
From: Anthony Jefferies
Sent: Wednesday, 22 March 2023 4:19 PM
To: Stewart, Andrew
Cc: David Collinge
Subject: Network Ten Pty Limited ats Lehrmann [GDL-1.220244.WILKIL]

Dear Andrew

We direct your attention to the communications between our client's agent Mr Nick Fordham and Ms Beverley McGarvey from Network 10 from 7 March 2023 until last night. If you do not have a copy of those communications, we suggest that you obtain them from your client and review them.

Mr Fordham wrote to Ms McGarvey on 21 March 2023 clearly informing her that unless this matter could be resolved by 11am today, then the Cross-Claim would be filed and served today. You have wrongly asserted in your email of even date that the deadline was 23 March 2023.

We did not respond to your letter of 7 March 2023 because of a request made by Ms McGarvey to our client. Our client complied with that request by 17 March 2023 and since then, Ms McGarvey has delayed progress of the matter with further, irrelevant queries.

We are prepared to delay filing the documents to 1pm on Friday 24 March 2023 and therefore require confirmation, by deed from your client as previously requested, by midday Friday 24 March 2023.

We are of the view that your client has had ample opportunity to consider this matter and the law is clear.

The communication passed onto our client from Leon Zwier is concerning and we reserve our client's position in relation to that matter, including any steps taken in connection with that communication to interfere with our client's retainer with our firm, and Ms Chrysanthou. In any event, it has no effect on the questions of indemnity that are currently the subject of the dispute and the proposed Cross-Claim.

If you agree to consent to the late filing of the Cross-Claim as set out above on Friday, then we will not proceed to file the document today as foreshadowed. Please let us know whether you agree to this course by 6pm today.

Regards

Anthony Jefferies
Partner



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6 April 2023

Mr Anthony Jeffries, Partner
Gillis Delaney Lawyers
Level 40
ANZ Tower
161 Castlereagh Street
SYDNEY NSW 2000

Dear Colleagues

**Network Ten Pty Limited ("Network Ten") ats Bruce Lehrman, Federal Court of
Australia Proceedings No: NSD103/2023 ("Proceedings")
Your client: Lisa Wilkinson**

We refer to your email of 27 March 2023, responding to our letter of 24 March 2023.

Network Ten considers that the position set out in that letter is consistent with all relevant law pertaining to this matter, including that which your client's representatives have identified in correspondence with ours.

Yours faithfully



Andrew Stewart
Partner



Tel: [REDACTED]
Fax: [REDACTED]
DX: [REDACTED]

By email

Our Ref: DEC/AJJ/230085
Your Ref: A Stewart

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17 May 2023

Telephone: [REDACTED]
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Mr A Stewart
Baker & McKenzie
Solicitors
Tower One - International Towers Sydney
Level 46, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By Email: [REDACTED]

Dear Colleagues

Lisa Wilkinson & Anor ats Bruce Lehrmann
Federal Curt of Australia Proceedings No NSD103/2023
Your client: Network Ten Pty Limited

We note the agreement that your client is to indemnify Ms Wilkinson for her reasonable legal costs and expenses in defending the claim against her brought by Lehrmann.

In the interests of transparency, and to avoid potential disagreement as to reasonableness, we disclose the rates for legal services in respect of those proceedings for which Ms Wilkinson claims indemnity as follows:

Counsel

Senior Counsel	\$800 per hour plus GST
Junior Counsel	\$350 per hour plus GST

Solicitors

Partner	\$750 per hour plus GST
Special Counsel	\$650 per hour plus GST
Associate	\$450 per hour plus GST
Lawyer	\$400 per hour plus GST
Paralegal	\$250 per hour plus GST

Any expenses incurred on behalf of Ms Wilkinson are charged at cost.

Mr A Stewart
Baker & McKenzie
Solicitors

17 May 2023

Agreement as to the reasonableness of the above rates does not, of course, prevent your client from otherwise raising any legitimate issue in respect of the appropriateness of charges made to Ms Wilkinson by those acting for her.

