

DATE: 8th June 2004

OUR REF: Office/PH

YOUR REF:

The Panel on Administration of Justice and Legal Services,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

Dear Sirs and Madams,

Re: Professional Indemnity Scheme

I am an ordinary member of the Law Society since 1985.

I refer to the "Extract from minutes of meeting of Administration of Justice and Legal Services Panel held on 26th April 2004"; in particular paragraphs 10(c), 11(d), 12, 13, 14, 15, 16, 21 and 22(a) thereof.

I have written to the Law Society Council Members, Mr. Patrick Moss, Mr. Howse...etc.. They did not reply to all my letters. I enclose copies of my letters and their replies (if any) for record purposes.

Contrary to successive Law Society Councils' assertions, I believe that the primary cause of the present disaster is not HIH's liquidation.

The multi-million shortfall contribution comes about because of **successive Law Society Councils' inactivity** to take effective steps to discourage/stem out negligence practice and the resultant huge increase of negligence claims.

I agree with Ms. Miriam Lau's observation set out in paragraph 14 of the Extract. I have repeatedly pointed out to the Law Society Council members that they should not provide "safety net" for negligent solicitors. I have yet to receive their replies to my letters dated 26th April 2004 (annexure A).

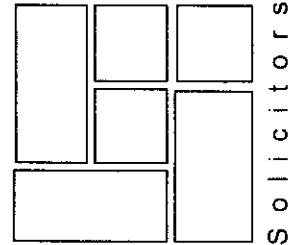
The billion-dollar question is: Why did successive Law Society Councils fail to implement risk-management both within the Scheme and amongst Hong Kong Solicitors?

At a recent CPD course one distinguished solicitor-speaker blamed it on ill-fortune! Such is the attitude of those solicitors who are charged with the statutory duty to protect the paramount interest of the public!

Even if HIH were still in business, could any member of the Law Society Council or director of HKSIF Limited (during the period from 1980 to 2004) guarantee that HIH would underwrite Hong Kong Solicitors' collective professional insurance upon identical terms and conditions after September 2005? HIH would of course lose billions of dollars for claims notified prior to September 2005, but it would probably recover its losses by increasing the insurance premium steeply.

Recently, I observe that certain individuals of the Law Society Council, Claims Committee, HKSIF Limited, Essar, Panel Solicitors (collectively "the Groups") have come out quite openly in support of the present PIS and the continuation thereof in a modified form (MPS) after September 2005.

Only a handful of individuals of the Groups oppose the present PIS and the continuation thereof after September 2005.



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It seems to me that it is a taboo amongst the Hong Kong solicitors not to expose fellow solicitors' personal interest in a scheme.

Personally I believe the present PIS is thoroughly rotten. The present PIS is controlled by the Groups without the risk of being audited/reviewed from time to time by an independent body.

In the following paragraphs, I shall deal with the official pretexts for continuing the present PIS (MPS) after September 2005.

<u>The Groups claim</u>	<u>My Personal Observation</u>
1. The Law Society Council is under a statutory duty to protect the paramount interest of the section of the public who requires legal service.	The statutory duty also requires the Law Society Council to take effective measures to discourage/stem out negligence practice or mal-practice.
2. The statutory duty requires the Law Society to maintain the present PIS ("the Scheme").	The statutory duty also extends to and requires the Law Society to maintain a cost-efficient insurance scheme free of corrupt practice.
3. The statutory duty requires the Law Society Council to ensure that the aggrieved public will be fully indemnified of all their losses by the Scheme.	<p>(a) The Scheme can only protect a section of the general public whose claims do not exceed HK\$10 million per claim ("the mutual protection cover").</p> <p>(b) If a client retains a solicitor to provide conveyancing legal service concerning a property with transaction value exceeding HK\$10 million, the client bears the responsibility to make sure that the solicitor either owns adequate assets or maintains top-up insurance to cover potential negligence claim above and beyond the mutual protection cover and all associated risks. No mutual protection cover can indemnify all the losses of each and every one of the aggrieved clients.</p> <p>(c) "The HK\$10.00 million" figure is an arbitrary decision.</p>

<p>4. "HK\$10 million per claim" mutual protection cover is reasonable and benefits the entire public.</p>	<p>(d) Why should the mutual protection cover under the proposed MPS be HK\$1.5 million, but not HK\$4.5 million or HK\$0.05 million?</p> <p>(e) If the Law Society sets the mutual protection cover to, say, HK\$50,000 per claim, almost the entire public will not be protected by the Scheme.</p> <p>(a) It does not limit each solicitor's liability to contribute to the shortfall which shortfall may well be HK\$10 billion per year depending on how many solicitors "choose" to be negligent.</p> <p>(b) A substantive number of firms do not take up many "HK\$10 million" retainers in any given year.</p> <p>(c) The handful of big firms are more likely to take up a bundle of less than "HK\$10 million" retainers during a particular period. For example, a big firm acts for both the developer and 1000 individual purchasers in the sale and purchase of residential units in a large land development. If the land title of such land development is defective due to the negligence of the big firm, the small firms will subsidize the big firm. The number of negligence claims for one single land development transaction can be as many as 1000. Is it fair for small firms (or criminal law practitioners), who are also a section of the public, to subsidize one big firm HK\$10 billion (shortfall contribution or increased insurance premium)?</p>
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Does it become reasonable for small firms to subsidize the big firm HK\$1.5 billion simply because the value of each residential unit (or the mutual protection cover) is HK\$1.5 million?

- (d) Can it be the government's stated policy to encourage solicitors not to act prudently for as long as negligence claims will be fully indemnified by the mutual protection cover? Insurance proceeds do not always afford an absolute compensation of lay client's economic loss.
- (e) The public is fully protected if no solicitor is negligent. Stringent and effective measures must be adopted to discourage/stem out negligence practice. [Is there any negligence claims filed against Law Society Council members?]
- (f) The Scheme (PIS or MPS) does not protect the public from negligent solicitors. It only serves to alleviate some of the losses suffered by the public.
- (g) If there is no negligence, there will not be any claim notified to the Scheme.
- (h) No claim, no shortfall, HIH collapsed, no impact on the Scheme, no demand on public funds.

<p>5. The Scheme can be “revived” by lowering the present “HK\$10 million per claim” mutual protection cover to say “HK\$1.5 million per claim”.</p>	<p>(i) 1600 negligence claims means negligent practice on a large scale. How can the Scheme protect or benefit the public if it “harbours” negligent solicitors on a large scale year after year? The Scheme does not regulate itself in the sense that, perhaps, after 10 years negligent solicitors will be driven out of practice due to extremely high punitive premium.</p> <p>(a) The Scheme is already insolvent.</p> <p>(b) Which insurance company would offer collective professional indemnity insurance (“PII”) to the solicitors at the current premium rate even if the Scheme (MPS) were to be re-adopted after September 2005? (How much will Essar charge for brokering a sweet insurance deal for the 6000 solicitors in September 2005?)</p> <p>(c) Even if the mutual protection cover limit is cut down to “HK\$1.5 million per claim”, who could guarantee that the number of negligence claims per year will not be greater than, say, 1500 claims per year?</p> <p>(d) If there were 1500 claims per year, what would be the premium rate?</p> <p>(e) If there were 1500 claims per year, which insurance company is willing to provide PII at a premium rate agreeable to the solicitors?</p>
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(f) If the Scheme were again insolvent after September 2005 due to there were 1500 claims per year, the Law Society members still cannot escape from the unlimited liability to mutually insure each other to an unlimited extent despite some wise solicitors propose that the “mutual protection cover” be lowered to say HK\$1.5 million per claim. Simple calculation will expose the snare.

(1) 1500 claims per year.

(2) HK\$1.5 million per claim.

(3) Total claim is: HK\$2.25 billion each year.

(4) Most recent figure for total annual premium is: HK\$0.35 billion.

(5) Insurance company will lose HK\$1.9 billion.

(6) What will be the rate of premium per solicitor for next year?

(7) Who can limit the number of negligence claims per year?

In any event, the liability to pay universal contribution cannot be limited (e.g. in the form of sharply increased premium) to 15% [i.e. 1.5 million/10 million] of the current \$10 million per claim mutual protection cover.

[Please refer to the assertions of Mr. Peter Lo (paragraph 13) and Mr. Howse (paragraph 16)].

