

Letterhead of MUNRO CLAYPOLE & REEVES

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Our Ref.: Office

Your Ref.:

Date: 29th November 1999

Please ask for Mr. Munro.....

The Director of Administration
Government Secretariat
Lower Albert Road
Hong Kong

Attn.: Ms Rosanna Law

Dear Madam,

Re: District Court (Amendment) Bill 1999

Personal Injuries Claims

I am pleased to note the proposal to increase the jurisdiction of the court to \$600,000 insofar as personal injuries claims are concerned (s.32(2)).

I wish to propose the following change to the proposed s.32(3) of the District Court Ordinance;

- "(3) In this section and in section 34, the amount of the Plaintiff's claim means the amount claimed, after taking into account
- (a) any set-off or any debt or demand the Defendant claims or may recover from the Plaintiff and
 - (b) any contributory negligence that the Plaintiff admits
 - (c) the amount of any paid employees' compensation deducted pursuant to s.26 Employees' Compensation Ordinance."

It is my experience that the District Court judiciary over the years have been roughly equally divided as to whether or not paid employees' compensation should be taken into account in deciding their financial jurisdiction.

I have experienced many cases, particularly those concerning fatal injuries, where there is a fairly large payment of employees' compensation leaving a small common law claim (claim for damages for negligence). Plaintiffs' solicitors who are aware of the divided opinion among the District Court judiciary will bring proceedings in the High Court even

where they are looking for less than \$120,000 damages - the present maximum jurisdiction of the District Court - (after paid employees' compensation has been deducted). This should not happen. High Court costs should not be incurred nor should the time of a High Court judge be taken dealing with such claims.

Turning to non-fatal injuries; I have experienced many cases where employers have paid the injured employees full salary during a lengthy sick leave period when their only obligation was to pay 2/3rds of the injured employees' average monthly earnings as at the date of the accident during that sick leave period (s.10 Employees' Compensation Ordinance).

Let us say that an employee is paid \$200,000 employees' compensation during his sick leave and he has a residual claim for, say, \$60,000 over and above the paid EC. Some District Court judges would decide that they had no jurisdiction to deal with what would be in reality a claim for only \$60,000 on the grounds that the "gross" claim figure was \$260,000 which was in excess of the District Court jurisdiction.

Let us suppose that the same injured employee is paid his usual wages in full i.e. \$300,000. It seems to me that in this instance the District Court would have no hesitation in accepting jurisdiction for the claim of \$60,000 because none of the \$300,000 comprised employees' compensation.

Really there should be no difference between the two.

One more point; I assume that the Committee will have considered the possibility of providing in s.32(3) that any contributory negligence determined by the court or agreed between the parties should be taken into account in addition to any contributory negligence admitted by the Plaintiff.

Yours faithfully,

Paul Munro
MUNRO CLAYPOLE & REEVES

/S/

c.c. The Director of Practitioners Affairs
of The Law Society of Hong Kong
&
Ms Margaret Ng
Barrister-at-law