

KordaMentha

To the Interested Persons as addressed

NO ACTION REQUIRED

29 June 2022

Dear Sir/Madam

**KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 as trustee for
APM Security Plan Sickness & Accident Fund (In Liquidation) ('the Fund') trust ('Trust')
ABN 57 413 197 086**

New Trustee remuneration and disbursement application

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). The First Order authorised the New Trustee to undertake a course of action in respect of the Trust ('First Course of Action'). Subsequently, on 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), the New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action').

Pursuant to the First Order and the Second Order, the New Trustee's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis for the First Course of Action, being from 22 June 2021 to 1 November 2021, and the Second Course of Action, being from 2 November 2021 to 5 May 2022 ('the Remuneration Periods'), respectively, subject to the Court's review and approval.

Consequently, I advise all Interested Persons that the New Trustee has filed its application seeking the Court's review and approval of New Trustee's remuneration and disbursements for the Remuneration Periods ('the Application').

Enclosed, for your reference, in respect of the Application, is the:

- Background to the New Trustee's appointment and notice of the Application at Annexure A
- Notice of motion dated 3 June 2022, which has been filed with the Supreme Court of NSW at Annexure B
- New Trustee's affidavit in support of the notice of motion at Annexure C.

I advise the Application is presently listed for 10:00am on 8 July 2022. Any changes to this time will be made known on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

Should you have any queries in relation to this matter, please contact Elyse Diamond of my office on (02) 8257 3014 or by email at ediamond@kordamentha.com.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S. Langdon', written in a cursive style.

Scott Langdon
Liquidator and Director of New Trustee

Enc.

Annexure A – Background and Notice of Application

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). The First Order authorised New Trustee to undertake a course of action in respect of the Trust ('First Course of Action'). The First Order further provided that New Trustee's remuneration and disbursements in respect of the First Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the First Order.

Subsequently, on 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action'). As a part of the Second Course of Action, New Trustee was authorised to make an application to the Court to, among other things, seek the Court's direction in relation to the future of the Fund ('Judicial Advice Application'). The Second Order varied the First Order to allow New Trustee to bring its application for review of its remuneration and disbursements in respect of the First Course of Action and the Second Course of Action within four weeks after the Court determines the Judicial Advice Application.

On 6 May 2022, the Court determined the Judicial Advice Application and gave its opinion, advice and direction to the New Trustee that it would be justified in, among other things, bringing proceedings to wind up the Fund. On the same day, by Order of the Supreme Court of New South Wales, Scott Langdon and Kate Conneely were appointed as joint and several liquidators of the Fund.

Pursuant to the First Order and the Second Order, New Trustee's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis for the First Course of Action for the period 22 June 2021 to 1 November 2021, and the Second Course of Action for the period 2 November 2021 to 5 May 2022, subject to the Court's review and approval.

In this correspondence, formal notice is provided to all Interested Persons that New Trustee has filed its application seeking the Court's review and approval of New Trustee's remuneration and disbursements for the First Course of Action and the Second Course of Action, for the periods 22 June 2021 to 1 November 2021, and 2 November 2021 to 5 May 2022.

Further to this background, enclosed, for your perusal, in respect of the remuneration and disbursement application, is the:

- Notice of motion dated 3 June 2022, which has been filed with the Supreme Court of New South Wales (Annexure B)
- New Trustee's affidavit in support of the notice of motion (Annexure C).

A partially redacted copy of Exhibit CMC-7 to New Trustee's affidavit in support of the notice of motion is available on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>. However, as Confidential Exhibit CMC-8 to the affidavit contains confidential information, it has not been provided to Interested Persons and the New Trustee will be seeking confidentiality orders over the exhibit at the hearing of the remuneration and disbursement application.

Annexure B – Notice of motion dated 3 June 2022

Form 20 (version 3)
UCPR 18.1 and 18.3

NOTICE OF MOTION

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General
Registry	Sydney
Case number	2021/00179305

TITLE OF PROCEEDINGS

First Plaintiff	PP New Pty Ltd ACN 088 406 437
Second Plaintiff	KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799

FILING DETAILS

Person seeking orders	Second Plaintiff
Filed in relation to	Second Plaintiff's notice of motion 3 June 2022
Legal representative	Bernard Colin Walrut, Ashurst Australia
Legal representative reference	1000-122-769
Legal representative PCN	51098
Contact name and telephone	Aaron Kam (02) 9528 6014
Contact email	Aaron.Kam@ashurst.com

PERSON AFFECTED BY ORDERS SOUGHT

Second Plaintiff

HEARING DETAILS

This motion is listed at

ORDERS SOUGHT

The second plaintiff (**New Custodian Trustee**) seeks the following relief:

1. An order pursuant to section 90 of the *Civil Procedure Act 2005* (NSW) (**Civil Procedure Act**), sections 59(4) and/or 93 of the *Trustee Act 1925* (NSW) (**Trustee Act**) and/or the Court's inherent jurisdiction that New Custodian Trustee's remuneration for the period 22 June 2021 to 1 November 2021 inclusive (**First Course of Action Period**) be approved in the amount of \$173,455.00 (excluding GST) for their performance of the role as trustee of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 (**Fund**) trust (**Custodian Trust**).
2. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursements incurred in connection with the performance of the role as trustee of the Custodian Trust during the First Course of Action Period be approved in the amount of \$136,290.30 (excluding GST).
3. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's remuneration for the period 2 November 2021 to 5 May 2022 inclusive (**Second Course of Action Period**) be approved in the amount of \$77,297.50 (excluding GST) for their performance of the role as trustee of the Custodian Trust.
4. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursements incurred in connection with the performance of the role as trustee of the Custodian Trust during the Second Course of Action Period be approved in the amount of \$548,978.15 (excluding GST).
5. An order pursuant to section 93 of the *Trustee Act* that New Custodian Trustee's costs and expenses of and incidental to this application are paid on an indemnity basis out of the assets of the Fund.
6. Such further or other order as to this Honourable Court deems fit or the nature of the case requires.