<p>6. "Big" firms do not fare well under the present Scheme. ["Mr. Chris Howse said...under a QIS...some solicitors and law firms might be disadvantaged..." (paragraph 15)]</p>	<p>(a) Most panel solicitors are "big" firms. (b) At least some Claims Committee Members are connected to the "big" firms. (c) The "big" firms collectively pay about 20 - 30% of the total insurance premium; but the panel firms collectively recover (or will recover) legal fees about 3 - 4 times (or more) of their total insurance premium. [Please demand Mr. Peter Lo/Mr. Howse to provide the actual figures.] (d) Should more "big" firms face increased conveyance - related negligence claims, panel firms will earn more legal fees. (e) I know that in one negligence claim of about HK\$0.5 million, the total legal fees paid to panel firm was about HK\$0.5 million before the case went to trial. So the Scheme actually paid out HK\$1.0 million. If this payment forms part of the current shortfall (of assets), 1/2 of all the ordinary members' contribution goes to the deep pocket of that fortunate "big" firm. (f) Some wise solicitors argue that reduced mutual protection cover will expose the "big firms" to greater risks. In fact, this cannot be the case because (i) most properties and assets now cost a lot cheaper than in 1997 and (ii) this argument can only succeed if it is indeed true that the Scheme (HK\$10 million/per claim), which supposedly applies to all solicitors, is actually tailored to suit the needs of the "big" firms.</p>
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<p>7. The Scheme works fine since about 1990.</p>	<p>(g) The “big” firms can still take up a lot of “less than HK\$1.5 million per claim” conveyancing retainers for land developers. The current average sale price of many small residential units in large land development is about HK\$1.5 million per unit. If the land title of the land development were defective due to the solicitors’ negligence, the number of negligence claims arising there from would still be substantial, say 1000 claims in any given year!</p> <p>(h) My personal view is: Big firms will fare a lot worse under QIS if we consider both the premium they will pay and the fees they will earn.</p> <p>(a) The Scheme is rotten and can be easily abused by corrupt individuals.</p> <p>(b) The Scheme does not maintain a strict internal audit system.</p> <p>(c) The Scheme does not maintain stringent prevention of corruption procedures. [No one has come out to defend the Scheme on this point.]</p> <p>(d) The Scheme encourages negligent practice:</p> <p>(i) More negligence claims, more business for panel firms.</p> <p>(ii) Mutual protection cover encourages solicitors not to act prudently for retainers of transaction value less than the mutual protection cover. A sole proprietor can just employ 1 conveyancing solicitor and 8 non-professional clerks to handle “the transaction papers” of a large land development project comprises of 500 residential units. In the process, the firm</p>
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earns a lot more profits than a prudent solicitor who carefully peruse all title deeds. Under the present scheme, if one adopts all costly risk management measures, he/she is basically a "sucker".

(iii) The following possibility does exist:-

Panel Firm A handles negligence claim for Panel Firm B.

Panel Firm B handles negligence claim for Panel Firm C.

Panel Firm C handles negligence claim for Panel Firm A.

(iv) The following possibility does exist:-

Claims Committee member A (of Panel Firm A) decides that the 50 negligence claims against member C (of Panel Firm C) (these claims come about due to ill-fortune!?) should be settled and instruct Essar to pay legal fees to the panel firm. Panel Firm B handles negligence claims for Panel Firm C.

Claims Committee member C (of Panel Firm C) decides that the 60 negligence claims against member B (of Panel Firm B) should be settled and instruct Essar to pay legal fees to the panel firm. Panel Firm A handles negligence claim for Panel Firm B.

"You scratch my back, I scratch yours"!?

(v) Up till now, not one Director of HKSIF Limited (or Essar) has come forward with a detailed explanation of the measures for prevention of corrupt practices now apply to the Scheme.

(vi) The following possibility also exists:

100 negligence claims are lodged against Firm A.

The Scheme pays HK\$1.0 billion to the 100 dissatisfied clients.

Firm A is dissolved. Solicitor X becomes consultant of Firm B (Solicitor Y). Solicitor X is not liable to pay an increased punitive insurance premium. Another 200 negligence claims are lodged against Solicitors X and Y. The Scheme again pays HK\$2.0 billion to the next batch of 200 dissatisfied clients. Firm B is dissolved. Solicitors X and Y become consultants of Firm C. Solicitors X and Y are not obliged to pay an increased punitive insurance premium. The 300 dissatisfied clients are now quite pleased.

The insurance company is not pleased. It wants a lot more insurance premium from all the Solicitors (big firm as well as small firms); otherwise it will not provide PII at all. The whole profession as well as the general public is at the mercy of the few insurers wisely picked by the insurance broker. The honest prudent solicitors will possibly

<p>8. The management of the Scheme works fine through “Law Society Council – Claims Committee – HKSIF Limited – Claims Manager – Essar – Panel Firms” set-up.</p>	<p>pay a total contribution of HK\$3.0 billion plus the panel firms’ substantial legal fees to the tune of, say, another HK\$3.0 billion.</p> <p>There are 6000 solicitors in the profession! Now it is public knowledge that my clients (whose claims in each case does not exceed \$10 million) will be “fully” indemnified by each and every one of the 6000 solicitors because of the collective wisdom of the Law Society Council.</p> <p>(vi) Now why should I be prudent as from, say, 4/6/2004?</p> <p>(a) Everybody must justify his/her existence in the bureaucracy of “Law Society Council – Claims Committee – HKSIF Limited – Claims Manager – Essar – Panel Firms”.</p> <p>(b) Panel Firms will not cry over additional fee income of say HK\$1700 million during a 6-yaer period.</p> <p>(c) HKSIF Limited employees need work.</p> <p>(d) It is always an honourable status of being a director of HKSIF Limited.</p> <p>(e) Substantial consultancy income and “goodwill” will never harm Essar (or any insurance broker representing 6000 solicitors).</p> <p>(f) Negligent solicitors need confidentiality, relatively cheap insurance cover as well as unlimited mutual indemnity by fellow practitioners.</p>
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	<p>(g) A Claims Committee member does not complain about the number of claims he/she must consider and decide for the good fortune of a handful of fellow solicitors even though he/she is not remunerated therefor.</p> <p>(h) Rip the multi-million PIS from the watchful-eye of the administration of Law Society, it will employ a lot less staff.</p>
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Perhaps you have already heard similar representations from my fellow members. I do not profess to be more knowledgeable. I wish to convey to your fellow colleagues in the Legislative Council the following message:

- (1) The Scheme only serves the personal interest of a handful of solicitors.
- (2) A new Scheme should be adopted to “deter” and “punish” negligent practice effectively. QIS is best suited for this purpose.
- (3) Negligent solicitors (or their firms) should not be allowed to participate in the administration, management, control, decision-making of any matter relating to the Scheme. A negligent solicitor (or his/her firm)’s role in the Scheme must be restricted to be the insured of a negligence claim notified to the Scheme.
- (4) The Scheme and all its funds must be tightly controlled by an independent committee comprises of, amongst others at least 1 representative from the ICAC.
- (5) The individuals of the Groups must declare in writing that they have not received any benefit (directly or indirectly) from the Scheme other than as an insured of a negligence claim notified to the Scheme.
- (6) The majority of the directors of HKSIF Limited must draw from other professions who cannot have any interest in the Scheme’s multi-billion funds or the outcome of any of the negligent claims.
- (7) The Claims Committee must also draw its members from other discipline (e.g. the Bar or the Accountants).

I urge the Legislative Council and the Government to conduct independent inquiries (preferably led by a representative of the ICAC) of the affairs of the Scheme since its inception.

Let me end this letter by telling you an **event**:

One Law Society Council member “H” asked a fellow Council member “PRES”: “Do I need to declare that there is a pending negligence claim against my firm?” “PRES” replied: “Certainly Not. It is confidential.”.

DAVID Y. Y. FUNG & CO.

Solicitors

Continuation Sheet No.

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Thank you for your kind attention.

Yours sincerely,

Ho Kai Cheong

HO Kai Cheong
member of the Law Society since 1985

c.c. Ms. Margaret Ng
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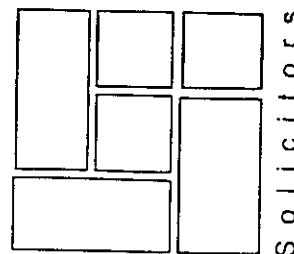
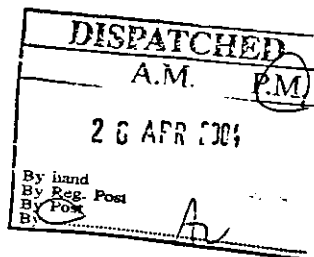
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DATE: 26th April 2004

OUR REF: Office/PH

OUR REF:

Annexure A



Mr. Ip Shing Hing and all Council Members,
The Law Society of Hong Kong,
3rd Floor, Wing On House,
71 Des Voeux Road Central,
Hong Kong.

Dear Mr. Ip,

Re: Shortfall Contribution – Professional Indemnity Scheme

Mr. L. Ko's letter dated 24th February 2004 (in particular Paragraph 4 of page 4 thereof) exposed the ludicrousness of the Council's approach to protect the public's interest.

The public is protected from negligent/reckless drivers not simply because they have taken out sufficient insurance to indemnify the victim's loss; but also due to the fact that these negligent/reckless drivers will be more careful after they pay a much higher insurance premium. Of course, the drivers know that they will be "off the road" for good if they cannot afford to pay the level of insurance premium as demanded by the insurers.

I personally do not understand why the Council insists on keeping the negligent/reckless solicitors on the roll. If a solicitor is negligent (regardless of the degree of negligence/culpability) and he does not have adequate personal assets to satisfy the judgment against him, what can the Council do under the present scheme (other than exercising the discretion to call for a universal contribution) to help the negligent/reckless solicitor? In fact, should any of the Council members do anything to help a negligent/reckless and destitute solicitor to maintain his/her practice if he/she is not "related" to the negligent/reckless solicitor?

I refer to the two (2) unfortunate claims referred to in Mr. Ko's letter (paragraph 8(2), page 3). If a judgment of about HK\$90 million had indeed been made against a negligent/reckless solicitor, but he/she did not take out sufficient top-up insurance, how on earth can the present scheme (or a different Master Policy Scheme) help him/her to continue his/her legal practice when he/she does not own adequate assets to prevent himself/herself from being declared bankrupt by reason of her/his failure to satisfy the judgment?

