

To the Interested Persons as addressed

28 June 2024

Action Required by 12 August 2024

Dear Sir/Madam

APM Security Plan Sickness & Accident Fund (In Liquidation) ('the Fund')
ABN 57 413 197 086

On 6 May 2022 by Order of the Supreme Court of New South Wales ('the Court'), Kate Conneely and I, Scott Langdon, were appointed joint and several liquidators of the Fund. I advise that Kate Conneely subsequently ceased to be a liquidator of the Fund on 19 February 2024. For the avoidance of doubt, I continue to be appointed as sole liquidator of the Fund ('the Liquidator').

Further details of the appointment can be found on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

The purpose of this letter is to provide an update on the winding up of the Fund and advise Interested Persons of the next steps required.

Update on Rules Application

As set out in the Liquidators' update to Interested Persons dated 15 November 2023, all property of the Fund has been realised (**Property**). Since then, the Liquidator has taken steps to consider how the net proceeds of the realisations of the Property might be distributed to eligible members of the Fund.

Prior to any distribution of the net proceeds, the Liquidator first needs to identify:

1. Which set of Rules govern the Fund
2. Which members and former members should receive a distribution from the Fund

These matters were considered in detail in an application for directions from the Court ('Rules Application'), in which the views of Interested Persons were also invited.

On 22 February 2024, the Liquidator obtained orders from the Court in respect of these matters. The full Orders can be found on the KordaMentha website and are also enclosed for your reference at Appendix 1.

In summary, the following Orders were made:

1. Kate Conneely cease to be a liquidator of the Fund

2. The Liquidator would be justified in proceeding on the basis that the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005 ('2005 Rules') (enclosed at Appendix 2), contained the Rules which govern the Fund
3. The Liquidator would be justified in proceeding on the basis that members of the Fund who are entitled to participate in a distribution of the Property are those persons who were members immediately prior to Amcor Ltd ('Amcor') commencing to make its employees redundant as a consequence of decommissioning the B7 and B8 machines in or around May 2012.

The Court's judgment in relation to these Orders is enclosed at Appendix 3, for your reference.

What does this mean?

The Liquidator will now proceed with compiling a list of members of the Fund who may be entitled to participate in a distribution of the Property.

In simple terms, these Orders mean that when the Liquidator considers a distribution of the net proceeds of the realisation of the Property:

- The 2005 Rules will be the Rules used to determine the Fund's classes of membership and relevant eligibility criteria
- Eligible members are those who were members of the Fund in or around May 2012, prior to Amcor's redundancies during the decommissioning of the B7 and B8 paper machines at the Botany site.

Further details are included in a 'Frequently Asked Questions ('FAQ') document enclosed at Appendix 4.

What do you need to do?

The Liquidator requires information from you to consider if you may be a member entitled to participate in a distribution. This information is required by 12 August 2024.

In this regard, please complete and return the Member Substantiation Form ('Form') at Appendix 5.

In addition to completing the attached Form, the Liquidator kindly requests you provide any supporting documentation you may have in respect of your membership eligibility per the 2005 Rules. For guidance on appropriate documentation, please refer to the FAQ document at Appendix 4.

Please complete and return the attached Member Substantiation Form with any available supporting documentation by 12 August 2024.

To assist in completing the Form, please also refer to Appendix 4 for FAQ.

Please complete the attached Form and return via email at botanymillfund@kordamentha.com or mail to KordaMentha, GPO Box 964, Brisbane QLD 4000.

Please note, if you do not have any supporting documentation relating to your membership, you are encouraged to still complete and return the enclosed Form.

Next steps

Once the response due date has passed, the Liquidator will return to the Court to seek advice as to:

- the classification of members based on the Rules and evidence provided
- the basis on which a distribution should be calculated and paid to relevant members.

I will report to members again prior to making this application.

Further information

Further information in respect of the Fund is available 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 my office by email at botanymillfund@kordamentha.com.

Yours faithfully



Scott Langdon
Liquidator

Enc.

Appendix 1 – Orders dated 22 February 2024



Issued: 22 February 2024 4:29 PM

JUDGMENT/ORDER

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	Scott David Langdon in his capacity as liquidator of the APM Security Plan Sickness & Accident Fund
-----------------	---

Corporation subject of the proceeding	KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799
---------------------------------------	---

DATE OF JUDGMENT/ORDER

Date made or given	22 February 2024
Date entered	22 February 2024

TERMS OF JUDGMENT/ORDER

VERDICT, ORDER OR DIRECTION:

Black J makes orders in Chambers in accordance with Short Minutes of Order initialled by him and placed in the file.

THE COURT:

1. Varies Order 1 made on 19 February 2024 to read:

Orders, pursuant to section 90-15 of Schedule 2 to the Corporations Act, 2001 (Cth) (Schedule 2), that Catherine Margaret Conneely (Ms Conneely) cease forthwith to be a liquidator of the APM Security Plan Sickness & Accident Fund (in liquidation) ABN 57 413 197 086 (Fund).

2. Orders, pursuant to section 90-15 of Schedule 2, that Scott David Harry Langdon, in his capacity as sole liquidator of the Fund (Applicant), would be justified in proceeding on the basis that the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005 (2005 Rules), contain the rules which govern the Fund.

3. Orders, pursuant to section 90-15 of Schedule 2, that the Applicant would be justified in proceeding on the basis that the members of the Fund who are entitled to participate in a distribution of its assets, are those persons who were members immediately prior to Amcor Ltd (Amcor) commencing, in or around May 2012, to make its employees redundant as a consequence of the decommissioning Amcor's paper machines known as "B7" and "B8".

4. Orders that the Applicant gives notice of these orders to the interested persons of the Fund by placing a copy of these orders on the website maintained by the Applicant at www.kordamentha.com.

5. Varies Order 4 made on 19 February 2024 to read:

Orders that the Applicant's and Ms Conneely's remuneration, costs and expenses of and incidental to these orders be paid out of the assets of the Fund.

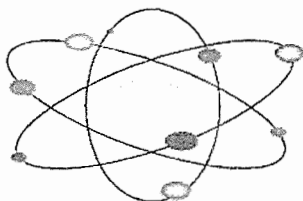
SEAL AND SIGNATURE



Signature	Rebel Kenna
Capacity	Principal Registrar
Date	22 February 2024

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

Appendix 2 – 2005 Rules



APM

BOTANY MILL SECURITY PLAN SICKNESS & ACCIDENT FUND

PO Box 95 Matraville NSW 2036

Telephone: 02 9695 3555 Fax: 02 9666 3048

Index

6	MANAGEMENT	Page 9
	6.1 Committee	"
	6.2 Elections	"
	6.3 Eligibility for Election	"
	6.4 Nominations	"
	6.5 Returning Officer	"
	6.6 Terms of Office	"
	6.7 Vacancies	"
	6.8 Meetings	"
	6.9 Quorum	"
	6.10 Notice of General Meeting	Page 10
	6.11 Quorum of General Meeting	"
	6.12 Simple Majority Decides	"
	6.13 Indemnity	"
	6.14 Secretary's Duties	"
	6.15 Treasurers Duties	"
	6.16 Chairman's Duties	"
	6.17 Bank Account Operation	"
7	MEETINGS	Page 11
	7.1 Committee	"
	7.2 Annual	"
	7.3 Special General Meeting (Chairman calls)	"
	7.4 Special General Meeting (Members request)	"
	7.5 Alterations to Rules	"
	7.6 Alterations to Contributions of Benefits	"
8	TRUSTEES	Page 12
	8.1 Number	"
	8.2 Who are they	"
	8.3 Replacing Trustees	"
	8.4 Meetings	"
	8.5 Investment of Funds	"
	8.6 Signatures	"
	8.7 Indemnity	"
	APPENDIX A	Page 13
	APPENDIX B	Page 14
	APPENDIX C	Page 15, 16, 17
	APPENDIX D	Page 18

APM Botany Mill Security Plan Sickness & Accident Fund

1. NAME

The name of THE FUND shall be "APM Botany Mill, Security Plan, Sickness & Accident Fund" hereafter referred to as "THE FUND". Any reference to "THE COMPANY", will be taken to mean "Amcor Ltd" trading as "Amcor Fibre Packaging Australasia".