SIGNATURE

Signature of legal representative

A handwritten signature in green ink, consisting of several fluid, overlapping strokes.

Capacity

Solicitor

Date of signature

3 June 2022

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney NSW 2000
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

Annexure C –New Trustee’s affidavit

Form 40 (version 6)
UCPR 35.1

AFFIDAVIT OF CATHERINE MARGARET CONNEELY
SWORN 3 JUNE 2022

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Corporations
Registry	Sydney
Case number	2021/00179305

TITLE OF PROCEEDINGS

First plaintiff	PP New Pty Ltd ACN 088 406 437
Second plaintiff	KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799

FILING DETAILS

Filed for	Second plaintiff
Filed in relation to	Second plaintiff's notice of motion dated 3 June 2022
Legal representative	Ashurst Australia Lawyers ABN 75304286095 Level 11 5 Martin Place SYDNEY NSW 2000 DX: 388 SYDNEY Tel: (02) 9258 6000 Fax: (02) 9258 6999
Legal representative reference	1000 122 769
Legal representative PCN	51098
Contact name and telephone	Aaron Kam (02) 9528 6014
Contact email	Aaron.Kam@ashurst.com

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Name	Catherine Margaret Conneely
Address	Level 5, Chifley Tower, 2 Chifley Place, Sydney NSW 2000
Occupation	Registered liquidator and chartered accountant
Date	3 June 2022

I say on oath:

Introduction

1. I am a registered liquidator, chartered accountant and partner of KordaMentha.
2. I am also a director of the second 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 the first plaintiff, PP New Pty Ltd (**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 her Honour was then) on 22 June 2021 (**22 June 2021 Orders**) in these proceedings (no. 2021/00179395).
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 proceedings no. 2022/00130874 (**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 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.
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-7" and "Confidential Exhibit CMC-8". Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in Exhibit CMC-7 and Confidential Exhibit CMC-8.
8. Confidential Exhibit CMC-8 contains documents which disclose details of Interested Persons (as defined below) and legally privileged information. New Custodian Trustee seeks an order under section 7 of the *Court Suppression and Non-publication Orders Act 2010* (NSW) limiting the disclosure of these documents.

Handwritten signature: C Conneely

Purpose of this affidavit

9. This affidavit is filed in support of the notice of motion dated 3 June 2022, seeking orders for review and approval of New Custodian Trustee's remuneration and disbursements paid from the assets of the Custodian Trust in accordance with order 8 of the 22 June 2021 Orders and order 6 of the orders made by Ward CJ in Eq in these proceedings on 2 November 2021 (**2 November 2021 Orders**). I note that New Custodian Trustee is required to make this application by 3 June 2022.
10. The total remuneration and disbursements for which review and approval is sought in this application is \$250,752.50 in fees and \$685,268.45 in disbursements (both excluding GST). This amount comprises:
 - (a) \$173,455.00 (excluding GST), being the professional fees of New Custodian Trustee incurred during the period 22 June 2021 to 1 November 2021 (**First Course of Action Period**);
 - (b) \$136,290.30 (excluding GST), being the disbursements incurred by New Custodian Trustee in connection with the performance of the role as trustee of the Custodian Trust during the First Course of Action Period;
 - (c) \$77,297.50 (excluding GST), being the professional fees of New Custodian Trustee incurred during the period 2 November 2021 to 5 May 2022 (**Second Course of Action Period**); and
 - (d) \$548,978.15 (excluding GST), being the disbursements incurred by New Custodian Trustee in connection with the performance of the role as trustee of the Custodian Trust during the Second Course of Action Period.

Background

11. I seek leave to rely upon the following affidavits filed in these proceedings:
 - (a) affidavit of Bernard Colin Walrut affirmed on 22 June 2021;
 - (b) my affidavit sworn on 22 June 2021 (**First Conneely Affidavit**);
 - (c) my affidavit sworn 28 October 2021 (**Second Conneely Affidavit**);
 - (d) my affidavit sworn 2 November 2021 (**Third Conneely Affidavit**); and
 - (e) my affidavit sworn 24 March 2022 (**Fourth Conneely Affidavit**).
12. Unless otherwise indicated, I have adopted the defined terms in First Conneely Affidavit, Second Conneely Affidavit, Third Conneely Affidavit and Fourth Conneely Affidavit in this affidavit.
13. I refer to paragraph 12 of the Second Conneely Affidavit where I depose to the background of the commencement of these proceedings.

Appointment of New Custodian Trustee

14. As a result of the matters deposed to from paragraph 12 of the Second Conneely Affidavit, on 22 June 2021, the plaintiffs made an application (**First Application**) before Ward CJ in

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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 (i.e., the Property) in New Custodian Trustee and consequential relief, including the authorisation of a prescribed course of action by New Custodian Trustee (**First Course of Action**). At pages 1 to 3 of Exhibit CMC-7 is a copy of the 22 June 2021 Orders.

First Course of Action

15. 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.
16. 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 (**First 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, along with consequential steps to facilitate the holding of the meeting (**Second Course of Action**). At pages 4 to 8 of Exhibit CMC-7 is a copy of the 2 November 2021 Orders.

Second Course of Action

17. 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 Fourth Conneely Affidavit.
18. As part of the Second Course of Action, on 6 May 2022, New Custodian Trustee made an application (**Third Application**) in these proceedings before Hammerschlag CJ in Eq seeking, among other things, the Court's opinion, advice and direction to New Custodian Trustee under section 63 of the *Trustee Act 1925* (NSW) that it would be justified in bringing proceedings to wind up the Fund (i.e., the Winding Up Proceedings) and selling the Property and transferring the Proceeds to the Liquidators. New Custodian Trustee also sought authorisation to, among other things, bring the Winding Up Proceedings (**Third Course of Action**). At pages 9 to 12 of Exhibit CMC-7 is a copy of the orders made by Hammerschlag CJ in Eq in these proceedings on 6 May 2022 (**6 May 2022 Orders**).

