

LEGAL SERVICES COMMISSIONER

v

RUSSELL KEDDIE

ADT 092009

STATEMENT OF AGREED FACTS

Background

1. At all material times since October 2002 each of Scott John Roulstone, Russell Walter Keddie and Tony Barakat (together "the Principals") were holders of unrestricted practising certificates.
2. At all times between October 2002 and 31 December 2006 each of the Principals were partners in the firm known successively as "Keddies", "Keddies Litigation Lawyers" or "Keddies the Insurance Law Specialists" (collectively "the firm").
3. At all material times since 1 January 2007 each of the Principals have been legal practitioner directors (as defined in Part 2.6 (Incorporated legal practices and multi-disciplinary partnerships) of the *Legal Profession Act 2004*) of the incorporated legal practice known as "Keddies Insurance Law Specialists Pty Ltd" ("the ILP").
4. At all times between October 2002 and August 2007 Philip Scroope was a Senior Associate employed by the firm and a personal injury law accredited specialist holding a restricted practising certificate.
5. Mr Scroope had:
 - 5.1 no authority from the Principals to sign cheques or to authorise requisitions for movement of funds;
 - 5.2 authority from the Principals to close files.
6. At all times between October 2002 and August 2007 David Marocchi



was an employee of the firm with a restricted practising certificate.

7. At all times between October 2002 and August 2007 Charles Ackroyd was employed by the firm as costs consultant.
8. Ms Shuang Ying Meng was injured in a motor vehicle accident on 29 September 2002. In October 2002 Ms Meng retained the firm to act for her in personal injury proceedings for the recovery of damages.
9. Mr Roulstone took Ms Meng's initial instructions when she was in hospital in Adelaide and discussed with her entering into a costs agreement with the firm.
10. Mr Scroope had day to day conduct of Ms Meng's matter.

Costs agreement

11. Ms Meng entered into a costs agreement with the firm dated 7 March 2003 which provided for the charging of costs at rates set out in the agreement.
12. Under the costs agreement the firm agreed to charge Ms Meng only if she had a successful outcome, being a verdict or award or settlement in her favour (clause 8).
13. Clause 2 of the costs agreement provided for charges to be made at the following rates, exclusive of GST:

We will charge you the following rates for the work we do.

Partner:	\$390.00 per hour (\$39 per unit)
Senior Litigation Lawyer/ Accredited Specialist:	\$360.00 per hour (\$36 per unit)
Litigation Lawyer:	\$300 .00 per hour (\$30 per unit)
Paralegal/Legal Clerk:	\$220.00 per hour (\$22 per unit)
Administrative Staff:	\$160.00 per hour (\$16 per unit)

All work will be charged in six-minute units at these rates.



14. Clause 3 of the costs agreement provided for payment of a 25% premium on costs and Clause 4 for a 25% premium on disbursements paid by the firm.
15. Clause 12 of the costs agreement provided that the firm would require payment of all costs and disbursements immediately if instructions were withdrawn or the costs agreement was terminated by the firm under clause 11, and that interest would be charged at the Supreme Court rate if the bill remained unpaid for more than 30 days.
16. At all relevant times the firm and the ILP have maintained computerised time and accounting records.

John Wang and Zeng Wang

17. The firm also acted for Ms Meng's husband and son, Yue Chen ("John") Wang and Zeng Yong Wang. Each of them entered into costs agreements with the firm dated 29 September 2005 which provided for the charging of costs at hourly rates as set out in the costs agreement, with all work done to be charged in 6 minute units at those rates.
18. Clause 3 of each of John Wang and Zeng Wang's costs agreements provided for a 25% premium if the insurer denies liability, the insurer alleges the client was at least 25% at fault, the insurer alleges the claim is fraudulent, the client lacks legal capacity or the claim is exempt from being referred to a claims assessor.

Settlement, receipt of settlement funds and bill

19. Ms Meng's matter and her husband's and son's matters settled on 13 December 2005.
20. On 21 December 2005 Mr Scroope handed to Mr Sui Sheng Lee on behalf of Ms Meng a reconciliation statement in relation to the settlement monies of \$3,525,000 and a detailed narrative bill dated 21 December 2005 ("the Narrative Bill").

