WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

This Certificate is issued pursuant to the *Workplace Injury Management and Workers Compensation Act* 1998 and clause 130 of the *Workers Compensation Regulation* 2010.

MATTER NO:	**005017/14**
COSTS APPLICANT:	**WORKLEGAL PTY LTD T/as UNILEGAL**
COSTS RESPONDENT:	**T BLUNDELL & A.J. GARDIMAN & T.L GOLDBERG T/as TURNER FREEMAN SOLICITORS**
DATE OF DETERMINATION :	**28 May 2015**
CITATION:	**[2015] NSWWCCC 5**

The Registrar determines:

1. The costs and disbursements are to be apportioned including pursuant to the maximum costs available under Item F Column 2 of Table 1 of Part 2 of Schedule 6 of the 2010 Regulation and pursuant to the COD's costs complexity uplift (namely, as to the costs totality of $10,072.57 earlier described) as follows (each including GST):

   (i) To costs for TF the sum of $8,058.05;

   (ii) To costs for UL the sum of $2,014.52 plus a disbursement of $250, accordingly at $2,264.52

2. To the extent that TF has been paid costs already by the employer or the insurer, TF is to pay or rebate to UL its above determined sum.

3. There are no costs of the assessment to either party.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION OF JOHN ANTHONY McGRUTHER, DELEGATE OF THE REGISTRAR, WORKERS COMPENSATION COMMISSION.

FOR REGISTRAR

STATEMENT OF REASONS

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BACKGROUND

1. This is an Application for apportionment of costs filed by the Costs Applicant ("UL" or "Applicant"). This Application is made pursuant to Clause 98(3) of the Workers Compensation Regulation 2010 ("*2010 Regulation*").

2. The Application was registered on 26 September 2014 with attachments .Where requisite, some of this material is referred to later. The Costs Respondent is as described in the heading above ("TF" or "Respondent").

3. I have a delegation to assess costs pursuant to section 371(2) of the *Workplace Injury Management and Workers Compensation Act 1998 ("the 1998 Act")*.

4. I am satisfied that I have sufficient information to assess. I have comprehensively studied all of the material in the Application. I have equally closely studied five (5) original Workers Compensation Commission ("Commission") Application to Resolve a Dispute proceedings files across three (3) distinct antecedent Commission proceedings. Those proceedings are under references WCC 002852/10 (2 files), 003146/13 (1 file), and 016338/12 (2 files). It is the latter (namely 016338/12, here "ARD" or "proceedings") to which this immediate assessment only relates. The other two (2) matters are of historic interest and may be referred to here only as requisite. Indeed, with this Application file itself, this assessment has necessarily attracted the study of six (6) bundles of file materials.

5. I am satisfied that each of the parties has had reasonable opportunity to submit, noting in this regard the Commission's letter to the parties of 23 December 2014 and to the Applicant of 26 September 2014.

6. Brief particulars of the ARD include the following. The worker was Rico Wen Hua Liu. The Respondent employer was Relec Pty Ltd ("employer"). The insurer was Employers Mutual NSW Limited ("insurer"). Edwards Michael were the legal representatives for the ARD Respondent. The ARD was registered by the Commission on 17 December 2012. It had been filed by UL then representing the worker ("worker" or "Liu"). The ARD claimed for weekly benefits, medical expenses and for lump sum compensation arising from contended injuries to the worker's neck, left shoulder, left arm, back and left leg. The recited date of injury was 17 November 2006. The injury incident was asserted to be a motor vehicle accident ("MVA") cited as a work journey claim. It appears that the injuries consequent upon this MVA incident (including to the lower back) were said (broadly described) to be superimposed upon and aggravating an antecedent back injury sustained by Liu in 1999. The

worker apparently had been engaged as an electrical fitter with the employer from about September 2004. As at the date of injury in November 2006 Liu was aged about 47 years.

