** is a copy of the orders dated 2 November 2021 (**2 November 2021 Orders**).

C3. Second Course of Action

14. Following the Second Application and in accordance with the 2 November 2021 Orders, New Custodian Trustee undertook the Second Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the Second Course of Action in paragraphs 15 to 62 of the Third Conneely Affidavit.
15. As part of the Second Course of Action, on 6 May 2022, New Custodian Trustee made an application (**Third Application**) before Hammerschlag CJ in Eq, seeking, among other things, authorisation to (**Third Course of Action**):
 - (a) bring proceedings to wind up the Fund (i.e. these proceedings) (**Winding Up Proceedings**);
 - (b) provide notice (**Third Notice**) to the Interested Persons of:
 - (i) the orders made in respect of the Third Application and any reasons for judgment;
 - (ii) the Winding Up Proceedings; and
 - (iii) any orders or directions made by the Court in the Winding Up Proceedings;
 - (c) issue the Third Notice by:
 - (i) sending the Third Notice to the email addresses of Interested Persons known to New Custodian Trustee;
 - (ii) sending the Third Notice to the postal addresses of Interested Persons known to New Custodian Trustee; and/or
 - (iii) publishing the Third Notice and the documents referred to in the Third Notice on the following website: <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund> (**New Custodian Trustee Website**);

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- (d) sell the property held under the Custodian Trust (**Property**);
- (e) to the extent necessary, bring proceedings seeking the Court's opinion, advice and direction in relation to the sale of any of the Property (**Approval Application**);
- (f) transfer the net amount of the sale proceeds of the Property and any other funds held by New Custodian Trustee under the Custodian Trust (**Proceeds**) to the Liquidators, after paying all expenses incurred in respect of the Third Course of Action and retaining such other amount as to New Custodian Trustee appears to be reasonably necessary for satisfying any other liability or contingent liability of the Custodian Trust; and
- (g) obtain professional representation and advice for the purposes of sub-paragraphs (a) to (f) above.

16. At pages 6 to 9 of Exhibit CMC-1 is a copy of the 6 May 2022 Judicial Advice Orders.

C4. Third Course of Action

- 17. Following the Third Application and in accordance with the 6 May 2022 Judicial Advice Orders, New Custodian Trustee undertook the Third Course of Action. With the exception of the step referred to in paragraph 15(f) above, I depose to the steps taken by New Custodian Trustee pursuant to the Third Course of Action in the Fourth Conneely Affidavit, paragraphs 21 to 27 of the Fifth Conneely Affidavit, paragraphs 18 to 59 of the Sixth Conneely Affidavit and paragraphs 21 to 28 of the Eighth Conneely Affidavit.
- 18. The Liquidators are in the process of opening bank accounts for the Proceeds to be transferred by New Custodian Trustee to the Liquidators from the bank accounts held in the name of New Custodian Trustee, after paying all expenses incurred in respect of the Third Course of Action and retaining such other amount as appears to New Custodian Trustee to be reasonably necessary for satisfying any other liability or contingent liability of the Custodian Trust.
- 19. No further courses of action have been authorised by the Court and New Custodian Trustee does not intend on seeking approval to conduct any further courses of action.

D Summary of work undertaken by the Liquidators

- 20. Since being appointed as liquidators of the Fund on 6 May 2022, the Liquidators have undertaken the following work (distinct from that of New Custodian Trustee as deposed to above). This relates to work outside of the scope of the various courses of action which have been approved by the Court and includes:
 - (a) investigations in relation to Property, potential members of the Fund, the rules governing the affairs of the Fund over time (**Rules**), the members of the Committee of the Fund, the various benefits payable to members of the Fund and the classes of members of the Fund, and generally, the affairs of the Custodian Trust and Fund;
 - (b) undertaking a financial review of the Fund, with the assistance of Rothsay Chartered Accountants (**Rothsay**), including, annual bookkeeping and the preparation of financial

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statements, undertaking audits and completing tax lodgements (where required) for the financial years ended 30 June 2015 to 30 June 2021 at this time only, with future periods to follow;

