RECOVERY AGENT

Report from Special Committee on Recovery Agent

I. Terms of Reference

1.1 A Special Committee on Recovery Agent ("SCRA") was appointed by the Bar Council at the end of January 2005 "to deal with issues arising from the phenomenon of non-legally qualified persons interfering in, or encouraging, litigation for reward"[1].

1.2 Specifically, the SCRA was asked to "report this activity with a view to identifying whether the practices of these agents constitute maintenance"[1].

1.3 This Report will cover, primarily, 3 topics – (i) What are Claims Recovery Agents ("RA")? (ii) The legality of the operation of RA and (iii) Legality and professional ethics issues of lawyers working with RA.

II. Recovery Agents

2.1 The information set out in this Section is based upon :

(a) Information and material obtained from members of the Bar;

---

[1] Letter from Bar Chairman to Anthony Chan, SC dated 21.1.05.

(b) Information and material obtained from the Law Society's Working Party on RA ("LSWP");

(c) Research conducted by members of the SCRA.

2.2 With the available material, we are aware of nine RA[2] [see Appendix I for a list of these RA]. The earliest in existence is said to have been established in December 1998. We have examined the customer contracts from five of these RA[3] ("the Contracts"). Five of the nine RA have their own websites. The Contracts and website information are amongst the most reliable of the available information on RA. We set out below a summary of the *modus operandi* and other relevant information of RA.

2.3 In general terms, RA are companies which purport to assist victims of personal injuries arising from, primarily, work related accidents, traffic accidents and medical procedures to pursue their claims for compensation in return for a fee based on a percentage of the recovered damages. Apparently, they are neither regulated nor insured for negligence or insolvency.

[2] It appears that one of the RA had operated under similar but different names at different times – Rees Taylor (P.I.) Aid Ltd. (2002) and Rees Taylor (H.K.) Ltd. (since 2003). The two are here treated as one RA.

[3] We have examined a contract of Rees Taylor (P.I.) Aid Ltd. and one of Rees Taylor (H.K.) Ltd which are different. In total, six contracts were examined.

Modus Operandi

2.4 RA operate for profits. From the website information, two (out of five with websites) of the RA promote their services with a quasi-public interest undertone – assisting the under-privileged in obtaining just compensation[4]. Invariably, the RA hold themselves out as professionals having expertise in making personal injury claims.

2.5 Unconfirmed information suggests that some of the RA may be operated by solicitors or jointly owned by solicitors. One member of the Bar has informed us that he was "approached indirectly and asked if [he] wished to be a shareholder in one of [the RA]".

2.6 RA operate under the pledge of "no win, no charge". The "clients" will only be liable to pay a fee to the RA if their claims are successful. RA do not demand a down payment. In some cases, the RA or their related financial institutions even provide loans to their clients[5]. Generally, in the event that the claims fail, the liability over the costs of the successful litigant will be assumed by the RA.

[4] See http://www.hkclaim.com/ and http://www.claimsdirecthk.com/.
[5] Low interest loans are offered as part of the services provided by Claims Direct HK via a related money lender (website information).

2.7 RA canvass for business at various places such as the Social Welfare Department, Labour Department and hospital Orthopaedic Wards. Leaflets are printed and distributed by the RA. RA also advertise their services via the internet and in newspapers[6]. The LSWP is aware of a television advertisement from a RA.

2.8 Further, based on information supplied by a member of the Bar (which was substantially first hand) ("the Information") it appears that RA may employ a network of "Claims Consultants" to canvass for business. The Information reveals that two employment accident victims were approached by a taxi driver who lived in the same village and said that he was a Claims Consultant with expertise in recovering compensation from employers. These victims duly entered in contracts with the RA which this Claim Consultant represented. It is, however, not known how widespread is the practice of employing a network of Claim Consultants or people with similar titles.

2.9 One of the RA advertises on its website that a payment of HK$1,500 will be made for the introduction of each client[7].

[6] On the 15.3.05, there was a full page advertisement in the Apple Daily (p.A13) from a RA.
[7] http://hk.geocities.com/alvincyt/reestaylor.html.

Contracts between RA and Victims

2.10 The relevant provisions of the Contracts are set out in tabulated form in Appendix II hererto.

Services Offered

2.11 The essential part of the "services" provided by RA is the financing of the victim's claim, i.e., the RA will pay the costs and disbursements incurred along the way and shoulder the risks of loss of the action (costs of the defendants). Most of the Contracts provide that the RA will be responsible for all expenses and legal fees in relation to the claim, which include solicitors' fees, Counsel's fees, expert fees, etc. Inclusion of insurance is noted in relation to the Contract of one of the RA (on the face of the Certificate of Insurance, the coverage is confined to "legal expenses"). According to the newspaper advertisement of this RA, it is the only RA in Hong Kong which provides insurance coverage. We note that the Certificate of Insurance is, on its face, inconsistent with the Contract in question which provides for insurance coverage in respect of all the expenses and fees incurred for pursing the victim's claim.

2.12 Some of the Contracts are unclear as to the scope of responsibility of the RA – whether legal costs include, eg., costs of appeal (interlocutory as well

as final) and costs of execution of judgment. One of the Contracts limits the RA's responsibility to only one specialist medical report.