Further, why should a negligent/reckless solicitor be permitted to practise if the public (which must include the insurance companies) consider her/his performance (past, present or future) deserves a high insurance premium but she/he does not even have the financial means to pay for the same (not to mention the other substantial expenses incidental to the maintenance of a practice; such as office rent...etc.)?

If the Council does mean what it says to the ordinary members in respect of the protection of the paramount interest of the public, is it not of utmost importance that incompetent/negligent/reckless/corrupt/fraudulent solicitors (who is also destitute) be "expelled" from the legal profession?

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I wonder what will be the public's response should they be fully informed of the desire amongst a handful of solicitors to maintain a scheme which does not "punish" a negligent/reckless solicitor! Will the Council call for further universal contribution of, say \$200 million should, say, another 3000 claims are notified in April 2005?

I genuinely believe that the present insurance scheme encourages the proliferation of incompetent/negligent/reckless/corrupt/fraudulent legal practice. No wonder there were 731 writs!

I would mention one specific matter which is totally unrelated to the other matters mentioned/referred to hereinabove.

Paragraph 5 of Mr. Lo's letter (paragraphs 4 to 6 thereof) asserts that (with one exception) there is not one single director of Essar who does not have any involvement in the scheme whatsoever.

I refer to my previous letters addressed to the Council. I must point out that up till now none of the Council members (or the administration of the Law Society) has come forward and declared to the ordinary members without any qualification that (i) he (she) [or his (her) firm] has never been subject to any indemnity claim; or (ii) he (she) [or his (her) firm] has never received any moneys or benefits from the fund of whatever nature either directly or indirectly.

As an ordinary member, I consider that the "conflict of interest" criteria is the one and only yardstick to gauge whether or not a particular Council member has properly exercised the "discretion" to call for universal contribution.

Finally, kindly explain from which document(s) presently available to either the public or the ordinary members of the Law Society I can find out say:

- (i) Whether a Council member has ever been indemnified by the scheme?
- (ii) Whether a Council member's firm has ever been indemnified by the scheme?
- (iii) Whether a director of Essar ("Essar Director") has ever been indemnified by the scheme?
- (iv) Whether an Essar Director's firm has ever been indemnified by the scheme?
- (v) Whether a Council member or his/her firm has ever been instructed by the scheme to act for negligent solicitor(s)?
- (vi) Whether an Essar Director's firm has ever been instructed by the scheme to act for negligent solicitor(s)?
- (vii) Whether a council member, an Essar Director or their firms have ever obtained benefit from the maintenance of the present scheme?

Would the administrators of an insolvent insurance scheme defend its existence if their interest were indeed identical to that of the ordinary members? Please comment.

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Please revert and explain fully why Essar or the Law Society cannot use "cryptic codes" to represent each and every solicitor or law firm to compile statistics about, say, how many (if any) of the Essar Directors (past, present or future) or their firms have been (will be) indemnified by the present scheme.

Does an Essar Director owe any fiduciary duty to the Fund and its creditors? Does an Essar Director owe any duty of care to the ultimate insurers of the 1130 negligent claims referred to in Mr. Patrick Moss' reply (annexure 1).

I look forward to receiving a positive and constructive reply from you and/or any one of the Essar Directors (past or present).

Thank you for your kind attention.

Yours sincerely,



HO Kai Cheong
member since 1985

c.c. Mr. Larry Ko
Enc.
PH/al

c/o Messrs. Lo and Lo
3501, 35th Floor
Gloucester Tower
The Landmark
Hong Kong

BY HAND

MR. IP Shing King
The Law Society of Hong Kong
3rd Floor, Wing On House
71 Des Voeux Road Central
Hong Kong

24 February 2004

Dear Mr. Ip,

Re: Professional Indemnity Scheme

Thank you for your letter of 29th January 2004.

Paragraph 2

Questions (I), (II) and (III) are really very straight forward and only require a definitive answer of yes or no. Since you don't answer them and basing on what you say under 1, your answers are as follows :-

(I) NO.

(II) NO.

(III) NO.

The above "no" answers come from your first two sentences, because as everyone is presumed to know the law, all present and future solicitors know that they have to act as insurers of last resort as this is an inescapable fact. Please kindly correct me if I am wrong.

It really is a relief to see you say that the "Law Society made it clear to Legco members that the balance of public protection had "swung" too far in favour of the public". The only reason why it has "swung" so far is because the Council made it so by insisting on making the call despite the word "may". I would really be

interested in your answer if one day when the Council eventually seeks to change the rules and Legco members ask you this, "Why is there a need to change the rules when you already have a discretion?"

I had thought that I had taken the trouble of quoting the passages of Lord Diplock and Lord Brightman which you relied on. However, it would appear that I have missed the passages you referred to. Perhaps you can kindly point them out to me in due course.

Throughout the case, the word "paramount" was only used in one passage, and that was when Lord Diplock considered the methods available for fulfilling the requirement of obtaining insurance cover against professional liability under the indemnity rules. He listed out in his judgement the following three methods of providing insurance cover: (a) mutual insurance financed by contributions by solicitors to a fund established and maintained by the Society, (b) a form of group insurance -- a method for which subsections (2)(b), 3(c) and 3(f) of section 37 of the Solicitors Act 1974 (the equivalent of our section 73A of the Legal Practitioners Ordinance) provide and (c) policies of insurance with insurers of their own choice taken out directly by individual solicitors [para. E, p. 610]. In light of method (b), Lord Diplock said:

"In the event the council adopted method (b). It thus becomes necessary to consider what form of group insurance Parliament intended should be authorised by the subsection, of which the paramount purpose was the protection of that section of the public that makes use of the services of solicitors." [para. F, p. 610]

It is my belief that Lord Diplock accepted the protection of public as the paramount purpose in the context of taking out a form of group insurance by the Society. One should note that Lord Diplock did not apply his "paramount" principle to the event of adopting the insurance method (a) under which a mutual insurance is financed by contributions by solicitors to a fund established and maintained by the Society.

As I have said above, the word "paramount" can only be found in the said passage. In the circumstances, please let me know how you come up with your conclusion of the finding of the case that the interest of the public is paramount to that of the profession.

Having said that above, I would be grateful if you could kindly answer my questions posed to you on page 3 of my letter of 8th January 2004 which are simply put as follows:-

- (i) Do you honestly believe that our law is so ridiculously stupid as to (a) make members of the profession act as insurers for insurance companies for unlimited amounts (b) endanger their means of livelihood and (c) drive some members out of the profession altogether?
- (ii) Do you agree that there is a world of difference between Mr. Swain's case and our case? The special interests in Swain's case were the refund of a few pounds to the UK members whereas the special interests of the HK members are the payment of \$416.8 million and the consequences of (a), (b) and (c) above.
- (iii) Please kindly explain "short term interests" as stated in paragraph 4 of my said letter.

Paragraph 8

1. I agree that the trust in the profession can only come at a price and I repeat that that price has been amply paid for by the profession whose members have already been paying huge insurance premiums. I see you have not specifically answered my question or are you saying you agree with my answer?

However, it would appear that you want to make the members pay an even higher price which would mean (a), (b) and (c) above. Don't you honestly think that that is too high a price to pay when some members cannot practise in their chosen profession because of the Council's enforced call?

2. I regret that I posed my question badly as I am well aware of the limitation of the fund. To my knowledge, there are at least 2 outstanding claims where the claims will exceed \$10 million and the firms concerned do not have top-up or sufficient top-up insurance. In such circumstances, do you not agree that these particular members as a result of human error face a claim for damages well beyond their resources? If they fail to pay, don't you think that would also endanger the confidence of the public in the profession? In other words, how far do you want it to go?
3. Regrettably your answer with the Motor Insurance Bureau ("MIB") only partially answers my question. You are no doubt aware of the following:
- (i) MIB established the first fund on 1st February 1981. The fund specifically excludes liability by MIB for judgment that remains unsettled because of the insolvency of insurers.

- (ii) On 1st November 1985, MIB established the Insolvency Fund which requires MIB to satisfy judgment left outstanding by motor insurers which went into insolvency after the said date.

So, if my motor insurer goes into liquidation before November 1985, do other vehicle owners all contribute to pay off my damages claims?

- (iii) MIB does not accept liability for any claims relating to property damage. So if my motor insurer goes into liquidation, do other vehicle owners all contribute to pay off my property damage claims?

Paragraph 4

You and I must live in different worlds. On the one hand, I am and have always been saying that the profession has to protect the public's interests and that has been well fulfilled by the members paying huge premiums to insurance companies. On the other hand, you say that is not enough and insist, despite a vast majority of members' contrary view, that they act as insurers for unlimited amounts as well even though the very people you are protecting is saying that the profession has already protected their interests by taking out insurance with insurance companies. In other words, you are saying that it doesn't matter what the public or the profession thinks. You then justify your views by saying it is dictated by the statutory rules which you yourself said in your letter of 19th December 2003 are discretionary. That surely is what you see as the reality of the situation. Please kindly correct me if I am wrong.

On your last two sentences, I have to say that everyone in Hong Kong, and not just lawyers, are required to abide by the law. Why is there a need to lobby for a change when you don't have to exercise the discretion?