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21. The Narrative Bill was prepared by or under the direction and control of Mr Scroope and signed by him.

22. The Narrative Bill contained charges totalling \$819,694.77, comprising:

22.1 Professional costs	\$507,119.84
(total includes costs totalling \$47,629.27 transferred in relation to John Wang's matter (\$21,500.69, page 115), and in relation to Zeng Yong Wang's matter (\$26,128.58, page 122))	
22.2 GST	50,711.98
22.3 Professional costs incl GST	557,831.82
22.4 Disbursements incl GST	254,922.48
22.5 Interest on disbursements (to date) incl GST	6,610.47
22.6 Additional disbursement re Zeng Wang	<u>330.00</u>
22.7 Total disbursements	<u>261,862.95</u>
TOTAL	<u>\$819,694.77</u>

23. The Narrative Bill did not identify the amounts charged, by rate or time spent, for the individual items of work set out or the persons who did the work.

24. The Narrative Bill contains mistakes, errors and duplications in the costs charged and the disbursements.

25. Ms Meng agreed to pay the professional costs in her husband's and son's matters, but not disbursements. The Narrative Bill states that costs were transferred to Ms Meng's file from her husband's and son's matters.

26. The Respondent does not know how the Narrative Bill was prepared and was not present in the office at the time of its preparation. Mr Scroope says that he followed the firm's practice of having his secretary prepare the Narrative Bill and in accordance with his general



practice he indicated the amount to be recorded for costs. A day or two prior to settlement of Ms Meng's matter and that of her husband's and son's matters on 13 December 2005 Mr Scroope informed the Respondent of the amount recorded on the firm's time cost ledger in Ms Meng's matter as at that date to which he added 25%. The Respondent accepted that information and required Mr Scroope to check the leakage.

27. The reconciliation statement recorded the following deductions to be made from the settlement sum:

27.1	Costs and Disbursements	\$819,694.77
27.2	10% HIC advance payment	\$352,500.00
27.3	Ernst Group (nursing/care services)	\$8,521.26
27.4	Treatment accounts:	
	(a) Para Quad	\$10,614.97
	(b) Douglas Moir Pathology	\$64.00
	(c) Roxby Downs Hospital	\$1,105.00
27.5	Advance payment of settlement	\$10,000.00
27.6	Net, due to Ms Meng	\$2,322,500.00

28. 21 December 2005 is the relevant date for a determination as to what is the fair and reasonable amount of costs by reference to the narrative bill.

29. The firm's trust account ledger for Ms Meng's matter records receipt, by direct deposit, on 22 December 2005 of \$3,172,500 being the settlement monies less the 10% HIC advance payment.

30. The firm's trust account ledger records the following payments on 22 December 2005:

30.1 an amount of \$2,322,500 paid to Ms Meng;



- 30.2 an amount of \$44,000 paid to counsel, part of the disbursements recorded in the Narrative Bill; and
 - 30.3 amounts of \$10,000 representing a refund of two advances, each of \$5,000.00, made to Ms Meng
 - 30.4 \$628,402.65 transferred to the firm's office account for costs and disbursements.
31. The firm's trust account ledger records payment, between 6 and 12 January 2006, of:
- 31.1 the charges to Ernst Group and the treatment accounts shown in [27]; and
 - 31.2 amounts totalling \$137,564.20 in respect of disbursements recorded in the Narrative Bill.
32. The firm's trust account ledger records on 18 January 2006 a further amount of \$9,727.92 transferred to the firm's office account for costs and disbursements.
- John Wang and Zeng Wang's costs***
33. The amount transferred in relation to John Wang's matter is stated to be \$21,500.69, at page 115 of the Narrative Bill.
34. The amount transferred in relation to Zeng Yong Wang's matter is stated to be \$26,128.58, at page 122 of the Narrative Bill.
35. The earlier pages of the Narrative Bill contain duplicated narratives for the same apparently transferred work.
36. Each of their matters settled for the amount of \$25,000 inclusive of costs. Authorities to settle signed by each of them authorised such settlement noting that each of them would receive \$20,000 clear after payment of all legal fees, outstanding medical expenses, Medicare and social security.

