

*Margaret Ng*  
*Member of Legislative Council*  
*Room 116, Neo Henry House*  
*10 Ice House Street*  
*Hong Kong*  
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**Email: [Margaret@margaretnng.com](mailto:Margaret@margaretnng.com)**  
**Website: <http://www.margaretnng.com>**

3<sup>rd</sup> November 2005

Mrs. Percy Ma  
Clerk  
AJLS Panel  
LegCo Secretariat  
Jackson Road  
HONG KONG

Dear Percy

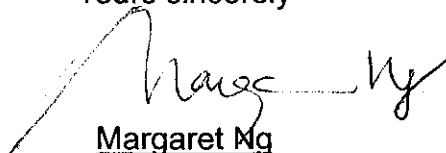
**QIS – Claims Committee**

I am requested by Mr. Rene Hout to bring to the notice of members of the AJLS Panel his unhappy experience with the Claims Committee of the Law Society. Mr. Hout does so in the context of the discussion on the draft QIS Rules and the indication of the Law Society representatives that, unlike the UK Qualifying Insurers Scheme, the Claims Committee will be retained in the Hong Kong QIS.

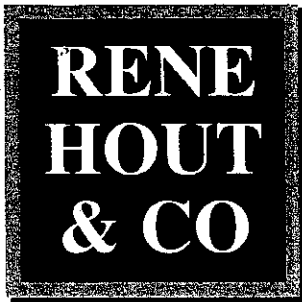
Accordingly I enclose the key correspondence provided by Mr. Hout for this purpose. I am happy to provide other documents mentioned in the correspondence at members' request.

I have recently received a response from the Law Society. Once permission is obtained, I will forward the same to you for circulation to members.

Yours sincerely

  
**Margaret Ng**

c.c. Mr. Rene Hout  
c.c. Mr. Peter Lo, President of the Law Society of Hong Kong



**SOLICITORS  
& NOTARIES**

## 吳靜江律師事務所

香港新界大埔寶湖道同秀坊七號地下  
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New Territories, Hong Kong.  
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(852) 2656 4207 (Litigation)  
Document Exchange No.: DX009218 Central 1

**Principal**

RENE HOUT 吳靜江律師  
LL.B. (Hons) ACI Arb.  
Notary Public 國際法律公証人

**Consultant:-**

RAYMOND W. M. AU 區偉文律師

Our Ref : RH/Office  
Your Ref :

Date: 11<sup>th</sup> July 2005

The Hon. Margaret Ng,  
Chairman,  
Administration of Justice and Legal Services Panel,  
Legislative Council,  
c/o 10<sup>th</sup> Floor,  
New Henry House,  
10 Ice House Street,  
Central,  
Hong Kong.

**BY FAX 2801 7134  
and BY HAND**

Dear Madam,

Re : Solicitors Professional Indemnity Scheme

I refer to Mr. Benny Yeung's letter of 6<sup>th</sup> July 2005.

Whilst I entirely agree with the views expressed by Mr. Yeung, I wish particularly to address the issue concerning the Law Society's insistence on the retention of the Claims Committee, in light of my own experience.

In 2003 a Writ was issued against my firm by a former client alleging negligence on my part in approving and accepting title on his behalf in his purchase of a property in 1994. His purported sale of the property in 2001, when he was represented by another firm of solicitors, was aborted due to alleged "title problems". He returned all deposits to the purported purchaser under a home-made cancellation agreement and other suspicious circumstances. He then sued my firm for negligence. Despite my conviction from the outset that the claim is entirely without merits (this supported by two expert reports) and despite circumstances pointing to a probable sham transaction, the panel solicitors and Insurers have been doing everything to prevent the action from proceeding to trial. They have refused to retain a counsel to provide an advice on merits and they have resorted to every means to try and force me to settle the claim at an amount which the Court would not possibly award even if all the plaintiff's allegations were proved, while refusing to agree that I should not be required to pay a loaded premium in future in such circumstances. The panel solicitors then prepared an "advice" on liability, evidence and quantum which is entirely against my case. In their advice, panel solicitors take the view that despite favourable expert evidence, the Court may not accept the admission of such evidence, that there are litigation risks involved and that the case should be settled "for commercial reasons". I had no choice but to invoke on the so-called "SC clause" contained in Schedule 3, paragraph 8 of the Solicitors (Professional