2. OBJECTIVE

The objective of THE FUND is to create and maintain sufficient financial resources, through Fortnightly or Monthly contributions of its members and THE COMPANY, and Investments, which will enable THE FUND to provide benefits as set out herein.

Rules.

APM Botany Mill Security Plan Sickness & Accident Fund

3 MEMBERSHIP

3.1 Eligibility

All full time permanent staff and employees of THE COMPANY, employed either at AFPA Botany Mill or by NSW Recycling Department, will be eligible for membership of THE FUND.

3.2 Minimum service period

A member will need to have been in the employ of THE COMPANY for Twenty six (26) weeks and to have paid Twenty six (26) weeks contributions to THE FUND before they are able to claim any benefits from THE FUND, (except for sickness benefits as provided under paragraph 5.4.1 & 5.4.2) or high cost Ancillary benefits as prescribed in *Appendix 1*).

An employee who after six (6) months probationary employment with THE COMPANY is not offered a full time position shall have refunded to him, from THE FUND, any contributions he has made, except if he has claimed Sickness Benefits as provided under 5.4.1. & 5.4.2. However an employee who is offered a full time position after the six (6) months probationary employment, will have to be employed for a further twenty six (26) weeks to qualify for the high cost Ancillary benefits as prescribed in (*Appendix A*)

3.3 Definition of Dependants

Dependants will include:

- i) Wife or Husband
- ii) Common law spouse
- iii) Dependant children up to 18 years of age
- iv) Student child up to 25 years of age
- v) Daughter housekeeper

The Committee may use its discretion in respect of unclear circumstances or in respect of wholly dependant persons not defined above.

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.

3.5 Unfinancial Members

A member shall be unfinancial if their contributions are over one month in arrears. Unfinancial members shall not be entitled to benefits under the scheme.

APM Botany Mill Security Plan Sickness & Accident Fund

3.6 Power to Suspend or Expel

The Committee of Management shall have the power to suspend or expel members of the fund for breaches of any of the rules of THE FUND. A member liable for suspension or expulsion shall be called upon to appear before the committee to show cause why they should not be suspended or expelled from THE FUND.

3.7 Honorary Membership

Honorary Membership of THE FUND may be granted to members with 10 years continuous service by the Committee under the following conditions,

- i) Upon the member reaching or surpassing normal retirement age.
- ii) Upon the member retiring due to health reasons which would qualify them for an Invalid Pension.
- iii) Upon the member reaching 55 years of age, is made redundant, accepts a Voluntary Redundancy or retires, and who pays to THE FUND an amount equivalent to 25% of what they would have contributed had they remained employed with THE COMPANY until their 65th birthday.

4. CONTRIBUTIONS.

Each member shall contribute an amount equivalent to \$2.00 per week.

Employee contributions will be deducted from wages, fortnightly, (salaried staff monthly). Any member in receipt of payment from THE FUND shall continue to contribute to THE FUND.

APM Botany Mill Security Plan Sickness & Accident Fund

5. BENEFITS

5.1 Ancillary Benefits

Members and their dependents (as defined) are eligible for Ancillary Benefits as prescribed in *Appendix A*. Where certain benefits as prescribed in *Appendix A*, have a Yearly limit, that year will be defined as from 1st July until 30th June. Yearly limit total covers a member and all his dependants.

The Committee will consider written request from members for benefits not expressly referred to in *Appendix A*, where those benefits relate to the health or welfare of the member or his dependants. The Committee's decision in such matters is final. The Committee may review the limits, as defined, in (*Appendix A*).

5.1.1 Annual Limit for Ancillary Benefits

That an annual limit of \$1,200 per member per year be imposed on the amount of monies that a member is reimbursed for sickness & accident claims. This will be reviewed on an annual basis.

A limit of \$600 is to be applied for the six months from 1st January to the 30th June 2002. There is no such limit for the six months ended 31st December 2001. If the imposition of the limit causes undue hardship to a member, they can apply in writing to the Secretary of the Committee for possible Trauma Relief Assistance. Any such case will be assessed by review of the Committee. In all other respects the Ancillary Benefits Table is unchanged with respect to available benefits and section claim limits.

5.1.2 Claims for Ancillary Benefits

Claims must be made on the claim form provided to the Secretary of the Fund and signed by the claimant. All claims must be accompanied by original itemised receipts, or for members, in Private Health Funds claiming the difference between what the Private Health Fund refund and the original charge, the tabled receipt from the Private Health Fund is acceptable.

5.1.3 Time Limit

A time limit for claim of reimbursement is to be applied. For an expense to be reimbursed, a claim must be submitted within 60 days, from date of making payment.

5.2 Funerals

Members and their dependants as defined and Honorary Members are eligible for Funeral Benefits as prescribed in *Appendix B*.

5.3 Use of Point Clare facilities

Members and Honorary members will have access to THE FUNDS facilities at Point Clare NSW. The rules relating to the use of these facilities are set out in *Appendix C*.

APM Botany Mill Security Plan Sickness & Accident Fund

5.4 Sickness Benefit

5.4.1 Weekly Benefit (not Workers Compensation)

A weekly benefit will be paid to a Member absent from work as a result of sickness or accident, and who is not in receipt of sick pay, Workers Compensation payments or any other payment except Government sickness benefits. The rate of this payment is prescribed in *Appendix A*.

5.4.2 Weekly Benefit (Workers Compensation Absence)

A weekly benefit will be paid to any member who is absent as a result of an injury received whilst in the employ of THE COMPANY and who is receiving Workers Compensation payments for such injury, but no other payments. The rate of this payment is prescribed in *Appendix A*.

5.4.3 Third Party Insurance Claims

Any member who subsequently receives a settlement via a Workers Compensation claim, or a Third Party Insurance claim etc, which has a component for lost wages which coincides with the period for which they have been paid Sickness Benefits, shall reimburse THE FUND for said payments.

5.4.4 Period of Benefits

- i) Full benefits will be paid for a period of up to thirty nine (39) weeks. The Committee shall have the power to continue to pay benefits at two thirds (2/3) the prescribed rate for a further thirteen (13) weeks.
- ii) A member who, having been on Sickness Benefits and returned to work, within three (3) months of such return to work again qualifies for Sickness Benefits, shall have all periods of absence treated as a continuous absence in respect of Paragraph 5.4.4 i.

5.4.5 Claims and/or Doctors Certificates

- i) Claims must be made in writing and on the Claim Form provided, to the Secretary of THE FUND and signed by the claimant. Each claim made upon THE FUND must be accompanied by a Doctors Certificate stating the nature of the illness or injury. On expiration of the original certificate continuation Certificates must be supplied.
- ii) Any claim related to the recurrence of any illness or injury in respect of which benefits have previously been paid shall require a new letter and Claim Form to be written to the Secretary of THE FUND and be accompanied by the relevant Doctors Certificate.
- iii) A Member being admitted to hospital shall be paid benefit from the day of admission to the day of discharge, provided a written claim as per paragraph 5.4.5 i. Above.
- iv) A Doctors Certificate need not be supplied to THE FUND in respect of Workers Compensation absences. Claims however should be lodged with the Secretary as soon as possible on the Claim Form provided.

APM Botany Mill Security Plan Sickness & Accident Fund

5. BENEFITS continued

5.4.6 Absence of Three (3) or more days

A member must be absent from work for three (3) clear working days as a result of the sickness or accident in respect of which he is making a claim before benefits become payable.