Paragraph 5

From my search at the Companies Registry, the board of Hong Kong Solicitors Indemnity Fund Limited ("the Company") consists of 10 members, 6 of whom are/were Council members. I list out hereunder their names and their membership concerning the Professional Indemnity Scheme.

<u>Directors of the Company</u>	<u>Council Member</u>	<u>Member of Professional Indemnity Advisory Committee</u>	<u>Member of PIS Claims Committee</u>	<u>Member of PIS Investment Sub-Committee</u>	<u>Member of PIS Panel Solicitors Selection Board</u>
Vincent W.S. Liang	Yes	Yes		Yes	
Mark J. Bradley			Yes	Yes	
Denis G. Brock	Yes		Yes		
Anthony W.K. Chow	Yes	Yes		Yes	Yes
Peter R. Griffiths					
Christopher G. Howse		Yes	Yes		
Peter Lo Chi Lik	Yes		Yes		
Sylvia W.Y. Siu	Yes				
Cecilia K.W. Wong	Yes				
Norris H.C. Yang		Yes		Yes	

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Looking at the above table, it can be clearly seen that all the directors of the Company, with the only exception of Mr. Peter R. Griffiths, wear different hats in respect of the Professional Indemnity Scheme. With that exception, there is not one single other director who can be said to have no involvement in the scheme whatsoever. Do you honestly believe that if the board was constituted by totally independent members that a call would be made?

I never used the word "bias" and it is you who used that word. After looking at the above table, perhaps you can kindly let me know which director of the Company, apart from Mr. Griffiths, is totally impartial so that the members' interests are protected. Did the Council members and the said directors ever consider Rule 7 of the said rules?

On this issue, I would be grateful if you could kindly let me have copies of the minutes with regard to the resolutions passed by the Company and the Council in February and March 2003 respectively. (Please see page 7 of the explanatory notes on shortfall contribution)

With regard to your last sentence, I am pleased to note that you say all members of the board are solicitors in practice and contribute to the shortfall call. Can anyone expect otherwise?

Paragraph 6

Since you do not give me an answer, can I take it that my views will be considered by the Council? Can I also take it that you will be furnishing me with actual figures?

Paragraph 7

Since you do not give me an answer, can I take it that what I said in this paragraph is all true and correct?

So far, from your letters, I gather that what you are saying is as follows :-

1. The Council must comply with the law prescribed by the Solicitors (Professional Indemnity) Rules.
2. You say that the said rules mandatorily require the Council to make the call despite the fact that rule 2(5)(a) contains the word "MAY" which you yourself said gives the Council a discretion.

- 3. By making the call, the Council has in fact made solicitors act as insurers for insurance companies for unlimited amounts, and you say that is an inescapable fact.
- 4. You then try to justify the Council's exercise of the discretion by referring me to Swain's case.
- 5. With regard to the call, the views of the majority of the members and the views of the public (the very people the Council is trying to protect) are not worth considering because they do not see the reality of the situation. Only the Council's views are relevant.
- 6. Do you agree that the above basically sets out what you have been saying?

I look forward to receiving your reply in due course.

Yours sincerely,



Larry Ko



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From the President

Our Ref. : PRES/FA/1265

14th April 2004

Mr. Larry Ko,
c/o Messrs. Lo & Lo,
3501, 35th Floor,
Gloucester Tower,
The Landmark,
Hong Kong.

Dear Mr. Ko,

Professional Indemnity Scheme

Thank you for your letters dated 15th March, 1st and 8th April.

I refer to the questions raised in your letter of 15th March to which my replies are as follows:

1. The Council resolved not to provide members with the opinions of counsel in relation to the shortfall as it is the policy of the Council not to release opinions of counsel which it has obtained for the purpose of administration of the Law Society. However, all members are welcome to comment on the logic of the Council's own deliberation which has been given;
2. As an exception the Council resolved to release the opinion of Mr. Anthony Mann to assist the requisitionists to come up with some viable options.
3. I do not know of any profession whose members are required to act as insurers of last resort;
4. As the Council does not intend to sell Wing On House we do not have a current valuation. The property was purchased in 1997 for HK\$115,000,000 excluding fitting out costs. If the property were to be sold the proceeds would go to the credit of the Law Society and not the Hong Kong Solicitors Professional Indemnity Fund which is a separate entity.

From the President

14th April 2004

Mr. Larry Ko
c/o Messrs. Lo & Lo

- 2 -

5. The Council and the board members were well aware of Rule 7 of the Solicitors (Professional Indemnity) Rules before making the decision to make the call;
6. I regret that I am unable to accede to your request for minutes of the Council meetings and board meetings in February and March 2003. For your information, part of the Council meeting and the Board meeting are not open to members as a lot of sensitive issues relating to individual members are covered;
7. The existing professional indemnity scheme arrangements are contractual as between the Law Society, the company and the insurers concerned and are based upon the existing rules. The rules cannot be changed unilaterally during the existence of the current contract with insurers. It is our intention to make changes to the rules contemporaneously with the expiration of the existing contracts.

Yours faithfully,



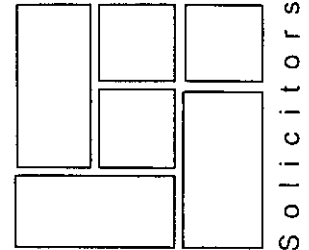
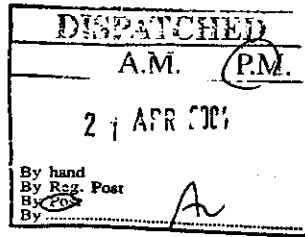
Ip Shing Hing
President

21st April 2004

REF: Office/PH

REF:

Mr. Ip Shing Hing,
The Law Society of Hong Kong,
3rd Floor, Wing On House,
71 Des Voeux Road Central,
Hong Kong.



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Agents for Trade Marks & Patents
馮元鉞律師行

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Ho Kai Cheong

何繼昌律師

China-Appointed Attesting Officer
中國委託公証人

CONSULTANT:

Emily M S Cheung

張妙嫻律師

China-Appointed Attesting Officer
中國委託公証人

ASSOCIATES:

Chan Yiu Fai Y.

陳耀輝律師

Lo Chi Hung

盧志雄律師

Dear Mr. Ip,

Re: Your reply dated 14th April 2004

I refer to your reply addressed to Mr. Larry Ko dated 10th April 2004; in particular paragraph 6 thereof.

Kindly confirm the nature of the "sensitive issues". Are you suggesting, for example, that an individual member, who is also a director of the Fund (which is a separate entity independent of the Law Society), was faced with a "conflict of interest" scenario at the said meetings?

Please clarify that none of the council members/directors who attended the said council meetings or board meetings in February and March 2003 was/is in any way involved/interested in any indemnity claims referred to in Mr. Patrick Moss's reply dated 13th April 2004 (for which the other ordinary members now act as the ultimate insurers) directly or indirectly.

Thank you for your kind attention.

Yours sincerely,

HO Kai Cheong
member since 1985

c.c. Mr. Larry Ko

PH/al

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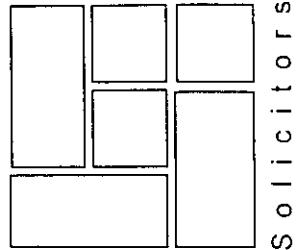
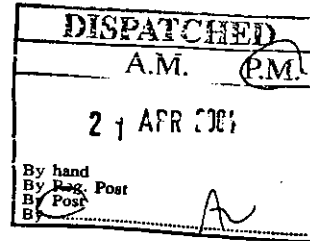
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21st April 2004

REF: Office/PH

R REF:



Mr. Patrick Moss,
Secretary General,
The Law Society of Hong Kong,
3rd Floor, Wing On House,
71 Des Voeux Road Central,
Hong Kong.

Dear Mr. Moss,

Re: Your reply dated 13th April 2004

I refer to your reply addressed to Mr. Larry Ko dated 13th April 2004.

You mentioned that 731 writs were issued against solicitors. I believe the abovementioned writs are public records and the administration of the Law Society (which is a separate entity independent of the Hong Kong Solicitors Professional Indemnity Fund) as well as all the council members are well aware of the identities of the solicitors named in the said writs.

Do you (as the incumbent Secretary General) propose that each and every ordinary member should from time to time search the court files to calculate the total claim amount and his/her own portion of the liability therefor under the present scheme?

Please compile a list of the particulars of the solicitors/firms concerned as disclosed by the said 731 writs and clarify whether any of the board members of the Fund are involved or interested in these proceedings directly (the defendant named) or indirectly (say, panel solicitors).

Thank you for your kind attention.

Yours sincerely,

HO Kai Cheong
member since 1985

c.c. Mr. Larry Ko
Council Members

PH/al

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Our Ref
Your Ref
Direct Line

SG/FA/1264

13th April 2004

Mr. Larry Ko,
c/o Messrs. Lo & Lo,
3501, 35th Floor,
Gloucester Tower,
The Landmark,
Hong Kong.

Dear Mr. Ko,

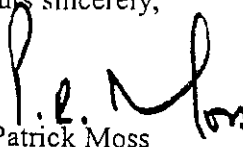
EGM on 21st April 2004

Thank you for your letter dated 8th April.