7. Liability was put in issue by the ARD Respondent and, until ultimately resolved, the proceedings were fully contested. Numerous, including historic, medical, operative, and treatment reports were drawn to the proceedings across a treatment history since, and before, the injury date of 17 November 2006.

8. Leaving aside other ARD proceedings detail presently, on or about 2 April 2013 the worker terminated representation instructions to UL, thenceforth engaging TF. On 4 April 2013 TF first notified the Commission that it was now representing Liu. This was a little prior to a proceedings Teleconference before Arbitrator Batchelor scheduled for 10.30 a.m. on 24 June 2013. Putting to one side the debate as to the reasons, there was no "file transfer" as such between the practitioners UL and TF. It appears that TF "recreated" its own proceedings file afresh, representing Liu until proceedings resolution ultimately on 28 May 2014.

9. Again leaving aside other proceedings history, and it appears not to be disputed, the matter resolved at "…*the conciliation phase on the second occasion*.." (a reference to there having been two conciliation/arbitrations scheduled and drawn to the matter). On 28 May 2014 a Certificate of Determination –Consent Orders ("COD"), quite detailed in its full terms, was issued by Arbitrator Egan. It is requisite that I refer, even in brief form, to some of the COD content.

10. The COD stated that the matter had resolved at a "*Conciliation Conference*"; that Part 4 of the ARD was amended to, in effect, add four (4) new injuries ; that the "*new injuries*" were a. nature and conditions from 12 January 2005 to 2 December 2007 b. injury on or about 12 February 2007 c. injury on or about 30 April 2007 and/or 1 May 2007, and d. psychiatric injury; various Awards for the Respondent were set out (COD paras 2 to 4); and that the "*balance of the claim is discontinued*" (para 5). The COD concluded as to three (3) notations as to matters agreed by the parties.

11. The important Order, for this assessment, was COD paragraph 6. For completeness, and in the circumstances of this assessment, I set it out fully:

> *"6. The respondent is to pay the applicants (*sic*) costs as agreed or assessed. I allow an uplift for considerable complexity of 30% to both parties. The matter involved: numerous teleconferences and two separate conciliation arbitrations; a significant issue as to causation of a cervical spine injury; a legal overlap between the provisions of the Motor Accidents Compensation Act, and the administrative medical assessment procedures thereunder and the provisions of the workers compensation legislation; and questions of an admission by the respondent in funding surgery for an injury in respect of which it later denied liability."*

12. Subsequently, it appears that the worker's costs in the proceedings have been paid to TF, the last legal representation in the proceedings for Liu.

13. I add some further background for abundant completeness. Some of it relates to the other Commission proceedings history referred to earlier, aside from the proceedings in ARD 016338/12 the subject of the costs Order (set out immediately above) founding this assessment. Some of it is perhaps the inheritance into sequential proceedings of a medical history emerging from earlier 1999 injuries contended by Liu. The legacy has been a very large volume of medical and proceedings material antecedent to, but brought into, the

immediate assessment proceedings of ARD 016338/10. As previously pointed out, inclusive of this ARD, this material has amounted to "five files worth". Relative to that background, the observations following are in no selected order of priority or emphasis, but as matters occur to me.

14. It is apparent that Liu has had a myriad of legal representation along the way. Messrs McClarens are seen in June 1997 as recipients of claimant medical reports. Messrs Firths emerge around November 2011. Messrs White Barnes regularly appear, in particular throughout 2009 to 2010. That reconciles with White Barnes having filed for Liu ARD 002852/10, registered by the Commission on 9 April 2010. I briefly note that this ARD was for lump sum compensation only. Its then pleaded "*injuries*" were "*..neck, back, psychological illness*..". It went to conciliation/arbitration on 19 July 2010 when it was discontinued. A Certificate of Determination- Consent Orders was issued by the Commission on 20 July 2010 reflecting that consent discontinuance. That included then no order as to costs.