Indemnity) Rules, whereby any dispute between Insurers and the insured as to whether the case should be contested should be referred to a Senior Counsel for determination. The Rules provide that, on the question whether the case should be contested, the Senior Counsel should give a determination as to "whether he has found substantially in favour of the Insurers". As between Insurers and the insured, the party who loses the reference will have to bear Senior Counsel's fees for his opinion.

When the dispute came before the Claims Committee in December 2004, the Committee, to my utter surprise and horror, resolved that the authorization given to Insurers to settle be **increased almost three fold**, and further that my firm be required to pay a "security for costs" of \$100,000 within **48 hours** (when even the Rules themselves provide for 7 days) in order to have the "luxury" of invoking on the SC clause. No reason was given for the improper and wholly arbitrary exercise of their discretion to abridge the time limit, and panel solicitors declined to supply me with the names of those present on the Committee at that meeting. It was only upon strong protests that 7 days were eventually given to me to pay the deposit.

The deposit was duly paid and Senior Counsel's opinion has now become available. His determination, which is final and conclusive, is that that title is good, that I was not negligent even if title was bad, that I have a good and meritorious defence, that the claim should be defended, that in his view he can see no possible ground for the Court to refuse to admit the two expert reports, and that there is no need to make any offer for settlement **at all**. He concludes by saying the following :-

".... it is everyone's own conclusion as to whether I have found substantially in favour of the insurers. My own view is that I have not. In fact I am more inclined to the view that I have found substantially in favour of the insured."

Almost as if Senior Counsel had found panel solicitors and Insurers' conduct despicable, he states in the concluding parts of his Opinion : ".... I do not see any basis for requiring the Defendant to pay loaded premium in the future".

Senior Counsel's fees in the sum of \$180,000 for providing the Opinion and the determination will now be borne by Insurers, to be paid, of course, out of the Solicitors Indemnity Fund. Such money could have been saved if the Claims Committee had had the sense of taking an impartial, sensible and fair approach.

If one accepts the views of Senior Counsel, which to my great relief are supportive of mine in every respect, one sees how hopelessly wrong panel solicitors' advices are, and how Insurers, panel solicitors and, above all, the Claims Committee have, for reasons wholly incomprehensible to me, been acting in what I believe to be a concerted effort in attempting to oppress firms into settlement

in favour of unscrupulous plaintiffs. One wonders how much money the Fund has lost over the years as a result of **mishandling** of claims.

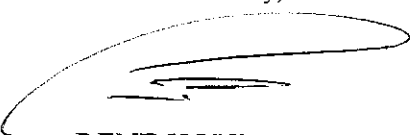
It is against this background that I find Mr. Howse's suggestion, in speaking of the "benefits" of the Claims Committee that with it the Law Society "can ensure that malpractices are reported to the Law Society", most intriguing and amazing. In my view, my case is a classic example of how the Claims Committee fails miserably to protect the interests of some members of the legal profession, indeed how it unconscionably oppresses them (particularly those from the smallest practices of which my practice is one) into submission to settle, in dubious and possibly fraudulent claims.

I cannot agree more with Mr. Yeung's apprehension that the Claims Committee might be motivated by the fact that it is used to channel valuable work to the panel solicitors, and his view that the power of the Claims Committee should not extend to the handling of claims. Indeed I see no reason for the Claims Committee to continue to exist. The recent decision to exclude Ms. Hilary Cordell from the new Committee on the purported ground of conflict of interest is plainly outrageous. It only amplifies the urgency of a complete reform of the present PIS and an elimination of all those who are and have been reaping illegitimate benefits made possible by the present PIS scheme.