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37. Each of the ledger accounts record, after receipt of the net amount of the settlement monies (exclusive of the 10% HIC withholding):
- 37.1 payment to each of the clients of \$17,500 (net of HIC withholding) on 9 January 2006; and
- 37.2 on 6 January 2006 transfers from trust to office in respect of costs and disbursements in accordance with an account dated 6 January 2006 and on 10 January 2006 payment of disbursements (medical reports, counsel's fees, and investigator's fees), totalling \$5,000.

Withdrawal of instructions

38. Ms Meng directed the firm to provide her file to her new solicitors, Margiotta, by direction dated 26 October 2006, which was provided to Mr Scroope on 31 October 2006.
39. By letter dated 7 November 2006 Ms Meng's new solicitors requested the provision of an itemised bill, in taxable form.

Itemised bill

40. To produce an itemised bill Mr Scroope reviewed the file, over a period between December 2006 and March 2007. He then reviewed the file and time costing records with Mr Ackroyd over a period of two days to identify attendances obvious from the file but which had not been entered at the time the work was done ("leakage"). Notes were made and given to the accounts department for additional entries to be made in the time records.
41. A copy of an itemised bill dated 11 May 2007 ("the May 2007 Invoice") was provided to the Applicant under cover of a letter from Mr Barakat dated 4 September 2007.
42. An unsigned itemised bill was provided to Ms Meng's then solicitor Mr Chow on 11 May 2007 by Mr Ackroyd. That itemised bill was signed by

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Mr Scroope around 25 May 2007.

43. The itemised invoices listed the items of work done, ascribing item numbers to each item of work. Each item was attributed to a particular fee earner. Each item included the units of time spent. There was a dollar value for each item, based on the fee earner's hourly rate and the units of time spent.
44. The Applicant's costs expert Ms Kerrie-Ann Rosati compared the Narrative Bill and the itemised invoices and produced reports dated 17 February 2009 and 3 August 2009. The Respondent agreed that many of the matters raised by Ms Rosati were reasonable criticisms of what had occurred in the charging of the Meng files.

Amended Tax Invoice

45. A document described as the Amended Tax Invoice was prepared by Mr Scroope using the May 2007 invoice.
46. After the initial work was done by Mr Scroope, the Respondent and his partners Mr Roulstone and Mr Barakat assisted Mr Scroope to continue with the preparation of the Amended Tax Invoice in December 2009 firstly over two days and then intermittently over the following two days. The Respondent asked Mr Scroope to explain the work that had been done, locate documents in the file, read them and then where he could to expand the information contained in the May tax invoice.
47. The Amended Tax Invoice identified duplications, mistakes and errors in the costs charged in the Narrative Bill.
48. In the Amended Tax Invoice some items were reduced, apportioned or not pressed, and some items were acknowledged to be duplications. The Amended Tax Invoice also contained additional items not included in the itemised invoices.
49. The Amended Tax Invoice listed the items of work done, ascribing item numbers to each item of work. Each item was attributed to a particular



fee earner. Each item included the units of time spent. There was no dollar value for any item, and no indication of the total dollar amount referable to the items of work listed.

50. The Respondent together with the other respondents provided the Amended Tax Invoice to the respondents' costs expert Mr Gordon Salier.
51. Mr Salier undertook a process of assessment of the charges in the Amended Tax Invoice, that is considering whether or not it was reasonable to carry out the work, whether the work was carried out in a reasonable manner, and the fairness and reasonableness of the amount of costs. The Respondent relies on the opinion of Mr Salier as to what is a fair and reasonable charge in all the circumstances.
52. Itemised bills of costs for John Wang and Zeng Wang's matters were prepared, apparently in the same manner as the Amended Tax Invoice, and provided to Mr Salier.
53. Ms Meng was charged grossly excessive amounts of costs.
54. The Narrative Bill included charges for work which was not reasonably carried out or not carried out in a reasonable manner, and charges that were unfair or unreasonable for the work, as a result of the units of time recorded as spent or otherwise.
55. The Narrative Bill included duplicated charges which should not have been made, including charges for work done in relation to Ms Meng's husband and son's matters. The Respondent says the duplicated charges are identified in the Amended Tax Invoice and accepts they should not have been made.
56. The Narrative Bill and Amended Tax Invoice refer to work performed by Mr Lee and Ms Liu as employees of Keddies, and external interpreting services provided by Helena were invoiced by Baiyi Language Services ("Baiyi").