15. Messrs Gulley Helene Serri Lawyers of Parramatta are also seen as recipients, in particular in a period of August 2007 to February 2008, of claimant medical material emerging within the same White Barnes proceedings file 002852/10. In that same proceedings file, Messrs Vardanega Roberts also emerge as apparently under instructions for Liu on historic medical material dated between May to October 1998.

16. Then, even apparently subsequent to the immediate proceedings ARD 016338/12 here for this assessment, Messrs Paramount Lawyers of Liverpool additionally emerge to represent Liu by filing for him ARD 003146/13 registered by the Commission on 14 February 2013.This ARD nominates the Applicant as "*Rico Liu*". Its claim was for weekly benefits and lump sum compensation. The asserted injuries are pleaded as "*..cervical and lumbar spine*.." for the same injury date (as pertinent to ARD 016338/12), namely 17 November 2006. Curiously, this Paramount ARD 003146/13, registered on 14 February 2013, was launched only two (2) months after the UL filing of ARD 016338/12 on 10 December 2012, and while these latter proceedings were still current. Perhaps unsurprisingly, Paramount discontinued its Liu proceedings on 26 February 2013.

17. I make some further observations, also in the context of the historic tapestry of claimant Liu representation, relative to the immediate ARD 016338/12 proceedings. Within that file, yet another Firm, Messrs Keddies, appears as the recipient of some claimant materials, including as at 13 June 2010. In some of these Keddies materials, the claimant has been variously described as *" David Wei Hua", "Wei Hua (David) Liu", "Rico Liu*", and "*Rico Wen Hua Liu*". I note that Keddies also are recipients of some claimant materials seen within Commission file ARD 002852/10, additional to observations about that file already made.

18. At this juncture I interpose an immediate observation pertinent to this assessment. One (amongst other) noteworthy point emerging from this overview, including in the perspective of the immediate assessment, is that it is eminently clear that, long before any instructed claimant representation by either UL or by TF for Liu, a bulk of acquired material, medical and otherwise, was already abroad about his presentation. Much of that legacy was inherited into and became part of the pre-acquired paperwork which fell into the filing of, and into the proceedings pursuit of, ARD 016338/12. It was not all of that paperwork, or of the respective proceedings' involvements of either of UL or of TF, but it was much of it. It is additionally noteworthy, including as to matters of analysis for any balanced assessment as to costs, that numerous medical and other reports across the entire Liu history as a claimant were not generated by any of the myriad of legal representatives he engaged, or by their work. More accurately, this very large bulk of material, surfacing over many years, was initiated,

obtained, received, and filed and served by the respective insurers or their representatives. Much other material also comprised various treating doctors' paperwork, as distinct from reports as such generated or instigated by lawyers. Much of that legacy also fell into these ARD 016338/12 proceedings presented here for assessment.

19. I do not propose later in these reasons, nor is it necessary, to reiterate finitely, or much at all further about, any of the observational overview background which I have troubled already to traverse above. They are amongst factors to which I have given deliberation relative to assessment of costs apportionment here.

This Application should be "struck out"

20. This was submitted by TF within its response submissions of 16 October 2014 ("TF Submissions"). It was urged on the assertion that at no stage had UL "..*attempted to resolve this issue*." (viz., costs or apportionment). UL made precisely the same counter- contention against TF in replying to the effect that TF had not approached any costs apportionment negotiations "*in good faith*". That this debate exists , not uncommonly ventilated in such matters, is no effective persuasion for this Application to be "*struck out*". It is the task of this assessment, consequent upon the Application itself, to determine costs to be apportioned. There is more than sufficient material before me to adequately deliberate upon, and to conclude, that task. Both parties have had requisite opportunity to submit to the Application and have so submitted. There is nothing vexatious or abnormal about the Application, other than that it attracts argument commonly drawn to legal practitioners' debate as to how their proceedings' costs might be split. Nor is the Application an abuse of process.

