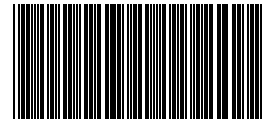




Filed: 6 February 2024 10:39 AM

Form 40
UCPR 35.1



D0001W91Q1

AFFIDAVIT OF Catherine Margaret Conneely - 5 February 2024

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2022/00130874

TITLE OF PROCEEDINGS

First Applicant	Catherine Margaret Conneely and Scott David Langdon in their capacity as joint and several liquidators of the APM Security Plan Sickness & Accident Fund
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FILING DETAILS

Filed for	Catherine Margaret Conneely and Scott David Langdon in their capacity as joint and several liquidators of the APM Security Plan Sickness & Accident Fund, Applicant 1
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Legal representative	Bernard Colin Walrut
Legal representative reference	

Telephone	
Your reference	1000 122 769

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Affidavit (General) (e-Services), along with any other documents listed below, were filed by the Court.

Affidavit (UCPR 40) (24.02.05 - Affidavit of Kate Conneely sworn 5 February 2024.pdf)

[attach.]

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 (IN LIQUIDATION)

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 (IN LIQUIDATION) ABN 57 413 197 086**

Applicants

AFFIDAVIT

On 5 February 2024, 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 refer to my affidavit sworn 3 November 2023 and filed in these proceedings on 8 November 2023 (which I will refer to in this affidavit as the **3 November Affidavit**).
2. Unless otherwise defined, capitalised terms used in this affidavit shall have the same meaning as set out in the 3 November Affidavit.
3. I make this affidavit from my own knowledge and the 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 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.
4. Exhibited to me at the time of swearing this affidavit are bundles of documents titled "Exhibit CMC-3" and "Confidential Exhibit CMC-4". Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in **Exhibit CMC-3** and **Confidential Exhibit CMC-4**.

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

Prepared by:

Ashurst Australia
Lawyers
5 Martin Place
Sydney NSW 2000

Tel: (02) 9258 6000
Fax: (02) 9258 6999
DX: 388 Sydney
Ref: 1000-122-769

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5. Confidential Exhibit CMC-4 contains documents which contain legally privileged information. The Liquidators seek an order under section 7 of the *Court Suppression and Non-publication Orders Act 2010* (NSW) limiting the disclosure of these documents.

B Purpose of this affidavit

6. This affidavit is my second affidavit filed in support of the interlocutory process filed on 8 November 2023 seeking the Court's advice and directions in respect of certain matters material to the determination of the members of the Fund.
7. This affidavit is made for the purposes of supplementing the 3 November Affidavit.

C Notice to Interested Persons

8. On 15 November 2023, I instructed my staff to provide notice of this application to Interested Persons (**Rules Application Notice**). The Rules Application Notice, together with a copy of the 3 November Affidavit and Exhibit CMC-1 to the 3 November Affidavit, was available for download from the Liquidators' website (<https://kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>) (**Liquidators' Website**) on 15 November 2023 by clicking on "Notice of Rules Application (15 November 2023)", and "Exhibit CMC-1 - Rules Application (3 November 2023)" in the "Download documents" section of the Liquidators' Website. At **page 1 to 64 of Exhibit CMC-3** is a copy of the Rules Application Notice.
9. The Rules Application Notice includes/provides notice of, among other things:
- (a) the Liquidators' intention to apply to the Court to seek orders, directions and/or declarations that:
 - (i) the 2005 Rules applies as the Rules which govern the Fund or alternatively, that the Liquidators would be justified in proceeding on the basis that the 2005 Rules contain the Rules which govern the Fund;
 - (ii) the Fund dissolved on 1 July 2012, or alternatively, the Liquidators would be justified in proceeding on the basis that the Fund dissolved on 1 July 2012;
 - (iii) the following Member Classes exist, or alternatively, the liquidators would be justified in proceeding on the basis that the following Member Classes exist:
 - (A) full members
 - (B) honorary members; and
 - (C) unfinancial members; and
 - (iv) that the Liquidators would be justified in proceeding on the basis that the Member Classes are to be determined in accordance with the directions given by the Court; and
 - (b) the date by which Interested Persons have to share their views on the Rules Application, being 1 December 2023, by providing responses Liquidators at the addresses provided for in the notice.