2.13 If the action fails, the victim is not required to pay any fees to the RA and, generally, the RA (or the insurance company) will bear the defendants' costs. However, three out of five of the Contracts[8] do not provide for the responsibility over the costs of the defendants in the event that the action fails.

2.14 If the action succeeds, generally, the fees and expenses paid by the RA will be recovered from the defendants and it is reasonably clear that the victim's liability to the RA is limited to the charges payable to the RA. However, an exception is found in two of the Contracts[9]. In respect of one, it is not clear if the victim's liability is limited to the charges payable to the RA. In other words, whether he will have to reimburse the RA for the expenses incurred and then claim those from the defendant. In respect of the other, it is implied that the victim will have to reimburse the RA for the incurred expenses and that the charges payable to the RA are to be calculated on the "net" compensation, i.e., after deduction of the expenses.

[8] One of the three (Contract of Fordman Ltd) is ambiguously drafted such that the costs liability in the event of a failed action is not clearly stated.
[9] The Contracts of Hong Kong Claims Association Ltd and Fordman Ltd.

Fees Charged

2.15 The fees charged by the RA, based on the Contracts, range from 20% to 25% of the compensation recovered by the Victim whether by way of settlement or litigation. Other information suggests that the percentage can even be higher.

2.16 There are variations in the Contracts as to what constitutes "compensation" upon which the charges of the RA are calculated. Some of the Contracts expressly include judgment interest as part of the compensation. Most of the Contracts are unclear on this point.

2.17 With one exception[10], all the Contracts expressly provide for the payment of the charges of the RA to be made directly to them by the victim's solicitor who is specifically authorised for this purpose.

Right to Choose Legal Representatives

2.18 According to the Contracts, the victims' right to choose their legal representatives varies from complete freedom, choosing from lawyers designated by the RA, or having to abide by the choice of the RA, at the other extreme.

[10] The Contract of Hong Kong Claims Association Ltd.

Payment-in

2.19 Most of the Contracts contain provisions whereby in the event of payment-in and the victim's refusal to accept it contrary to legal advice, then the victim will have to bear the consequence on costs if the payment-in could not be "beaten".

Termination

2.20 One of the Contracts provides that if the reasonable advice of the legal representative is not accepted by the victim, the RA is entitled to terminate the Contract and it will not compensate the victim for losses, if any.

2.21 One of the Contracts stipulates that if the victim's case has been assessed by the RA's designated lawyer as having a more than 50% chance of success, the victim should not unilaterally "suspend" or terminate the Contract. Otherwise he will have to reimburse the RA for all expenses incurred.

2.22 It is reasonably clear from the Contracts that upon having entered into a contract with the RA, the victims are not free to back out.

2.23 Some of the Contracts provide for termination of contract in the event that the victim dies or is declared bankrupt before the claim/action is concluded.

Authorization Letter

2.24 Two of the Contracts require the victims to sign an irrevocable Authorization Letter/Power of Attorney appointing the RA as his sole agent in relation to the conduct of his claim. Such documents include wide terms giving the RA all power to pursue the claim and take relevant action on the victims' behalf such as to negotiate, settle the claim, obtain documents, retain and give instructions to legal representatives, sign relevant documents and receive the compensation.

Misstatement/misrepresentation

2.25 Some of the Contracts contain provisions concerning misstatement/misrepresentation. "Contract 6" (see Appendix II) makes it a condition precedent for the RA's responsibilities that the victim must have given truthful information concerning the accident in question. "Contract 4" requires the victim to warrant that all information provided by him to the RA is true and accurate and that any breach of the warranty constitutes a breach of the contract. There is a clause in "Contract 1" that the victim has to provide true and accurate information to the lawyers appointed by the RA or the RA.

Whether Providing Legal Advice

2.26 Some of the Contracts expressly declare that the RA are not giving legal

advice in any form to the victims and/or that the victims have been advised of the existence of Legal Aid and to seek the advice of independent lawyers on the agreement.

Other Observations

2.27 It is quite clear that solicitors involved are knowing and willing participants in the operation of RA' businesses. In all but one of the Contracts, the RA are to be paid by the victims' solicitors from the compensation money recovered in the claims [see para. 2.17 above]. The ability of some of the RA to dictate the nomination of solicitors to be retained to act for the victims fortifies this observation.

2.28 From information provided by members of the Bar and the LSWP, it appears that some firms of solicitors are well-known for acting in close association with RA. Whilst the SCRA has seen no unequivocal evidence of Counsel having knowingly worked for lay clients who are funded by RA, it is not at all difficult to envisage that some Counsel might well have done so given that in all probability there would be special arrangements over the payment of their fees – not rendering any fee note until the conclusion of the action or even agreeing to charge on a contingency

basis[11].

2.29 Common sense dictates that RA are only interested in cases which have merits and where the potentially liable parties are worth suing (the obvious candidates being insured parties). This is consistent with the information received by the SCRA.

III. The legality of the operation of RA

3.1 In addition to the law of maintenance and champerty, the SCRA has considered some the provisions of the Legal Practitioners Ordinance, Cap. 159 ("the LPO").