Third Course of Action

19. Following the Third Application and in accordance with the 6 May 2022 Orders, on 6 May 2022, New Custodian Trustee made an application before Hammerschlag CJ in Eq seeking to wind up the Fund under section 583(c) of the *Corporations Act 2001* (Cth) (**Corporations Act**) (i.e., the Winding Up Proceedings). Orders were made winding up the Fund and appointing Mr Langdon and I as the liquidators of the Fund. At pages 13 to 14 of Exhibit CMC-7 is a copy of the 6 May 2022 Winding Up Orders.

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20. New Custodian Trustee is in the process of carrying out the balance of the steps comprising the Third Course of Action. As deposed to above, the present application only relates to the review of New Custodian Trustee's remuneration and disbursements in respect of the First Course of Action and the Second Course of Action. New Custodian Trustee is required to make an application to the Court for a review of its remuneration and disbursements in respect of the Third Course of Action within 6 months of the 6 May 2022 Orders. I intend to cause New Custodian Trustee to bring that application after completing the steps comprising the Third Course of Action. However, if this process takes longer than six months, I will cause New Custodian Trustee to bring an application every six months.

Categorisation of work undertaken by New Custodian Trustee

21. The process for categorising and recording fees undertaken by New Custodian Trustee in connection with the administration of the Custodian Trust and the Fund is described below.
22. 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.
23. 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".
24. 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.
25. 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 administration of the Custodian Trust and the Fund.

Time-based method

26. New Custodian Trustee has calculated its remuneration on the basis of an hourly rate for each staff member who carried out work in respect of the administration of the Custodian Trust and the Fund multiplied by the number of hours spent by each person on the tasks performed (i.e., a time-based method).

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27. The rates charged by New Custodian Trustee are the hourly rates for the relevant staff member (at the time that each task was being performed) of KordaMentha. At pages 15 to 20 of Exhibit CMC-7 are copies of KordaMentha's hourly schedule of rates (exclusive of GST) and disbursement policy for the First Course of Action Period and Second Course of Action Period.
28. 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 the administration of the Custodian Trust and the Fund; and
 - (g) the risks undertaken by my firm in allowing New Custodian Trustee to accept the appointment as trustee of the Custodian Trust and conducting the work in relation to the appointment.
29. I 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 New Custodian Trustee to produce a detailed analysis of time spent on each task by each individual staff member utilised in the administration of the Custodian Trust and Fund;
 - (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, responding to Interested Persons' enquiries, reporting to Interested Persons and general administration and risk mitigation.

Remuneration and disbursements claimed

30. At pages 21 to 22 of Exhibit CMC-7 is a summary of the key work performed by New Custodian Trustee during the First Course of Action Period and Second Course of Action Period.
31. At pages 23 to 24 of Exhibit CMC-7 are schedules which provide an overview of the quantum of the remuneration claimed by New Custodian Trustee during the First Course of Action Period and the Second Course of Action Period. The schedules identify the following information:

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- (a) each individual who carried out work during the First Course of Action Period and Second Course of Action 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 23.
32. At pages 25 to 28 of Exhibit CMC-7 are schedules which provide a summary of the disbursements that were incurred by New Custodian Trustee in connection with the performance of the role as trustee of the Custodian Trust during the First Course of Action Period and Second Course of Action Period.
33. I have also included more detailed schedules setting out each time entry allocated to the categories identified in paragraph 23 above during the First Course of Action Period and Second Course of Action Period. 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.
34. In my view, all of the tasks detailed in this affidavit were necessary for the proper administration of the Custodian Trust and the Fund in accordance with the First Course of Action and the Second Course of Action and in order to maximise realisations for the benefit of Interested Persons.
35. KordaMentha follows the Australian Restructuring Insolvency and Turnaround Association Code of Professional Practice (**ARITA Code**) in relation to the insolvency appointments KordaMentha undertakes. Given the similarities between New Custodian Trustee's role in relation to the administration of the Custodian Trust and the Fund and the role of a voluntary administrator under Part 5.3A of the *Corporations Act*, New Custodian Trustee has adopted the ARITA Code as a guide in carrying out the First Course of Action and Second Course of Action. At pages 29 to 83 of Exhibit CMC-7 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.

First Course of Action Period

Remuneration

36. Immediately below is a summary of the amounts claimed in respect of work undertaken by New Custodian Trustee in each of the categories identified in paragraph 23 above in respect of the First Course of Action Period. At paragraphs 37 to 54 below, I provide more specific details of the work my staff and I performed during the First Course of Action Period by reference to those categories.

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KordaMentha

Category	Remuneration sought to be approved for the First Course of Action Period
Administration and risk mitigation	\$34,470.00
Litigation/legal	\$13,260.00
Assets	\$41,277.50
Interested Persons	\$49,440.00
Statutory compliance	\$28,042.50
Trading	\$6,965.00
TOTAL (excluding GST and disbursements)	\$173,455.00

Administration and risk mitigation

37. The total amount of remuneration sought with respect to this category is \$34,470.00 (excluding GST).
38. A schedule setting out each time entry allocated to this category during the First Course of Action Period is at pages 84 to 115 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
39. There were several administrative matters which New Custodian Trustee had to attend to upon being appointed as custodian trustee of the Custodian Trust, including placing insurance on the Point Clare Properties, attending to the collection and upload of Books and Records, and liaising with New Custodian Trustee's solicitors (at the time, Norton Rose Fulbright (**NRF**)) with planning for the First Course of Action. In summary, New Custodian Trustee has undertaken the following work in respect of the administration and risk mitigation category:
- (a) collecting, uploading and categorising the Books and Records on New Custodian Trustee's document management platform, Relativity;
 - (b) engaging AJ Gallagher to undertake an assessment of all insurance policies to ensure appropriate cover for the Point Clare Properties and arranging for insurance cover for the Point Clare Properties;
 - (c) liaising with media outlets in respect of the publication of the Notice; and
 - (d) maintaining the New Custodian Trustee Website for Interested Persons.