Please feel free to cite my case in bringing up the issue as to why the Claims Committee would want to monitor claims and to continue handling claims, and all other related issues. In light of my own harrowing experience, the Committee obviously has its own, in my view illegitimate, purposes to serve.

Lastly I wish to thank you for your great work and for all the selfless efforts you have so consistently made for the good of the profession.

Yours faithfully,



RENE HOUT  
RENE HOUT & CO.

RH/jf

c.c. All PIS Action Group Members.

*Margaret Ng*  
*Member of Legislative Council*  
*Room 116, New Henry House*  
*10 Ice House Street*  
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*Tel.: (852) 2525 7633 Fax: (852) 2801 7134*  
**Email: Margaret@margaretnq.com**  
**Website: http://www.margaretnq.com**

**BY FAX 2656 4207**

15<sup>th</sup> July 2005

Mr. Rene Hout  
Messrs. Rene Hout & Co.  
Ground floor  
No.7 Tung Sau Square  
Plover Cove Road  
Tai Po  
NEW TERRITORIES

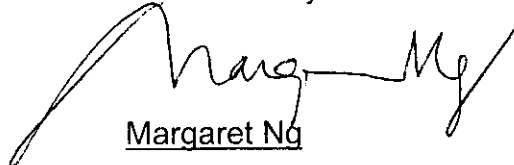
Dear Rene

**Solicitors Professional Indemnity Insurance**

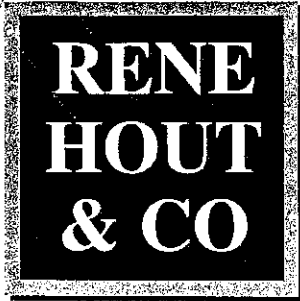
Thank you for your letter of 11 July 2005.

Your letter caused me great concern. It occurred to me that I should ask the Law Society to clarify how the Claims Committee works in the light of your case. Please let me know if you have any objections.

Yours sincerely



Margaret Ng



SOLICITORS  
& NOTARIES

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Principal

RENE HOUT 吳靜江律師  
LL.B. (Hons) ACI Arb.  
Notary Public 國際法律公証人

Consultant:-

RAYMOND W. M. AU 區偉文律師

Our Ref : RH/Office  
Your Ref :

Date: 30<sup>th</sup> August 2005

The Hon. Margaret Ng,  
Chairman,  
Administration of Justice and Legal Services Panel,  
Legislative Council,  
c/o 10<sup>th</sup> Floor, New Henry House,  
10 Ice House Street,  
Central,  
Hong Kong.

BY HAND

Dear Margaret,

Re : Solicitors Professional Indemnity Scheme  
HCA No.292 of 2003

I refer to my letters to you of 11<sup>th</sup> and 18<sup>th</sup> July 2005 and your kind response of 15<sup>th</sup> July 2005 concerning the captioned matter.

Regrettably, despite the firm and positive views in my favour set out in the Opinion of Mr. Edward Chan SC dated 23<sup>rd</sup> June 2005, I am continuing to experience considerable difficulties and frustrations in my perennial fight against Panel Solicitors, Insurers and the Claims Committee in my endeavours to secure a trial.

I enclose the relevant correspondence, marked up and in chronological order, for your kind perusal. As you can see, ESSAR and the Claims Committee have never given me a single reply to my enquiries, while the replies I did receive from the Hong Kong Solicitors Indemnity Fund Limited (if they can properly be regarded as such) smack of a pathetic tone of disinterest and indifference.

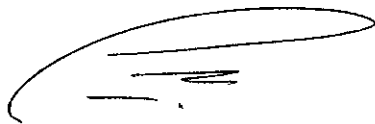
As you can see, Insurers are now refusing to retain Senior Counsel to represent me at trial unless I agree to fund the same. Further, I was told instructions on further conduct are being sought from the Claims Committee but no such instructions have been forthcoming, despite the lapse of over two months since the date of the Opinion.