5.4.7 Notification of return to work

Members on sickness benefits must notify the Secretary in writing immediately on return to work.

5.4.8 Medical Examination

The Committee shall have the right to request that a member be examined by a Doctor chosen by the Committee in respect to the illness or injury for which a sickness benefit is sort. The fee for such an examination will be paid by THE FUND. Any members failing to attend such an examination shall be debarred from receiving benefits from THE FUND.

5.4.9 Medical Referee

In the event of there being a disagreement of opinion between the Doctor nominated by the Committee and members private Doctor, a medical referee whose appointment shall be agreed to by both parties shall be consulted, and his decision shall be binding on both parties. The fee for the referee shall be paid by THE FUND.

5.4.10 Expulsion - working and receiving benefits

Any member accepting employment of any kind without the permission of the Committee whilst receiving benefits from THE FUND shall be expelled and shall forfeit all claims against THE FUND.

5.4.11 Misconduct - To receive Benefits

Any member feigning sickness or reducing himself to sickness through his own misconduct shall not be entitled to any benefits from THE FUND. The decision of the Committee being final in such cases.

APM Botany Mill Security Plan Sickness & Accident Fund

6. MANAGEMENT

6.1 Committee

The affairs of THE FUND shall be controlled by a Committee of Management which will be comprised of three (3) Management representatives being: The Chairman, The Treasurer, and The Secretary, who will be appointed by THE COMPANY, and six (6) representatives of THE FUND who shall be elected from the members of THE FUND.

A list of the current Committee can be found in *Appendix D*.

6.2 Elections

Elections, if required, will be by ballot and taken at the Annual General Meeting of THE FUND.

6.3 Eligibility for Election

All adult members of THE FUND shall be eligible for election to the Committee.

6.4 Nominations

Nominations shall be made in writing, signed by the proposer and the nominee, and shall be forwarded to the Secretary at least seven (7) days prior to the date of the election. If insufficient nominees have been received by the prescribed date, then further nominees may be taken from the floor at the Annual General Meeting.

6.5 Returning Officer

There shall be a Returning Officer appointed by the Committee, who shall supervise all arrangements for elections.

6.6 Terms of Office

Elected members of the Committee shall hold office for twelve (12) months or until the next Annual General Meeting.

6.7 Vacancies

In the event of there being a vacancy on the Committee at any time (of an elected representative), the remaining members of the Committee may appoint a successor until the next Annual General Meeting. In the event of a vacancy on the Committee of an appointed officer THE COMPANY shall appoint a replacement.

6.8 Meetings

The Committee shall meet at least once every two months.

Any member of the committee can request a committee meeting at any time and provided a quorum can be obtained a meeting will be held.

6.9 Quorum

A quorum (of the Committee) shall consist of five (5) members.

APM Botany Mill Security Plan Sickness & Accident Fund

6.10 Notice of General Meeting

Notice of a General Meeting shall be attached to Payslips, as well as being put in the mail boxes in reception not less than eight (8) days before the proposed date of such meeting.

6.11 Quorum

A quorum (for the purpose of a General Meeting) shall consist of twelve financial members of THE FUND.

6.12 Simple Majority Decides

All questions at meetings shall be decided by a majority of the Members present, but in the case of equality of votes the Chairman shall have a second and casting vote.

6.13 Indemnity

Each officer and/or Committee member of THE FUND acting with due authority or under instructions on behalf of THE FUND shall stand in the position of agent for all purposes within the objects of THE FUND and shall be Indemnified by THE FUND, and all costs, losses and/or liabilities which any such officer or Committee member may suffer or incur by reason of any contract entered into or act or thing done by him in any such capacity jointly or severally, shall be paid by and from the resources of THE FUND.

6.14 Secretary's Duties

The Secretary shall attend meetings of THE FUND and keep books in a faithfully manner. The Secretary will attend to sickness and accident claims and make payments on behalf of THE FUND.

6.15 Treasurers Duties

The Treasurer shall receive all monies on account of THE FUND and deposit them in the bank account as the rules direct and prepare a balance sheet for the Annual General Meeting.

6.16 Chairman's Duties

The chairman will preside at all meetings of THE FUND and follow and apply the rules of THE FUND as set out.

6.17 Bank Account Operation

Bank Account operations shall be made by any two (2) of the Chairman, Secretary, Treasurer or Members Trustee signing conjointly.

APM Botany Mill Security Plan Sickness & Accident Fund

7. MEETINGS

7.1 Committee

The Committee shall meet at least once every two months to deal with any matters arising from or since the last meeting.

Any member of the committee can request a committee meeting at any time and provided a quorum can be obtained a meeting will be held

7.2 Annual

THE FUND's financial year shall extend from July 1st until June 30th in the following year. The Annual General Meeting shall be held between July and September in each year for the purpose of considering the annual accounts and the Committee Report, to elect the Management Committee for the ensuing twelve (12) months, and conduct such business of which notice has been given in accordance with the rules.

7.3 Special General Meeting (Chairman calls)

The Chairman shall call a General Meeting of members at any time they consider necessary, and the place of the meeting shall be decided by the Chairman. Members must be given eight (8) days notice of such meeting and the purpose of the meeting explained. A quorum shall consist of twelve (12) or more financial members.

7.4 Special General Meeting (Members request)

Any twenty (20) financial members can at any time request the Chairman in writing to call a Special General Meeting, which shall be called within fourteen (14) days after the receipt of such a request. All members shall be entitled to attend General Meetings and shall be entitled to vote.

A quorum shall consist of twelve (12) or more financial members.

7.5 Alterations to Rules

The rules of THE FUND shall only be altered or added to at a General Meeting by a three fourths (3/4) majority of the members present and entitled to vote. Notice of such intention to alter any rule must be attached to Payslips, as well as being put in the mail boxes in reception, at least eight (8) days prior to the date of the meeting. Notwithstanding the foregoing no alteration or addition to any of the rules shall be valid unless THE COMPANY consents to such changes.

7.6 Alterations to Contributions or Benefits

Alterations to contributions by the members and alteration to benefits (as listed in *Appendix A*) may be authorised by a three fourths (3/4) majority of the members present at a General Meeting or by a three fourths (3/4) majority of the full Committee.

APM Botany Mill Security Plan Sickness & Accident Fund

8. TRUSTEES

8.1 Number

The Trustees shall be three (3) in number
A list of the current Trustees can be found in *Appendix D*.

8.2 Who are they

- i) One Trustee shall be called the appointed Trustee, his appointment being made by the Company. He shall be the Chairperson of the Trustees, and shall hold office at the pleasure of THE COMPANY or until he resigns.
- ii) One Trustee shall be the "Members Trustee", who shall be elected by the Members of THE FUND at the Annual General Meeting
- iii) The third Trustee shall be the Secretary of THE FUND.

8.3 Replacing Trustees

Should the appointed Trustee, or the Secretary cease to hold office THE COMPANY will appoint another Trustee in their place. If the elected Trustee dies or vacates office before the expiration of their term of office, the remaining Trustees shall appoint a member to fill the vacancy until the next Annual General Meeting.

8.4 Meetings

The Trustees shall meet at least once every six (6) months. Two (2) Trustees may call a meeting by giving three (3) days notice in writing to the Secretary.

8.5 Investment of Funds

The Trustees may invest the monies of THE FUND or any part thereof in any of the following ways with the consent of the Committee, or by a four/fifths (4/5) majority of members present and entitled to vote in General Meetings.

- i) Bank guaranteed low risk fixed term deposits.
- ii) In the public funds.
- iii) In the purchase of land or in the erection or alteration of offices or other buildings thereon.
- iv) In shares (preference or ordinary) or debentures of Amcor Ltd or PaperlinX Ltd.
- v) In any other security expressly directed by the rules of THE FUND not being personal security.