Litigation/legal

40. The total amount of remuneration sought with respect to this category is \$13,260.00 (excluding GST).

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41. A schedule setting out each time entry allocated to this category during the First Course of Action Period is at pages 84 to 115 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
42. In summary, New Custodian Trustee has undertaken the following work in respect of the "litigation/legal" category:
- (a) liaising with and assisting NRF, in respect of the preparation of the Second Application seeking, among other things, directions for the convening of a meeting of Interested Persons to consider the Fund's future. This included:
 - (i) considering and developing the Second Course of Action;
 - (ii) preparing the Second Conneely Affidavit and Third Conneely Affidavit; and
 - (iii) considering, reviewing and collating relevant information and documentation for the exhibits to the Third Conneely Affidavit.

Assets

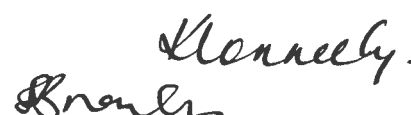
43. The total amount of remuneration sought with respect to this category is \$41,277.50 (excluding GST).
44. A schedule setting out each time entry allocated to this category during the First Course of Action Period is at pages 84 to 115 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
45. As per the 22 June 2021 Orders, the Property vested in New Custodian Trustee. This includes the Point Clare Properties, the Shares and cash maintained in various bank accounts in the name of the Fund. New Custodian Trustee has been required to secure, maintain and facilitate the transfer of ownership of these assets to itself. In summary, New Custodian Trustee has undertaken the following work in respect of the "assets" category:
- (a) providing notice of New Custodian Trustee's appointment to various financial institutions, including St George Bank and Bank Australia, and liaising with these financial institutions to identify accounts in the name of the Fund and arranging for Mr Langdon and I to be added as signatories to the accounts held with St George Bank and Bank Australia;
 - (b) providing notice of New Custodian Trustee's appointment to Link and Computershare and liaising with Link and Computershare to arrange for the share registry to be updated to reflect the ownership of the Shares;
 - (c) providing notice of New Custodian Trustee's appointment to essential services and utility providers, Central Coast Council and Revenue NSW and requesting confirmation of any amounts owing in respect of the Point Clare Properties by PP New (as the former registered proprietor of the Point Clare Properties);

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- (d) liaising with NSW Land Registry Services, Crown Lands and Jacob Chretien (Opal) in relation to the transfer of title of the Point Clare Properties, ascertaining the locations of the original certificates of title and related issues;
- (e) liaising with Joshua Caldwell, Nathan Caldwell and Cobi Caldwell (the caretakers of the Point Clare Properties engaged by PP New) to confirm the state of the Point Clare Properties;
- (f) ascertaining the annual holding costs for the Point Clare Properties; and
- (g) engaging Preston Rowe Paterson (**PRP**) to prepare a valuation of the Point Clare Properties.

Interested Persons

- 46. The total amount of remuneration sought with respect to this category is \$49,440.00 (excluding GST).
- 47. A schedule setting out each time entry allocated to this category during the First Course of Action Period is at pages 84 to 115 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
- 48. As deposed to in the Fourth Conneely Affidavit at paragraph 35, there are approximately 143 Interested Persons (as listed in the Updated Interested Persons List at pages 1 to 3 of Confidential Exhibit CMC-7). As such, my staff and I have been required to answer an extensive number of enquiries (approximately 400 emails and phone calls) and issue communications to Interested Persons to keep them updated on the administration of the Custodian Trust and the Fund. In summary, New Custodian Trustee has undertaken the following work in respect of the Interested Persons category:
 - (a) issuing the Notice to Interested Persons by:
 - (i) publishing it on the New Custodian Trustee Website, in the *The Australian*, the *Sydney Morning Herald* and the *Daily Telegraph*; and
 - (ii) sending a copy to the known addresses and email addresses of the Interested Persons identified at the time;
 - (b) establishing and maintaining a dedicated email for any queries from Interested Persons and responding to the queries;
 - (c) considering responses to the Notice from Interested Persons and requesting Interested Persons provide any information they have in respect of the Fund in support of their claim for historical membership of the Fund;
 - (d) reviewing and considering additional information provided by Interested Persons; and
 - (e) categorising the various types of Interested Persons identified in New Custodian Trustee's investigations and creating a list of Interested Persons.



 K. Conneely

Investigations and statutory compliance

49. The total amount of remuneration sought with respect to this category is \$28,042.50 (excluding GST).
50. A schedule setting out each time entry allocated to this category during the First Course of Action Period is at pages 84 to 115 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
51. This category has been used to a limited extent to record time spent in reviewing the Books and Records and considering matters arising from that review. In summary, New Custodian Trustee has undertaken the following work in respect of the investigations and statutory compliance category:
- (a) reviewing the Books and Records and liaising with PP New and Katrina Bobeff (Opal) to identify the potential members of the Fund (including former members of the Committee);
 - (b) investigating the discrepancy between the number of Orora Shares apparently held by PP New prior to New Custodian Trustee's appointment (289,200) and the amount of shares as advised by Link (231,360);
 - (c) providing notice of New Custodian Trustee's appointment to the Australian Taxation Office (**ATO**) and requesting details of the Fund's tax obligations, legal status and last lodged tax returns; and
 - (d) making a subsequent freedom of information request to the ATO and reviewing the documents received in response to that request so as to determine any amounts owing to the Fund by the ATO and the quantum of any tax liability.

Trading

52. The total amount of remuneration sought with respect to this category is \$6,965.00 (excluding GST).
53. A schedule setting out each time entry allocated to this category during the First Course of Action Period is at pages 84 to 115 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
54. This category has been used to record time spent on general accounting tasks connected with the Fund. In summary, New Custodian Trustee has undertaken the following work in respect of the trading category:
- (a) general accounting tasks, including, processing receipts, attending to bank account reconciliations, and processing receipts and payments onto New Custodian Trustee's accounting system, Insol; and

Brendan Monnechy.