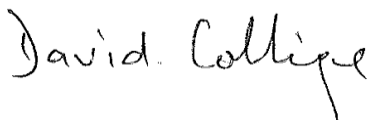
If your client considers those rates unreasonable, please advise by return specifying the reasons.

At this stage, it is not possible to provide a realistic assessment of aggregate legal costs and expenses likely to be incurred.

Please let us know if there are any other issues relating to the above which you consider would usefully be addressed at this time.

Yours faithfully

GILLIS DELANEY LAWYERS



David Collinge
Special Counsel
Email: [REDACTED]
Direct Line: [REDACTED]



Anthony Jefferies
Partner
Email: [REDACTED]
Direct Line: [REDACTED]



Our Ref: DEC/AJJ/230085
Your Ref: A Stewart

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30 May 2023

Mr A Stewart
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By Email: [REDACTED]

Dear Colleagues

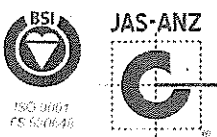
**Lisa Wilkinson & Anor ats Bruce Lehrmann
Federal Court of Australia Proceedings No NSD103/2023
Your client: Network Ten Pty Limited**

We refer to your letter of 7 March 2023 and later letter of 23 March 2023, and have now sought advice from Senior Counsel at the commercial bar not previously involved in the matter, in relation to the various positions taken by Network Ten in relation to our client's costs of defending Mr Lehrmann's claim against her.

By your letter dated 7 March 2023, Network Ten confirmed its obligation to indemnify our client against any damages award or costs order made in favour of Mr Lehrmann. That confirmation was correctly made and consistent with the obligation of an employer, recognised under the general law, to indemnify an employee in respect of a liability to a third party arising in the course of their employment: *Famatina Development Corporation Ltd* [1914] 2 Ch 271; *NRMA v Whittlam* [2007] NSWCA 81.

Unfortunately, the confirmation provided by Network Ten in its letter of 7 March 2023 did not include confirmation that it would honour the obligation just described, but was instead limited by its terms to a different and narrower law set out in s 3 of the *Employees Liability Act 1991* (NSW), which only operates in a case where both employer and employee are liable. Please confirm that Network Ten agrees that it is bound to indemnify our client pursuant to the general law principles set out above.

Further, the content of that indemnity arising under general law is not limited to payment of a judgment in favour of a third party in respect of such liability. It also provides for indemnity against costs reasonably incurred by the employee in defending the third party's liability claim: *NRMA v Whittlam* at [74]-[76].



Liability Limited by a scheme approved under Professional Standards Legislation

By your later letter of 23 March 2023, Network Ten agreed to reimburse our client for defence costs to the extent properly incurred and reasonable in amount, but said it would only do so at the conclusion of the proceedings.

That agreement does not reflect the extent of Network Ten's obligations at law, as set out above. Network's Ten obligation is to indemnify against costs, not reimburse after the event. This is unsurprising given that the indemnity in question concerns liabilities that may be large ones that an employee would not be expected (or able) to pay first in order to obtain an entitlement to indemnification. Network Ten's limited agreement does not recognise this.

The suggestion by Network Ten that our client would have to pay her own costs in the first instance (or be limited to choosing lawyers prepared to act without payment for a long time) is one that is uncommercial and contrary to the purpose and value of the indemnity; in effect making the value of the indemnity only as good as an employee's capacity to bear substantial costs for a long period, and placing the party who is supposed to have the protection of the indemnity in a position where he or she is exposed to financial pressure that the indemnity is intended to avoid.

Network's Ten position appears to be driven by a cash flow desire to defer payment, leaving its employee to carry the financial burden of the costs through the proceedings, and on the basis that Network Ten will only contribute that which cannot be recovered from Mr Lehrmann in the event of a costs order in our client's favour. While Network Ten may consider that financially desirable, to proceed in that way is inconsistent with its obligations as employer. It would be inappropriate for Network Ten to put its own financial desires ahead of compliance with its obligations to its employees.