- (c) liaising with external tax advisors to estimate tax payable in respect of the New Custodian Trustee's realisations of the Fund's assets;
 - (d) liaising with statutory bodies including the Office of State Revenue and Australian Taxation Office in respect of the Fund's tax obligations;
 - (e) attending to various notifications in respect of the appointment of liquidators to the Fund, including statutory notification to the Australian Securities & Investments Commission;
 - (f) liaising with the Liquidators' solicitors, Ashurst, to prepare an application under section 90-15 of the IPS seeking judicial advice from the Court in respect of, among other things, the relevant Rules which govern the Fund (there are various versions which do not appear to have been properly altered in accordance with the alteration provisions of the Rules), the dissolution date of the Fund and the member classes of the Fund (**Judicial Advice Application**);
 - (g) undertaking a review of the Books and Records to support findings in respect of the various iterations of the Rules, member classes and more general affairs of the Custodian Trust and Fund;
 - (h) ongoing cash flow management of the Fund's assets and preparation of estimated outcome statements to forecast potential distribution scenarios;
 - (i) liaising with Ashurst to prepare this application; and
 - (j) reporting to and communicating with Interested Persons.
21. I provide further detail of the work undertaken by the Liquidators in section H below.

E Categorisation of work undertaken by the Liquidators

22. The process for categorising and recording fees undertaken by the Liquidators in connection with the liquidation of the Fund (**Liquidation**) is described below.
23. Each staff member of KordaMentha maintains a computerised time sheet system, capturing time spent on various engagements on a daily basis. The time spent on various engagements is recorded in that time sheet on the basis of six minute units.
24. The system requires the person entering the time in the computerised system first to nominate the category of work performed before entering their time. My staff and I allocated our time to the following categories:
- (a) "Administration and risk mitigation";
 - (b) "Litigation/legal"
 - (c) "Statutory compliance";



- (d) "Assets";
- (e) "Trading"; and
- (f) "Interested Persons".

25. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with Interested Persons could have been recorded under either the "administration and risk mitigation" category or the "Interested Persons" category. However, each task is only recorded once, and the time for carrying out each task has only been recorded once.

26. These records have been extracted from the computerised system for the purpose of this application. The extracts, to the best of my knowledge and belief, only record time spent by each of my staff and I in relation to the Liquidation. KordaMentha has retained a separate file for the trusteeship of the Custodian Trust to ensure there is no overlap.

F Time-based method

27. The Liquidators have calculated their remuneration on the basis of an hourly rate for each staff member who carried out work in respect of the Liquidation multiplied by the number of hours spent by each person on the tasks performed (i.e. a time-based method).

28. The rates charged by the Liquidators are the hourly rates for the relevant staff member (at the time that each task was being performed) of KordaMentha. At page 10 of Exhibit CMC-1 is a copy of a schedule which provides an overview of the quantum of the remuneration claimed by the Liquidators during the Period in respect of the liquidation, and includes, among other things, the hourly rates (exclusive of GST) of each relevant staff member of KordaMentha as applicable during the Period. KordaMentha's rates are updated on 1 July every year.

29. I believe that the rates are reasonable given:

- (a) the work actually performed;
- (b) the experience of each staff member;
- (c) the responsibility of each staff member in relation to the work performed by them;
- (d) the complexity of the various tasks performed by each staff member;
- (e) rates charged by comparable firms for such work;
- (f) the costs incurred by my firm in performing the work in relation to Liquidation; and
- (g) the risks undertaken by KordaMentha in allowing the Liquidators to accept the appointment as liquidator of the Fund and conducting the work in relation to the appointment.

30. In the First Conneely Affidavit, which was filed in support of a successful application for the appointment of New Custodian Trustee as trustee of the Custodian Trust, I, at paragraphs 59 to 62, indicated to the Court that New Custodian Trustee proposed to calculate its remuneration using a time-based method and expressed the opinion that this approach was appropriate. New Custodian

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Trustee has adopted this method throughout the trusteeship and the Liquidators have also adopted this method throughout the liquidation.