- (b) liaising with the ongoing service providers to the Point Clare Properties to ensure ongoing maintenance as required.

Disbursements

55. As per the 22 June 2021 Orders, New Custodian Trustee is required to seek a review of disbursements in connection with the First Course of Action paid out of the assets of the Custodian Trust. Immediately below is a summary of the disbursements paid in connection with the First Course of Action. At paragraphs 57 to 60 below, I provide more specific details of the disbursements.

Disbursement	Amount (excluding GST)
Invoice from NRF dated 30 September 2021	\$23,133.00
Invoice from NRF dated 16 November 2021	\$89,277.91
Invoice from PRP dated 1 September 2021	\$2,000.00
Invoice from Gallaghers dated 14 September 2021	\$2,702.02
Newspaper publishing costs	\$5,478.82
Law Image document coding and scanning	\$9,149.65
Postage expenses	\$166.88
ASIC lodgement	\$276.00
RelativityOne hosting fees (internal disbursement)	\$956.02
RelativityOne user fees (internal disbursement)	\$3,150.00
TOTAL (excluding GST)	\$136,290.30

56. I have reviewed each of the disbursements in connection with the First Course of Action and am satisfied that they were reasonably incurred and properly payable by New Custodian Trustee.

NRF and counsel

57. At pages 1 to 20 of Confidential Exhibit CMC-8 are copies of the invoices from NRF to New Custodian Trustee dated 30 September 2021 and 16 November 2021 (including invoices from junior counsel).
58. The total amount of the invoices is \$112,410.91 (excluding GST) (including NRF's disbursements — i.e. junior counsel). The fees relate to assisting New Custodian Trustee with the preparation of and making the Second Application (including the preparation of the notice of motion, Second Conneely Affidavit, Third Conneely Affidavit and submissions for the Second Application) and generally advising New Custodian with respect to all aspects of the First Course of Action.

Bren *Konnelly.*

Other disbursements

59. At pages 116 to 123 of Exhibit CMC-7 are copies of the available invoices for the other disbursements referred to in the table in paragraph 55 above. I am unable to provide invoices for certain disbursements, for example, books and records storage, postage expenses and ASIC charges, as these costs are paid via KordaMentha's corporate account for various engagements in bulk and then a portion of the cost is applied to the specific engagement. Similarly, for the newspaper publishing costs, KordaMentha's corporate account is charged when an advertisement is placed and subsequently disbursed to the relevant engagement. In regards to the RelativityOne disbursements, KordaMentha has an agreement with Relativity to pay \$300 in hosting fees and \$150 per person in user fees, each month, which are apportioned to the specific engagement.
60. I note the following in respect of these disbursements:
- (a) PRP – as deposed to in paragraphs 61 and 62 of the Second Conneely Affidavit, New Custodian Trustee obtained two quotes (from PRP and Opteon) for valuations of the Point Clare Properties. While PRP's estimate was more expensive compared to Opteon, New Custodian Trustee opted with PRP because, among other things, it provided an in-depth quote with consideration to the valuation instructions along with the jetty and "in one line sale" of the Point Clare Properties;
 - (b) Gallaghers – this relates to insurance costs for the Point Clare Properties;
 - (c) newspaper publishing costs and postage expenses – these were incurred in order to publish the Notice in accordance with the 22 June 2021 Orders;
 - (d) Law Image document coding and scanning, RelativityOne hosting fees and user fees – these relate to the digitalising (scan, image and code) and maintenance of the Books and Records electronically on Relativity (see paragraphs 18 to 20 of the Second Connelly Affidavit). Relativity is regularly used, and will continue to be used throughout this engagement by New Custodian Trustee, the Liquidators and their solicitors; and
 - (e) ASIC lodgement – this relates to the ASIC annual review charge payable by proprietary companies and was required to be paid in respect of New Custodian Trustee.

Second Course of Action Period

Remuneration

61. Immediately below is a summary of the amounts claimed in respect of work undertaken by New Custodian Trustee in each of the categories identified in paragraph 24 above in respect of the Second Course of Action Period. At paragraphs 62 to 79 below, I provide more specific details of the work my staff and I performed during the Second Course of Action Period by reference to those categories.

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Bramon*

Category	Remuneration sought to be approved for the Second Course of Action Period
Administration and risk mitigation	\$3,597.50
Litigation/legal	\$20,855.00
Assets	\$14,360.00
Interested Persons	\$17,520.00
Statutory compliance	\$17,492.50
Trading	\$3,472.50
TOTAL (excluding GST and disbursements)	\$77,297.50

Administration and risk mitigation

62. The total amount of remuneration sought with respect to this category is \$3,597.50 (excluding GST).
63. A schedule setting out each time entry allocated to this category during the Second Course of Action Period is at pages 124 to 137 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
64. There were several administrative matters which New Custodian Trustee had to attend to, including assisting New Custodian Trustee's solicitors, Ashurst, with various matters in respect of the transfer of title of the Property. In summary, New Custodian Trustee has undertaken the following work in respect of the administration and risk mitigation category:
- (a) assisting NRF and Ashurst with preparation of an application to Revenue NSW requesting a concessional rate of duty in respect of the transfer;
 - (b) liaising with Ashurst in respect of enquires into the tax obligations and legal status of the Fund;
 - (c) liaising with media outlets in respect of the publication of the Second Notice; and
 - (d) maintaining the New Custodian Trustee Website for Interested Persons.

Litigation/legal

65. The total amount of remuneration sought with respect to this category is \$20,855.00 (excluding GST).
66. A schedule setting out each time entry allocated to this category during the Second Course of Action Period is at pages 124 to 137 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.

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67. In summary, New Custodian Trustee has undertaken the following work in respect of the litigation/legal category:

- (a) liaising with and assisting Ashurst in respect of the preparation of the Third Application seeking, among other things, the Court's opinion, advice and direction to New Custodian Trustee that it would be justified in, among other things, bringing the Winding up Proceedings and authorisation to undertake the Third Course of Action. This included:
 - (i) considering and developing the Third Course of Action;
 - (ii) considering the issues which are likely to arise in the winding up of the Fund;
 - (iii) preparing the Fourth Conneely Affidavit; and
 - (iv) considering, reviewing and collating relevant information and documentation for the exhibits to the Fourth Connelly Affidavit.