Maintenance and Champerty

3.2 *"**Maintenance** was described by Lord Denning M.R. in In re Trepca Mines Ltd. (No.2) [1963] Ch. 199, 219 as "improperly stirring up litigation and strife by giving aid to one party to bring or defend a claim without just cause or excuse." **Champerty** was described by Scrutton L.J. in Ellis v Torrington [1920] 1 K.B. 399, 412 as "only a particular form of maintenance, namely, where the person who maintains takes as a reward a share in the property recovered." This last formulation does not assume*

[11] See Chairman's Letter in The Bar Newsletter 2005/1

that the maintenance is unlawful. There can be no champerty if there is no maintenance; but there can still be champerty even if the maintenance is not unlawful. The public policy which informs the two doctrines is different and allows for different exceptions." [emphasis added]

per Millett LJ (as he then was) in Thai Trading Co. v Taylor [1998] QB 781 at p.786C.

3.3 Maintenance and champerty were common law offences as well as tortious under English law until their abolition in 1967. Plainly, the relevant consideration here is champerty given the fact that RA operate a business for profits which are derived from the compensation which their customers obtain.

3.4 The maintenance which underpins champerty can take various forms such as assisting the litigation by procuring evidence and instructing lawyers (which are, as seen above, activities normally undertaken by RA):

(a) Stanley v Jones 131 ER 143 (1831) where an agreement to communicate such information as shall enable a party to recover a sum of money by action, and to exert influence for procuring evidence to substantiate the claim, upon condition of receiving a portion of the sum recovered, was held illegal;

(b) Sprye v Porter 26 LJ (QB) 64 (1856) where an agreement to supply information and evidence for litigation in consideration of a share of the proceeds was held to be champertous; and

(c) Hutley v Hutley LR 8 QB 112 (1873) where an agreement to take necessary steps to contest a will and advance money and obtain evidence for such purpose and instruct an attorney in consideration for a share of the real and personal property recovered was held to be champertous.

The Underlying Public Policy

3.5 The public policy prohibiting the offence of champerty was expressed vividly by Lord Campbell in Sprye v Porter (supra) at p.71:

"*...Here we have maintenance in its worst aspect. The Plaintiff and Rosaz, entire strangers to the property, which they say the defendant has title to, but which is in the possession of another claiming title to it, agree with him that legal proceedings should be instituted in his name for the recovery of it, and that they will supply him, not with any specified or definite documents or information, but with evidence that should be sufficient to enable him successfully to recover the property. Each of them is to have one-fifth of the property when so recovered, and unless the evidence with*

which they supply him is sufficient for this purpose, they are to recover nothing. They are not to employ the attorney or to advance money to carry on the litigation, but they are to supply that upon which the event of the suit must depend – evidence; and they are to supply it of such a nature and in such quantity as to ensure success. The plaintiff purchases an interest in the property in dispute, bargains for litigation to recover it, and undertakes to maintain the defendant in a suit in a manner of all others the most likely to lead to perjury and to a perversion of justice. Upon principle such an agreement is clearly illegal, and Stanley v Jones is an express authority to that effect." [emphasis added]

3.6 There is an often quoted passage by Lord Denning MR in In re Trepca Mines Ltd (No 2) [1963] Ch 199 at p.219-220:

"*The reason why the common law condemns champerty is because of the abuses to which it may give rise. The common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame the damages, to suppress evidence, or even to suborn witnesses. These fears may be exaggerated; but, be that so or not, the law for centuries has declared champerty to be unlawful, and we cannot do otherwise than enforce the law...*".

Champerty Remains a Crime in Hong Kong

3.7 The common law of England was the vehicle by which the concepts of maintenance and champerty were imported into Hong Kong when Great Britain acquired Hong Kong as a colony over 150 years ago.

3.8 At that time, the law of England was that maintenance and champerty were both civil wrongs (torts) and crimes (misdemeanours). Maintenance and champerty were received into Hong Kong law on the same footing.

3.9 Their existence as both crimes and torts under the common law as received into Hong Kong under the Supreme Court Ordinance 1873 was made clear in a prosecution of a solicitor for champerty in 1898. The case is mentioned in an editorial note in the report of Cannonway Consultants Ltd. v Kenworth Engineering Ltd. [1995] 1 HKC 179 at p.180I-181B.

3.10 The Criminal Law Act 1967 abolished the crime of champerty in the U.K. However the law in Hong Kong did not change then. By that time (1967) the common law of England had been received through the declaratory Application of English Laws Ordinance, Cap. 88 which was enacted in 1966. It provided in section 3 that the common law and rules of equity were to be in force in Hong Kong "*so far as they are applicable to circumstances of the colony or of its inhabitants subject to such*

modifications as such circumstances may require, and subject to amendment by ordinance, Act or Order-in-Council". The common law and rules of equity were to apply "*notwithstanding any amendment thereof as part of the law of England made at any time by an Order in Council or Act which does not apply to Hong Kong*". The Criminal Law Act 1967 did not apply to Hong Kong.

3.11 Hong Kong finally abolished the distinction between felonies and misdemeanours only in 1991. The Administration of Justice (Felonies and Misdemeanours) Ordinance 1991, Cap. 328 more or less duplicated the Criminal Law Act 1967 but did not deal with the torts and crimes of maintenance and champerty. The result was that they remained as torts and crimes under the common law in Hong Kong[12].