I would be deeply grateful if you would request a clarification and explanation from the Law Society as to the role of the Claims Committee in a case such as this. This saga makes it all the more pressing that the present PIS must be scrapped as soon as possible and replaced by QIS. There is also no reason for the Claims Committee to continue to exist once QIS is in place.

I would be pleased to supply you with copies of the Opinion of Mr. Edward Chan SC and the Instructions to Senior Counsel prepared by Panel Solicitors (marked up with my comments) if you would like to peruse the same.

I am grateful for your time and invaluable assistance.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'RENE HOUT', with a large, sweeping loop at the end.

RENE HOUT

RH/jf

Encl.

*Margaret Ng*

*10th Floor New Henry House*

*10 Ice House Street*

*Hong Kong*

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**Website: http://www.margaretnng.com**

**BY HAND**

13<sup>th</sup> September 2005

Mr. Peter Lo  
President  
The Law Society of Hong Kong  
Wing On House  
3<sup>rd</sup> floor  
**HONG KONG**

Dear Peter

I have received a letter from Mr. Rene Hout of Rene Hout & Co. in respect of the way the claim against his firm in High Court Action No.292 of 2003 was handled under the present indemnity system, in particular, by the Claims Committee. Upon my request, Mr. Hout also provided me with the relevant correspondence and documents. In his view, his experience strongly demonstrates that the Claims Committee should not be retained.

The correspondence shows that a claim was made against Rene Hout & Co. in respect of a conveyancing matter. Mr. Hout was of the view that the claim was unmeritorious and should be defended, and wrote to the Claims Committee in November and December 2004. However, the Claims Committee decided to authorize Baker & McKenzie, the Panel Solicitors, to settle with the Plaintiff at HK\$700,000 plus costs. It also required Rene Hout & Co. to give a HK\$100,000 security within 48 hours as a condition for his invoking the rule for a Senior Counsel reference. 7 days extension was given, and the security was paid. Mr. Hout considered the requirement to be arbitrary and unreasonable.

On 23 May 2005, Instructions were sent to Senior Counsel. On 23 June 2005 Senior Counsel gave his views, substantially in favour of Rene Hout & Co., and advising that the defence was meritorious and the action should be defended, and that settlement, if considered, should be on the basis of the "nuisance value" of the litigation. This being the case, the cost of Senior Counsel's Opinion was borne by the Solicitors Indemnity Fund. Mr. Hout considered that these expenses from the Fund could have been avoided had the Claims Committee properly considered his view instead of rejecting it without giving any reason.



Senior Counsel's opinion was obtained on 23 June 2005, correspondence ensued between Mr. Hout, Baker & McKenzie, the Insurers and the Claims Committee. From the dates of the letters, it would appear that no decision was taken about the defence without the instructions of the Insurers and the Claims Committee, and instructions were given only on 25 August, some 2 months later, notwithstanding repeated demands from Mr. Hout. Mr. Hout considered this tardiness in response and even then without substantive response to the inquiries he raised was unacceptable and suggested disinterest and indifference on the part of the Claims Committee.

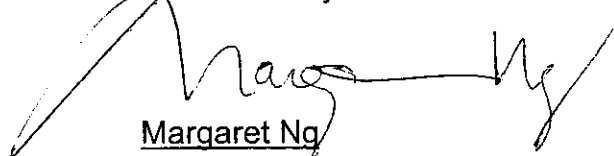
On 25 August 2005, Baker & McKenzie informed Rene Hout & Co. of the instructions from Insurers that should the matter proceed to trial, Senior Counsel would not be briefed unless Rene Hout agreed to pay the extra costs. Mr. Hout considered this to be unreasonable given the clear magnitude, complexity and potential impact of the case. It is relevant that Senior Counsel had already indicated that the matter was likely to go to the Court of Appeal, may be further. Mr. Hout declined to pay the extra costs. On 31 August, he was told that Insurers had decided Senior Counsel would not be instructed. Mr. Hout could only respond by making clear that this was against his instructions and that he reserved his rights against Insurers.