21. As to the fashion by which each set of practitioners might arguably have approached costs discussions (if at all) pre-filing, or post-filing, of this Application, such might be, and commonly is, a factor for consideration as to any allowed costs of the assessment.That is a quite separate deliberation. I deal with it later. It is not an argument the fact of which normally prevailing to have an Application "*struck out*". This Application is no different. The Application capably engages the assessment task.

22. The Application is not struck out.

The bill or costs falling for assessment

23. There are several curiosities about the "bill" filed by UL to this assessment. Within the Application, there is a copy of a UL tax invoice dated 4 March 2014. It is addressed: "*Employers Mutual NSW Limited and/or Rico Wen Hua Liu 31 Boomerang Street* GRANVILLE NSW 2142". The "*Granville*" address as such is not the insurer's address. It is Liu's address consistent with that for him in the ARD. There is a copy of an apparent covering letter of 4 March 2014 from UL addressed singularly to "*Rico Wen Hua Liu*" to the Granville address marked " *BY REGISTERED POST*". It is not normally how a proceedings' claimants' bill would be remitted, usually being directed to the insurer and/or to the legal representatives for the employer (Edwards Michael). If, for example, it is a "bill" issued by a claimant's former solicitors (as here), and is issued prior to the subject proceedings conclusion (as here), then typically those former solicitors (here, UL) would remit the "bill" to the then acting solicitors (here, TF) by way of notice for payment or apportionment, and equally usually, with an accompanying covering letter for that enclosure. This might be additional to UL, say, copying the "bill" concurrently to the insurer and/or to the employer's legal representatives. It is not exactly clear, but it is not apparent that any of this occurred here. It is uncertain as to what might have eventuated upon a claimant's direct receipt of such a remitted invoice, as apparently happened. In this matter however, it is noted, for

example, that TF invited UL in its letter to UL of 12 March 2014 to "*refrain from*" such direct communications with TF's then client.

24. The "bill" copied by UL to the Application claims costs under a description of : " Item 5 or 7 of Table 2 & Item D of Table1"..$5,905.25..10% GST..$590.53..Post GST..$6,495.78..**DISBURSEMENTS**..Mercantile Claims Services (statement interpreting fee)*..$250…TOTAL…$6,745.78..".

25. This "bill" is in fact headed: " **AMENDED TAX INVOICE**". Again, in a presentation which is decidedly unclear, it appears that there may have been an earlier tax invoice issued by UL, as for example referred to in the UL letter to TF of 2 May 2013, but no earlier UL tax invoice is copied to this assessment. It is therefore also unclear as to what the reference "**AMENDED**" refers.

26. There is another curious element under this heading of "bill for assessment". At paragraph 5 of the UL Application submissions dated 22 September 2014, UL states that "*..costs of con/arb hearing (sic) are capped up to $1,138.50 ($5,905.25 under Item D progressing to $7,043.75 under Item F)..".* This was in part in the context of costs discussions argued between UL and TF around briefing counsel. But it is not the context in which I raise this element here. However, I should immediately observe (again, not the context in which I raise the matter here) that this UL "proposition" as to Table Items being mathematically deduced divisibly (UL here deducting Item D sum above from the Item F sum above) to arrive at a purported "capping" for an isolated activity (e.g., "con/arb hearing") is not how the Tables work nor how the Tables are to be interpreted. There is no such "capping" regimen or any valid precedent for any such "proposition" or approach.

27. The context in which I raise the UL reference to "$1,138.50" is in a broader "bill interpretation" context. In reply to the TF submissions' protest that UL did not send an "itemised" bill, UL correctly (in its Reply of 23 October 2014) stated that an "*itemized bill is not required"* for the purposes of a bill pursuant to Schedule 6 of the 2010 Regulation. But then, in its Reply paragraph 3, UL somewhat extraordinarily adds: " *It is quite obvious that our amended tax invoice of 4 March 2014 was just a way of invoicing according to Schedule 6 and the professional fee in the sum of $5,905.25 plus GST was* ***not the actual amount*** *which we sought to recover from the Costs Respondent"* (emphasis added).