3.12 The Application of English Laws Ordinance was not adopted as one of the laws of the new HKSAR in 1997 but Article Eight of The Basic Law declares the common law as one of the sources of law for the HKSAR on the basis of it being one of the laws "previously in force" on 1 July 1997. Reception under Article Eight of The Basic Law was subject only to the common law not being in contravention of The Basic Law and amendment by Legco.

[12] See also Archbold Hong Kong, 2005, para.30-123 at p.1613

3.13 As a crime that was formerly a misdemeanour at common law and thus capable of being tried as an indictable offence, the offence of champerty is punishable with a maximum of 7 years imprisonment and a fine: section 101I Criminal Procedure Ordinance, Cap. 221.

3.14 It needs no emphasis that the rarity of prosecution of the crime of champerty does not lead to automatic abolition of the crime. Abolition of a crime has to be done by legislation.

Choice of Law

3.15 Two of the Contracts expressly provide for the application of Hong Kong law. Even in the absence of stipulation, there can be little doubt that RA contracts will be governed by Hong Kong law by reason of the fact that they would have been made in Hong Kong between Hong Kong parties.

Whether a contract between a RA and a potential litigant is Champertous?

3.16 As shown in the series of cases of Stanley v Jones, Sprye v Porter and Hutley v Hutley, an agreement to maintain another person's litigation such as by actively assisting to procure evidence and instructing lawyers in return for a share in the proceeds amounts to the offence of champerty.

3.17 When considering whether an agreement amounts to the offence of

champerty, the court will consider all the relevant circumstances and not just the written agreement: Sprye v Porter.

3.18 A contract between a RA and a potential litigant is clearly champertous for the following reasons:

(a) The RA will be responsible for all the expenses and disbursements including legal expenses, court's filing fees and fees charged by expert witnesses. In other words, it will be financing the litigation;

(b) The RA will provide active assistance (eg., preparing witness statements and liaising with the solicitor) to the potential litigant in connection with his personal injuries claim and in the event that any monetary compensation is recovered by the litigant, there shall be a sum payable to the RA in the region of 25% of the compensation;

(c) The conduct of the RA is not governed by any rules of professional ethics. They have no interest in the litigation apart from profiting from it; and

(d) In the circumstances, there is a real tendency for RA to inflame the damages and/or to suppress evidence and/or to suborn witnesses for his personal gain.

Whether a Champertous Agreement can be Justified

3.19 Maintenance is permissible when the maintainer has a legitimate interest in

the outcome of the suit. This is not confined to cases where he has a financial or commercial interest. It extends to other cases where social, family, or other ties justified the maintainer in supporting the litigation: Thai Trading at p.786H - 787A-B.

3.20 In Siegfried Adalbert Unruh v Hans-Joerg Seeberger & Anr, HCA 6641/00, unrep., Deputy High Court Judge Saunders, 3.9.04, the Court in Hong Kong recently held that champerty can be justified and "*there is no reason why a genuine commercial interest, which would justify what would otherwise be maintenance, should not also justify what would otherwise be champerty*" (p.65B).

3.21 In Siegfried Adalbert Unruh, at p.60-67, the agreement between the plaintiff and the defendants was one in which the plaintiff, who was not a party to litigation in question, was to share in the proceeds of the litigation. The formula used to determine the share of the proceeds was based upon a percentage of the monetary compensation received in the litigation. The court held that the plaintiff had a sufficient commercial interest in the litigation so that the arrangement was taken out of the realms of champerty. The court took into account, *inter alia*, the following facts:

(a) at the time the parties entered into the agreement, the plaintiff held 50% of the shares of the company involved in the litigation (the 2nd

defendant);

(b) the plaintiff had a continuous association with the 2nd defendant in his capacity as an executive director;

(c) the plaintiff had a shareholding in the 2nd defendant and held options in respect of further shares in the 2nd defendant; and

(d) as the founder of the 2nd defendant, and having regard to his prior personal involvement in the subject matter of the litigation, the plaintiff had a familiarity and direct personal involvement in all of the issues in the litigation.

3.22 These justifying factors certainly do not exist in the relationship between RA and their customers.

3.23 Moreover, it must be noted that in order for an interest to justify maintenance (or champerty) it must be "*distinct from the benefit which [the RA] seek to derive from [the agreement with their customers]*": Giles v Thompson [1994] 1 AC 142, at p.163H.

3.24 In the premises, the SCRA is of the view that even if a champertous agreement can be justified as a matter of law on the ground of the existence of a legitimate interest, on the material before us there is no such legitimate interest in respect of the agreements between the RA and their customers.

IV. Lawyers working with RA

Legality

4.1 Two issues arise for consideration – (a) whether lawyers knowingly assisting in the conduct of champertous litigation participate in the crime as accessories and (b) if such lawyers agree to participate in the litigation on a contingency fee basis, whether those agreements are themselves agreements of maintenance and/or champerty which are unlawful.

Aiding and Abetting

4.2 In paragraphs 2.27 and 2.28 above, the knowing involvement of solicitors and Counsel with the operation of RA has been referred to. There is an issue whether such Counsel and solicitors are liable for aiding and abetting the commission of a criminal offence (champerty). It is of course assumed that they have the requisite knowledge that the agreements in question are champertous.

4.3 It is trite law that one who aids and abets, counsels or procures the commission of an offence is just as guilty as the principal and he is liable to be tried and punished for that offence as a principal offender.