31. I still consider that the time-based method rather than one of the other methods – for example, fixed fee, percentage (i.e. the fee is based on a percentage rate of a particular variable such as assets recovered) and contingency (i.e. contingent on a particular outcome), is the most appropriate for reasons including:
- (a) the method allows the Liquidators to produce a detailed analysis of time spent on each task by each individual staff member utilised in the Liquidation;
 - (b) the method provides full accountability to Interested Persons in the method of calculation and ensures that Interested Persons are only charged for work that is actually performed; and
 - (c) the method fairly reflects the necessary work performed, noting that there are a number of tasks that are required to be performed but do not relate to the realisation of assets, for example, investigations in relation to the potential members of the Fund, undertaking a financial review of the Fund and general administration and risk mitigation.

G Remuneration claimed

32. At **pages 11 to 12 of Exhibit CMC-1** is a summary of the key work performed by the Liquidators during the Period in respect of the Liquidation.
33. At **page 10 of Exhibit CMC-1** is a schedule which provides an overview of the quantum of the remuneration claimed by the Liquidators during the Period in respect of the Liquidation. The schedule identifies the following information:
- (a) each individual who carried out work during the Period;
 - (b) their position within KordaMentha;
 - (c) their hourly charge out rate;
 - (d) their total hours of work;
 - (e) the total remuneration charged in respect of their work; and
 - (f) the remuneration charged in respect of each of the categories referred to in paragraph 24.
34. I have also included a detailed schedule at **pages 13 to 22 of Exhibit CMC-1** setting out each time entry allocated to the categories identified in paragraph 24 above during the Period in respect of the Liquidation. I have reviewed the narrations for all the work claimed in this application on a line-by-line basis. From my knowledge of the work carried out and my supervision of the tasks undertaken, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.
35. In my view, all of the tasks detailed in this affidavit were necessary for the Liquidation and in order to maximise realisations for the benefit of Interested Persons.

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36. KordaMentha follows the Australian Restructuring Insolvency and Turnaround Association Code of Professional Practice (**ARITA Code**) in relation to the insolvency appointments KordaMentha undertakes, including the Liquidation. At **pages 23 to 77 of Exhibit CMC-1** is a copy of "Practice Statement Insolvency 5: Remuneration reporting" which came into effect on 31 March 2021 and is contained in the fourth edition of the ARITA Code.

H Remuneration for the Period

H1. Summary

37. Immediately below is a summary of the amounts claimed in respect of work undertaken by the Liquidators in the relevant categories identified in paragraph 24 above in connection with the Liquidation during the Period. At paragraphs 38 to 55 below, I provide specific details of the work my staff and I performed during the Period by reference to those categories.

Category	Remuneration sought to be approved for the Period
Administration and risk mitigation	\$2,575.00
Litigation/legal	\$30,529.50
Assets	\$490.00
Interested Persons	\$3,595.00
Statutory compliance	\$68,806.00
Trading	\$4,126.00
TOTAL (excluding GST)	\$110,121.50

H2. Administration and risk mitigation

38. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$2,575.00 (excluding GST).
39. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 13 of Exhibit CMC-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
40. In summary, the Liquidators have undertaken the following work in respect of the administration and risk mitigation category:
- (a) liaising with insurers in respect of appointment of liquidators, notifying insurers of events as required, cancelling relevant policies on the sale of assets and arranging for the refund of policies as applicable;

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- (b) maintaining the New Custodian Trustee Website containing information for Interested Persons;
- (c) attending to ongoing management of Relativity, the online document management platform for the Books and Records;
- (d) preparation of internal billings for the Liquidators' remuneration;
- (e) general engagement planning meetings and discussions relating to the Liquidation; and
- (f) general administration including filing of documents and document finalisation relating to the Liquidation.

H3. Litigation/legal

- 41. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$30,529.50 (excluding GST).
- 42. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **pages 14 to 15 of Exhibit CMC-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
- 43. This category has been used to record time spent liaising with Ashurst, in particular, in respect of the various applications made or to be made by the Liquidators, namely, this application and the Judicial Advice Application. In summary, the Liquidators have undertaken the following work in respect of the litigation/legal category:
 - (a) liaising with and assisting Ashurst in respect of the preparation of the Judicial Advice Application. This included:
 - (i) considering the issues which are likely to arise in respect of the Judicial Advice Application;
 - (ii) liaising with Ashurst and counsel in respect of the various issues pertaining to the Judicial Advice Application;
 - (iii) commencing the preparation of my affidavit in support of the Judicial Advice Application;
 - (iv) reviewing Books and Records to determine appropriate treatment of various issues in the Judicial Advice Application;
 - (v) preparing analysis to review potential outcomes of the Judicial Advice Application; and
 - (vi) considering, reviewing and collating relevant information and documentation for the exhibits to the affidavit in support of the Judicial Advice Application; and
 - (b) liaising with and assisting Ashurst in respect of various other issues relating to the Liquidation.