Such conduct is more than a failure to comply with the indemnity obligation – it is conduct that would be expected to erode the trust and confidence between employer and employee, being aspects of the relationship Network Ten is bound to foster not corrode. It would be regrettable if Network Ten was prepared to treat any employee in this way, both in terms of its obligations as employer and, from a broader commercial and reputational perspective, in terms of its reputation and capacity to attract talent. Network Ten's approach is also singular given both it and our client are defendants to Mr Lehrmann's claim, as one would have thought that in such a case, Network Ten would be seeking to support, not disenfranchise, an important co-defendant.

It is accepted, of course, and consistent with established principle, that: (a) in circumstances where our client has retained her lawyers and is liable to pay costs to them, she would be entitled to an order for costs against Mr Lehrmann in the event of success, with her indemnification by Network Ten irrelevant to that entitlement; and (b) assuming Network Ten had properly indemnified our client, Network Ten would be entitled to be paid sums recovered pursuant to such an order: see *Noye v Robbins* [2010] WASCA 83 at [323] and following.

In these circumstances, our client affords Network Ten an opportunity to revisit its position and honour the indemnity obligation it owes our client.

In this regard, we now enclose invoice dated 30 May 2023 for work undertaken by lawyers acting for our client in the Lehrmann proceeding in an amount of \$375,728.63.

Mr A Stewart
Baker & McKenzie
Solicitors

30 May 2023

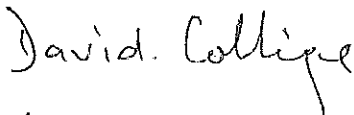
On behalf of our client, we request that Network Ten pay this invoice. Our client is content for payment to be made direct to the issuer of the invoice (i.e. our firm), or if Network Ten would prefer, for payments to be made to our client on the basis that she will use the funds to pay her lawyers directly.

In the event Network Ten takes the view that any item of invoiced cost is unreasonable, we request that you identify the item and the reasons for the taking of that position, and otherwise attend to payment of the balance of the invoice. We will consider any such items and reasons and let you know our client's position.

On behalf of our client, we request that Network Ten confirm by no later than 5:00 pm on 2 June 2023 that it will act in accordance with the requests set out in this letter within 14 days of the date of this letter.

If Network Ten fails to do so, our client will take legal action to obtain relief in respect of that failure, and rely on this letter on all questions of costs.

Yours faithfully
GILLIS DELANEY LAWYERS



David Collinge
Special Counsel



Anthony Jefferies
Partner



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21 June 2023

Anthony Jeffries
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Dear Colleagues

Lehrmann v Network Ten Pty Ltd & Anor - Federal Court of Australia Proceedings No NSD103/2023

We refer to your letter of 30 May 2023 in relation to the above matter.

In our letter of 24 March 2023, we confirmed our client agreed to “reimburse Ms Wilkinson for her legal costs of defending the Proceedings to the extent that those costs are properly incurred and reasonable in amount and to the extent required under section 3(1)(b) of the Employees Liability Act 1991 (NSW) ***and at general law***” (emphasis added).

It is therefore unclear why you have now sought advice from Senior Counsel, nor what purpose the recitals at paragraphs 2 to 5 of your letter of 30 May 2023 serve. To be clear, our client does not accept that the second paragraph of your letter correctly states the position at general law. As our letter of 24 March 2023 stated, Network Ten has agreed to reimburse Ms Wilkinson for her legal costs in this matter *to the extent those costs are properly incurred and reasonable in amount*. It adopts that position based on relevant law.

Your letter of 30 May 2023 cites no legal basis for the contentions set out at paragraphs 6 to 9. If your client intends to maintain the position set out in those paragraphs, please make any future assertion of that entitlement by reference to relevant law.

Paragraph 10 of your letter appears to convey that your client is entitled to indemnification only to the extent of her actual, out of pocket liability for costs and would not be entitled to retain any amounts awarded and paid to her in respect of costs Network Ten had paid or was liable to pay on her behalf. If that is the position adopted, our client would agree with that statement of principle subject to the additional conditions that:

- a) as explained above, your client’s right to be indemnified for her costs in this proceeding is limited to those costs properly incurred and reasonable in amount; and

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- b) your client *must* pursue any cost orders to which it is reasonably arguable she is entitled so that costs recovered in that way may be applied against her costs in the proceeding and thereby reduce our client's out of pocket liability. Where your client does not pursue those reasonable cost orders, our client reserves the right to withhold payment to your and/or your client's counsel in the amounts it reasonably apprehends your client would have recovered by pursuing those orders.