Assets

68. The total amount of remuneration sought with respect to this category is \$14,360.00 (excluding GST).

69. A schedule setting out each time entry allocated to this category during the Second Course of Action Period is at pages 124 to 137 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.

70. As per the 2 November 2021 Orders, New Custodian Trustee was authorised to identify the Property and liabilities of the Fund, including Property held in the name of individuals or other third parties on behalf of the Fund. New Custodian Trustee was also authorised to open the New Accounts and transfer each Bank Australia Account to the corresponding New Account, and reinvest term deposits as required. In summary, New Custodian Trustee has undertaken the following work in respect of the assets category:

- (a) arranging for the opening of accounts with St George Bank for the purpose of opening the New Accounts and subsequently arranging for the opening of an account with Macquarie due to the delay in St George Bank opening the New Accounts;
- (b) renewing various term deposits with St George Bank;
- (c) procuring the transfer of the Point Clare Properties from PP New to New Custodian Trustee; and
- (d) continuing to pursue the transfer of the Shares from PP New to New Custodian Trustee and liaising with Computershare and Link in respect of the transfer.

Interested Persons

71. The total amount of remuneration sought with respect to this category is \$17,520.00 (excluding GST).

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72. A schedule setting out each time entry allocated to this category during the Second Course of Action Period is at pages 124 to 137 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
73. My staff and I have been required to consider and respond to an extensive number of enquiries (approximately 400 emails and phone calls) from Interested Persons as well as prepare the 24 November Report and hold the First Meeting. In summary, New Custodian Trustee has undertaken the following work in respect of the Interested Persons category:
- (a) issuing the 24 November Report (which contained information comprising part of the Second Notice) to Interested Persons by:
 - (i) publishing it on the New Custodian Trustee Website;
 - (ii) sending a copy to the known addresses and email addresses of the Interested Persons identified at the time; and
 - (iii) providing notice of, among other things, the 24 November Report (and a link to download the report from the New Custodian Website) in the *The Australian*, the *Sydney Morning Herald* and the *Daily Telegraph*;
 - (b) maintaining a dedicated email for any queries from Interested Persons and responding to the queries;
 - (c) considering responses to the 24 November Report (in respect of the proposal to wind up the Fund) from Interested Persons and requesting that certain Interested Persons provide information they have in respect of the Fund in support of their claim for historical membership of the Fund;
 - (d) reviewing and considering additional information provided by Interested Persons; and
 - (e) convening and holding the First Meeting.

Investigations and statutory compliance

74. The total amount of remuneration sought with respect to this category is \$17,492.50 (excluding GST).
75. A schedule setting out each time entry allocated to this category during the Second Course of Action Period is at pages 124 to 137 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
76. This category has been used to record time spent in reviewing the Books and Records and investigations required for preparing the 24 November Report. In summary, New Custodian Trustee has undertaken the following work in respect of the investigations and statutory compliance category:

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- (a) reviewing the Books and Records to identify additional potential members of the Fund (including former members of the Committee);
- (b) investigating the background of the Fund, including the history, the Committee and other officeholders, the Rules and the historical financial position, and preparing the 24 November Report;
- (c) conducting preliminary investigations and financial reconciliations into the possibility of misappropriation of the Fund's assets by reviewing the historical financial statements of the Fund;
- (d) reviewing the Books and Records to identify additional property of the Fund, namely, the Picnic Fund Accounts which have a combined balance of approximately \$37,000; and
- (e) engaging Rothsay Accounting Services Pty Ltd (**Rothsay**), for the purposes of completing annual bookkeeping, and the preparation of financial statements, audits and tax lodgements in respect of the Fund for the period 1 July 2014 to 30 June 2022.

Trading

- 77. The total amount of remuneration sought with respect to this category is \$3,472.50 (excluding GST).
- 78. A schedule setting out each time entry allocated to this category during the Second Course of Action Period is at pages 124 to 137 of Exhibit CMC-7. This schedule includes a description of each task undertaken, 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.
- 79. This category has been used to record time spent on general accounting tasks connected with the Fund. In summary, New Custodian Trustee has 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 and payments onto Insol; and
 - (b) continued liaising with the ongoing service providers to the Point Clare Properties to ensure maintenance as required.

Disbursements

- 80. As per the 2 November 2021 Orders, New Custodian Trustee is required to seek a review of disbursements in connection with the Second Course of Action paid out of the assets of the Custodian Trust. Immediately below is a summary of the disbursements paid in connection with the Second Course of Action. At paragraphs 82 to 88 below, I provide more specific details of the disbursements.

Disbursement	Amount (excluding GST)
Invoice(s) from NRF dated 20 December 2021	\$2,766.50

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Invoice from Ashurst dated 21 December 2021	\$67,627.50
Invoice from Ashurst dated 1 June 2022 for the period 16 December 2021 to 28 Jan 2022	\$74,060.50
Invoice from Ashurst dated 28 February 2022	\$103,971.00
Invoice from Ashurst dated 31 March 2022	\$199,509.13
Invoice from Ashurst dated 30 April 2022	\$34,802.93
Invoice from Rothsay dated 31 March 2022	\$45,000.00
Newspaper publishing costs	\$8,522.28
Copying and printing costs	\$1,571.82
Books and records storage	\$55.94
RelativityOne hosting fees (internal disbursement)	\$2,240.55
RelativityOne user fees (internal disbursement)	\$8,850.00
TOTAL (excluding GST)	\$548,978.15

81. I have reviewed each of the disbursements in connection with the Second Course of Action and am satisfied that they were reasonably incurred and properly payable by New Custodian Trustee.