Under option B of the proposed resolutions for consideration at the forthcoming EGM it will be necessary to fund the run-off of claims notified under the existing scheme until September 2005. Currently there are 1,130 claims which have been notified to the claims managers and 731 writs have been issued against solicitors. The Hong Kong Solicitors Indemnity Fund has a contractual obligation to meet these claims and accordingly the fund has to be maintained. For comments on this obligation please refer to the Willis Report and in particular pages 57 and 82 et seq.

I am not aware of any intention by the Council to legitimize the call for shortfall contributions by way of this resolution. The Council considers that the Solicitors (Professional Indemnity) Rules fully empower it to make such calls without any need for retrospective ratification by the Law Society in general meeting.

Yours sincerely,


Patrick Moss
Secretary General

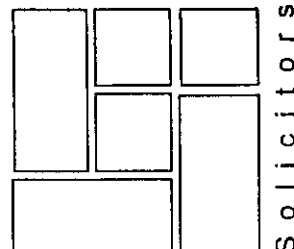
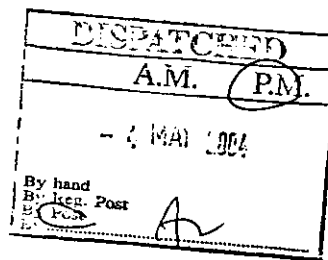
President	Vice-Presidents	Council Members			Secretary General
Ip Shing Hing	Anson K.C. Kan Michael J. Lintern-Smith	Denis G. Brock Anthony W.K. Chow Junius K.Y. Ho Lester G. Huang Stephen W.S. Hung	Andrew Jeffries Alex T.H. Lai Amy Y.K. Liu Peter C.L. Lo Billy W.Y. Ma	Kenneth S.Y. Ng Timothy C. Parkes Sylvia W.Y. Siu Herbert H.K. Tsoi Wong Kwai Huen	Cecilia K.W. Wong Dieter L.T. Yih Patrick R. Moss

DATE: 4th May 2004

JR REF: Office/PH

DUR REF:

Mr. Ip Shing Hing,
c/o Messrs. Christine M. Koo & Ip,
Solicitors,
Room 3105, 31/F.,
Bank of America Tower,
12 Harbour Road,
Hong Kong.



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Dear Mr. Ip,

Re: Your representation enclosed to Mr. Patrick Moss' Letters dated 29th April 2004

I refer to your captioned representation dated 29th April 2004 and my letter addressed to you dated 26th April 2004.

Could you declare that:-

- (i) you have never given notice to SIF that a claim has been made against you or your firm;
- (ii) you or your firm has never acted for SIF in respect of a claim made against another council member or another Essar Director or his/her firm;
- (iii) you or your firm has never obtained any benefit directly or indirectly from SIF or the insurance broker;
- (iv) you or your firm will not obtain any monetary benefit from the maintenance/continuation of the present scheme;
- (v) when you discharge your duties as one of the directors of Essar, you have dutifully and conscientiously made all reasonable inquiries in respect of the operation of the scheme (in particular (i) the circumstances surrounding the insurance with HIH in 1987; and (ii) there is no fact or matter or document which would prompt a prudent solicitor to make inquiries of the conduct of one or more staff/officers/employees/agents of SIF).

I shall be most grateful if you would reply and procure the other council members to reply to the above questions in order to demonstrate that all the council members and Essar Directors did discharge their fiduciary duties dutifully and conscientiously.

I shall vote against the motion should all the council members and Essar Directors provide a positive answer to each of the above questions.

Yours sincerely,

HO Kai Cheong
member since 1985

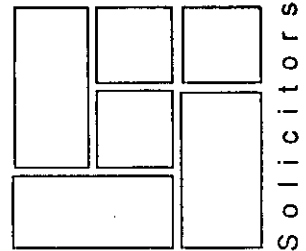
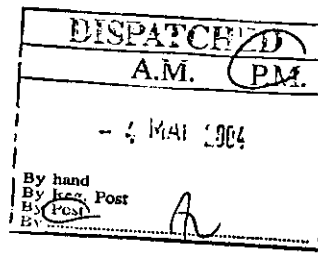
✓c.c. Mr. Larry Ko
PH/al.

E: 4th May 2004

REF: Office/PH

IR REF:

Mr. Denis Gareth Brock,
c/o Messrs. Clifford Chance,
Solicitors,
29/F., Jardine House,
1 Connaught Place,
Central,
Hong Kong.



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Dear Mr. Brock,

Re: Your representation enclosed to Mr. Patrick Moss' Letters dated 29th April 2004

I refer to your captioned representation dated 29th April 2004 and my letter addressed to Mr. Ip Shing Hing dated 26th April 2004.

Could you declare that:-

- (vi) you have never given notice to SIF that a claim has been made against you or your firm;
- (vii) you or your firm has never acted for SIF in respect of a claim made against another council member or another Essar Director or his/her firm;
- (viii) you or your firm has never obtained any benefit directly or indirectly from SIF or the insurance broker;
- (ix) you or your firm will not obtain any monetary benefit from the maintenance/continuation of the present scheme;
- (x) when you discharge your duties as one of the directors of Essar, you have dutifully and conscientiously made all reasonable inquiries in respect of the operation of the scheme (in particular (i) the circumstances surrounding the insurance with HIH in 1987; and (ii) there is no fact or matter or document which would prompt a prudent solicitor to make inquiries of the conduct of one or more staff/officers/employees/agents of SIF).

I shall be most grateful if you would reply and procure the other council members to reply to the above questions in order to demonstrate that all the council members and Essar Directors did discharge their fiduciary duties dutifully and conscientiously.

I shall vote against the motion should all the council members and Essar Directors provide a positive answer to each of the above questions.

Yours sincerely,

HO Kai Cheong
member since 1985

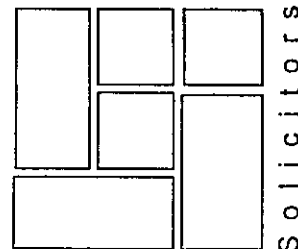
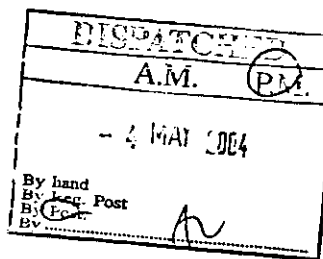
✓ c.c. Mr. Larry Ko
PH/al

DATE: 4th May 2004

COUR REF: Office/PH

COUR REF:

Mr. Anthony Chow Wing Kin,
c/o Messrs. Wong Peter C., Chow & Chow,
Solicitors,
Room 2204, Admiralty Centre, Tower One,
18 Harcourt Road,
Hong Kong.



David Y Y Fung & Co
Agents for Trade Marks & Patents
馮元鈺律師行

SOLE PROPRIETOR:
Ho Kai Cheong
何繼昌律師
China-Appointed Attesting Officer
中國委託公証人

CONSULTANT:
Emily M S Cheung
張妙嫻律師
China-Appointed Attesting Officer
中國委託公証人

ASSOCIATES:
Chan Yiu Fai Y.
陳耀輝律師

Lo Chi Hung
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廣東國際大廈 A 附樓 15 樓 B
電話 : (86-20) 8331 1000
傳真 : (86-20) 8331 1135

Dear Mr. Chow,

Re: Your representation enclosed to Mr. Patrick Moss' Letters dated 29th April 2004

I refer to your captioned representation dated 29th April 2004 and my letter addressed to Mr. Ip Shing Hing dated 26th April 2004.

Could you declare that:-

- (xi) you have never given notice to SIF that a claim has been made against you or your firm;
- (xii) you or your firm has never acted for SIF in respect of a claim made against another council member or another Essar Director or his/her firm;
- (xiii) you or your firm has never obtained any benefit directly or indirectly from SIF or the insurance broker;
- (xiv) you or your firm will not obtain any monetary benefit from the maintenance/continuation of the present scheme;
- (xv) when you discharge your duties as one of the directors of Essar, you have dutifully and conscientiously made all reasonable inquiries in respect of the operation of the scheme (in particular (i) the circumstances surrounding the insurance with HIH in 1987; and (ii) there is no fact or matter or document which would prompt a prudent solicitor to make inquiries of the conduct of one or more staff/officers/employees/agents of SIF).

I shall be most grateful if you would reply and procure the other council members to reply to the above questions in order to demonstrate that all the council members and Essar Directors did discharge their fiduciary duties dutifully and conscientiously.

I shall vote against the motion should all the council members and Essar Directors provide a positive answer to each of the above questions.

Yours sincerely,

HO Kai Cheong
member since 1985

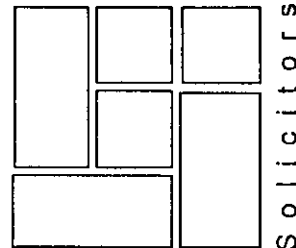
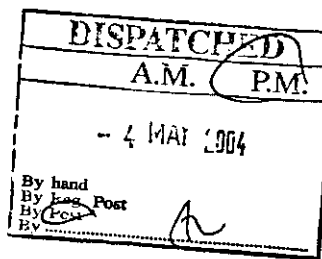
✓ c.c. Mr. Larry Ko
PH/al

TE: 4th May 2004

R REF: Office/PH

UR REF:

Ms. Sylvia Siu Wing Yee,
c/o Messrs. Sit, Fung, Kwong & Shum,
Solicitors,
18/F., Gloucester Tower,
The Landmark,
11 Pedder Street,
Central,
Hong Kong.