4.4 "Aid" is used to describe the activity of a person who helps, supports or assists the perpetrator to commit the principal offence whereas "abet" aims at those whose activity invites, instigates or encourages the perpetrator to commit it, whether or not in either case he is present at the time of the commission. 'Counsel' means 'advise' and 'encourage', and 'procures' refers to the person who causes it to be committed or brings its commission about.

4.5 Once there is knowledge on the part of the lawyers of a champertous agreement between the RA and their customers and the lawyers then agree, no doubt on the direct or indirect "instructions" of the RA, to act for purposes of furthering the customers' claims (eg., advising on the quantum of damages and engaging in settlement negotiations with the potential defendants), it is quite clear that the lawyers so acting are liable to be prosecuted for the offence of aiding and abetting the crime of champerty.

The LPO

4.6 The material concerning RA which the SCRA has examined suggests that they purport to provide quasi-legal, if not legal, services. Based on website and newspaper advertisements, it is quite plain that the role of the RA involves various legal work, such as assessing the chances of success of claims (索償經理評估索償成功率); gathering evidence and preparing

related documents (搜集證據及準備有關文件); and "meanwhile [the RA] will provide professional legal and medical opinions" (期間泰萊會提供專業的法律及醫生意見).

4.7 Under section 44 of the LPO, any person who not being a qualified barrister, either directly or indirectly, practices or acts as a barrister shall be guilty of an offence and liable on summary conviction to a fine of $500,000.

4.8 Under section 45 of the LPO, a person not being qualified to act as a solicitor, shall not act as a solicitor, or as such sue [sic.] out any writ or process, or commence, carry on or defend any action, suit or other proceeding, in the name of any other person or in his own name, in any court of civil or criminal jurisdiction or act as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any court or magistrate.

4.9 Under section 45(2) of the LPO, any person who contravenes the above provision shall be:

(a) guilty of contempt of court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly;

(b) incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting; and

(c) guilty of an offence and liable on summary conviction to a fine of $500,000 and to a term of imprisonment for 2 years.

4.10 The gravamen of the aforesaid offences appear to be "practices or acts as a barrister" and "acts as a solicitor" respectively.

4.11 The question of "acting as barrister" was considered by the Court of Appeal[13] which rejected a narrow meaning of "doing an act which only a qualified barrister may do". The Court of Appeal acknowledged that barristers' work included advising on Hong Kong Law, appearance in courts or as advocates before tribunals or committees, visiting police stations, etc. and that other professionals such as accountants and financial advisors frequently advised on provisions of the Inland Revenue Ordinance, the Companies Ordinance and Securities Ordinance; architects and engineers advised on provisions of the Building Ordinance and its

[13] The Hong Kong Bar Association v City West Investment Ltd. & Others [1994] 2 HKLR 39.

Regulations. One deduces from this authority that lawyers do not have any monopoly on providing legal advice.

4.12 According to a number of old English authorities, "acting as solicitor" meant that someone held himself out as a qualified solicitor[14]. When a person did not attempt to mislead and hold himself out as a solicitor, he was not found to have acted as such[15].

4.13 Whilst RA act in a quasi-legal role and purport to give legal advice in some cases, it is difficult to conclude that they have thereby contravened sections 44 and/or 45 of the LPO if they did not hold themselves out as barristers or solicitors.

4.14 For completeness, it should be noted that sections 46 and 47 of the LPO prohibit respectively the pretence by unqualified persons as being solicitors and the preparation of certain documents (including any instrument relating to any legal proceedings) by unqualified persons.

Contingency Fee

4.15 It is widely believed, and indeed a matter of common sense, that many

[14] Re Hall, ex p Incorporated Law Society (1893) 69 LT 385 (an architect entering appearances in an action); Davies v Davies, Re Watts (1913) 29 TLR 51 (a former solicitor's clerk procuring a decree nisi in a matrimonial case).

[15] Re Incorporated Law Society's Application (1885) 1 TLR 354.

lawyers (solicitors and barristers) who knowingly participate in the conduct of an action "funded" by RA are likely to have agreed to be paid on a contingency basis like the RA.

4.16 As long ago as 1673, it was held in Penrice v Parker (1673) Cas temp Finch 75 that an agreement by Counsel to accept a contingency fee was illegal as being maintenance.

4.17 In Wallersteiner v Moir (No.2) [1975] 1 QB 373, it was held that a contingency fee arrangement for a solicitor is champertous:

"*English law has never sanctioned an agreement by which a lawyer is remunerated on the basis of a "contingency fee," that is that he gets paid the fee if he wins, but not if he loses. Such an agreement was illegal on the ground that it was the offence of champerty. In its origin champerty was a division of the proceeds (campi partitio). An agreement by which a lawyer, if he won, was to receive a share of the proceeds was pure champerty. Even if he was not to receive an actual share, but payment of a commission on a sum proportioned to the amount recovered – only if he won – it was also regarded as champerty:...*" per Lord Denning MR at p.393D

"*A contingency fee, that is, an arrangement under which the legal advisers*

of a litigant shall be remunerated only in the event of the litigant succeeding in recovering money or other property in the action, has hitherto always been regarded as illegal under English law on the ground that it involves maintenance of the action by the legal adviser. Moreover, where, as is usual in such a case, the remuneration which the adviser is to receive is to be, or to be measured by, a proportion of the fund or of the value of the property recovered, the arrangement may fall within that particular class of maintenance called champerty." per Buckley LJ at p.401D

"*A contingency fee for conducting litigation is by the law of England champerty and, as such, contrary to public policy.*" per Scarman LJ at p.407F.