8.6 Signatures

With respect to all matters concerning investments of THE FUND, the signature of the Secretary and one other Trustee shall be necessary.

8.7 Indemnity

Each of the Trustees of THE FUND, acting with due authority or under instruction on behalf of THE FUND shall stand in the position of agent for all purposes within the objects of THE FUND and shall be indemnified by THE FUND, and all costs, losses and or liabilities which any such Trustee may suffer or incur by reason of any contact entered into or act or thing done by him in any such capacity jointly or severally, shall be paid by and from the resources of THE FUND.

APPENDIX A

Table of Ancillary Benefits

Note: Notwithstanding the limits set out below, Total ancillary benefits (excluding trauma relief) are subject to the \$1200 annual limit as prescribed in clause 5.1

1 SICKNESS BENEFITS Weekly Sickness Benefit (not Workers Compensation) see item 5.4.1 Weekly Sickness Benefit (Workers Compensation) see item 5.4.2	\$60 per week \$ 8 per week
2 AMBULANCE SERVICE Ambulance benefit, limited to five (5) services per annum	100% of charge
3 DENTAL BENEFITS Fillings, Restorations, Surgical Extractions, Peri/Endodontics Orthodontic Services, Prosthodontics, Bridge & Crown, Root Canal, Wisdom Teeth extractions (* 12 month qualifying period) Dentures. Full or partial replacement or repairs (* 12 month qualifying period) Other. Miscellaneous dental services not prescribed above	\$80 per Treatment \$1000 per annum* \$700 per annum * \$40 per service
4 THERAPIES NOT PROVIDED BY A MD Physiotherapy and Therapeutic Massage Counselling/Occupational Therapy Speech Therapy Psychological counselling Chiropractic Treatment Osteopathic Treatment Podiatry Acupuncture Naturopath Consultations Dietician	\$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service \$40 per service
5 OPTICAL Members are entitled to claim, after the 12 month qualifying period*, each 2 years, up to the amount shown (the amount includes any claims for dependants), Spectacles and/or Contact Lenses NOTE: Disposable Contact Lenses are included in this category, however a maximum of \$300 may be claimed per 2 years* for Disposable Contact Lenses, as part of the total \$800	\$800 per 2 years *
6 MISCELLANEOUS Hearing Aids, limited to one payment each two years (* 12 month qualifying period) Nebuliser / CPAP Home Nursing (when ordered by Doctor) Trauma Relief assistance, As Agreed on by the Committee Television Rental whilst in hospital Maternity Payment (Baby Payment) Corrective Shoes (from 1 st July)	\$803 per unit per ear * \$150 per annum \$30 per service, \$400 per annum \$800 per annum no limit \$600 per child* \$300
ANNUAL LIMIT: THERE IS AN ANNUAL OVERALL LIMIT OF \$1,200 THAT CAN BE REBATED TO ANY ONE MEMBER IN ANY ONE (1) FINANCIAL YEAR. FOR THIS PURPOSE TRAUMA RELIEF GRANTED BY THE COMMITTEE WILL BE CONSIDERED OUTSIDE THE LIMIT.	
TIME LIMIT: ALL EXPENSES MUST BE CLAIMED WITHIN 60 DAYS OF MAKING PAYMENT.	

APPENDIX B

Funeral Benefits

A Funeral Benefit shall be payable from THE FUND to members or their dependants, or to that person who undertakes to answer for the funeral expenses of the deceased. Provided that wherever a husband and wife are both members then only one payment is made.

Full Member

On the death of a member or their dependant THE FUND will pay all funeral expenses for that member or their dependant up to an amount of \$5000.

Honorary Member

Upon the death of an Honorary Member a funeral benefit shall be payable from THE FUND to the person who undertakes to answer for the funeral expenses of the deceased. The amount of this benefit will be \$800.

Proof of Death

Proof of Death is required before any benefit is paid.

APPENDIX C

Rules relating to Point Clare Facilities

A. POINT CLARE BOOKINGS

1. Sick or convalescing members (but not Honorary Members) have absolute priority over any other members in the use of Point Clare, regardless of the rules as set out below. Sick or convalescing members do not pay the required fee.
 2. Bookings can not be made more than three (3) months in advance, but should be made at least one month in advance. The bookings will be first in first served except as explained below.
 3. Except as outlined in point 4, members are restricted to one (1) use of Point Clare facilities per year and may not always book in for the same time every year.
 4. A member may use the Point Clare facilities more than once a year only if no other member who has not had a booking in the current year has made a booking for the same period. These second bookings can only be confirmed one month prior to the booking date. At this point these second bookings will take precedence over any late first bookings.
-
5. A member may use Point Clare at the same time each year only if no other member who has not previously had a booking for that time of the year has made a booking. As with second bookings (point 4) these bookings can only be confirmed one month prior to the booking date.
 6. Honorary Members may only use the facilities once a year. They can only book one month in advance and may not book during NSW school vacation periods.
 7. Fees payable for the use of Point Clare must be made within seven (7) days of the booking being placed. This fee will be refunded if the booking is cancelled no later than seven (7) days before the booking start date. However, if the booking is cancelled after this time, the fee will only be refunded at the discretion of the Sick & Accident Fund Committee. Your booking will not be guaranteed until this fee is paid. If a member has placed a second booking and this booking is subsequently rejected (as per points 4 & 5) this fee will be refunded.

APPENDIX C

Rules relating to Point Clare Facilities

B. TENANCY RULES - POINT CLARE

ALL TENANTS ARE REQUESTED TO OBSERVE THE FOLLOWING RULES.
FAILURE TO DO SO MAY MEAN THAT YOU WILL BE REQUESTED TO APPEAR
BEFORE THE COMMITTEE OF MANAGEMENT.

1. The premises must be LOCKED AND MADE SECURE when leaving. This includes locking ALL BUILDINGS when going off site for any reason whatsoever (eg shopping etc).
2. Flats must be left clean and tidy.
3. No visitor or person other than an immediate dependant of a member, i.e. family member who resides and is supported by the member, may stay overnight, except where prior permission has been granted by the Committee extra overnight visitor(s)*, may be allowed. This exception will be at the absolute discretion of the Committee. (*extra overnight visitors cannot exceed the bedding supplied in each of the Cottages, see item 5)
4. No camping gear, caravan or the like, including sleeping in vehicles on any part of the property is permitted. This requirement is by order of Gosford Shire Council. Failure of any member to observe this order may seriously affect the tenancy provisions approved by the Council.
5. The tenant is responsible for removal of all waste materials from inside the flats into the otto bins provided. This includes paper, bottles and cans.
6. The motor boat is not to be used until the member has spoken to the caretaker and received instruction in its use.
7. When all flats are in use, the use of the boat is to be co-ordinated day about by the tenants, in agreement with each other.
8. No vehicle is to be driven past the double gates unless authorised by the caretaker.
9. The caretaker has full authority in the absence of any committee member, to ask the tenant to conform with such rules, and failure to do so will result in the tenant being requested to vacate the premises without delay.
10. The caretaker has the right to make an inventory check of all equipment and the premises prior to and after the tenant vacates. Any items damaged, broken, missing, altered or changed, will be discussed with the tenant with the view to that person being held responsible.
11. Strictly NO ANIMALS OR PETS OF ANY KIND are allowed to be kept on the premises anywhere by any tenant or person who resides with that tenant.
12. The Committee has the power to take any necessary action that they see fit.

APPENDIX C

Rules relating to Point Clare Facilities

C. GENERAL

1. Members Complaints

Members should submit in writing to the Secretary of THE FUND, within fourteen (14) days of returning from Point Clare any such matter about which they are concerned. The Committee will investigate all such complaints and report back.

2. Caretaker

The Caretaker - appointed by the Committee is the responsible person in charge at all times. He is empowered by the Committee to safeguard the premises and its facilities whilst it is being used or vacant.