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廣東國際大廈 A 附樓 15 樓 B
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傳真 : (86-20) 8331 1135

Dear Ms. Siu,

Re: Your representation enclosed to Mr. Patrick Moss' Letters dated 29th April 2004

I refer to your captioned representation dated 29th April 2004 and my letter addressed to Mr. Ip Shing Hing dated 26th April 2004.

Could you declare that:-

- (xvi) you have never given notice to SIF that a claim has been made against you or your firm;
- (xvii) you or your firm has never acted for SIF in respect of a claim made against another council member or another Essar Director or his/her firm;
- (xviii) you or your firm has never obtained any benefit directly or indirectly from SIF or the insurance broker;
- (xix) you or your firm will not obtain any monetary benefit from the maintenance/continuation of the present scheme;
- (xx) when you discharge your duties as one of the directors of Essar, you have dutifully and conscientiously made all reasonable inquiries in respect of the operation of the scheme (in particular (i) the circumstances surrounding the insurance with HIH in 1987; and (ii) there is no fact or matter or document which would prompt a prudent solicitor to make inquiries of the conduct of one or more staff/officers/employees/agents of SIF).

I shall be most grateful if you would reply and procure the other council members to reply to the above questions in order to demonstrate that all the council members and Essar Directors did discharge their fiduciary duties dutifully and conscientiously.

I shall vote against the motion should all the council members and Essar Directors provide a positive answer to each of the above questions.

Yours sincerely,

Ho Kai Cheong

HO Kai Cheong
member since 1985

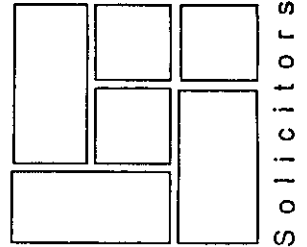
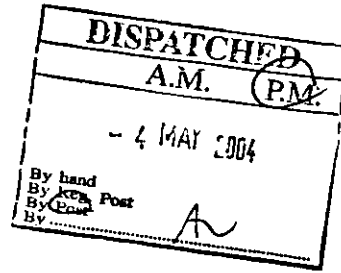
/c.c. Mr. Larry Ko
PH/al

DATE: 4th May 2004

JR REF: Office/PH

JUR REF:

Mrs. Wong Ng Kit Wah, Cecilia,
c/o Messrs. Kevin Ng & Co.,
Solicitors,
Suite B, 13/F.,
Two Chinachem Plaza,
135 Des Voeux Road Central,
Hong Kong.



David Y Y Fung & Co
Agents for Trade Marks & Patents
馮元鈺律師行

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廣東國際大廈 A 附樓 15 樓 B
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Dear Mrs. Wong,

Re: Your representation enclosed to Mr. Patrick Moss' Letters dated 29th April 2004

I refer to your captioned representation dated 29th April 2004 and my letter addressed to Mr. Ip Shing Hing dated 26th April 2004.

Could you declare that:-

- (xxi) you have never given notice to SIF that a claim has been made against you or your firm;
- (xxii) you or your firm has never acted for SIF in respect of a claim made against another council member or another Essar Director or his/her firm;
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- (xxv) when you discharge your duties as one of the directors of Essar, you have dutifully and conscientiously made all reasonable inquiries in respect of the operation of the scheme (in particular (i) the circumstances surrounding the insurance with HIH in 1987; and (ii) there is no fact or matter or document which would prompt a prudent solicitor to make inquiries of the conduct of one or more staff/officers/employees/agents of SIF).

I shall be most grateful if you would reply and procure the other council members to reply to the above questions in order to demonstrate that all the council members and Essar Directors did discharge their fiduciary duties dutifully and conscientiously.

I shall vote against the motion should all the council members and Essar Directors provide a positive answer to each of the above questions.

Yours sincerely,

HO Kai Cheong
member since 1985

✓ c.c. Mr. Larry Ko 4/15/04
PH/al



THE
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OF HONG KONG

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WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref
Your Ref
Direct Line

4th May 2004

Mr. Ho Kai Cheong,
David Y. Y. Fung & Co.,
Unit 3513, 35/F., The Center,
99 Queen's Road Central,
Hong Kong.

Dear Mr. Ho,

Thank you for your letter dated 21st April, the contents of which I have noted. I do not have a record of the names of firms against whom the 731 writs have been issued. This information is maintained as part of the claims files by Essar Insurance Services Limited as managers of the Scheme. They are precluded from providing you with this information under the provisions of the Solicitors (Professional Indemnity) Rules and the Personal Data (Privacy) Ordinance. Your belief that the administration of the Law Society as well as all the Council members are aware of the identities of the solicitors named in the writs is incorrect.

The list of panel solicitors acting on behalf of firms against whom claims have been made is contained in the Annual Report of the Law Society on page 68. No member of a panel solicitor firm participates in any decisions of the Claims Committee, the Council or the board of HKSIF Ltd. in which he or she may have a conflict of interest.

Yours faithfully,

Patrick Moss
Secretary General

PM/ff

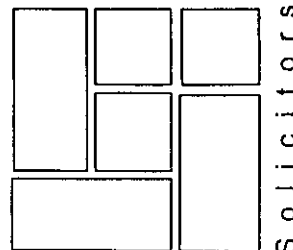
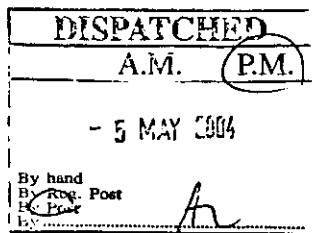
President	Vice-Presidents	Council Members			Secretary General
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TE: 5th May 2004

IR REF: Office/PH

UR REF:

Mr. Christopher Guy Howse,
c/o Messrs. Richards Butler,
Solicitors,
20/F., Alexandra House,
Chater Road,
Central,
Hong Kong.



David Y Y Fung & Co

Agents for Trade Marks & Patents

馮元鈺律師行

SOLE PROPRIETOR:

Ho Kai Cheong

何繼昌律師

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Dear Mr. Howse,

Re: The Professional Indemnity Scheme Course Outline

I refer to "The Professional Indemnity Scheme Course Outline".

I note that the presenters only allow 25 minutes for "Questions and Answers".

Could you deal with the following questions when you come to "The Role of the Claims Committee and ESSAR, the Claims Manager" on 11th May 2004":-

- (1) Are there any rules, regulations, practice guidelines or internal audit system to ensure that the directors/officers/staff/employees/agents of Essar of the Claims Committee or the Claims Manager cannot implement any corrupt practice when (a) a claim is notified by a negligent solicitor or (b) a firm is appointed to act for the scheme/negligent solicitor?
- (2) Is each and every director of Essar required to declare his/her interest/involvement whenever there is a possibility of conflict of interest; say when the negligent solicitor is a friend of (a) one (or more) of the members of the Claims Committee; or (b) the partners of the firm of solicitors appointed to act for the negligent solicitor/the Scheme?
- (3) Had there been any instance of a member of the Claims Committee (or his/her firm) named as the negligent solicitor in a claim notified by the Scheme?
- (4) Is there any procedure/internal control system to prevent a negligent solicitor (or his/her firm) from participating in the Scheme other than as the insured?
- (5) Has any negligent solicitor (or his/her firm) ever participated in the Scheme other than as the insured?

I shall be grateful if you would respond to the above questions in writing with a view to allowing more time for other members to ask questions.

Yours sincerely,

Ho Kai Cheong

HO Kai Cheong
member since 1985

PH/al

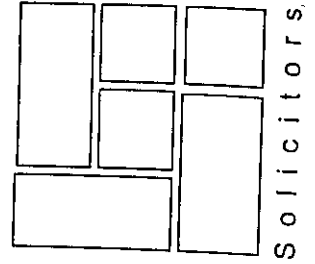
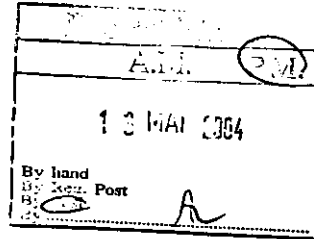
ATE: 13th May 2004

UR REF: Office/PH

OUR REF:

Mr. Christopher Guy Howse,
c/o Messrs. Richards Butler,
Solicitors,
20/F., Alexandra House,
Chater Road,
Central,
Hong Kong.

1st Letter



David Y Y Fung & Co
Agents for Trade Marks & Patents
馮元鈺律師行

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Dear Mr. Howse,

Re: The Professional Indemnity Scheme Course Outline

I refer to my letter addressed to you on 5th May 2004.

With regret, you did not deal with any of my queries on 11th May 2004.

Given that you are an honest solicitor, I must assume that your refusal/failure is an admission by conduct that:

- (1) There is not any rules, regulation practice guidelines or internal audit system to deal with the scenarios mentioned in my query (1).
- (2) No director of Essar has ever declared his/her interest when there is a conflict of interest mentioned in my query (2).
- (3) There was (were) case(s) where a member of the Claims Committee (or his/her firm) had been named as the negligent solicitor in a claim notified to the Scheme.
- (4) There is not any procedure/internal control system to prevent a negligent solicitor (or his/her firm) from participating in the Scheme other than as the insured.
- (5) In truth and in fact, a negligent solicitor (or his/her firm) has participated in the Scheme other than as the insured.