Clearly Mr. Hout considered that not only had the Claims Committee not acted reasonably or responsively towards him as he had the right to expect, but that the decisions of the Claims Committee, in forcing him to settle at an unwarranted sum and forcing him to ask for Senior Counsel reference, were manifestly wasteful. It might also suggest that a member faced with an unmeritorious claim could unjustifiably be made to pay loaded premium.

As these are serious issues raised on the role of the Claims Committee, it is right that they should be brought to your attention as the President of the Law Society. As they are relevant to the evaluation of the system under the present legislative framework of the Solicitors (Professional Indemnity) Rules, as well as to the suggestion that the Claims Committee should be retained under the contemplated QIS system, I should be most grateful for your views and comments.

With best regards

Yours sincerely



Margaret Ng

c.c. Mr. Rene Hout,  
Rene Hout & Co.



SOLICITORS  
& NOTARIES

## 吳靜江律師事務所

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**Principal**

RENE HOUT 吳靜江律師  
LL.B. (Hons) ACI Arb.  
Notary Public 國際法律公証人

**Consultant:-**

RAYMOND W. M. AU 區偉文律師

Our Ref: RH/1/C-3791/94

Your Ref:

Date: 6<sup>th</sup> October 2005

Ms. Margaret Ng,  
Members of Legislative Council,  
Room 116, New Henry House,  
10 Ice House Street,  
Hong Kong.

BY HAND

Dear Margaret,

Re : Solicitors Professional Indemnity Scheme  
High Court Action No.292 of 2003

With reference to the above matter, I enclose copies of a letter from Essar Insurance Services Ltd. dated 5<sup>th</sup> October 2005 and my firm's replies to Essar and panel solicitors for your kind reference.

It appears that at the meeting of the Claims Committee on 28<sup>th</sup> September 2005, the Committee has interpreted paragraphs 81 and 84 of Mr. Edward Chan SC's Opinion in such a way as entitling them to give authority to the insurers to settle at a 'nuisance value' being "at least the unrecoverable costs [and disbursements] of defending the claim to the Court of Appeal". Paragraph 83 of the Opinion is, however, ignored.

Having regard to the way this case has been conducted by panel solicitors and insurers from the outset, the unrecoverable costs and disbursements will be very considerable and would include the voluminous correspondence between panel solicitors, insurers and my firm, the cost of the Senior Counsel's Opinion, and the fees of Senior Counsel for representing my firm at trial (HK\$1.1 million). Although the Claims Committee has now agreed that insurers may instruct Senior Counsel for the trial (which insurers have previously rejected), if the above interpretation was adopted, insurers would be able to treat his fees as "unrecoverable costs" and to include such amount in an offer as being for purported "nuisance value" settlement. This would virtually ensure that the claimant would accept the same and that there would be no trial. It would reasonably be anticipated that such an offer would even exceed the previous authority of HK\$700,000 plus costs given by the Claims Committee in December 2004.

Ms. Margaret Ng,  
Members of Legislative Council.  
6th October 2005

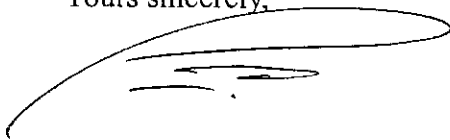
Page 2

Regrettably, despite your letter to the President of the Law Society, it seems that the Claims Committee is still conducting this case in a manner oppressive to me and against my interest.

I should be most grateful if, time permitting, you would bring this matter up with the Law Society at the next Legislative Council meeting of the Panel on Administration of Justice and Legal Services.

Kind Regards.