28. The first question which then challenges any recipient, or indeed assessor, is: "Well, if this is not the bill for assessment, what is?" Or, expressed another way, including relative to any requested apportionment of costs between practitioners: "Then what is, and where is, the identifiable sum I am asked to pay or to negotiate?"

29. Put simply, the UL "bill" of 4 March 2014 is, by the Applicant's own acknowledgment within assessment, not necessarily the "bill" tendered to be assessed. Yet, it is the only "bill", in tax invoice format at least, put to the assessment. It was in part for this reason that by letter to the parties of 13 March 2015 the Commission especially requisitioned, pursuant to Clause 118 of the 2010 Regulation, the parties to provide evidence of the proceedings costs paid by the employer including a copy of the relevant tax invoice. A close examination of the material suggests that UL do not have or have not seen, or been given by TF, a copy of any such invoice presumably, but reliably, from TF to the employer and/or insurer. In effect, UL affirmed this in its email of 21 April 2015 to the Commission in its response to the Clause 118 requisition. Regrettably, especially noting the prerequisites of Clause 118, TF appears not to have responded to the Commission's requisition.

30. The Commission has a discretion to inform itself against the background of any given assessment presentation. This is especially so where the Commission may not have been assisted by the provision of requested information from the parties or from a party. It is sufficiently clear that TF has rendered, and been paid, a final proceedings tax invoice. The regulated costs to which in the normal course of this matter TF would be reliably anticipated to invoice the employer are pursuant to Table 1 Item F Column 2 of Schedule 6. Those costs are at $7,043.75 plus GST. I have earlier referred to the terms of the subject COD as inclusive also of a 30% complexity uplift. Normally, and indeed equitably, it would be to such disclosed costs that the Commission, in any usual and common assessment presentation, would be invited to assess apportioned costs. It would be inequitable were the Commission to adopt any different an approach here. The Commission will here determine such apportionment on the basis of costs under Table 1 Item F Column 2 as otherwise described, and for the reasons set out, immediately above.

ISSUES FOR DETERMINATION

31. The extent to which UL and TF are entitled to share or have apportioned the one set of available maximum costs under Part 17 and Schedule 6 of the *Workers Compensation Regulation 2010 ("the 2010 Regulation"),*such apportionment being pursuant to Clauses 98(1) (2) and (3) of Subdivision 2 of that Regulation.

32. Whether there are to be any costs of this assessment to either UL or TF.

SUBMISSIONS

33. These have been referred to earlier, and where requisite may be referred to in discussion following**.**

FINDINGS AND REASONS

34. These reasons will be confined to central points only, there being no need to traverse matters, proceedings' or other history, otherwise. The parties will be sufficiently familiar with it. It is however emphasised that a fulsome study has been devoted to the entirety of this Application's content, as well as to all antecedent proceedings' files' content as previously stated.

Apportionment

35. I deal with apportionment against some of the background previously described and as referred to following. Only one set of maximum costs is recoverable by the Applicant for the proceedings. The costs maximum covers all work (Clause 10 of Part 1 of Schedule 6). The question of apportionment of such maximum costs is equally founded on Clauses 98(2) and (3) of Part 17 of the 2010 Regulation. I am satisfied that the subject work for the client Applicant worker was "*..in or in relation to a claim…*" (Clause 98(1) and (2)).