4.18 It should be mentioned here that there seems to be an attempt by the English Court of Appeal to change the law that contingency fee arrangements constitute maintenance and/or champerty based on modern social conditions - Thai Trading Co. v Taylor [1998] QB 781. That decision was subsequently criticised and not followed in Hughes v Kingston Upon Hull City Council [1999] QB 1193 and Awwad v Geraghty & Co., **CA**, [2000] 3 WLR 1041.

4.19 The SCRA is satisfied that Wallersteiner (No.2) reflects the current state of law applicable in Hong Kong. In Bevan Ashford v Geoff Yeandle (Contractors) Ltd. [1999] Ch 239 at p.244D, Sir Richard Scott V-C observed:

"*At the time the Act of 1990* [by this Act conditional fee agreements were legalised in the UK] *came into effect it had been long established that contingency fee agreements, sometimes called "no win no fee" agreements, for the remuneration of lawyers for their services in litigation were unlawful and unenforceable at common law. They were caught by the law of champerty. Champertous agreements were at one time both criminal and tortious.*".

4.20 We can envisage two types of contingency fee arrangement for lawyers acting with RA. Firstly, an agreement that if the action is successful they will only charge so much of their fees as are allowed upon taxation (i.e., they will get their fees from the losing party). Secondly, an agreement that if the action is successful they will charge their full fees so that whatever cannot be allowed upon taxation will have to be paid out of the compensation recovered in the action.

4.21 The SCRA is of the opinion that in the former case the lawyers would have committed the crime of maintenance, but not champerty given that there is

no sharing in the proceeds of litigation (this view is supported by Millett LJ (as he then was) in Thai Trading (supra) at p.788E). There can be no question of any justification for the maintenance given that what the lawyers have agreed to is contrary to professional conduct restrictions (see below) and therefore would not be countenanced by the court.

4.22 In respect of the latter case, the lawyers would have committed the crime of champerty.

Professional Conduct

4.23 For completeness, this section covers the obvious conflict with professional ethics by lawyers who cooperate with RA by charging a contingency fee, but it is not intended to deal with all potential conflicts with the professional codes of conduct.

4.24 Pursuant to section 64(1)(b) of the LPO a solicitor may not enter into a contingency fee arrangement for acting in contentious business. The section provides as follows:

"*Nothing in section ...shall give validity to-*

...

(b) any agreement by which a solicitor retained or employed to

prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success in that action, suit or proceeding;".

4.25 "Contentious business" includes any business done by a solicitor in any court, whether as a solicitor or as an advocate: the LPO, s.2(1).

4.26 It was observed by Millett LJ (as he then was) in Thai Trading (supra) at p.785F in respect of the similarly worded English legislation that "*the Act shall not give validity to arrangements of the kind specified. It does not legitimise such arrangements if they are otherwise unlawful, but neither does it make them unlawful if they are otherwise lawful*".

4.27 Principle 4.16 of The Hong Kong Solicitors' Guide To Professional Conduct, Vol. 1 provides that:

"*A solicitor may not enter into a contingency fee arrangement for acting in contentious proceedings*: ...".

4.28 It was observed by Lord Mustill in Giles v Thomson (supra) at p.153F in respect of the comparable rule of England that such a rule is a manifestation of the law of maintenance and champerty.

4.29 Commentary one to Principle 4.16 defines a contingency fee arrangement as:

> *"... any arrangement whereby a solicitor is to be rewarded only in the event of success in litigation by the payment of any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise). This is so, even if the agreement further stipulates a minimum fee in any case, win or lose."*.

4.30. In the premises, it is clear that no solicitor can enter into any agreement with a RA or the lay client for purposes of personal injuries litigation such that the payment of his fees will depend on the outcome of the litigation.

4.31 Paragraph 124 of the Code of Conduct of the Bar provides that:

> *"A barrister may not accept a brief or instructions on terms that payment of fees shall be postponed or shall depend upon or be related to a contingency."*.

4.32 A barrister stands in the same position as a solicitor in terms of accepting any brief the payment for which is contingency based. Further, a barrister may not try to circumvent the contingency fee prohibition by agreeing not

to render a fee note on the case until the conclusion of the action, because such an agreement will also fall foul of the said Paragraph 124.

V. Public Interest

5.1 Strictly speaking, this is an area outside the SCRA's terms of reference. Notwithstanding, the SCRA believes that it should share with the Bar Council some of its thoughts on this subject which are based on careful consideration of the information gathered on RA.

5.2 There is currently a good deal of interest on the subject of RA. In a reply of the Secretary for Justice made on the 27.1.05 to the speech of the Hon. Margaret Ng, the Secretary stated that:

"... *there is insufficient evidence to show that these companies [RA] cause damages (sic.) in the community or that control by way of legislation is necessary. ...*"[16]

5.3. Aside from legality (which has been considered above), the question whether RA are desirable is one which is apparently best answered by examining whether RA provide any valuable service to the public. On one view, the fact that RA are widespread demonstrates that they are meeting an

[16] Newsletter of the Hon. Margaret Ng dated 8.2.05, Annex 1 & 2.

unsatisfied demand. Indeed, according to a newspaper advertisement of a RA, its targeted customers are those who are unable to qualify for legal aid and without the means to pay for legal expenses themselves.