NRF

82. At pages 21 to 24 of Confidential Exhibit CMC-8 is a copy of the invoice from NRF to New Custodian Trustee dated 20 December 2021.
83. The total amount of the invoice is \$2,766.50 (excluding GST) (including disbursements — i.e., counsel). The fees relate to NRF's fees incurred in connection with the Second Course of Action, specifically, preparation of an application to Revenue NSW requesting a concessional rate of duty in respect of the transfer of the Point Clare Properties to New Custodian Trustee.

Ashurst and counsel

84. At pages 25 to 63 of Confidential Exhibit CMC-8 are copies of invoices from Ashurst to New Custodian Trustee dated 21 December 2021, 28 February 2022, 31 March 2022 and 29 April 2022 and 1 June 2022 (including the invoices from senior and junior counsel). I note that the invoice dated 1 June 2022 relates to work done over the period 16 December 2021 to 28 January 2022 but had to be reissued as it was incorrectly addressed.
85. The total amount of the invoices are \$479,971.06 (excluding GST) (including disbursements — i.e. senior and junior counsel). I understand that the invoices dated 28 February 2022, 30 April 2022 and 1 June 2022, totalling \$212,834.43, are yet to be paid but will be paid shortly. The fees relate to assisting New Custodian Trustee with the preparation of and making the Third Application (including the preparation of the notice of motion, Fourth

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Conneely Affidavit, advice for the purpose of the Third Application and submissions), preparation of a further application to Revenue NSW requesting a concessional rate of duty in respect of the transfer of the Point Clare Properties to New Custodian Trustee and preparation of a request to record New Custodian Trustee as registered proprietor of the Point Clare Properties and generally advising New Custodian with respect to all aspects of the Second Course of Action.

86. I note that substantial work was undertaken in respect of the Second Course of Action, in particular, the preparation of the Third Application. The extent of this work is evident in the documents relied on for the purposes of the Third Application. I note particularly the following:

- (a) New Custodian Trustee made the Third Application to ensure that it was justified in, among other things, bringing the Winding Up Proceedings — the Court gave its opinion, advice and direction that New Custodian Trustee was justified in doing so. Given the nature of the Third Application, New Custodian Trustee was required to obtain senior counsel's opinion in respect of, among other things, bringing the Winding Up Proceedings. Senior counsel provided a detailed opinion on New Custodian Trustee's proposed course of action, which included a detailed analysis of the legislative history of the winding up provisions in respect of a Part 5.7 body, the definitions of a Part 5.7 body and various other related definitions and terms (both in the United Kingdom and Australia). I understand that this required the preparation of a number of aide memoires to assist senior counsel and the Court with the Third Application;
- (b) the Fourth Conneely Affidavit is a substantial affidavit where I deposed to the proposed winding up of the Fund, how the winding up would be conducted and the relevant adaptations required to be made to Chapter 5 of the Corporations Act (and ancillary provisions). The Fourth Conneely Affidavit was prepared so that it could be used (and was used) for the Third Application and the Winding Up Proceedings (although the latter forms part of the Third Course of Action). While the costs of preparing the Fourth Conneely Affidavit have been charged in respect of the Second Course of Action, I consider that the work undertaken will mean less costs will be incurred in respect of the Third Course of Action;
- (c) in preparing the Third Application, New Custodian Trustee was required to prepare the Originating Process in respect of the Winding Up Proceedings to demonstrate to the Court what New Custodian Trustee intended to do in respect of the Custodian Trust and the Fund moving forward (as it was ultimately seeking justification in bringing the Winding Up Proceedings). This application required detailed consideration of the adaptations to Chapter 5 of the *Corporations Act* and ancillary provisions such as Chapter 5 of the Regulations, IPSC, IPRC and the Corporations Rules. I am informed by Ashurst and believe that there have been no authorities which considered adaptations to the relatively recently introduced IPSC and IPRC and that the relief which was sought and ultimately obtained was novel in that respect; and

Brendan Conneely.

- (d) the material which New Custodian Trustee relied on for the Third Application was voluminous and included, extracts of 13 different legislative acts and 40 different authorities. New Custodian Trustee also relied on extracts from a number of texts.

Other disbursements

87. At pages 138 to 139 of Confidential Exhibit CMC-7 are copies of the invoices for the other disbursements referred to in the table in paragraph 80. As mentioned above at paragraph 59, I do not possess all of the disbursement invoices and I have included what invoices are available.
88. I note the following in respect of these disbursements:
- (a) Rothsay – as deposed in in paragraph 89 of the Fourth Conneely Affidavit, New Custodian Trustee has engage a tax account (Rothsay) to prepare trial balances and tax returns for the Fund for the FY14 and FY21 period (which have not been lodged with the ATO) and to consider the tax affairs of the Fund. This process will provide the Liquidators with a more complete picture of the financial position of the Fund (including identifying its assets and liabilities);
 - (b) newspaper publishing costs – these were incurred in order to publish the Second Notice in accordance with the 2 November 2021 Orders;
 - (c) copying and printing costs – these were incurred in order to distribute the Second Notice/24 November Report in accordance with the 2 November 2021 Orders;
 - (d) Books and Records storage, RelativityOne hosting fees and user fees – these relate to the physical storage of the Books and Records and the maintenance of the Books and Records electronically on Relativity.

Matters relevant to consideration of remuneration

89. In the context of an external administration, the Court must have regard to whether the remuneration is reasonable and takes into account any or all of the matters listed in section 60-12 of the IPRC when reviewing a remuneration determination. I consider that the role undertaken by New Custodian Trustee in performing the First Course of Action and Second Course of Action to be analogous to a voluntary administrator. In the circumstances, I consider each of these matters (where relevant) in turn below.

The extent to which the work by New Custodian Trustee was necessary and properly performed (s 60-12(a))

90. I consider that the work performed by New Custodian Trustee as deposed to above was properly incurred by New Custodian Trustee as part of undertaking the First Course of Action and Second Course of Action. In this regard, I note that the work performed by New Custodian Trustee related, for the most part, to Interested Persons, and was necessary in order to provide updates to Interested Persons and obtain information from them in respect of the Fund.