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H4. Assets

44. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$490.00 (excluding GST).
45. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 21 of Exhibit CMC-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
46. The Liquidators have spent limited time in respect of this category as the Property was realised by New Custodian Trustee. In summary, the Liquidators have undertaken the following work in respect of the assets category:
- (a) issuing notice of appointment of liquidators to various stakeholders/suppliers of the Point Clare Properties; and
 - (b) ongoing management of the Fund's bank accounts.

H5. Interested Persons

47. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$3,595.00 (excluding GST).
48. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 22 of Exhibit CMC-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
49. My staff and I have been required to consider and respond to a number of enquiries in respect of the Liquidation during the Period. In summary, the Liquidators have undertaken the following work in respect of the Interested Persons category:
- (a) maintaining and revising Interested Persons listing based on investigations and Books and Records;
 - (b) continuing categorisation of classes of Interested Persons based on the Rules;
 - (c) reviewing and considering additional information provided by Interested Persons; and
 - (d) responding to various queries received from Interested Persons via email and phone calls.

H6. Investigations and statutory compliance

50. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$68,806.00 (excluding GST).
51. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **pages 16 to 20 of Exhibit CMC-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.

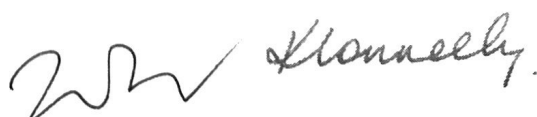


52. In summary, the Liquidators have undertaken the following work in respect of the investigations and statutory compliance category:

- (a) reviewing the Books and Records to identify additional potential members of the Fund and additional property of the Fund;
- (b) reviewing the Books and Records to identify sets of Rules governing the affairs of the Fund at various points in time;
- (c) liaising with various statutory bodies, including the Office of State Revenue and Australian Taxation Office (ATO), including providing notice of appointment of liquidators;
- (d) ongoing correspondence with the ATO in respect of outstanding obligations and lodgements;
- (e) attending to statutory notifications to Australian Securities & Investments Commission, and correspondence in respect of statutory forms;
- (f) attending to the preparation of bank reconciliations for each bank account held by the Fund;
- (g) preparing memorandum of findings from investigations into Rules, minutes of meetings of the Fund's committee and other Rules-related correspondence;
- (h) preparing memorandum of findings from investigation into members and membership classes of the Fund;
- (i) reviewing data from the Books and Records to prepare record of various benefits paid to members over time;
- (j) conducting analysis of conduct of the Fund per the Books and Records against the Rules;
- (k) liaising with Rothsay in respect of preparation of accounts for the financial year ended 30 June 2015 (FY15) to the financial year ended 30 June 2021 (FY21);
- (l) liaising with Rothsay in respect of the preparation for financial statements for the period FY15 to FY21;
- (m) assisting external auditors with a review of the Fund's accounts and financial statements, including collating and reviewing Books and Records at the request of the auditors;
- (n) reviewing company tax returns prepared by Rothsay for the period FY15 to FY21; and
- (o) engaging external tax advisors to consider capital gains tax potentially applicable to New Custodian Trustee's asset realisations, including review of relevant cost base calculations.

H7. Trading

53. The total amount of remuneration sought with respect to this category for the Period in respect of the Liquidation is \$4,126.00 (excluding GST).