3. Committee

Committee members involved in working bees or required to carry out any repair shall, if necessary, have preference over other members to occupy the premises to carry out such work.

4. Penalties

Any member of THE FUND who disregards or breaks any rule may be dealt with by the Committee. The Committee may require members in this instance to appear before the Committee.

5. About the Cottages

The House, referred to as Flat 3, sleeps 6. Comprising of 1 Queen bed and 4 single beds.

The Units:

Flat 2 on the Waterside of the property sleeps 6. Comprising of 4 single beds, and a double bed (futon bed in lounge room).

Flat 1 on the Roadside of the property sleeps 4. Comprising of 1 queen bed and a futon that converts to a double bed.

Kitchen equipment, is supplied. It is necessary to take pillows/bedding//towels and items of a personal nature.

APPENDIX D

Current Trustees and Members of the Committee

Trustees

Chairperson of Trustees	Eric Bartschi
Members Trustee	Fiona Faust
Secretary/Trustee	Edwin Caldwell

Committee

Chairperson	Eric Bartschi
Treasurer	Peter Ryan
Secretary	Edwin Caldwell
Elected representatives	Fiona Faust Craig Walters Gerard O'Connell Craig Pickett Raelene Oliver Paul Curtis

Appendix 3 – Court’s judgment dated 19 February 2024



Equity Division Supreme Court New South Wales

Case Name: **In the matter of APM Security Plan Sickness & Accident Fund (in liq)**

Medium Neutral Citation: [2024] NSWSC 145

Hearing Date(s): 19 February 2024

Date of Orders: 19 February 2024

Date of Decision: 19 February 2024

Jurisdiction: Equity - Corporations List

Before: Black J

Decision: Direct the liquidator to provide short minutes of order to give effect to judgment.

Catchwords: CORPORATIONS – Winding up – application by liquidator for direction as to which rules of fund are operative.

CORPORATIONS – Winding up – application by liquidator for direction as to when fund was dissolved – direction as to entitlement of members and former members to share in distribution of fund assets.

Legislation Cited:

- *Insolvency Practice Schedule (Corporations)* 2016 ss 90-15, 90-20
- *Trustee Act* 1925 (NSW) s 63
- *Corporations Act* 2001 (Cth) s 583
- *Uniform Civil Procedure Rules* 2005 (NSW) reg 6.29

Cases Cited:

- *Hanchett-Stamford v Attorney-General* [2008] EWHC 330; [2009] Ch 173
- *Hickey v Attorney General of the State of New South Wales* [2021] NSWSC 772
- *Re GKN Bolts and Nuts Ltd* [1982] 1WLR 774
- *Re Octaviar Administration Pty Ltd (in liq)* [2015] NSWSC 1556
- *Re William Denby and Sons Ltd Sick and Benevolent Fund* [1971] 1 WLR 973

Texts Cited:

Category: Procedural rulings

Parties: KordaMentha Shelf Co (AMPSPSAF) Pty Ltd
(Plaintiff)
Catherine Margaret Conneely and Scott David Harry
Langdon in their capacity as joint and several
liquidators of the ASPM Security Plan Sickness &
Accident Fund (in liquidation) (Applicants)

Representation: Counsel:
D Stack (Applicants)

Solicitors:
Ashurst Australia (Applicants)

File Number(s): 2022/130874

Publication Restriction:

JUDGMENT

Nature of the application

- 1 By Interlocutory Process filed on 8 November 2023, Ms Conneely (formerly a liquidator of the APM Security Plan Sickness and Accident Fund (in liq) ("Fund") and Mr Scott Langdon, who remains as liquidator of the Fund, seek orders under ss 90-15 and 90-20 of the Insolvency Practice Schedule (Corporations) and under s 63 of the *Trustee Act* 1925 (NSW) ("*Trustee Act*") and in the inherent jurisdiction of the Court. That relief is formulated as, alternatively, declarations as to particular matters or as advice that the liquidators, or now Mr Langdon in his capacity as the remaining liquidator, would be justified in proceeding on specified bases. Essentially, two issues are raised by the application, the first being the identification of the operative Rules of the Fund and, second, a question which was formulated as directed to the date of dissolution of the Fund although, in substance, it raises the issue of the persons who were entitled to be treated as members of the Fund so as to receive a distribution of assets on its dissolution.

Affidavit evidence and chronology

- 2 The Liquidator relies on two affidavits and a substantial volume of documents in support of the application. I first sent out that affidavit evidence and a chronology of events.
- 3 By her first affidavit dated 3 November 2023, Ms Conneely sets out the history of the Fund at some length and identifies possible versions of the Rules of the Fund, tracing the position from the earliest Rules that have been located through later versions, and sets out the steps which were taken in respect of the dissolution of the Fund.
- 4 By her second affidavit dated 5 February 2024, Ms Conneely gives evidence of notice that has been given to members of the Fund and other interested persons in respect of this application, and refers to responses from members and former members which support, in some cases, a distribution to all living members of the Fund and, in other cases, distribution on alternative bases. Ms Conneely also indicated the view that the liquidators had formed as to the appropriate manner of distribution of the balance of assets in the Fund between its members and former members as follows:

“... 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.”
- 5 I will reach the same view for the reasons noted below, and I will address why, even if it is “controversial”, it is also correct below.

- 6 The exhibits to Ms Conneely's affidavits include an earlier version of the Rules of the Fund, and that document is relevant so far as the benefits specified in that earlier version are less than those paid out and allow it to be excluded as the current Rules of the Fund. Ms Conneely also identifies the 2005 Rules of the Fund which contain membership criteria and identified the objective of the Fund, namely:

"The objective of the Fund is to create and maintain sufficient financial resources, through fortnightly or monthly contributions of its members and the company and investments which will enable The Fund to provide benefits as set out herein."

- 7 Clause 3 provided for membership of the Fund and cl 3.4 provided when membership would cease, including on a member's leaving the employee of the company. As Mr Stack who appears for the Liquidator points out, that clause contemplates that a member would cease to be a member of the Fund when he or she left the employer company's employment. It had the result in this matter that some 73 per cent of members of the Fund ceased to be members when they left its employ after they were made redundant, as I will note below. However, that provision does not deal, expressly or impliedly, with the entitlements of the members upon that of an event occurring, and I will return to the applicable legal principles in that respect below. Clause 3.5 dealt with the category of unfinancial members, which would have relevance if it were found that members entitlements only arose at a later date or that the Fund was dissolved at a time that members were unfinancial.
- 8 Clause 4 provided for contributions and cl 5 sets out the relevant benefits payable to members of the Fund. Appendix A sets out particular benefits that were payable and included provision for maternity payments of \$600 per child. That is significant because, not only were these Rules found within the records of the Fund, but, or at least the records of the employer company, but there is also evidence of payments of maternity benefits in accordance with that provision, which creates a strong inference that that version of the Rules took effect.

9 Ms Conneely's second affidavit exhibits a 2008 version of the Rules of the Fund, which was not found in the Fund's records but as provided by a member of the Fund to the liquidators. That version of the Rules is largely consistent with the 2005 version, with a change to at least one of the benefits payable, and an indication of a change in membership of the committee of the Fund. The fact that document was held by and provided by one of the members indicates the possibility that it may have come into effect.

10 The issues in this application arise because some 73 per cent of members of the Fund were made redundant by the employer company and ceased to be members of the Fund on the installation of new production machinery by that company in mid-2012. In anticipation of that occurring, by a memorandum dated 19 October 2011, a commercial manager of the employer company identified several matters supporting the winding up of the Fund on the one hand or its continuance of the other. The matters that supported a winding of the Fund included that:

"The closure of B7 and B8 [the earlier machines] provides a logical break point for the wind up of the fund with less than 30 out of 115 members moving across to B9 [the new machine]."