5.4 However, whether RA are providing valuable service cannot be divorced from the question of properly understanding what it is that they are providing. It is of interest to note that in England where legal aid was abolished for personal injury claims in 2000, the Citizens Advice Bureaux have handled 130,000 problems since that time relating to claims made with the use of "claims firms"[17]. The SCRA believes that it is in the position to identify some of the problems or pitfalls in what is provided by RA.

5.5 Firstly, the Contracts are neither well-drafted nor "customer-oriented". There are notable problems with some of the provisions:

(i) In respect of the Contract that provides for insurance cover, which may be seen to be one which gives the best protection to the customer, apart from the possible inconsistency mentioned in para. 2.11 above, a cover of USD 80,000 does not go very far when the insurance is most needed, i.e., when the action has failed and the

[17] Report in the Telegraph dated 13.12.04 [Appendix III]

costs of both sides will have to be paid. There is no mechanism contained in the said contract to ensure that adequate insurance cover, which will be topped up where necessary, will be in place;

(ii) In respect of the Contracts which provide no insurance cover, the promises by the RA to assume the liability over the costs of the defendants where the actions failed are only as good as their financial ability;

(iii) In the case of "Contract 5" [see Appendix II], it is very unclear what precisely are the obligations assumed by the RA;

(iv) In the case of "Contract 6", possibly the only substantive benefit which the customer derives from it at the price of 25% of the "net compensation" (net of the costs and expenses incurred) is that his costs and expenses will be paid up front by the RA. Such costs and expenses will be deducted from the compensation where his action succeeds and he will have to bear the same as well as the costs of the defendant if his action fails[18];

[18] There is ambiguity in the contract on whether the RA will have to bear the costs of litigation (those of the customer and/or the defendant) in the event that the action fails.

(vi) Given that the charges of the RA will have to be paid shortly upon receipt of compensation, in a situation (albeit rare) where the customer has to repay the compensation (eg., repayment of interim payment where the action failed) and the RA has become insolvent, the customer will have to repay what has been paid to the RA;

(vii) In cases where the appointment of legal representatives is controlled by the RA, the problem of conflict of interest between the RA and the customers (eg., the tension between holding out to achieve a better settlement for the customers and a speedy settlement to improve the RA's cash flow) may be exacerbated because of lack of truly impartial advice to the customers;

(viii) Finally, as noted in paragraph 2.25 above, some of the Contracts make it part of the obligations of the customers that they must provide true and accurate information. No doubt these provisions are aimed at the information provided in respect of the accidents and upon which the claims are to be launched. Such provisions may give rise to arguments by the RA that they are not required to fulfil their part of the bargain and are entitled to recover the expenses already incurred by them from the customers in the event that the claims are lost on the basis that the customers' evidence is rejected

by the court as untruthful.

5.6 The Information (see para. 2.8 above) serves to highlight the kind of abuse which can occur when people who are not subject to professional ethics or control are driven by financial motivation. After the two accident victims ("Suen" and "Wong") signed their contracts with the RA, they were each taken by a representative of the RA to the Legal Aid Department to apply for legal aid. Wong eventually pulled out of the arrangement with the RA after consulting a member of the Bar (as a friend). However, when Suen wanted to terminate her relationship with the RA she was threatened and bowed to the pressure [for details see Summary of Events supplied to Anthony Chan SC in Appendix IV].

VI. Conclusions

6 By reason of the above analysis, the SCRA is of the opinion as follows:

(i) The agreements between RA and their customers are champertous and constitute a crime in Hong Kong;

(ii) Such agreements cannot be enforced in a civil court in Hong Kong;

(iii) Lawyers who knowingly assist in the performance of champertous agreements are themselves liable to be prosecuted as accessories to the criminal offence;

(iv) Lawyers who have agreed to contingency fees in the context of litigation may have committed the crime of champerty;

(v) Such lawyers are answerable for the breach of their professional codes of conduct;

(vi) Given the prevalence of RA, the Bar Council may see fit to consider whether these matters should be brought to the attention of the Department of Justice.

Special Committee on Recovery Agent

1st April 2005

Appendix I

	RA	Website (where applicable)
1	Rees Taylor (P.I.) Aid Limited (2002) Rees Taylor (H.K.) Limited (since 2003)	http://hk.geocities.com/alvincyt/reestaylor.html
2	Solomon & Company Company, Limited	
3	Sure Win Consultants Limited	
4	Hong Kong Claims Association Limited	http://www.hkclaim.com/
5	Fordman Limited	
6	Hong Kong Association for Accidental Injuries or death	
7	Solid Recovery	http://www.solid-recovery.com/index.htm
8	Claims Direct HK	http://www.claimsdirecthk.com/index.htm
9	Remedy Asia Limited	http://www.remedy.com.hk/index.htm

Note: 1. The documents covered in this Appendix are in Chinese with the exception of Contract 6 which is in English.