54. A schedule setting out each time entry allocated to this category during the Period in respect of the Liquidation is at **page 21 of Exhibit CMC-1**. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged and a narration of the task undertaken.
55. This category has been used to record time spent on general accounting tasks and day-to-day administration connected with the Fund. In summary, the Liquidators have undertaken the following work in respect of the investigations and statutory compliance category:
- (a) general accounting tasks, including, processing receipts, attending to bank account reconciliations and processing receipts on Insol;
 - (b) preparation and review of various cash flow statements to ensure appropriate management of the Fund's assets;
 - (c) preparation of an estimated outcome statement to forecast Proceeds available for distribution to Interested Persons; and
 - (d) scenario analysis of estimated outcome statement for forecast Proceeds available under various sets of distribution circumstances.

I Matters relevant to consideration of remuneration

56. I note that the Court must have regard to whether the remuneration of an external administrator is reasonable and takes into account any or all of the matters listed in section 60-12 of the IPS when reviewing a remuneration determination. In the circumstances, I consider each of these matters (where relevant) in turn below.

11. The extent to which the work by the Liquidators was necessary and properly performed (s 60-12(a))

57. I consider that the work performed by the Liquidators as deposed to above was properly incurred by the Liquidators. This work was foreshadowed in previous affidavits filed in the SC Proceedings, including, paragraphs 82 to 84 of the Third Conneely Affidavit (which was filed in support of New Custodian Trustee's application for the appointment of the Liquidators). In this regard, I note that the work performed by the Liquidators related to, for the most part, the litigation/legal and investigations and statutory compliance categories and will be necessary in order to ultimately determine how the Proceeds should be distributed to Interested Persons.

12. The period during which the work was performed by the Liquidators (s 60-12(c))

58. The work performed by the Liquidators in respect of the Liquidation occurred over the period May 2022 to August 2023 (a period of approximately 15 months). The total professional fees over this period was \$110,121.50 (excluding GST), equating to approximately \$7,341.43 (excluding GST) per month.

13. The quality and complexity of the work performed by the Liquidators (s 60-12(d) and (e))

59. I consider the work performed by the Liquidators (and Ashurst) has been of a high quality. The majority of the remuneration incurred related to this application and the Judicial Advice Application.



I note that the Judicial Advice Application is a complex application in that it will seek the Court's advice in respect of a number of questions in connection with the Liquidation which arise, in large part, because of the paucity of the records of the Fund and resulting uncertainty with respect to the affairs of the Fund. As deposed to above, the Liquidators consider the application is necessary in order for the Liquidators to distribute the Proceeds to Interested Persons.

14. The level of risk or responsibility accepted by the Liquidators (s 60-12(g))

60. I considered that the level of risk or responsibility was higher than a typical external administration process, in large part due to the paucity of the records of the Fund, uncertainty with respect to the affairs of the Fund and the potential competing interests of Interested Persons with respect to the distribution of the Proceeds. In order to protect the Liquidators from claims by Interested Persons that they have not acted in accordance with the interests of Interested Persons with respect to the distribution of the Proceeds, the Liquidators consider it necessary to make the Judicial Advice Application.

15. The value and nature of any property dealt with, or likely to be dealt with, by the Liquidators (s 60-12(h))

61. As deposed to in the Third Conneely Affidavit, the Property as at appointment of New Custodian Trustee consisted of the properties located at 67 Victory Parade, Tascott NSW 2250 (**67 Victory Parade**) and 69 Victory Parade, Tascott NSW 2250 (**69 Victory Parade**), shares in Amcor Plc (**Amcor Shares**) and shares in Orora Ltd (**Orora Shares**) and cash held in various bank accounts maintained with St George Bank and Bank Australia (which have since been transferred to Macquarie). The total value of the Property currently held by the Liquidators is approximately \$8.6 million, broken down as follows:
- (a) \$1,750,000 – 67 Victory Parade (being the sale price of the property – see paragraph 57 of the Fifth Conneely Affidavit and paragraph 27 of the Eighth Conneely Affidavit);
 - (b) \$1,300,000 – 69 Victory Parade (being the sale price of the property – see paragraph 57 of the Fifth Conneely Affidavit and paragraph 27 of the Eighth Conneely Affidavit);
 - (c) \$4,837,388 – Amcor Shares (being the realised value of the shares, net of brokerage costs – see paragraph 25 of the Fifth Conneely Affidavit);
 - (d) \$705,471 – Orora Shares (being the realised value of the shares, net of brokerage costs – see paragraph 25 of the Fifth Conneely Affidavit); and
 - (e) the existing cash balances of the various accounts maintained with St George Bank and Bank Australia.