10. On 15 November 2023, the Liquidators' staff sent the Rules Application Notice, the 3 November Affidavit and Exhibit CMC-1 to the 3 November Affidavit to the known email addresses of the Interested Persons identified by the Liquidators at the time. At **pages 1 to 11 of Confidential Exhibit CMC-4** is a list of the Interested Persons (and their email and/or postal addresses) to whom the Rules Application Notice was sent (**Current Interested Persons List**).
11. At **page 65 of Exhibit CMC-3** is a copy of the covering email sent to the emails addresses of Interested Persons referred to in paragraph 10 above on 15 November 2023 (excluding the attachment). I note that the recipient or "to" field in the email is blank because the Interested Persons were all blind copied such that an Interested Person could not identify another Interested Person the email was sent to.
12. Between 15 November 2023 and 16 November 2023, the Rules Application Notice was mailed to the known postal addresses of the Interested Persons identified by Liquidators at the time.
13. As at the date of swearing this affidavit, the Liquidators have received return to sender mail from 184 Interested Persons. At **pages 1 to 12 of Confidential Exhibit CMC-4** is a consolidated list of Interested Persons and a summary of the return to senders. The Interested Persons whom the Liquidators have received return to sender mail from are identified by "RTS" marked next to their name under the column with heading "Address Line 1".
14. I note that this is a return rate of approximately 61% in respect of the addresses referred to in an original leatherbound book comprising the Books and Records and a return rate of approximately 44% for all recipients. Given the high return rate, the Liquidators do not propose on continuing to send future correspondence via post unless otherwise directed by the Court.
15. I am informed by my solicitors, Ashurst, that:
 - (a) notice of this application was provided to ASIC on 27 November 2023; and
 - (b) as at the date of swearing this affidavit, they have not received any responses from ASIC.

At **pages 66 to 68 of Exhibit CMC-3** is a copy of the cover email and letter sent to ASIC.

D Response to notice

16. As at the date of swearing this affidavit, the Liquidators have received 12 responses, via email, from Interested Persons in respect of the Rules Application Notice.

Interested Person 1

17. On 17 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 1 sharing their view that, among other things:
 - (a) any living contributor that has made payment to the fund should be eligible for some portion of the remaining assets; and
 - (b) the assets of the fund do not belong to the few remaining members that happened to be in the fund at 1 July 2005 or 1 July 2012 or any other arbitrary date.




At **page 13 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 1.

Interested Person 2

18. On 17 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 2, among other things, providing details of their employment at Botany Mill and requesting next steps and the approximate date of completion. At **page 14 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 2.

Interested Person 3

19. On 20 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 3, among other things, providing details of their employment at Botany Mill and sharing their view that:
- (a) under the Rules at the time they joined, anyone who had over 25 years' membership was also an Honorary Member; and
 - (b) the rules that were applicable at the time Interested Person 3 joined should be the relevant rules that apply.

At **page 15 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 3.

Interested Person 4

20. On 20 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 4 providing details of their employment at Botany Mill (including that they were made redundant on 31 May 2012) and querying whether that would put him in the honorary member class. At **pages 16 to 17 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 4.

Interested Person 5

21. On 20 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 5, among other things, providing details of their employment/redundancy and sharing their view that himself and interested parties who were also members of the Fund leading up to the May 2012 redundancies should be included in the fund distribution options. At **pages 18 to 19 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 5.

Interested Person 6

22. On 23 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 6, among other things, providing details of their employment at "Amcor Botany" and offering to provide evidence of such employment. At **page 20 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 6.

Interested Person 7

23. On 23 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 7 sharing their view:
- (a) that approximately 80-90% of financial members of the fund took redundancy in May 2012 "when the old B7 & B8 paper machines were shut down for the final time"; and
 - (b) that strictly speaking, that would make them "unfinancial" members at the time of the funds dissolution; and
 - (c) that "we should be considered as financial members as the fund effectively closed along with the closure of B7 & B8".

At **page 21 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 7.