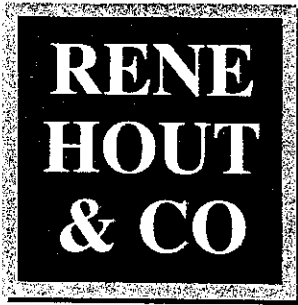
Yours sincerely,

A handwritten signature in dark ink, appearing to be 'RENE HOUT', with a large, sweeping flourish extending to the left.

RENE HOUT

RH/jf

Encl.



SOLICITORS  
& NOTARIES

## 吳靜江律師事務所

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**Principal**

RENE HOUT 吳靜江律師  
LL.B. (Hons) ACI Arb.  
Notary Public 國際法律公証人

**Consultant:-**

RAYMOND W. M. AU 區偉文律師

Our Ref: RH/1/C-3791/94

Your Ref:

Date: 26<sup>th</sup> October 2005

Ms. Margaret Ng,  
Member of Legislative Council,  
Room 116, New Henry House,  
10 Ice House Street,  
Hong Kong.

BY HAND

Dear Margaret,

Re : Solicitors Professional Indemnity Scheme  
High Court Action No.292 of 2003

Thank you for your letter of 10<sup>th</sup> October 2005.

In response to your letter to Mr. Peter Lo dated 13<sup>th</sup> September 2005, the Law Society today wrote to me seeking my confirmation that I have no objection to the disclosure of information relating to the Claim to the Council and to you. I shall reply accordingly.

In the meantime, copies of Essar's letter of 10<sup>th</sup> October 2005 and my firm's reply of 25<sup>th</sup> October 2005 are enclosed for your kind reference.

Kind Regards.

Yours sincerely,

RENE HOUT  
Encl.



**ESSAR Insurance Services Ltd.**

A member of  
the Aon Group of Companies

Your Ref: RH/1/C-3791/94  
Our Ref: KF/dc/PI/2001-072

21st Floor, Aon China Building  
29 Queen's Road Central  
Hong Kong  
Telephone: 2861 6666  
Facsimile : 2861 6560 (Admin)  
2862 4105 (Claims)  
Interchange DX-009337 Central 1

10 October 2005

**Direct Line: 2862 4261**

**Direct Fax: 2862 4105**

Rene Hout & Co  
Solicitors  
G/F, No. 7 Tung Sau Square  
Plover Cove Road, Tai Po  
New Territories  
Hong Kong

BY FAX 2656 4207 & BY DX 9218 C1

**Attn: Mr Rene Hout**

Dear Sirs

**Hong Kong Solicitors Indemnity Fund Limited**  
**Professional Indemnity Scheme**

**Insured: Rene Hout & Co**

**Claim No: PI/2001-072**

Managers refer to your letter of 5 October 2005 and respond as follows:

1. Settlement Authority

Your comments are noted regarding Insurers' decision to seek to settle this claim. However, Managers do not consider it is appropriate to enter into further correspondence with you directly on this issue, when Panel Solicitors are appointed to conduct the defence of the claim.

2. Senior Counsel

There is a misunderstanding here. In recognition of your continued wish for Senior Counsel to be briefed for trial (in the absence of prior settlement of the claim) the Claims Committee has decided that Edward Chan SC will be briefed, together with junior counsel. The costs of the brief and refreshers for Senior and Junior Counsel will be borne by Insurers as within the indemnity limit for this claim (subject to payment of your deductible).

3. The meaning of "Insurers' usual reservation of indemnity"

It is Insurers' standard practice to maintain a general reservation of indemnity pending the conclusion of Panel Solicitors' investigations.

4. Deductible

As stated by Managers in their letters of 21 December 2004 and 20 January 2005, payment of your firm's deductible is required in accordance with Schedule 3, paragraphs 2 and 4 of the Rules. In accordance with these provisions, your deductible is now due in full to cover Panel Solicitors' costs and disbursements incurred to date, which are in excess of your deductible.