We will, as requested, continue to review the invoices provided for your client's costs in this matter to date. Our preliminary view, however, is:

- a) it appears unlikely that costs of over \$375,000 to the end of May this year can have been probably incurred or are reasonable in amount. Your client has essentially incurred those costs in the course of:
 - i. preparing a 22 page defence;
 - ii. pressing production under one paragraph of a Notice to Produce. Relevantly, the judgment in that interlocutory matter (which your Senior Counsel requested) called your client's submissions, "devoid of merit", suggested the Notice was sought to be made as, "a vehicle for the production of a vast range of information which, on any rational view, could never be discoverable and, more importantly, has no apparent relevance to the disposition of the present application" and counselled that, "Instead of spending time pressing and subsequently arguing at the hearing about an oppressive call, it would have been more consistent with the overarching purpose to spend time well in advance of the hearing calibrating and then serving a more refined and non-oppressive request for identified documents in the Report."; and
 - iii. participating to some extent in argument in relation to the application of the limitation period in the matter;
- b) in the ongoing conduct of the proceeding, we are instructed that you, on your client's behalf, have undertaken work that substantially and unnecessarily duplicates work our client's representatives in the proceeding have undertaken. Costs in respect of that work are not properly incurred or reasonable in amount. Our client's obligations to indemnify your client do not extend to funding an entirely parallel and duplicative case to the one it is running as a co-defendant of your client; and
- c) despite requesting that, in the event our client "takes the view that any item of invoiced cost is unreasonable", our client identify that item and "the reasons for taking that position", the level of detail in your tax invoice gives our client almost no indication of what it is being asked to pay for. To give non-exhaustive examples, the invoices contains narrations such as "Review corro from client and review", "Settle note to you reporting", and "Draft corro to S.C". No payment will be made in relation to such vague and inscrutable activities, particularly in circumstances where the costs claimed appear to be intermingled with other

matters such as advising Mr Fordham in relation to his correspondence and correspondence with our office.

To allow us to continue that review, our client requires:

- a) your signed costs agreement with Ms Wilkinson;
- b) the current CV of all solicitors working on this matter;
- c) the costs agreements of all counsel working on this matter; and
- d) all cost estimates you have provided to your client prior to or in the course of undertaking work on this matter.

As we say above, our client remains committed to meeting its full, legal obligations to indemnify your client, both as to the nature of the expenses it is obliged to meet on your client's behalf and the time at which it is obliged to meet them.

Our client is concerned, however, for the reasons outlined above and generally, that your client is incurring significant unnecessary (and unrecoverable) costs in this matter.

We consider that disputes of this nature can largely be avoided if you inform us in advance of the steps and work you proposed to undertake, provide an estimate of costs and seek our client's approval to proceed. As you know, any person paying for legal work is entitled to require that level of transparency and oversight. It will also help to avoid either yourselves or your client being out of pocket for costs which do not fall within the scope of our client's obligations to your client.

While we recognise that our present dispute as to costs incurred in the past will be resolved one way or the other, our strong suggestion is that from this point forward you do not undertake work on this matter until the scope of that work and nature and estimate of costs are given to our client so it can indicate its position.

Kindly provide those materials by return.

Yours faithfully



Andrew Stewart
Partner



Nicholas Kraegen
Senior Associate



Our Ref: DEC/AJJ/230085
Your Ref: A Stewart

25 September 2023

Mr A Stewart
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By Email: [REDACTED]

Dear Colleagues

Lisa Wilkinson & Anor ats Bruce Lehrmann
Federal Court of Australia Proceedings No NSD103/2023
Your client: Network Ten Pty Limited

We refer to our letter to you of 30 May 2023 and your letter in response of 21 June 2023.