11 The matters identified as supporting the ongoing operation of the Fund included positive aspects of its activities.

12 By an email dated 15 June 2012, postdating the redundancy of employees, which was sent to the 30 or so remaining members of the Fund, the employer company noted that:

"Recently [the employer company] made a decision to wind up the [Fund] this decision had been deliberated for the last couple of years. The process by which the winding up will be carried out is yet to be announced and it is likely that the program will take years rather than months to complete."

13 That email referred to the decision of committee members that the Fund should be run in caretaker mode, with a more limited range of activities, and noted that:

"Member deductions will cease and payment of health and medical benefit claims would also cease from that time. Members use of [certain facilities] will

continue as the committee believes this helps in maintaining the facilities. This decision is partly made in view of the large number of members who had to leave the fund in May and June [2012]."

- 14 That email is significant, in several respects. First, it points to a recognition by the employer company of the significance that a large number of members had departed the Fund, in effect, by a forced departure arising from their redundancy when the new production machinery was commissioned. Second, that email points to a significant change in the activities of the Fund, so far as it would continue to be run in caretaker mode, with a narrowed range of activities. Third, it is qualified by the fact that, while that decision had then been made, a long period then passed before it was implemented, after the employer company had sold the business to a third party.
- 15 Ms Conneely points to subsequent activities within the Fund, after mid-2012, which indicate that it then continued in respect of a narrower range of activities, including the use by members of two properties owned by the Fund, for the benefit of its smaller number of remaining members. A document contained in a further exhibit to that affidavit, tendered on a confidential basis, refers to the 32 persons who were remaining members of the Fund as at 13 June 2012, indicating the large number of members who had by that time lost their membership on redundancy, and recording that one of those remaining members was to cease employment later in June 2012. The exhibits to Ms Conneely's affidavits also include financial reports for the Fund continuing into 2014, which record its limited then range of receipts and payments, consistent with the proposition that it continued, beyond 2012, with a limited range of activities, consistent with the earlier reference to it functioning in a "caretaker mode" which I have noted above.
- 16 In late 2020, a member of the Fund wrote to the new owner of the business inquiring as to the position in respect of the liquidation of the Fund. That company responded that no final decision had been made in respect of the future of the Fund, and that member drew attention to an earlier letter, sent by the employer company in 2003 which contemplated that, in the event of a

winding up of the Fund, the monies held in the Fund would be distributed amongst its members on a specified basis.

- 17 The Fund appears to have continued operation on a limited basis until the company which had acquired the business ultimately retained Ms Conneely and Mr Langdon and the firm with which they are associated in order to complete the winding up of the Fund. Ultimately, in May 2022, orders were later made by the Court to wind up the Fund, under s 583 of the *Act* or in its inherent jurisdiction.

The advice that is sought by the Liquidator

- 18 Mr Stack draws attention to the scope of the Court's jurisdiction under s 90-15 of the Insolvency Practice Schedule (Corporations) and the broadly corresponding jurisdiction in respect of a trust under s 63 of the *Trustee Act*. I am satisfied that the jurisdiction under s 90-15 of the Insolvency Practice Schedule (Corporations) is available here, where the Liquidator has been appointed by the Court to wind up the Fund. It is doubtful that the jurisdiction under s 63 of the *Trustee Act* is available, where it appears the Fund is an unincorporated association and not a trust. Mr Stack draws attention to the width of the Court's powers to give directions to a liquidator under s 90-15 of the Insolvency Practice Schedule (Corporations) and to my summary of the applicable principles in *Re Octaviar Administration Pty Ltd (in liq)* [2015] NSWSC 1556 and the cases that have adopted that approach.
- 19 I am satisfied that the Court can, and should, give such a direction to the Liquidator here, where the issues raised have considerable legal difficulty and the uncertainties as to the Rules which apply also warrant such advice. Importantly, it would also be unreasonable to require the Liquidator to proceed to a distribution of monies held in the Fund without advice that will protect him, where he must make a difficult choice between advantaging one or other group of potential recipients of a distribution from the Fund, either to the advantage of the wider group of members and former members of the Fund prior to the redundancy in 2012, if they are permitted to share in the distribution, or of the

smaller group who would likely receive greater amounts if only the remaining members of the Fund after that redundancy were permitted to participate in the distribution.

The applicable Rules

- 20 The first issue, as to which the Liquidator seeks a declaration or a direction from the Court, is the applicable Rules to be applied. It seems to me that it is not necessary to make a declaration as to that matter, where there is a degree of uncertainty in the factual position, and a direction will sufficiently protect the Liquidators in this regard. As Mr Stack points out in submissions, several matters support a finding, preferred by the Liquidator, that the 2005 Rules apply, although a finding that the 2008 Rules apply could also be made on the basis that it is unlikely that they would have been provided to a member unless they had taken effect. Here, as Mr Stack points out, there is little relevant difference between those two versions of the Rules, because the provisions which would be relevant to a distribution to members are the same or substantially the same in both those versions of the Rules.
- 21 On balance, it seems to me that I should order that the Liquidator is justified in proceeding on the basis that the 2005 Rules apply, while recognising a possibility that the 2008 Rules had later been adopted. It seems to me that that view is preferable, where the 2005 Rules were held in the relevant documents relating to the Fund and, second, there is no evidence in respect of the 2008 Rules that they were approved by the necessary meeting of members which would be necessary to bring them into effect, although I recognise that the same might arguably be said in respect of the 2005 Rules. In any event, it seems to me that a direction that the Liquidator is justified in proceeding on that basis can be made, where it is plainly more likely that the 2005 or 2008 Rules applied, given the evidence as to the quantum of benefits paid to which I referred above, and it is marginally more probable that the 2005 rather than the 2008 Rules for the reasons noted above.

Which members and former members should receive a distribution for the Fund

- 22 The second and more complex issue as to which the Liquidator seeks a declaration or direction is directed to which members or former members of the Fund are entitled to share in a distribution of the balance of the Fund. The Liquidator formulates that question as whether the Fund was "dissolved" on 1 July 2012, or whether he would be justified in proceeding on the basis that the Fund was "dissolved" on that date. For reasons that I will explain below, it seems to me to be preferable to approach the question on a somewhat different basis.
- 23 Mr Stack makes comprehensive and helpful submissions which draw attention to relevant English case law and to Australian case law which refers to it. He draws attention to the decision in *Re William Denby and Sons Ltd Sick and Benevolent Fund* [1971] 1 WLR 973 ("*Denby*"), where Brightman J addressed the question when it could be said that a fund was "dissolved" including by informal means. In that case, there were initially some 300 members of the relevant fund, and about 170 of them left a company's employment as a result of industrial difficulties, although at least 124 members continued in employment. His Honour there noted that there were several circumstances in which a fund could potentially be "dissolved" and identified such circumstance as being "where the substratum upon which the society or fund was founded has gone." His Honour there found that the fund had not been dissolved, where at least 124 members of the fund remained in employment and his Honour noted the likelihood that the employer would there employ new staff so that the number of the members of the fund would ultimately be replenished. That finding is plainly distinguishable from the facts in respect of the Fund in issue here, although I recognise this is a question of degree. Here, a substantially larger proportion of members of the Fund were made redundant, and the reduction in membership of the Fund was plainly permanent in character, by reason of the replacement of the previous machines and the redundancies consequential upon in the introduction of the replacement machine.

- 24 In a second decision, *Re GKN Bolts and Nuts Ltd* [1982] 1WLR 774 ("*GKN*"), Sir Robert Megarry VC considered that decision, in a case where a club had essentially ceased its activities over a period of time. Megarry VC also referred (at 776) to the need for the Court to adopt a "broad" approach to a problem of this character and observed that:

"The Courts have to be ready to allow the general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on the strict interpretation and strict application of the letter of the rules."

