

LEGAL SERVICES COMMISSIONER

v

PHILIP SCROOPE

ADT 092010

STATEMENT OF AGREED FACTS**Background**

1. At all times since October 2002 each of Scott John Roulstone, Russell Walter Keddie and Tony Barakat (together "the Principals") have been 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 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 no authority without the specific approval of a partner of the firm to determine the amount to be charged to a client on completion of the matter, although he could where he considered it
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appropriate suggest a reduction in recorded time;

- 5.3 authority from the Principals to close files, but no authority to authorise the transfer of funds in payment of costs and disbursements.
- 5.4 No authority to determine charge out rates or other terms of costs agreements with clients.
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. He had a high level of personal responsibility.

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 ("Time Cost Ledger"). Mr Scroope made entries onto the time costing system, or caused entries to be made by somebody else on his behalf, for the work done by him. Other staff made entries without Mr Scroope's knowledge or direction. Some of those entries were attributed to PJS (Mr Scroope's designation) though they did not relate to work done by him and the entries were not made at his direction.

John Wang and Zeng Wang

17. From August 2005 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. Mr Scroope had day to day conduct of John Wang and Zeng Wang's matters.
19. 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

20. Ms Meng's matter and her husband's and son's matters settled on 13 December 2005.
21. 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")
22. The Narrative Bill was prepared by or at the direction and control of Mr Scroope and signed by him. A secretary prepared a draft long form bill (giving a date and brief description of each item of work) as a word document. The document included the disbursements prepaid by the firm, those disbursements still to be paid, including counsel's fees and any advances required to be brought to account. Mr Scroope informed the secretary of the total amount of professional fees to be provided for on the document. The Narrative Bill was an engrossment of that document.
23. The Narrative Bill contained charges totalling \$819,694.77, comprising:
 - 23.1 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))

23.2	GST	50,711.98
23.3	Professional costs incl GST	557,831.82
23.4	Disbursements incl GST	254,922.48
23.5	Interest on disbursements (to date) incl GST	6,610.47
23.6	Additional disbursement re Zeng Wang	<u>330.00</u>
23.7	Total disbursements	<u>261,862.95</u>
	TOTAL	<u>\$819,694.77</u>

24. 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 by whom the individual items of work were performed. It contains entries which shortly describe the work performed, and the date on which the work is said to have been performed.
25. The Narrative Bill contains mistakes, errors and duplications in some of the description of work performed for costs charged and the disbursements.
26. 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.
27. The total amount charged for professional costs in the Narrative Bill was approximately the amount recorded for costs in the firm's computerised Time Costs Ledger at the date of the Narrative Bill with a 25% uplift. The Respondent discussed the question of costs with Mr Keddie before the settlement conference and informed him of the figure for professional costs being the amount on the Time Cost Ledger plus 25%. The Respondent confined his checking of the time costing

records to looking for leakage and any significant anomalous entries. The Respondent did not suggest any reduction.

28. There is no extant copy of the time costs ledger as at 21 December 2005.

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

29.1	Costs and Disbursements	\$819,694.77
29.2	10% HIC advance payment	\$352,500.00
29.3	Ernst Group (nursing/care services)	\$8,521.26
29.4	Treatment accounts:	
	(a) Para Quad	\$10,614.97
	(b) Douglas Moir Pathology	\$64.00
	(c) Roxby Downs Hospital	\$1,105.00
29.5	Advance payment of settlement	\$10,000.00
29.6	Net, due to Ms Meng	\$2,322,500.00

30. 21 December 2005 is the relevant date for a determination as to what is the fair and reasonable amount of costs.

31. 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.