Attached are:

- 1 an amended tax invoice in the amount of \$353,538.88 setting out the costs and expenses properly incurred and reasonable in amount by our client in relation to the above proceedings, up until 30 May 2023. The amended tax invoice substitutes for that sent to you on 30 May 2023.
- 2 a tax invoice in the amount of \$370,017.00 setting out the costs and expenses properly incurred and reasonable in amount by our client in relation to the above proceedings, from 31 May 2023 to 20 September 2023.

Our client now seeks confirmation, by 3 October 2023, that your client agrees to pay, on the terms proposed below, the above amended tax invoice and the tax invoice, by 24 October 2023.

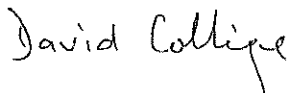
The terms proposed are that:

- A in the event that your client, acting reasonably, considers that any item or portion of the costs and expenses invoiced in the tax invoices is unreasonable (**Disputed Costs**), then your client is to:
- (i) notify us, within 14 days, identifying the Disputed Costs and stating in detail the reasons why your client considers that such costs or expenses are unreasonable; and

- (ii) pay the balance of the tax invoices (being the total less the amount of the Disputed Costs) by 24 October 2023.
- B In the event that your client makes a notification conformably with paragraph A(i) above:
- (i) our client is to respond to the notification within 14 days (**Response**);
 - (ii) if, within 14 days, your client accepts the Response in whole or in part, your client is to pay any such applicable amounts within 28 days;
 - (iii) if your client does not accept the Response in whole or in part within 14 days, then determination of which of the remaining Disputed Costs are reasonable is to be referred to Mr Stephen Lancken (or equivalent), whose decision will be binding; and
 - (iv) your client is to pay any such amounts determined by Mr Lancken to be reasonable within 14 days of any determination of Mr Lancken.

If your client does not signify agreement as requested, our client proposes to take action to obtain relief in respect of the failure to indemnify her and will rely on this letter on all questions of costs.

Yours faithfully
GILLIS DELANEY LAWYERS



David Collinge
Special Counsel



Anthony Jefferies
Partner



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6 October 2023

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Partner
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Sydney NSW 2000

Dear Colleagues

Lehrmann v Network Ten Pty Ltd & Anor - Federal Court of Australia Proceedings No NSD103/2023

We refer to your letter of 25 September 2023 (**your September Letter**) in relation to the above matter, responding to our letter of 21 June 2023 (**June Letter**). Defined terms in our June Letter are adopted below.

Our client appreciates some efforts have been made to more adequately describe the work undertaken on behalf of your client and for which she now seeks reimbursement. In saying that our client has not had the opportunity to fully review the extensive further invoices provided and reserves its position on the adequacy of the description of the charges or their appropriateness.

Otherwise, your September Letter wholly ignores the position and requests set out in our June Letter. In particular it:

- a) cites no legal basis for the contentions set out at paragraphs 6 to 9 of your letter of 30 May 2023;
- b) signifies no agreement on your client's part to pursue any cost orders to which it is reasonably arguable she is entitled so that costs recovered in that way may be applied against her costs in the proceeding and thereby reduce our client's out of pocket liability;
- c) provides no justification of the extent of your client's costs as at 30 May 2023 (which even on the revised invoice provided with your September Letter run to over \$350,000) having been incurred in relation to matters scarcely warranting such extensive costs.
- d) provides no response in relation to the substantial and unnecessary duplication of the work our client's representatives in the proceeding have undertaken. Our client's concerns in relation to that duplication of work relate to the invoice for more recent work in this matter as well;

- e) attaches invoices that continue to intermingle charges in relation to your client's defence of Mr Lehrmann's claim with other matters. As we say above, our client also reserves its position on the adequacy of the description of the charges in the invoices or their appropriateness;
- f) Fails to provide the reasonable substantiating documentation and information requested in our June Letter, being:
 - i. your signed costs agreement with Ms Wilkinson;
 - ii. the current CV of all solicitors working on this matter;
 - iii. the costs agreements of all counsel working on this matter; and
 - iv. all cost estimates you have provided to your client prior to or in the course of undertaking work on this matter.