36. As observed in *Dania Ghalie v Department of Family and Community Services [2013] NSW WCC C008 ("Ghalie"):*

> [19] "*The apportionment ratio, between competing legal practitioners, as to the division of Schedule 6 maximum costs, is neither a finite science nor with any guidance by regulated prescription. That is, there is no exact, or any, mechanism by which costs may be forensically apportioned (albeit permitted) under Schedule 6…[20]…However, traditional common law and statutory*

principles enshrine a standard for party/party, (and indeed, solicitor/client) costs as being, when not otherwise agreed, such costs as are fair and reasonable in the circumstances of each given presentation. For example, this is both prescribed, and illustrated, within sections 363(1) and (2) and 364(1) and (2) of the NSW Legal Profession Act 2004…[21]..When, therefore, not otherwise agreed, as here, the same enshrined principle as to fairness and reasonableness is sensibly applicable to a costs apportionment between practitioners of the available Schedule 6 costs (Stephen Smart and Associates v Michael Abboud & Co Solicitors [2011] NSW WCC C011, including per the Assessor there at para [22]."

37. Clauses 121 and 122, and Clauses 126 and 127, of Part 17 of the 2010 Regulation, mirror the same principles as to the relevant considerations in determining fair and reasonable costs as found in sections 363 and 364 of the NSW Legal Profession Act 2004.

38. I have borne these principles in mind in my deliberations here. Equally, I retain a discretion in any given presentation as to any appropriate apportionments. In the exercise of my discretion, and in the determination of costs apportionment in this immediate presentation, I have had regard to the matters and factors briefly discussed following, not expressed in any selected priority order, but as observations occur to me.

39. To reiterate, the UL broader period of proceedings' Applicant retainer or instructions engagement appears, in effect, to have been between 17 December 2012 and 2 April 2013. This seems to be a period (of UL under instructions) of about 3.5 months. The TF instructions period from outset to proceedings resolution appears to have been from 2 April 2013 to 28 May 2014. Comparatively, this is a period of about 13 months.

40. Leaving aside that instructions' chronology, I refer to some of the respective costs' submissions of each of UL and TF. I do so in no selected or priority order, but as matters occur to me. It is not necessary that these reasons traverse the entirety of that submissions content except to note that it has all been forensically studied by me.

41. Briefly stated, UL as Applicant submitted that it had given over extraordinary time to the matter, for example urging its having had five (5) long conferences (occupying "*17 hours…and other advices…including on time limitations..."*) between 16 November 2012 and 4 March 2013; that bulky pages of documents were involved; that it is not correct that TF did "most" of the work; that UL gave some "CTP" claim associated advice; and that, in short, UL did substantial work.

42. I interpose here briefly to observe that any "CTP" claim component of work would not, respectfully, fall into costs considerations under Schedule 6.

43. TF as Respondent submitted that the matter for them involved two (2) teleconferences and two (2) conciliation/arbitration hearings; that some of their inherited work arose due to "*inconsistencies*" in the originally filed ARD of UL; that the matter's complexity drew the need for counsel at both "hearings"; that the material TF inherited from UL was not entirely instigated by UL but had been obtained from the worker or his various prior lawyers (for example, from the earlier work of White Barnes, amongst others); that, in this respect, UL's work was largely made up of "*compiling"* of material "*..obtained by the worker's initial solicitors.*."; that extensive further material (including Late Documents) was drawn to their work in the matter; that a number of documents and updated statements were served and relied upon by the worker since the UL involvement; that, from their inception of instructions, TF had to "*recreate*" the file (leaving aside any "debate" as to file transfer); that

their work involved numerous conferences with Liu; that the last conciliation/arbitration itself occupied a full day; and that, in short, TF did substantial, and by far the bulk of, proceedings work effectively before the Commission. TF appended to its Respondent Submissions of 16 October 2014 a list of "*relevant events*" drawn to the progression of the matter within their instructions period, that list indicating fourteen (14) finite attendances between 11 March 2013 and 27 May 2014, also duly here considered.

44. I interpose here with some further brief observations again expressed in no priority order. The need for or use by TF of counsel is not centrally material to any costs apportionment to it, other than perhaps to be potentially indicative of a matter's complexity. That "complexity" has already been endorsed within the terms of the COD, partly recited earlier, and is not a deliberation befalling this assessment function. As stated in Ghalie:

> "…*the fact that PKS chose at some point to engage counsel was a matter for it, and as to costs considerations, is not a material factor towards apportioning any more favourably to it*.." (*Ghalie* at para 24 (xii)).