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

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

32.2 an amount of \$44,000 paid to counsel, part of the disbursements recorded in the Narrative Bill;

32.3 amounts of \$10,000 representing a refund of two advances,

each of \$5,000.00, made to Ms Meng; and

- 32.4 \$628,402.65 transferred to the firm's office account for costs and disbursements.
- 33. The firm's trust account ledger records payment, between 6 and 12 January 2006, of:
 - 33.1 the charges to Ernst Group and the treatment accounts shown in [29]; and
 - 33.2 amounts totalling \$137,564.20 in respect of disbursements recorded in the Narrative Bill.
- 34. 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

- 35. The amount transferred in relation to John Wang's matter is stated to be \$21,500.69, at page 115 of the Narrative Bill.
- 36. 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.
- 37. The earlier pages of the Narrative Bill contain duplicated narratives for the same apparently transferred work.
- 38. 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.
- 39. Each of the ledger accounts record, after receipt of the net amount of the settlement monies (exclusive of the 10% HIC withholding):
 - 39.1 payment to each of the clients of \$17,500 (net of HIC

withholding) on 9 January 2006; and

39.2 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

40. Ms Meng directed the firm to provide her file to her new solicitors, Margiotta, by direction dated 26 October 2006, which was provided to the Respondent on 31 October 2006.
41. Ms Meng was charged by the firm grossly excessive amounts of costs.
42. 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.
43. The Time Costs Ledger included duplicated charges which should not have been made. There were duplicated entries for work done in relation to Ms Meng's husband and son's matters. Such entries were effectively replicated in the narrative contained in the Narrative Bill (but not as to individual amounts or other particulars).
44. The Narrative Bill and Amended Tax Invoice refer to work performed by Mr Lee and Ms Liu as employees of Keddiess, and external interpreting services provided by Helena were invoiced by Baiyi Language Services ("Baiyi").
45. Mr Lee was the owner of Baiyi. Baiyi invoices were charged as disbursements as in [48.1].
46. Hong Liu was a clerk from about 2002 and her employment commenced on 27 May 2004. Significant professional costs are

attributed to Hong Liu and Mr Lee as fee earners in the period before their employment is stated to have commenced. On many occasions, there is a corresponding disbursement charge for Baiyi, apparently for the same work.

47. Mr Scroope says he was not aware of the employment status of Mr Lee, Ms Liu or of Mr Lee's position with Baiyi at the relevant times.
48. The Narrative Bill included:
 - 48.1 a disbursement of \$77,000.00 for interpreting services provided by Baiyi, when there were only invoices to the value of \$67,456.24;
 - 48.2 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;
 - 48.3 a charge of \$2,461 in airfares for Mr Lee in respect of which there are no supporting invoices;
 - 48.4 a charge of \$1,000 for travel expenses for Mr Lee;
 - 48.5 a charge of \$6,610.47 for interest on disbursements, when there was no provision in the costs agreement for interest.
49. The firm has admitted that fair and reasonable professional costs for Ms Meng's matter, including the 25% uplift in accordance with the costs agreement, excluding GST, are \$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 \$9,262.32 and \$9,187.25 respectively. Total fair and reasonable professional costs for all three matters are \$292,045.19.
50. 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


51. 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:

- 51.1 by the firm \$150,000
- 51.2 counsel and an investigator, in total \$30,000
- 51.3 in November 2011 by the firm \$80,000.

52. The Respondent accepts that Ms Meng was overcharged by the Firm as at [41]-[50] and that the level of charges rendered to Ms Meng and her family, in the Narrative Bill, was excessive, and that he must accept a significant level of responsibility for that having occurred. He accepts that he gave inadequate attention to the detail of the bill and that there should have been closer checking.

53. The Applicant contends that the Respondent's conduct in respect of the preparation of the Narrative Bill constituted unsatisfactory professional conduct and the Respondent admits that was so.

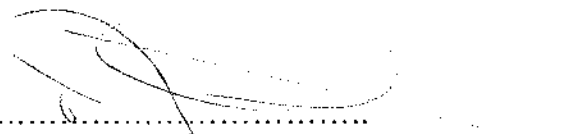
Signature of Solicitor for Applicant
Name



.....
Lynda Muston
Solicitor for Applicant

Date: 30/4/12

Signature of Respondent
Name



.....
Philip Scroope
In Person

Date: 30/4/12