24. On 30 November 2023, the Liquidators wrote to Interested Person 7 requesting further details as to:
- (a) when Interested Person 7 started and stopped working at the Botany Mill and/or the B7 and B8 paper machines; and
 - (b) whether the Interested Person 9 was made redundant in or around May 2012.

At **page 22 to 27 of Confidential Exhibit CMC-4** is a copy of the email from the Liquidators to Interested Person 7.

25. On 30 November 2023, Interested Person 7 responded to the Liquidators and provided:
- (a) a copy of a letter dated 24 May 2012 from Amcor to Interested Person 7 confirming that Interested Person 7 was employed at "Amcor Paper and Recycling – Botany Mill" for the period from 19 July 1999 to 24 May 2012; and
 - (b) a copy of a letter dated 18 January 2000 from Amcor to Interested Person 7 confirming that Interested Person 7 was temporarily employed at Botany Mill for a fixed term commencing on 19 July 1999 to 19 January 2000, and offering Interested Person 7 a permanent position at Botany Mill.

At **page 22 to 27 of Confidential Exhibit CMC-4** is a copy of that email from Interested Person 7.

Interested Person 8

26. On 25 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 8, among other things, sharing their view:
- (a) that in 1988, "A.P.M.-Botany" closed its engineering workshop and "made some 100-200 employees redundant. These people all became unfinancial members or honorary members (25 year member)"; and
 - (b) that their original opinion on the "split up" was that payment should be prorata for years of membership, however, they now feel "this would be an onerous task, take many man/hours at great cost" and therefore, they now prefer "equal payment to all eligible people".

At **page 28 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 8.

Interested Person 9

27. On 27 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 9, among other things, sharing their view that:
- (a) the majority of employees that were members of the Fund before it was dissolved in July 2012 were made redundant in May 2012; and
 - (b) the class of members defined as "full members" should include anyone who was made redundant from Amcor Botany Mill in 2012, "as the reason for the dissolution of the Fund in July 2012 was because of the closure of the B7 and B8 paper machines at Botany Mill and the subsequent redundancy of the majority of its employees/staff".

At **page 29 of Confidential Exhibit CMC-4** is a copy of that email from Interested Person 9.

28. On 30 November 2023, the Liquidators wrote to Interested Person 9 requesting further details as to:
- (a) when Interested Person 9 started and stopped working at the Botany Mill and/or the B7 and B8 paper machines; and
 - (b) whether the Interested Person 9 was made redundant in or around May 2012, or whether they were redeployed elsewhere in 2012.

At **page 30 to 32 of Confidential Exhibit CMC-4** is a copy of the email from the Liquidators to Interested Person 9.

29. On 30 November 2023, Interested Person 9 responded to the Liquidators' queries and confirmed, among other things:
- (a) they started at the Botany Mill on 5 February 2001;
 - (b) they commenced 12 months of maternity leave on 16 January 2012 (expected to return to work on 14 January 2013);
 - (c) they were paid maternity leave and annual leave during their maternity leave period which ended on 8 April 2012, and was to take unpaid maternity leave for the remainder of their leave period until 11 January 2012;
 - (d) while they cannot find any record of the date of their redundancy, they recall it was in May 2012; and
 - (e) they returned to Botany Mill in August 2015, but had three years at home with their children, so their term of service did not carry over.

At **page 30 to 32 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 9 to the Liquidators.

Interested Person 10

30. On 29 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 10, among other things, sharing their view that:

- (a) the 2005 Rules should be accepted as the rules; and
- (b) agreeing that 1 July 2012 should be used as the date the fund was dissolved.

At **page 33 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 10.

Interested Person 11

31. On 30 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 11 sharing their view that they are "happy to proceed" with the 2005 Rules and Distribution Scenario 1 being applied. At **page 34 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 11.