57. Mr Lee was the owner of Baiyi. Baiyi invoices were charged as disbursements as in [59.1].
58. Hong Liu was a clerk from about 2002 and her employment commenced on 27 May 2004. Professional costs are attributed to Hong Liu as a fee earner in the period before her employment is stated to have commenced. On many occasions, there is a corresponding disbursement charge for Baiyi.
59. The Narrative Bill included:
- 59.1 a disbursement of \$77,000.00 for interpreting services provided by Baiyi, when there were only invoices to the value of \$67,456.24;
 - 59.2 a charge of \$8,000 for Mr Marocchi's travel expenses to China, although no professional costs are claimed for Mr Marocchi conferring with witnesses;
 - 59.3 a charge of \$2,461 in airfares for Mr Lee in respect of which there are no supporting invoices;
 - 59.4 a charge of \$1,000 for travel expenses for Mr Lee;
 - 59.5 a charge of \$6,610.47 for interest on disbursements, when there was no provision in the costs agreement for interest.
 - 59.6 although the costs agreement permitted the firm to charge a 25% premium on disbursements paid by the firm no such charge was made.
60. Fair and reasonable professional costs for Ms Meng's matter, including the 25% uplift in accordance with the costs agreement, excluding GST, are agreed to be \$273,595.63. Fair and reasonable professional costs for John Wang's and Zeng Wang's matters, including the 25% uplift in accordance with their separate costs agreements, excluding GST, are agreed to be \$9,262.32 and \$9,187.25 respectively. Total fair and

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reasonable professional costs for all three matters are agreed to be \$292,045.19.

61. Bearing in mind the amount charged in December 2005 and deducted from Ms Meng's settlement, in respect of all three matters, there was an overcharge of \$215,074.65.

Deed and repayments to Ms Meng

62. Disputes regarding costs arose between Ms Meng and the firm which were settled on the basis of a deed, pursuant to which payments totalling \$180,000 were made to Ms Meng in August 2007 as follows:

62.1	by the firm	\$150,000
62.2	counsel and an investigator, in total	\$30,000
62.3	in November 2011 by the firm	\$80,000.

63. The Respondent has undertaken to the Tribunal and by letter dated 20 October 2010 to Ms Meng has undertaken to her, that if the Tribunal decides there is a different figure for costs and disbursements which Ms Meng has paid, the Respondent will refund that amount immediately with interest from 21 December 2005.

64. The Respondent has expressed his regret and has apologised to Ms Meng by his letter dated 20 October 2010.

65. The Respondent says that he did not supervise:

65.1 The entries in the narrative descriptions of the individual attendances and items of work represented to have been done in Ms Meng's matter and that of her husband and son;

65.2 The entries of the following disbursements in the Narrative Bill:

- (a) the charge of \$8,000 for Mr Marocchi's travel expenses to China;



- (b) the charge of \$2,461 in airfares for Mr Lee;
- (c) the charge of \$1,000 for travel expenses for Mr Lee other than an email from the Respondent to his personal assistant "Marg" dated 3 May 2005 directing the allocation "about \$1,000" of the amount to Ms Meng's file;
- (d) the entire charge of \$77,000 for Baiyi when there were supporting invoices of \$67,456.27.

65.3 The manner in which Ms Meng was charged in the Narrative Bill.

- 66. The Respondent accepts ultimate responsibility for any acts or omissions by Mr Scroope and all other staff with the carriage and conduct of Ms Meng's file and those of her husband and son.
- 67. The Respondent accepts that Ms Meng was overcharged. Ms Meng was charged grossly excessive amounts of costs as at [53]-[60].
- 68. The Respondent accepts that his conduct in paragraphs [65], [66] and [67] constitutes professional misconduct.

Signature of Solicitor for Applicant
Name Lynda Muston
Solicitor for Applicant

Date: 20th April 2012.

Signature of Respondent
Name Russell Walter Keddie
Respondent

Date: 30th April 2012.