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The period during which the work was performed by New Custodian Trustee (s 60-12(c))

91. The work performed by New Custodian Trustee occurred over the period June 2021 to May 2022 (a period of approximately 11 months). The total professional fees and disbursements over this period was \$936,020.95, equating to approximately \$85,092.80 per month. The professional fees over this period was \$250,752.50, equating to approximately \$22,795.68 per month and the disbursements over this period was \$685,268.45 equating to approximately \$62,297.13 per month.

The quality and complexity of the work performed by New Custodian Trustee (s 60-12(d) and (e))

92. I consider the work performed by New Custodian Trustee, and its legal advisers, has been of a high quality. The majority of the remuneration incurred was in respect of the Second Application and Third Application and the Court made orders in respect of both of these applications (albeit uncontested) in substantially the same form as the relief sought by New Custodian Trustee. In respect of the Third Application (and the Winding Up Proceedings), the work required to be undertaken by New Custodian Trustee, was legally complex due to the absence of critical documents for the Fund and the Custodian Trust, and, as I understand it, novel.

The level of risk or responsibility accepted by New Custodian Trustee (s 60-12(g))

93. I considered that the level of risk or responsibility was higher than a typical external administration process, in large part due to the complex legal situation involving whether the Fund was considered a trust or unincorporated association, and sought to acquire appropriate legal advice in this regard.

The value and nature of any property dealt with, or likely to be dealt with, by New Custodian Trustee (s 60-12(h))

94. As deposed to in the Fourth Conneely Affidavit, the Property consists of the Point Clare Properties, Shares and cash held in various bank accounts maintained with St George Bank and Bank Australia. The total value of the Property is \$10.8 million, broken down as follows:
- (a) \$2,050,000 – 67 Victory Parade (valuation as at 6 August 2021);
 - (b) \$1,550,000 – 69 Victory Parade (valuation as at 6 August 2021);
 - (c) \$5,321,280 – Amcor Shares (currently trading at \$18.40 per share);
 - (d) \$886,109 – Orora Shares (currently trading at \$3.83 per share); and
 - (e) \$1,000,000 – cash held in the various St George Bank and Bank Australia accounts.
95. I am not aware of any further property held on the trust for the Fund, however the Liquidators investigations are continuing in this regard. The valuations referred to in the preceding paragraph are subject to change, particularly the Amcor Shares and Orora Shares which change on a daily basis.
96. At this stage, none of the Property has been realised. The Property will be realised by New Custodian Trustee in accordance with the Third Course of Action and the orders made by Hammerschlag CJ in Eq.

Brian Conneely

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

97. As deposed to above, New Custodian Trustee has identified 143 Interested Persons. The 24 November Report was issued to the Interested Persons and provided, in section 6.2, that New Custodian Trustee anticipated it would make an application for review of its disbursements paid in the prior six month period in the first quarter of the calendar year 2022. A summary of receipts and payments (providing details of remuneration and disbursements already paid) was included at Appendix E of the 24 November Report.
98. Apart from an enquiry from an Interested Person on 1 December 2021 (see page 106 of Confidential Exhibit CMC-6) requesting an itemised list of disbursements for the fees of KordaMentha as of 1 December 2021, I have not received any responses or queries from Interested Persons about New Custodian Trustee's remuneration or disbursements paid.
99. I intend to provide a copy of the notice of motion and affidavit (excluding Confidential Exhibit CMC-8) and a copy of any orders made in this application to Interested Persons. To the extent that any Interested Persons wishes to object to any remuneration and/or disbursements which have been reviewed and approved by the Court, I propose that those Interested Persons should have an opportunity to do so within 21 days of being provided with a copy of the application and any orders.

The time properly taken by New Custodian Trustee in performing the work (s 60-12(j))

100. In addition to the matters deposed to in paragraphs 26 to 29 above in relation to the rates and the calculation of New Custodian Trustee' remuneration during the First Course of Action Period and Second Course of Action Period, I note that:
- (a) the work performed by New Custodian Trustee was delegated to staff members of KordaMentha having regard to their respective rates, their skill and experience and the complexity of the administration of the Custodian Trust and the Fund;
 - (b) the majority of the work was performed by a Senior Business Analyst who had the experience to carry out day-to-day tasks under the supervision of more senior staff. The Senior Business Analyst's hourly charge out rate is \$375 and they accounted for 45% of the professional fees sought;
 - (c) the Senior Business Analyst was primarily supervised by me (hourly charge out rate of \$725) and a Director (hourly charge out rate of \$675). Together this accounted for 41% 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.

Other matters

101. At page 140 of Exhibit CMC-7 is a summary of receipts and payments in respect of the First Course of Action Period and Second Course of Action period.

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102. In respect of the ongoing administration of the Custodian Trust and the Fund, New Custodian Trustee is in the process of realising the Property. The Liquidators expect to shortly commence their detailed investigations into the affairs of the Custodian Trust and Fund but do not currently anticipate that there will be further recoveries for Interested Persons apart from any appreciation in the value of the Property. 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. Depending on the outcome of the directions hearing about the classes of members of the Fund and approach to be applied to the distribution of surplus Property (see paragraph 82 of the Fourth Conneely Affidavit), I anticipate that the winding up of the Fund will take approximately 12 to 18 months to complete.
103. I anticipate that any further applications for review of New Custodian Trustee's remuneration and disbursements will be made in accordance with the 6 May 2022 Orders and any further orders that may be made in this regard.
104. I note that there is currently no order which relates to the review of the remuneration and disbursements of the Liquidators in respect of the winding up of the Fund. I anticipate that the Liquidators will seek approval of their remuneration in accordance with Division 60 of the IPSC and pay disbursements in the ordinary course.

SWORN at Sydney NSW

Signature of deponent

K Conneely

Name of witness

Samantha Brandon

Address of witness

Level 11, 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 known the deponent for at least 12 months.

Signature of witness

SBrandon