Interested Person 12

32. On 30 November 2023, the Liquidators received a response to the Rules Application Notice from Interested Person 12, among other things, sharing their view that:

- (a) all "assets & moneys" from the Fund "should be shared equally by living members only";
- (b) those who are "life members" and/or have been members for a longer period of time than others:
 - (i) have "already greatly benefitted more" from the Fund than someone who has been a member for a shorter period; and
 - (ii) should not be entitled to a "greater share base on a pro rata years of membership scenario";
- (c) the yearly monetary benefits the Fund offered "by far exceeded the yearly contribution in dollar terms" and also "provided members the use of 2 holiday properties". Therefore, those with a longer membership period "have already greatly benefitted more monetarily over those years"; and
- (d) "only those living who paid in as a member " should received a share of the proceeds from the winding up of the Fund.

At **page 35 of Confidential Exhibit CMC-4** is a copy of the email from Interested Person 12.

33. As at the date of swearing this affidavit, the Liquidators have not received any further responses from other Interested Persons in respect of the Rules Application Notice, which were due on 1 December 2023.

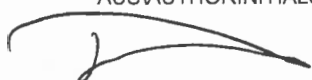
E Interested Persons made redundant in May 2012

34. To provide context to the matters relating to the redundancies of a number of Interested Persons in 2012 (as deposed to in this section), I set out below the circumstances leading up to the initial decision to wind up the Fund (which I depose to in detail in section C of the 3 November Affidavit):

- (a) the Fund (and Custodian Trust) appears to have been established as early as the 1950's in order to provide, among other things, sickness, accident and funeral benefits to certain employees of APM, and was funded by contributions from its members and APM;
 - (b) the Botany Mill historically consisted of various paper machines, which were housed in the Botany Mill;
 - (c) as suggested in the Ryan Note (dated 19 October 2011), a reason for the winding up of the Fund was the that the closure of paper machines, B7 and B8, provides a logical breakpoint with less that 30 out of 115 members of the Fund moving across to a new machine in building, B9;
 - (d) around June 2012, Mr Ryan emailed members of the Fund informing them that Amcor had decided to wind up the Fund (and this process would likely take years to complete) and that the three remaining members of the Committee believe that from 1 July 2012, the Fund should be run in "caretaker mode"; and
 - (e) around July 2012, B7 and B8, ceased operation and were decommissioned. These machines were replaced by B9 which has been operational since early 2013.
35. Based on the Liquidators' review of the Books and Records and further investigations in relation to the employees of APM, it appears that:
- (a) the number of employees of APM working at the Botany Mill immediately before the closure of B7 and B8 in around June 2012 appears to have been approximately 115. This is based on the Ryan Note;
 - (b) following the closure of B7 and B8 in June 2012, there appears to have been approximately 32 employees of APM working at the Botany Mill. This is based on the list of purported "current members" of the Fund sent by Fiona Faust to Peter Ryan on 13 June 2012 and is reflective of the numbers referred to in the Ryan Note. This email appears at page 1 of Exhibit CMC-2; and
 - (c) as at the date of the First Application, being 22 June 2021, it is unlikely there were any employees of APM working at the Botany Mill. This is because in about December 2013, APM implemented a scheme of arrangement for a demerger of its paper distribution business with Orora. Orora subsequently sold this business to Opal in about April 2020 (see paragraphs 24 and 31 of the 3 November Affidavit). As such, from about December 2013, any employees working at the Botany Mill are likely to have been employees of Orora or Opal (or entities associated with these entities).
36. I note that of the 12 responses received from interested persons, at least 4 responses were from interested persons who allege they were made redundant around 2012 as a result of the closure of B7 and B8.