62. I am not aware of any further property held on the trust for the Fund.

16. The number, attributes and conduct, or the likely number, attributes and conduct, of Interested Persons (s 60-12(i))

63. The Liquidators have identified approximately 1,004 Interested Persons of the Fund and have contact details of approximately 421 Interested Persons (all being former employees of the Fund or

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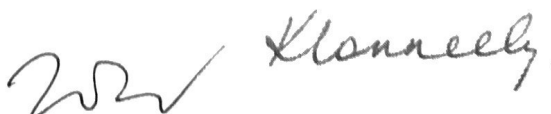
relatives of the former employees). In previous applications made by New Custodian Trustee for approval of its remuneration (and disbursements), Interested Persons have not sought to oppose or be heard on these applications. I anticipate that the number, attributes and conduct of Interested Persons in respect of these applications will likely be the same for this application.

17. The time properly taken by the Liquidators in performing the work (s 60-12(j))

64. In addition to the matters deposed to in paragraphs 27 to 31 above in relation to the rates and the calculation of the Liquidators' remuneration during Period, I note that:
- (a) the work performed by the Liquidators was delegated to staff members of KordaMentha having regard to their respective rates, skill and experience and the complexity of the Liquidation;
 - (b) the majority of the work was performed by a Senior Business Analyst/Executive Analyst/Senior Executive Analyst who had the experience to carry out day-to-day tasks under the supervision of more senior staff. The Senior Business Analyst/Executive Analyst/Senior Executive Analyst's hourly charge out rate is \$375 for FY22, \$495 for FY23 and \$550 for FY24, and they accounted for 64% of the professional fees sought;
 - (c) the Senior Business Analyst/Executive Analyst/Senior Executive Analyst was primarily supervised by me (hourly charge out rate \$725 for FY22, \$795 for FY23 and \$850 for FY24) and a Director/Executive Director (hourly charge out rate \$675 for FY22, \$745 for FY23 and \$850 for FY24). Together this accounted for 30% of the total professional fees sought; and
 - (d) general administrative tasks falling into the administration and risk mitigation category were performed by less senior but appropriately qualified staff such as Administration Assistants and Undergraduates.

J Other matters

65. At page 78 of Exhibit CMC-1 is a summary of receipts and payments for the Liquidation for the Period.
66. In respect of the ongoing Liquidation, the Liquidators are in the process of making the Judicial Advice Application. Upon determination of the Judicial Advice Application, the Liquidators will be in a position to identify the members of the Fund who are entitled to a distribution of the Proceeds and, following this, in the event that the members cannot agree to a unanimous distribution method in respect of the Proceeds, make an application to determine how to distribute the Proceeds amongst members. The Liquidators will also continue to undertake the financial review of the Fund with the assistance of Rothsay, including annual bookkeeping and the preparation of financial statements, undertaking audits and completing tax lodgements where required.
67. The Liquidators have not and do not propose on seeking approval of their remuneration for the Liquidation for the Period under section 60-10(1)(c) of the IPS. This is in circumstances where:

 W. W. Klonneely

- (a) in the past, New Custodian Trustee has been required to seek Court approval of its remuneration and disbursements paid in respect of the trusteeship of the Custodian Trust; and
- (b) Interested Persons have not historically expressed a view on New Custodian Trustee's remuneration and disbursements (see for example the Seventh Conneely Affidavit) and, in respect of the remuneration sought by the Liquidators, I consider the position will likely be the same.

68. I will swear a further affidavit which annexes the notices to be issued under rule 9.2(2) of the *Supreme Court (Corporations) Rules 1999* (Cth) and any response/s from Interested Persons.

SWORN at

SYDNEY, NSW

Signature of deponent

K. Conneely

Name of witness

Thu Thao Janet Pham

Address of witness

5 Martin 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:

Current driver licence

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

Signature of witness

[Signature]

Endorsement by witness: I have signed a scanned copy of the signed document sent to me electronically by the deponent, having witnessed the signature of the deponent over audio visual link in accordance with section 14G(2) of the *Electronic Transactions Act 2000* (NSW).