These are not unreasonable requests, particularly in light of the now \$723,555.88 in legal costs our client is now asked to pay in this matter.

Further, and plainly, your client has ignored the suggestion in our June Letter that at least from that point forward you do not undertake work on this matter until the scope of that work and nature and estimate of costs are given to our client so it can indicate its position.

Our client notes your client's proposal to take action to obtain relief in the event our client does not signify agreement to the terms proposed in your September Letter, and that she proposes to rely on that letter on "all questions of costs" should that occur. We observe that your client's failure to respond adequately to any of the requests outlined above or in our previous letters would make any such action wholly premature. Our client would naturally rely on this and its previous correspondence in relation to the costs of any such action.

Yours faithfully



Andrew Stewart
Partner



Nicholas Kraegen
Senior Associate



Our Ref: DEC/AJJ/230085
Your Ref: A Stewart

9 October 2023

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By Email: [REDACTED]

Dear Colleagues

**Lisa Wilkinson & Anor ats Bruce Lehrmann
Federal Court of Australia Proceedings No NSD103/2023**

We refer to your letter dated 6 October 2023.

As to whether our client will pursue costs orders against the plaintiff in the defamation proceeding, it follows from our client's already stated position that she would, if indemnified by your client, pursue costs relief that would benefit your client. Indeed, your client would, as a party who has indemnified, be entitled to exercise rights of subrogation, and to the extent that was not so, our client, as a party who has been indemnified in respect of her costs, would be obliged to pursue costs orders and their satisfaction for your client's benefit (assuming her reasonable costs of doing so were covered).

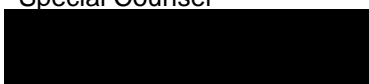
As to costs agreements and estimates, please find enclosed our initial retainer with Ms Wilkinson. Given the concern our client has had regarding your client's failure to indemnify her for her defence costs, updated estimates of the likely costs of the proceedings have been provided frequently to her, usually at least monthly. The costs billed to date do not exceed those estimates.

It appears from the other terms of your letter that your client is not prepared to honour its indemnity by making a payment, regardless of the above matters. If the position is otherwise, and your client will now make a payment to our client in light of the above information, please let us know by no later than 4pm on Tuesday, 10 October 2023.

Yours faithfully
GILLIS DELANEY LAWYERS

David Collinge

David Collinge
Special Counsel



Anthony Jefferies

Anthony Jefferies
Partner



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* Associated Firm

** In cooperation with
Trench, Rossi e Watanabe
Advogados

10 October 2023

Anthony Jefferies
Partner
Gillis Delaney Lawyers
Level 40, ANZ Tower
161 Castlereagh St
Sydney NSW 2000

Dear Colleagues

**Lehrmann v Network Ten Pty Ltd & Anor - Federal Court of Australia Proceedings
No NSD103/2023**

We refer to your letter of 9 October 2023 in relation to the above matter.

The assertion in your letter that, "It appears from the other terms of your letter that your client is not prepared to honour its indemnity by making a payment, regardless of the above matters" mischaracterises our client's position in relation to reimbursing your client's costs of defending the above proceedings, as any fair reading of our previous correspondence on this matter will confirm. Our client's position has been made clear in relation to those costs, in particular in our letters dated 24 March 2023 and 21 June 2023.

Please provide the balance of the matter sought in our letter of 6 October 2023. As has been explained, our client reasonably requires that material to properly understand and engage with your client's demands.

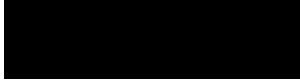
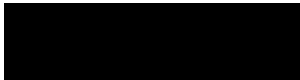
Repeated requests for undertakings as to very substantial payment while refusing to respond to those reasonable requests do not permit the advancement or resolution of this matter. We remind you of your duties under section 56 of the *Civil Procedure Act 2005* (NSW) and equivalent provisions, and the potential costs consequences of failing to discharge them.

Yours faithfully



Andrew Stewart
Partner

Nicholas Kraegen
Senior Associate



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By email