It is premature to apply for waiver of your firm's deductible pursuant to Schedule 3, paragraph 1(1)(b) of the Rules as the action against your firm is not yet disposed of. On the disposal of the action it is open to your firm to make an application for waiver, but this will remain in the discretion of the Claims Committee, and it is highly unlikely that a recommendation for waiver will be made if unrecovered costs and disbursements are in excess of the amount of your deductible. In the meantime, your deductible is due in full.

All Panel Solicitors render interim fee notes to Managers for their costs and disbursements and indeed it would be impractical for them not to do so. In accordance with usual practice, these interim bills have been approved by Managers and paid by Insurers.

Please note Rule 15 of the Rules. The effect of Rule 15(1) is that failure to pay your deductible when demanded by the Law Society shall be an event of professional misconduct. Managers will refer your non-payment to the Law Society if you fail to pay your deductible within 14 days of receipt of this letter. In this respect please regard this letter as written notice to you under Rule 15(2) that your deductible is payable within 14 days i.e. on or before 25 October 2005.

Please note in addition that under Rule 18 of the Rules non-payment may be reported by the Claims Committee to the Council of the Law Society as an event of professional misconduct.

Could we please receive a cheque from you for HK\$45,000 for payment of your deductible made payable to Essar Insurance Services Limited on or before 25 October 2005.

5. Authority for Settlement

Managers note that you agree to a reasonable settlement offer based on the "nuisance value" of the claim only on the conditions set out at paragraphs (a)-(e) of page 3 of your letter. Following your lettering:-

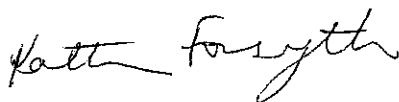
- (a) It is usual practice for any settlement offer to be made without any admission or acceptance of liability;

- (b) Managers' letter to you dated 3 October 2005 confirms Insurers' interpretation of "nuisance value" as per the Determination i.e: at least the unrecoverable costs of defending the claim to the Court of Appeal;
- (c) We are not yet in a position to confirm the amount of the proposed settlement offer;
- (d) this issue has been dealt with in paragraph 4 above; and
- (e) there is no authority under the Rules for the Claims Committee to waive claims loading.

Please note that indemnity continues to remain reserved.

Yours faithfully.

**ESSAR INSURANCE SERVICES LTD.**

A handwritten signature in cursive script, appearing to read "Katherine Forsyth".

**Katherine Forsyth**  
**Legal Officer**



SOLICITORS  
& NOTARIES

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Principal

RENE HOUT 吳靜江律師

LL.B. (Hons) ACI Arb.

Notary Public 國際法律公証人

Consultant:-

RAYMOND W. M. AU 區偉文律師

Our Ref: RH/1/C-3791/94

Your Ref: KF/dc/PI/2001-072

Date: 25<sup>th</sup> October 2005

ESSAR Insurance Services Ltd.,  
21<sup>st</sup> Floor,  
Aon China Building,  
29 Queen's Road Central,  
Hong Kong.

BY FAX 2862 4105 and  
BY DX-009337 Central 1

Dear Sirs,

Re : Hong Kong Solicitors Indemnity Fund Limited  
Professional Indemnity Scheme  
Insured : Rene Hout & Co.  
Claim No. : PI/2001-072

We refer to your letter of 10<sup>th</sup> October 2005.

Deductible

Our letter to panel solicitors dated 2<sup>nd</sup> November 2004 and our letters to you dated 5<sup>th</sup> January 2005, 7<sup>th</sup> February 2005, 25<sup>th</sup> February 2005 and 5<sup>th</sup> October 2005 are hereby repeated. We reiterate that we have never agreed that panel solicitors should render interim bills and any payment made to panel solicitors under such circumstances is without our consent and against the rules of professional conduct as explained in our letter of 5<sup>th</sup> October 2005. As to other payments made by way of disbursements out of the fund on our behalf, the same would be borne by the claimant if we successfully defend the claim, and these will likely be recoverable in full on taxation as being necessary and reasonable expenses incurred in defending the claim. Just as it is premature, as you stated, to apply for waiver of the deductible as the action is not yet disposed of, it is premature for the same reason to request us to now pay such deductible.