I shall send copies of my letters and your reply (if any) to Ms. Margaret Ng to enable her to comprehend the present PIS from another perspective.

Yours sincerely,

Ho Kai Cheong

HO Kai Cheong
member since 1985

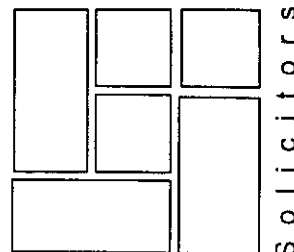
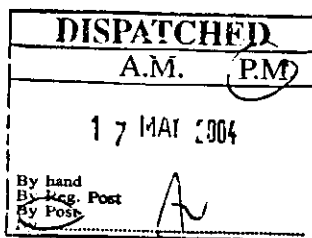
PH/al

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DATE: 14th May 2004

OUR REF: Office/PH

YOUR REF:



Mr. Christopher Guy Howse,
c/o Messrs. Richards Butler,
Solicitors,
20/F., Alexandra House,
Chater Road,
Central,
Hong Kong.

2nd Letter

Private & Confidential

David Y Y Fung & Co
Agents for Trade Marks & Patents
馮元鉞律師行

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Dear Mr. Howse,

Re: The Professional Indemnity Scheme CPD Course

I refer to the CPD course held on 11th May 2004.

I must applaud you and your co-speaker for giving a very clear picture of the paramount duties of the Law Society to (i) protect the interest of the public, (ii) "maintain" the Scheme and (iii) ensure the section of the public who require legal services shall be fully indemnified in the event that they suffer loss as a result of the negligence of the solicitors.

You are, of course, very intelligent, honest, frank, highly praised, extremely competent with insurance matters and a person of integrity. You shall honour and implement your representations particularly when the same are uttered at a public occasion.

On 11th May 2004, you had in fact told the audience that it is the paramount duty of the Council of the Law Society and the board of HKSIF Limited to maintain a Scheme which will ensure all aggrieved claimants be indemnified fully (100%) of their loss as a result of solicitors' negligence. You even emphasized the "beauty" of the mutuality embedded in the present Scheme. You did tell the audience that without the HK\$10 million mutual cover, some solicitors may not be able to continue their practice! You went on to cite an example (Please refer to annexure 1).

I do not think that you were lying on 11th May 2004. You could not be lying on 11th May 2004.

I do not think that you deliberately misled the audience on 11th May 2004. I do not believe that you had made any mistake on 11th May 2004.

When you and your co-speaker told the audience that at all material times since 1989, the public was able to recover all their losses under the present Scheme, you and your co-speakers were making a public statement, not just personally, but on behalf of all the Council members, the officers/directors of HKSIF Limited, the officers/directors of Essar as well as the principal officers of the administration of the Law Society.

..../P.2

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- 2 -

Under the present Scheme, an aggrieved claimant may [but not an absolute certainty that he/she shall be able to] recover all his/her loss from the negligent firm even if the same is less than HK\$10 million.

You and your co-speakers are in a much better position to explain why such scenario would occur.

Will you and your co-speaker publish "supplemental notes" to clarify the liabilities of the Council members and directors of HKSIF Limited in respect of their statutory duties (i) to maintain the Scheme and (ii) to protect the public's interest with a view to indemnifying the public's loss 100%?

Let me move to another subject. At the CPD course, you had repeatedly use "your firms are negligent" to describe certain scenarios. Here, allow me to use the phrase "your firm" in a very loose sense without any imputation.

Assuming that a dissatisfied claimant obtains judgment against your firm in a successful negligence claim for HK\$500 million; and "your firm" does not purchase top-up insurance. Your firm has 27 partners. The Scheme pays to the dissatisfied claimant HK\$10 million (indirectly). Who will pay the dissatisfied claimant the balance of HK\$490 million?

Are you suggesting that all members become liable to further contribute to the unpaid balance of HK\$490 million?

If I understand your lecture on "mutuality" correctly, all the other members will definitely not be liable to contribute to the unpaid balance.

How can the dissatisfied claimant recover the unpaid balance of HK\$490 million in the unfortunate event that all the 27 partners just do not have any money at all?

You and your co-speaker did not tell any lies or make any mistakes on 11th May 2004.

So, someone shall pay the balance of HK\$490 million.

You did not suggest it was the liability of the government or another insurance company.

So it had to be the solicitors who were so wise to create both the present Scheme and the HKSIF Limited as well as some other solicitors who had publicly acknowledged the Law Society's statutory duties to protect the public's interest to the fullest extent. In fact your co-speaker mentioned that Council members as well as directors of HKSIF Limited could be sued by the public if they fail to discharge their statutory duties.

I am pleased to learn that the present Scheme requires all the Council members as well as the directors of HKSIF Limited to indemnify the dissatisfied claimant the unpaid balance of HK\$490 million.

You probably knew that one solicitors firm is being sued for about HK\$500 million.

- 3 -

You did not tell any lies on 11th May 2004, did you? (Please refer to annexure 2).

As I see it, in order that all dissatisfied claimants shall be able to recover their losses 100%, the Council members as well as the directors of HKSIF Limited must at all material times "maintain" an aggregate net asset worth of not less than the "shortfall". This duty is additional and supplemental to their statutory duties to "maintain" the Scheme.

Did the Council members as well as the directors of HKSIF Limited together owned assets of net asset value of not less than HK\$400 million as at the date on which the Council voted to call for "universal contribution"?

I am quite happy to leave the profession temporarily if it were indeed true that all the outstanding negligence claims and any claim against me shall be fully paid by the Council members and directors of HKSIF Limited personally.

It is absurd to suggest that the directors of HKSIF Limited will be personally liable to the public, don't you think so?

On what basis can you assert with truth that a 2-partner firm shall definitely be able to continue its practice if it is being claimed HK\$11 million and the "mutual cover" is limited to HK\$10 million? Do you and your co-speaker undertake to indemnify the dissatisfied claimant the unpaid balance of HK\$1 million under the present Scheme?

Please confirm that, as a matter of truth and fact, not every dissatisfied claimant will be able to recover his/her loss 100% even if the present Scheme will continue after September 2005.

How on earth can a Master Policy Scheme be so fundamentally different from a QIS if the "mutual cover" is only limited to say HK\$0.5 million. Not one solicitors firm will be so foolish to tell the audience that it will never face one or more claims of more than HK\$0.5 million? A prudent solicitor will definitely purchase adequate insurance with his/her own money whether the present Scheme, a Master Policy Scheme or QIS is adopted.

Are you suggesting that small firms should not accept any retainer of a "value" greater than the "mutual cover"?

Please also confirm that, even under the present Scheme, should a solicitor not carry out his/her duties properly (please do not blame it on ill fortune even if a messenger throws away your client's cheque!); he/she will never be certain that he/she will be able to pay off the negligence claim fully and continue his/her legal practice.

Having said the above, I do not forget that you are an honest managing partner of a reputable multi-jurisdiction solicitors firm. I therefore acknowledge and accept that you have by conduct undertaken to indemnify all dissatisfied claimants the unpaid balance of their claims in the event that the negligent solicitors concerned are destitute with a view to implementing the stated policy of the government under the present Scheme.

- 4 -

Allow me to move to another public statement made by you on 11th May 2004.

I do not think that you are dishonest. On the contrary, I personally believe that you shall do all that you can within your authority and power at all costs to make sure that your statement does accord with true facts.

You did tell the audience that a few "big" law firms together contribute about 20% of the annual insurance premium and they will probably be the keenest ones opting QIS.

Under a QIS, the Law Society probably do not need the service of the Claims Committee, HKSIF Limited or Essar (the Claims Manager). In all probabilities, the Law Society or HKSIF Limited will not maintain a panel of solicitors to handle negligence claims according to the wish and desire of the Claims Committee.

You know all the figures, statistics and names of the panel solicitors. I do not.

Let me assume:

- (i) there are 10 "big" law firms and 10 panel solicitors firms;
- (ii) the annual insurance premium is about HK\$200 million since 1997;
- (iii) the 10 "big" firms together contribute 20% of the annual insurance premium;
- (iv) the 10 panel solicitors firms together handle all the negligence claims notified to the Fund;
- (v) I estimate that the average legal fees paid/payable to the panel solicitors for each claim is about HK\$0.75 million.

There were a total of 1633 negligence claims for the 6-year period from 1997 to 2003.

The 10 "big" firms paid a total sum of about HK\$240 million but during the same period the 10 panel solicitors firms received (or will receive) legal fees in the sum of about HK\$1,224.75 million!

The panel solicitors firms will stand to lose huge sums of fee income should all the small firms vote for a de-mutualized scheme be adopted after September 2005.

Can you confirm that Messrs. Richards Butler was not one of the panel solicitors firm during the period from 1997 to 2003?

Do you honestly believe that a Council member would vote for a de-mutualized PIS if he/she stands to lose substantial fee income after the present Scheme is scrapped?

Do you honestly believe that the "big" firms would vote for the present Scheme be scrapped after September 2005?