45. Having so stated, as to this Liu matter, this assessment would respectfully here immediately observe, however, that the proceedings complexities towards the ultimate successful prosecution (resolution) of the matter was illustrative of work devolving upon TF most substantially, if not entirely as to the teleconference and multiple conciliation Commission formal processes occurring entirely within the TF instructions period. This factor is also for deliberation here, and has been considered.

46. I also note, in terms only of the point as to subsequent adjustments to the originally filed ARD of UL, that TF had to deal with a Commission Direction of 24 June 2013 for an Amended ARD to be filed and served by 15 July 2013, illustrative only in the context of developments in the active prosecution by TF to finality of the proceedings. For completeness, I might equally note that it was not abundantly clear as to whether one or two teleconferences were involved in the TF period. Certainly, two Conciliation/ Arbitrations were scheduled and in fact two Conciliations took place, the matter settling long into the second. However it does appear upon a closer reading of the material that TF acknowledges within assessment one only teleconference occurred. Also, the TF references to several "hearings" is not correct. More accurately, there was no "hearing" (that is, arbitration) as such in the proceedings, but several Conciliations.

47. I have earlier troubled in some detail to refer to the history of instructions emanating from the worker Liu to a myriad of Firms across an extended injury and general personal history since as early as 1999. Much of that history reflects instructions antecedent to, in some respects long antecedent to, instructions in the approximate respective periods (above) of 3.5 months to UL or of 13 months to TF, albeit with different (or "overlapping") asserted injuries involved. However, the balance of material and information before this assessment is reliably suggestive of UL having predominantly inherited, rather than instigating, many of the historic medical, and other, reports and materials. This is true, too, of that same prior paperwork which TF urges it had to "recreate". The UL inheritance does not suggest that UL did not give over a degree of energy and work in the matter prior to client worker instructions disengagement from UL in favour of TF, nor is that the conclusion here. But broadly, upon closest analysis, this assessment is left with the persuasive impression that TF carried the predominance of the proceedings trusteeship in its claims pursuit before the Commission, including importantly procedurally, to ultimate Conciliated resolution.

48. In the exercise of my discretion, against all of the studied background to this matter pertinent to assessment considerations, I have arrived at the considered conclusion that the

TF proceedings' work was the predominant work, as to time and as to work generally, including as to any fairly apportioned costs, to that of UL.

49. I do also immediately and additionally note that the respective work contributions of each of UL and of TF was beyond *"slight or fleeting"* (*Patterson v Cohen [2005] NSWSC 635*, per Hamilton J, and *Roam Australia Pty Ltd v Telstra Corporation Ltd, FCA (22 September 1997*, unreported, per Lehane J.). That is, the work of each of the practitioner Firms here warrants and attracts some costs compensation, but to be relatively apportioned.

50. Inherent in the discussion already had are deliberations as to that apportionment. It is not necessary that I traverse them further.

51. Perhaps not surprisingly, the Arbitrator declared within the COD as to the matter's complexity. I would regard that factor, generally, as permeating the entirety of the proceedings. That is, in my discretionary analysis, that complexity would have attached, for a shorter, but arguably less intense and more antecedent, UL retainer period; but would also certainly have attached to a significantly longer, and procedurally at least, more intense TF retainer period. I have, amongst other factors, also considered these elements.

52. As stated, only one set of Schedule 6 maximum costs is available. As outlined earlier, those costs determined as falling for assessment here (excluding the 30% complexity uplift) are in the sum of $7,043.75 (plus GST). The complexity uplift raises that sum by $2,113.13 to $9,156.88 (plus GST). With total GST of $915.69, full proceedings costs for apportionment are here determined and calculate at $10,072.57.