- 25 Megarry VC also recognised that it was possible for a club to be "dissolved spontaneously" although he doubted that mere inactivity was enough to bring about that result, and he questioned the use of the concept of cessation of the "substratum" in that context. It seems to me that the result in that case is of limited assistance here, where it is plain enough that the Fund did not cease its activities, although it significantly narrowed both the number of employees for whose benefit those activities were conducted and the scope of those activities. Here, to the extent that it could be said that the Fund was "dissolved", that is likely to arise from the radical change in the scope of its activities, rather than from a cessation of those activities of the kind contemplated in *GKN*.

- 26 Mr Stack also draws attention to the decision in *Hanchett-Stamford v Attorney-General* [2008] EWHC 330; [2009] Ch 173 where Lewison J referred to *Denby* and *GKN* and also undertook an analysis of the circumstances in which members are subject to contractual restrictions which prevent their claiming their proportionate share of the assets of an unincorporated association. His Lordship there observed (at [47]) that:

"The thread that runs through all these cases is that the property of an unincorporated association is the property of its members, but that they are contractually precluded from severing their share except in accordance with the rules of the association; and that, on dissolution, those who are members at that time are entitled to the assets free from any such contractual restrictions."

- 27 I recognise that this observation is directed, as are several earlier cases, to identifying the point at which the dissolution of the Fund occurs, but it does not seem to me to exclude the possibility that, at some earlier point, there may be

so radical a change in the activities of a fund or the scale or scope of its membership as to free the members from a contractual restriction on their claiming entitlements in the fund.

- 28 As Mr Stack points out, these English cases were referred to without disapproval by Ward CJ in Eq (as the President then was) in *Hickey v Attorney General of the State of New South Wales* [2021] NSWSC 772 (at [34]ff).
- 29 Turning now to the position which might be adopted in respect of the identification of the date on which the Fund was “dissolved”, Mr Stack identified the factors which supported and did not support each of the possible dates of dissolution. If it were necessary to determine the date on which the Fund was dissolved, I would likely here find that it was a date after 1 July 2012 since the Fund continued its activities, although on a limited scale, well after the point at which the employer company and then the Fund's member committee decided to wind up the Fund and that it should be run in caretaker mode from 1 July 2012. As the Liquidator fairly recognises and as Mr Stack points out in submissions, the process of winding up of the Fund then continued over a significant period, during which the Fund engaged in continuing activities of a smaller scale and for the benefit of a smaller number of members.
- 30 However, it seems to me here preferable not to determine this application by seeking to identify a single date of “dissolution” of the Fund but instead to ask the question, at what point were members of the Fund freed of any limitation that would prevent them requiring that they be paid their proper share the assets of the Fund, however that share may be calculated? It seems to me that, having regard to the contractual basis of the Fund and the radical changes which affected its operation in mid-2012, and also taking into account the matters of fairness to which Sir Robert Megarry referred in *GKN*, a change which brought about the exclusion of 73% of the Funds members was so significant that those members who were excluded were no longer restricted from claiming their proper share of the assets of the Fund, whether by an implied term or otherwise. Conversely, the administrators of the Fund and its remaining members could not, from the point of exclusion of those many

members, point to any implied term which would have the unreasonable consequence that remaining members of the Fund obtained a windfall gain by appropriating, albeit not through their own actions, the product of the contributions made by the 73% of the excluded members of the Fund in earlier years. To the extent that a term was identified which had that consequence, it seems to me that it would be so unreasonable that it could not be implied into the Rules of the Fund.

- 31 In the particular circumstances, whether or not the redundancy of such a large proportion of the members of the Fund could properly be characterised as giving rise to a "dissolution" of the Fund, it brought about so radical a redistribution of the assets of the Fund that remaining members were no longer bound by any implied agreement not to claim their proper share of the Fund's assets, as at the date immediately prior to that redundancy taking effect.
- 32 I should therefore give a direction that the Liquidator would be justified in proceeding on the basis that members of the Fund immediately prior to the redundancies which took place in May 2012 were entitled to claim their proper share of the assets of the Fund. That result is consistent with the view expressed by Ms Conneely in her second affidavit, to which I referred above. I do not consider that it is inconsistent with provisions in the Rules which indicate when a member's membership of the Fund ceases, which do not address his or her entitlement to a distribution from the Fund in the unusual situation, arising here, the some 73% of members of the Fund ceased to be members at the same time, as a result of their redundancy.

Orders

- 33 I therefore make the following orders:
1. Order pursuant to s 90-15 of the Insolvency Practice Schedule (Corporations) 2016 that Ms Conneely cease forthwith to be a liquidator of the Fund.

2. Order pursuant to reg 6.29 of the *Uniform Civil Procedure Rules 2005* (NSW) that Ms Conneely be removed as one of the parties to these proceedings.
 3. Order that the liquidator bring in within two business days short minutes of order to give effect to this judgment.
 4. Order that the Applicant's and Ms Conneely's remuneration costs and expenses of and incidental to these orders be paid out of the assets of the Fund.
 5. Order that the exhibits be returned.
- 34 I also bear in mind that the Liquidator has foreshadowed a further application to the Court seeking further advice as to the basis on which the entitlements of members of the Fund will be calculated.

*I certify that this and the preceding 12 pages
are a true copy of the reasons for judgment herein
of his Honour Justice Black.*

MS

Associate

Date: 22 February 2024

Appendix 4 – Frequently Asked Questions

APM Security Plan Sickness & Accident Fund (In Liquidation) (‘the Fund’)

Frequently Asked Questions (‘FAQs’)

to be read together with the Liquidator correspondence dated 28 June 2024

Why do I need to complete a Member Substantiation Form?

The Liquidator is using the Member Substantiation Form to gather information from persons claiming to be members of the Fund which may be relevant in determining their entitlement to participate in a distribution of the Fund’s net asset realisation proceeds.

This includes information the Liquidator may use to reconcile your claim to the Fund’s records or fill gaps in the Fund’s records. The Liquidator will ultimately return to the Court with the information gathered and confirm how to proceed with a distribution of the Fund’s net proceeds to any eligible members. The Liquidator will formally adjudicate your claim at this future stage.

Why is the Liquidator using the 2005 Rules?

Several versions of the Fund’s rules were contained in the books and records. Further details of these versions are contained in the Liquidator’s Rules Application, which is available on the KordaMentha website here:

<https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

On 22 February 2024, the Liquidator obtained Orders that they would be justified in proceeding on the basis that the document entitled "APM Botany Mill Security Plan Sickness & Accident Fund Rules" dated 1 July 2005 ('2005 Rules') contain the Rules which govern the Fund.

A fully copy of the Rules is available on the KordaMentha website for your reference.

What if I do not know my specific employment start or finish date at the Botany Mill?

If you are not sure of your exact employment start or finish date at the Botany Mill, please provide your best estimation and note that it is an approximation only on the Member Substantiation Form.

What are the types of members?

The final determination of members will be subject to a further Court application. However, the table below sets out the preliminary membership eligibility criteria based on the Liquidator's review of the 2005 Rules is as follows:

Membership type	Reference	Eligibility criteria
Member	3.1.	Full-time permanent staff and employees of the Company, employed at either the AFPA Botany Mill or by NSW Recycling Department.
	3.2.	
		Contributed an amount equivalent to \$2.00 per week (deducted from wages).
Honorary member	3.7.	May be granted to members with 10 years continuous service by the Committee, under the following conditions:
		– Upon the member reaching or surpassing normal retirement age.
		– Upon the member retiring due to health reasons which would qualify them for an Invalid Pension.
		– Upon the member reaching 55 years of age, is made redundant, accepts a voluntary redundancy or retires, and who pays to the Fund an amount equivalent to 25% of what they would have contributed had they remained employed with the Company until their 65th birthday.
Unfinancial member	3.5.	Contributions are over one month in arrears.