Should you refer the alleged non-payment to the Law Society, we respectfully request that you at the same time make available to the Law Society copies of all correspondence between this firm, panel solicitors and yourselves relating to the handling and conduct of this action from 29<sup>th</sup> January 2003 to date, including of course our respective arguments on the payment of the deductible and Mr.



ESSAR Insurance Services Ltd.  
25th October 2005

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Edward Chan SC's Opinion and Determination dated 23<sup>rd</sup> June 2005 and his letter to panel solicitors dated 19<sup>th</sup> August 2005 (together "the Determination"), to enable the Law Society to come to a just, fair and proper determination of the issue.

Authority for Settlement

In our view, Insurers' interpretation of "nuisance value" is plainly erroneous and in blatant disregard of the Determination, in particular paragraphs 83 and 84 thereof, and Senior Counsel's letter to panel solicitors dated 19<sup>th</sup> August 2005. It is against the Determination to equate "nuisance value" with "unrecoverable costs of defending the claim", more so to include costs of defending the claim to the Court of Appeal. We hereby repeat our plea to Insurers and the Claims Committee that they observe the Determination by which all relevant parties are bound, pursuant to Schedule 3, paragraph 8(1)(c)(ii) of the Solicitors (Professional Indemnity) Rules.

Yours faithfully,



RENE HOUT & CO.

RH/jf

c.c. The Hon. Margaret Ng

Chairman of the Legislative Counsel Panel on  
Administration of Justice and Legal Services

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*Member of Legislative Council*  
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BY HAND

3<sup>rd</sup> November 2005

Mr. Peter Lo  
President  
The Law Society of Hong Kong  
3<sup>rd</sup> floor  
Wing On House  
HONG KONG

Dear Peter

**Insured: Rene Hout & Co.**  
**Claim No.PI/2001-072**

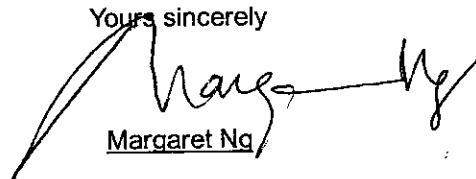
Thank you for your letter of 2 November 2005 in reply to mine of 13 September 2005. I greatly appreciate your setting out clearly the issues and the Law Society's response to them.

As I am sending Mr. Rene Hout's letters to members of the AJLS Panel at his request, I hope you will agree to my sending your reply to members as well.

In my view, there are two broad issues. On the issue of the propriety of the conduct of the Claims Committee, you have explained that the Claims Committee has acted reasonably under the existing rules. But on the issue which is more immediately relevant, i.e. to the QIS, it is hard to see how the Claims Committee has contributed positively to the process. It seems that your case is that even if Senior Counsel's advice was that the claim against Rene Hout & Co. was unmeritorious, because of the inherent risk of any litigation and the nuisance value of it, it is reasonable for the Claims Committee to advise to settle. If this is the guiding principle, then the Claims Committee would seem to penalize every firm who is complained against, no matter how meritorious the defence. In other words, Mr. Rene Hout's point that the Claims Committee's function has no added value but rather the opposite does have a point. While, whatever the merit or shortcoming, the Claims Committee and with its Panel Solicitors are part and partial of the existing PIS, its retention in the new QIS to be set up is a matter of choice and must be justified. I believe this is a valid point which I hope the Law Society will take into consideration.

With best regards

Yours sincerely



Margaret Ng

c.c. Mrs. Percy Ma, Clerk to the AJLS Panel  
c.c. Mr. Rene Hout