37. As noted at paragraph 20 above, Interested Person 4 was made redundant on or around 31 May 2012 and queried whether they would be classified as an honorary member. Based on the Books and Records, it is unclear whether Interested Person 4 was an honorary member. This is because, the latest source of honorary members that the Liquidators have is a physical board of long term employees of the Botany Mill. The board lists those employees with more than 25 years' service however, under the 2005 Rules (which the Liquidators' suggest should be adopted), a member may qualify for honorary membership with 10 years' continuous service. Interested Person has advised that their start dated was in 1996 (which, subject to the provision of supporting evidence, may make them an honorary member). Interested Person 4 is not otherwise on the June 2012 Member List.
38. As noted at paragraph 21 above, Interested Person 5 was made redundant in May 2012 and queried whether they would be classified as a financial member on the June 2012 member list. Based on the Books and Records, it is the Liquidators' preliminary view that Interested Person 5 is an honorary member however they were not included on the June 2012 Member List.
39. As noted at paragraphs 23 to 25 above, Interested Person 7 was made redundant on 24 May 2012 and shared their view that they and other persons made redundant as a result of the closure of B7 and B8 "should be considered as financial members as the fund effectively closed along with the closure of B7 & B8". Based on the Books and Records, it is unclear whether Interested Person 7 was an honorary member however they have advised that their start dated was in 1999 (which may, subject to the provision of supporting evidence, make them an honorary member). Interested Person 7 is not otherwise on the June 2012 Member List.
40. As noted at paragraphs 27 to 29 above, Interested Person 9 was made redundant in May 2012 and shared their view that the class of members defined as "full members" should include anyone who was made redundant in 2012. Based on the Books and Records, it is unclear whether Interested Person 9 was an honorary member however they have advised that their start date was in 2001 (which may, subject to the provision of supporting evidence, make them an honorary member). Interested Person 9 is not otherwise on the June 2012 Member List.
41. Having regard to the redundancies made in May 2012 being caused by the closure of B7 and B8, and such closure of B7 and B8 also being part of the reason the Fund was wound up (as noted in the Ryan Note), the Liquidators consider that it would be unfair for any full members who were made redundant in or around May 2012 as a result of the closure of B7 and B8, to be excluded from participating in any distribution of the Fund.
42. Adopting the practical views deposed to in the 3 November Affidavit regarding the application of the 2005 Rules (see section F.12 of the 3 November Affidavit) and a Fund dissolution date of 1 July 2012 (see section H.3 of the 3 November Affidavit), it is the Liquidators' preliminary view that any full members who were made redundant in or around May 2012 (unless they were honorary members) would cease to be a member of the Fund because clause 3.4 of the 2005 Rules provides that membership of the Fund will cease on, among other things, the member leaving the employ of the Amcor Ltd. An extract of the relevant clause is below:



3.4 Membership of THE FUND will cease

- i) On the member leaving the employ of THE COMPANY.*
- ii) On the member being transferred from AFPA Botany or NSW Recycling.*
- iii) On the expulsion from THE FUND in accordance with the rules.*

43. All other versions of the Rules contain a similar provision to clause 3.4 in that membership will cease upon the member leaving the employ of the relevant company. I have not extracted these provisions below but note that they are contained at pages 22, 147, 160, 179, 198, 271 of Exhibit CMC-1. I also note that a comparison of relevant clause appears in a table at page 235 of Exhibit CMC-1.
44. As such, the Liquidators are of the view that any full members who were made redundant as a result of the May 2012 redundancies ought to be considered as full members, subject to the other directions provided by this Court in relation to the Rules which govern the Fund and the dissolution date of the Fund. The Liquidators' acknowledge that this view may be controversial in the context of the 2005 Rules (and any other Rules), having regard to the provisions which deal with when membership ceases. However, the Liquidators consider it to be the fair and equitable position to adopt because it appears, based on the timeline deposed to above, that the redundancies of the members employed at the Botany Mill were a direct consequence of the closure of B7 and B8 – which occurred just before the proposed dissolution date of the Fund. If the Court is minded to make this direction, I note that the Liquidators will still need to conduct a verification process to determine whether these individuals were full members at the relevant time and whether they were made redundant in the circumstances set out above.

F Corrections to 3 November Affidavit

45. I refer to paragraph 55(f) of the 3 November Affidavit which identifies the 2008 Rules as being at pages 194 to 212 of Exhibit CMC-1.
46. It has come to my attention that the documents exhibited at pages 194 to 212 of Exhibit CMC-1 are the 2005 Rules.
47. Exhibited at **pages 69 to 87 of Exhibit CMC-3** is a copy of the 2008 Rules.

SWORN at

SYDNEY, NSW

Signature of deponent

Klanneely

Name of witness

Jesse Dwyer

Address of witness

11/5 Martin Place Sydney NSW

Capacity of witness

SolicitorAnd 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 licenceIdentification 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).~~

J.D.