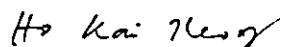
Do you honestly believe that the present Scheme is not favouring the "big" firms?

- 5 -

I regret that on 11th May 2004 the audience was not informed of the scenario that the Council members, the directors of HKSIF Limited, and perhaps the principal officers of the administration of the Law Society are in fact and in law "the insurers of the last resort" under the present Scheme. If you agree with my analysis, please procure the Council to revoke the call and arrange refund.

I reserve the right to inform Ms. Margaret Ng of the contents of this letter and your reply (or absence of reply) so that she will be in a better position to understand the personal interest involved if some solicitors lobby for the continuation of the present Scheme or any "mutual scheme" after September 2005.

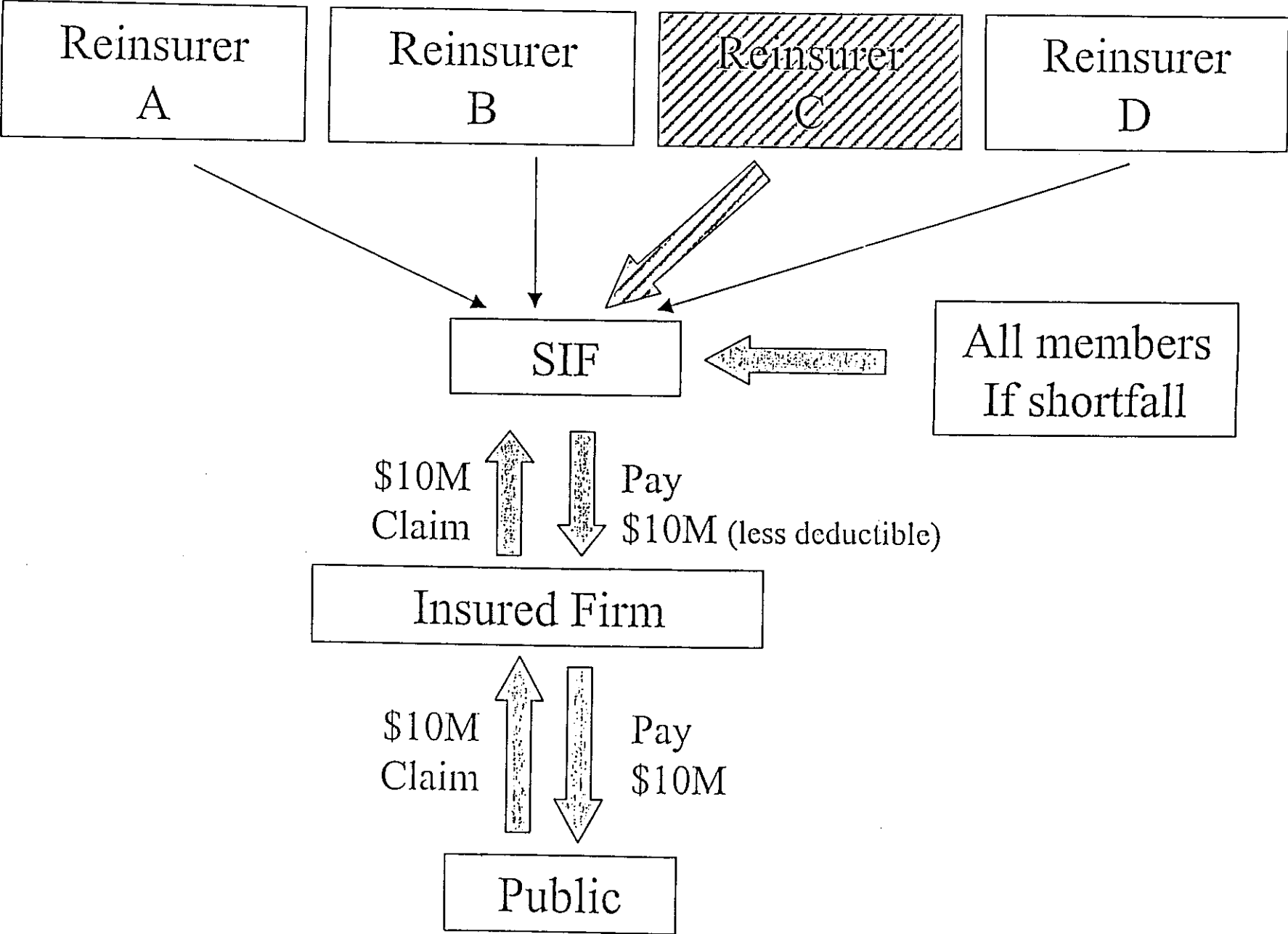
Yours sincerely,



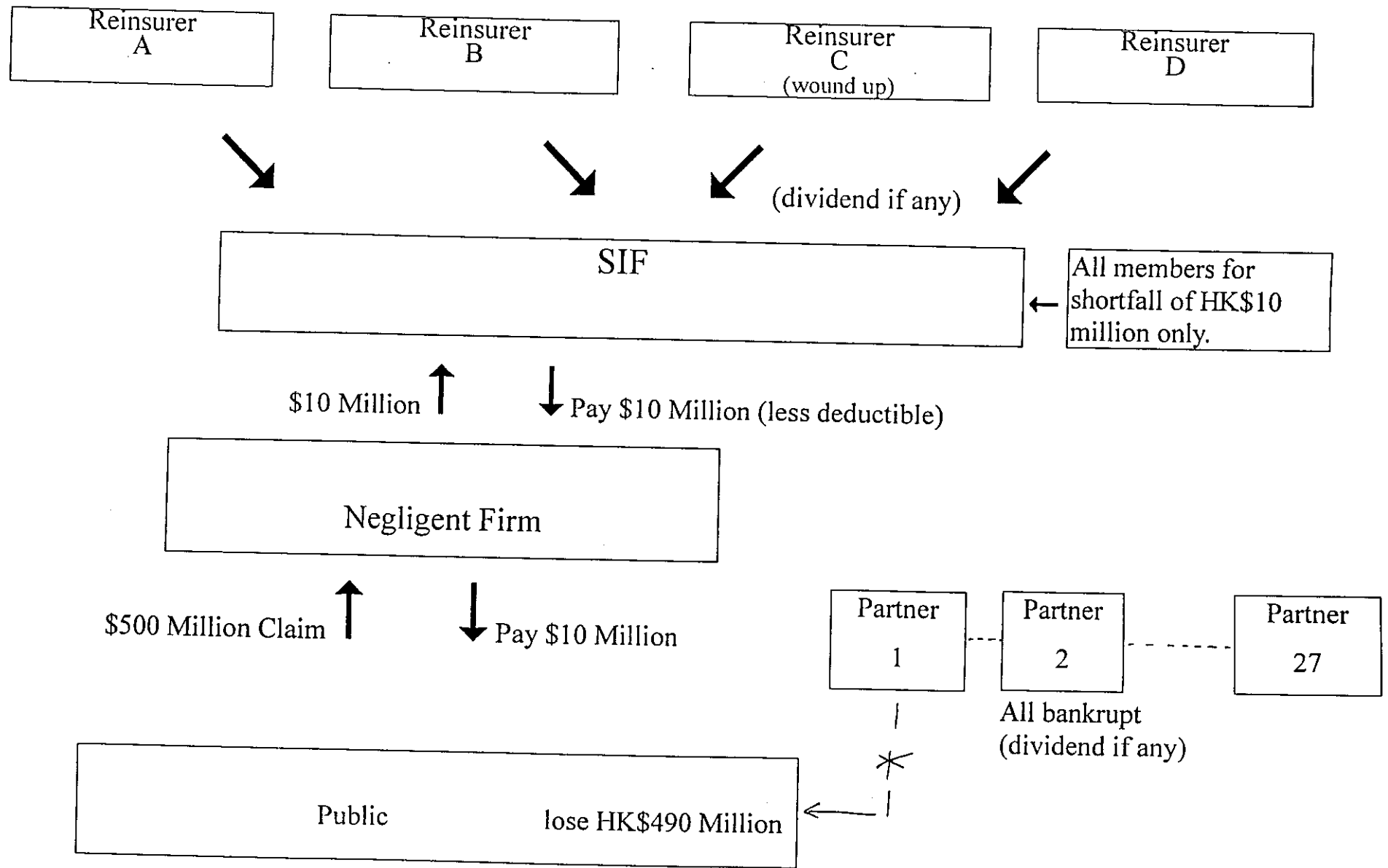
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19 May 2004

Dear Mr. Ho,

The Professional Indemnity Scheme CPD Course

I refer to your letter of 14th May 2004 which it is described as "2nd Letter". I have not received a first letter.

On 11th May, as I made it clear in my previous letter, I was taking part in a CPD presentation. The views expressed during this presentation were my own. I was not speaking on behalf of any officer or director of ESSAR, The Law Society or The Hong Kong Solicitors Indemnity Fund Ltd.

I regret your letter contains a number of factual inaccuracies and assumptions which are not correct. I do not, however, propose to provide a detailed response to your letter as I think it would be preferable if you sought clarification on the current and proposed professional indemnity arrangements either from The Law Society Council or from the Chairman of Hong Kong Solicitors Indemnity Fund Ltd.

Yours faithfully,


C.G. Howse

cc: Woo, Kwan, Lee & Lo (By Post)
Attn.: Mr. Peter Lo

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