Membership type	Reference	Eligibility criteria
Former member	3.4	- Member of the Fund, but: - left the employ of the Company; or - were transferred from AFPA Botany or NSW Recycling; or - were expelled from the Fund in accordance with the 2005 Rules.

What contributions should I provide details of?

To the extent you can recall (or have documentation demonstrating), please advise:

- The dollar value of each of your contributions to the Fund
- The frequency of those contributions (e.g. weekly, fortnightly, monthly)
- The period of time for which contributions were deducted/paid.

What constitutes a 'dependant' for the purpose of completing the Form?

The 2005 Rules define 'dependants' in Section 3.3. The extract from the Rules is set out below:

"Dependants will include:

- i) Wife or husband
- ii) Common law spouse
- iii) Dependant children of up to 18 years of age
- iv) Student child up to 25 years of age
- v) Daughter housekeeper."

Please provide the names of anyone who would have been defined as your 'dependant' during your membership of the Fund and their relation to you.

What details of benefits paid to me do I need to disclose in the Member Substantiation Form?

Details of benefits paid to you will allow the Liquidator to review the books and records of the Fund to confirm your membership type and tenure as a member the Fund. The Liquidator does not require a comprehensive list of all benefits paid to you during your membership of the Fund, however, to your best recollection please advise of:

- Any ancillary benefits received in respect of your claims (described in Section 5.1. and Appendix A of the 2005 Rules);
- Any ancillary benefits received in respect of your dependants' claims (described in Section 5.1. and Appendix A of the 2005 Rules);
- Any funeral benefits received (described in Section 5.2 of the 2005 Rules);
- Any sickness benefits received (described in Section 5.4 of the 2005 Rules)

Please provide approximate details and timing only – the Liquidator does not require a comprehensive list.

What type of supporting documentation is sufficient?

Examples of documentation which you may provide include, but is not limited to:

- Pay slips showing your employment at the Company
- Pay slips showing deductions for contributions to the Fund
- Previous claim forms for benefits payable by the Fund
- Correspondence with Committee members or management of the Fund
- Employment contract showing employment at the Botany Mill
- Extract of bank statements during your tenure as an employee of the Botany Mill, including deposit of wages
- Correspondence demonstrating employment at the Botany Mill
- If you were made redundant, separation certificate demonstrating cessation of your employment at the Botany Mill.

We acknowledge there has been a significant passage of time since the Fund was established and since it entered 'caretaker mode.'

The Liquidator is in possession of the last known books and records of the Fund; however, these documents are not fulsome. The Liquidator will also be considering these records when reviewing Member Substantiation Forms, however the records do not comprehensively identify every member of the Fund, so please provide any additional documentation to the best of your ability.

What if I do not have any supporting documentation?

If you do not have supporting documentation, please still provide a Member Substantiation Form, completed to the best of your ability. The Liquidator's office may call to discuss your employment at the Botany Mill and documentation further.

Does the Liquidator hold records relating to my membership?

The Liquidator possesses some books and records relating to the Fund. These are not a complete set of records, and therefore members are encouraged to provide any records they have of their membership to ensure their claim is appropriately substantiated. As an example, the Liquidator holds a copy of the honour board for service of more than 25 years at the Botany Mill.

Can I complete the Member Substantiation Form on behalf of somebody else?

Yes, you can complete this form on behalf of a (current or former) member of the Fund. If you are completing this form on behalf of somebody else:

- Use Section 2 of the Form to identify the details of the (current or former) member
- Tick the second box under 'Execution' for completing the form on behalf of a (current or former) member.
- Sign the form and provide your contact details at the bottom of the Form, should the Liquidator's office need to contact you.

What if my relative may have been a member but they are now deceased?

You may complete the Member Substantiation Form on behalf of a deceased member. While the Liquidator does not have Court directions as to which members will receive a distribution of the Fund's net proceeds, or if deceased members will be eligible, you are encouraged to provide any known details so you can still be included in correspondence regarding next steps in the winding up and distribution process.

Please complete the Member Substantiation Form on behalf of someone else as outlined above and also provide documentation substantiating your relation to the Interested Person or their estate.

I was made redundant during the decommissioning of the B7 and B7 paper machines at Botany Mill. What does this mean for me?

Based on the 22 February 2024 Orders, you may be entitled to participate in a distribution of the Fund's net proceeds. While the Liquidator cannot confirm the quantum of any distribution at this stage, please complete and return the Member Substantiation Form so you can be included in correspondence regarding next steps in the winding up and distribution process.

Will you confirm if I am a member once I provide the documentation?

The Liquidator will review your documentation and will be in contact with any queries or to confirm if any further information is required.

While the Liquidator will review your documentation, they are not able to definitively confirm if you are a member of the Fund for the purpose of a distribution of the Fund's net assets. This is ultimately for the Court to decide in the next application brought by the Liquidator. This will be the Distribution Application (defined below). After the Distribution Application the Liquidator will formally adjudicate on the Member Substantiation Forms received.

What distribution will I receive?

At this stage, the Liquidator cannot confirm if you will receive a distribution, nor the quantum of any distribution potentially payable. This is because the Liquidator will first need to return to the Court to confirm members have been appropriately classified, have provided appropriate supporting evidence, and to confirm how the Liquidator should calculate and pay a distribution.

The Liquidator will report to Interested Persons again prior to making this Distribution Application.

When will I know the size of my distribution and when will it be paid?

Prior to paying a distribution from the Fund, the Liquidator will need to:

- Review the Member Substantiation Forms received, collate and review all substantiating documentation
- Prepare an application to the Court seeking guidance on the information received and distribution methods (Distribution Application)
- Adjudicate all claims and subsequently attend to calculating and paying the distribution.

As the Liquidator does not currently have a view on how many members will provide Member Substantiation Forms, it is difficult to provide a time estimate or dollar value in respect of a distribution.

The Liquidator will again report to members prior to making the Distribution Application and will provide a timeline in respect of the distribution, as soon as they are able.

Appendix 5 – Member Substantiation Form

Member Substantiation Form

APM Security Plan Sickness & Accident Fund (In Liquidation) ('the Fund')

To: The Liquidator of the Fund:

1. This is to state that in or around May 2012, I or the person I am completing this form on behalf of, claim/claims to be member of the Fund.
2. Particulars of my claimed membership are as follows:

Full name

(name of member, including any names the member may have previously been known as)

Date of birth

(date of birth of member)

Date employment
commenced at the
Botany Mill

(date employment commenced with Amcor at the Botany Mill)

Date employment
ceased at the Botany
Mill

(date employment ceased at the Botany Mill)

Reason for employment
cessation

(reason for ceasing employment at the Botany Mill, e.g. retirement, redundancy, injury, other)

Claimed membership
type

(to the best of your knowledge, what type of membership was held)

Details of contributions
made to the Fund

(amounts of contributions, frequency of payment)

Name of any
dependants or prior
dependants

(name of any present or prior dependants as defined in the FAQ, including any names they were previously known as)

Details of any benefits
paid to you or your
dependants

(any sickness and accident or other benefits paid to you during your tenure at the Botany Mill that you recall, including approximate date/year)

To the extent available, please enclose supporting documentation for the information you have detailed above. Refer to the Frequently Asked Questions dated 28 June 2024 for examples of supporting documentation you may provide.

3. This form is being used only for the purpose of canvassing current or former members of the Fund, and is subject to an application to the Court, which the Liquidator will be filing prior to making any distribution. Correspondence in respect of this application and any further information required from Interested Persons will be provided in due course.

Execution:

- ☐ I am completing this form in respect of my own membership at the Botany Mill. (tick if applicable)
- ☐ I am completing this form on behalf of a member and have provided substantiation to demonstrate my relation to that member and/or authorisation to make this statement. (tick if applicable)

Please ensure you insert your preferred contact details when filling out the information below.

Signature _____

Name _____

Address _____

Email _____

Phone _____ Fax _____

Date _____