53. In the exercise of my discretion, including pursuant to Clauses 126 and 127 of the 2010 Regulation, I affirm and determine that the fair and reasonable costs in the proceedings (excluding GST) at the Schedule 6 maximum and incorporating the complexity uplift are in the sum of $9,156.88 (excluding GST). Further, and in the exercise of my discretion, including for the reasons here given, I determine, pursuant to Clause 98 of the 2010 Regulation, that such costs are to be apportioned as to 80% thereof to TF, and as to 20% thereof to UL. That is calculated to TF at $7,325.50 (plus GST of $732.55), namely to TF (inclusive of GST) at $8058.05; and to UL at $1,831.38 (plus GST of $183.14), namely to UL (inclusive of GST) at $2,014.52.

54. The one disbursement (Mercantile Claims Services interpreting fee) is not disputed as for payment or rebate to UL at $250 (GST included). That sum is added to the UL costs entitlement here determined, accordingly in total for UL at $2,264.52.

55. As to costs, these apportioned sums including GST total, and reconcile with the total of $10,072.57 earlier referred to as the maximum one set of costs here available under the COD.

56. Further, and independently of the Reasons already given, I determine in any event that on any basis the said apportioned sums are respectively the fair and reasonable compensable amounts for costs for each of the respective practitioners in this matter, and I so assess (*Ghalie*).

57. As it appears that TF has already been the recipient from the insurer of full costs payment then in such actuality, consequent upon this assessment, it is incumbent upon TF to pay or to rebate to UL, or to procure otherwise for the insurer to pay to UL, the respective costs entitlement of UL here determined and certified.

COSTS ALLOWED

58. The costs as determined and here apportioned are set out above.

COSTS OF THE ASSESSMENT

59. This is a discretionary consideration pursuant to Clause 126(4) of Part 17 of the 2010 Regulation.

60. I have commented sufficiently before on the proceedings' claims history of the matter as conducted by each of practitioners within their respective periods of instructions. I have also commented earlier on some of the communications between TF and UL on costs. Except as briefly follows, I do not propose to detail here all of the various content that I have nevertheless closely noted as to any negotiations on costs or on apportionment whether pre-filing or post filing of this Application.

61. The "debate" surrounding "file transfer" or requested proceedings' information has not been especially helpful either way in assisting costs assessment deliberations. That aside, at one point I note TF invited UL to "*..reduce your tax invoice to $500 plus GST*.." ((TF letter of 30 May 2014). At a later point, TF indicated it might contribute costs to UL at *"$1,400*" including GST and the $250 disbursement (TF letter of 15 July 2014). UL for its part did not so much apparently "propose" a figure, other than the "representation" as to costs submitted within the "Amended Tax Invoice" of March 2014, closely examined as to its content and context earlier. Within the material, both parties in various ways asserted a lack of "*good faith*" negotiations, equally not especially helpful respectfully as to any actuality of their own costs resolution as to obviate the task drawn to this assessment administrative function. In short, equally respectfully, both parties might well have done better here both before and after this assessment's filing.

62. In all of the circumstances, and in the exercise of my discretion, I determine that neither party is to be allowed any costs of this assessment.

DETERMINATION

63. For the Reasons given, I determine that:

    4. The costs and disbursements are to be apportioned including pursuant to the maximum costs available under Item F Column 2 of Table 1 of Part 2 of Schedule 6 of the 2010 Regulation and pursuant to the COD's costs complexity uplift (namely, as to the costs totality of $10,072.57 earlier described) as follows (each including GST):

        (i) To costs for TF the sum of $8,058.05;

        (ii) To costs for UL the sum of $2,014.52 plus a disbursement of $250, accordingly at $2,264.52

    5. To the extent that TF has been paid costs already by the employer or the insurer, TF is to pay or rebate to UL its above determined sum.

    6. There are no costs of the assessment to either party.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE STATEMENT OF REASONS OF JOHN ANTHONY McGRUTHER, DELEGATE OF THE REGISTRAR, WORKERS COMPENSATION COMMISSION.

FOR REGISTRAR