

DEFENCE OF SECOND CROSS-DEFENDANT TO FIRST CROSS-CLAIM STATEMENT OF CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/171592

TITLE OF PROCEEDINGS

Plaintiff	John Smith and Rosemary Smith
Defendant	Australian Executor Trustees Limited ACN 007 869 794

TITLE OF CROSS-CLAIM

First Cross-Claimant	Australian Executor Trustees Limited
Second Cross-Claimant	IOOF Holdings Limited
First Cross-Defendant	AXIS Speciality Europe SE
Second Cross-Defendant	Willis Australia Limited

FILING DETAILS

Filed for	Willis Australia Limited, Second Cross-Defendant
Filed in relation to	First Cross-Claimant and Second Cross-Claimant, First Cross-Claim Statement
Legal representative	Pamela Madafiglio, Minter Ellison
Legal representative reference	PAM:SZMS:1136331
Contact name and telephone	Simone Smith, (02) 9921 4467
Contact email	simone.smith@minterellison.com

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at

PLEADINGS AND PARTICULARS

The Second Cross-Defendant (**Willis**) pleads as follows to the allegations made by the first cross-claimant (**AET**) and the second cross-claimant (**IOOF**) in the First Cross-Claim Statement of Cross-Claim (**First Cross-Claim Statement**):

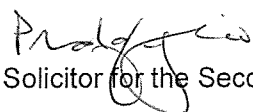
1. In answer to paragraph 46 of the First Cross-Claim Statement Willis:
 - (a) admits that it was retained by IOOF as its financial lines insurance broker;

- (b) admits that it received from IOOF a request for tender dated 17 May 2010;
 - (c) admits that it provided IOOF with a tender response dated 9 July 2010;
 - (d) admits that Mr Riordan of IOOF sent an the email dated 25 August 2010 from to Mr Grant of Willis;
 - (e) says that by the express terms of that email, IOOF informed Willis that it had determined that it did not wish to pay for or receive the services that Willis had set out in its tender response, and that it had determined instead to limit the scope of Willis' retainer in the manner set out in that email; and
 - (f) otherwise denies the allegation as particularised.
2. Paragraph 47 of the First Cross-Claim Statement is denied.
 3. In answer to paragraph 48 of the First Cross-Claim Statement Willis admits that it was an implied term of the retainer referred to in paragraph 46 above that it would exercise reasonable care in performing its obligations under that retainer, and otherwise denies paragraph 48.
 4. In answer to paragraph 49 of the First Cross-Claim Statement Willis admits that it owed IOOF a duty of care at common law co-extensive with that pleaded in paragraph 48 above, and otherwise denies paragraph 49.
 5. Paragraph 50 of the First Cross-Claim Statement is admitted.
 6. Paragraph 51 of the First Cross-Claim Statement is admitted.
 7. Paragraph 52 of the First Cross-Claim Statement is admitted.
 8. Paragraph 53 of the First Cross-Claim Statement is denied.
 9. Paragraph 54 of the First Cross-Claim Statement is denied.
 10. Paragraph 55 of the First Cross-Claim Statement is denied.
 11. Paragraph 56 of the First Cross-Claim Statement is denied.
 12. Willis does not admit any other allegation or assumption upon which any one or more of the claims against it is based.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 of the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor for the Second Cross-Defendant

Date of signature

4 July 2016

AFFIDAVIT VERIFYING

Name GREGORY VLATOS
Address LEVEL 16, 123 PITT ST SYDNEY NSW 2000
Occupation ACCOUNTANT
Date 4 JULY 2016

I say on oath:

1. I am a Director of Willis Australia Limited and am authorised to verify this defence on its behalf.
2. I believe that the allegations of fact contained in the defence are true.
3. I believe that the allegations of fact that are denied in the defence are untrue.
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN at

Signature of deponent

Name of witness

MARIGOLD MAGNAYE

Address of witness

116, 123 PITT ST, SYDNEY

Capacity of witness

LEGAL COUNSEL

And as a witness, I certify the following matters concerning the making of this affidavit by the person who made this affidavit (**deponent**):

1. I saw the face of the deponent.
2. I have known the deponent for at least 12 months ~~OR I have confirmed the deponent's identity using an identification document:~~

Identification document relied on (may be original or certified copy)¹

Signature of witness:

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

¹ 'Identification documents' include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or JP Ruling 003 - Confirming identity for NSW statutory declarations and affidavits, footnote 3.

FURTHER DETAILS ABOUT FILING PARTY

Filing party

Second Cross-Defendant

Name	Willis Australia Limited
Address	C/- Minter Ellison, Governor Macquarie Tower, Level 40, 1 Farrer Place, Sydney NSW 2000
Frequent user identifier	246

Legal representative for filing party

Name	Pamela Madafiglio
Practising certificate number	3509
Firm	Minter Ellison
Contact solicitor	Simone Smith
Address	Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
DX address	117 Sydney
Telephone	(02) 9921 4467
Fax	(02) 9921 8314
Email	simone.smith@minterellison.com
Electronic service address	Not applicable