2. The issue of confidentiality is not provided for in any of the Contracts. It is of particular significance for those Contracts that empower and authorize the RA to have full assess to all documents in relation to the Victims' claims and to discuss with the Victims' lawyers about the claim.

Contract 1: Rees Taylor (P.I.) Aid Limited ("Rees")

Clause	Content
1, 2, 10	**Services**: Rees is responsible for all expenses and legal fees like expert fees, solicitors fees, Counsel fees, court fees, and other misc. expenses (including those fees incidental to any appeal filed by the opponent, appeal against all interlocutory orders and execution of any judgment, order or settlement) which are in relation to the Accident. This sum will then become the costs to be paid by the defendant when the action succeeds or is settled.
3, 7, 12, 20	**Service charge**: **25%** of the total compensation including judgment interest calculated from the date of judgment or settlement sum. Such charges have to be paid within 5 days directly by the designated solicitors to the RA from the compensation obtained in accordance with an irrevocable Authorization Letter signed by the Victim beforehand. Rees' charges are payable in the event that the Victim settles with the other party privately.
4, 5	If there is a **payment-in**, the Victim has to act according to the advice of the designated solicitor. If not, a Counsel of at least 10 years' experience agreed by both the Victim and Rees will be briefed for advice on the payment-in. If the Victim insists on rejecting the payment-in contrary to Counsel's advice and the judgment sum is less than the payment-in, Rees will not be responsible for the costs of the other party.
8	If the **action fails**, the Victim is not required to pay any sum to Rees and Rees will bear the costs of the other party.
11	The Victim is allowed to **choose his solicitors, Counsel**, medical expert or technical expert, etc. **from among those appointed by Rees**.

19	The Victim is required to provide **completely true and accurate information** to the designated solicitor or Rees.
21	If the other party **refuses to pay** the compensation or costs, Rees will apply for execution in the name of the Victim at its own costs.
22, 23	The Contact **terminates** when the Victim dies or is declared bankrupt before the completion of the claim and no charge is payable.
25	Before the execution of the Contract, Rees has already advised the Victim about the availability of **Legal Aid**, etc. and the engagement of an independent lawyer for advice on the Contract.

Contract 2: Rees Taylor (H.K.) Limited ("Rees HK")

Mostly the same as Contract 1 except the followings:

Clause	Content
1, 5	**Services**: Rees HK will arrange for the Victim an **insurance** policy to cover all the expenses and fees required in pursuing his claim. There is no express stipulation on who pays the **premium**. The services provided by Rees HK include **investigation** and preparation of all **witness statements**.
2	If the **action fails**, the Victim is not required to pay any charges and the insurance company will pay all of the other party's legal costs.
3	The Victim can **choose** his legal representatives.
6	**25%** service charge has to be paid to Rees HK within 2 days. There is no stipulation on whether judgment **interest** is part of the compensation on which service charge is based.
9	The Victim cannot suspend or **terminate** the Contact unilaterally; otherwise he has to reimburse Rees HK for all expenses incurred.
10	Upon conclusion of the action the insurance company will recover directly from the other party the legal costs and expenses incurred.
12	The Victim authorizes Rees HK to follow-up and discuss his case with his legal representatives.
13.2	The Victim acknowledges that Rees HK is **neither a lawyer** nor providing any legal opinion in any way whatsoever.
Certificate of Insurance	**Period of Insurance**: From the date of joining the cover to the finalization of the case, subject to payment of renewal premium or

	run-off premium for a maximum duration of 5 years. **Coverage: Legal expenses** whatsoever incurred. **Limit of Indemnity**: USD80,000.00 for any One Event. [Policy is not available to the SCRA]

Contract 3: Solomon & Company Co. Ltd. ("Solomon")

Similar to Contract 2 except the followings:

Clause	Content
1	Solomon will pay for legal fees and other expenses.
1, 3	The Victim must agree to retain the legal representative **designated** by Solomon. However, the Victim also has the **right to choose** his legal representative or look for other legal assistance but Solomon will not pay for any of the related fees.
4.1	**Services**: Solomon will retain one lawyer to investigate the Victim's claim and see if he has **more than 50% chance** of winning his claim.
5	**Service charge**: the percentage is left blank.
8	If the lawyer assigned by Solomon opines that there is over 50% chance of winning the case, the Victim should not unilaterally suspend or **terminate** this Contract; otherwise he has to reimburse [Solomon] of all expenses incurred.

Note: Contract 3 does not contain any provision on:

- ✧ Definition of 'compensation' – whether judgment interest included?
- ✧ What happens if the Victim dies or is declared bankrupt during the proceedings?
- ✧ Involvement of insurance company.
- ✧ Whether the Victim has been advised of the availability of Legal Aid, the option of consulting independent lawyers, etc.?

Contract 4: Sure Win Consultants Limited ("Sure")

Similar to Contract 2 (without the involvement of insurance) except the followings:

Clause	Content
1.01	Sure has the right to **choose** the solicitor and/or Counsel for the Victim and the victim must agree. The expenses to be paid by Sure cover only 1 specialist medical report.
1.02	**Service charge: 20%** of the compensation which does not include any amount stated in a compensation assessment certificate issued by the Labour Department. The Victim agrees to irrevocably appoint and authorize Sure to be his **agent and attorney** in handing his claim until the conclusion or settlement of the same.
2.01	The Victim declares that he has not retained any other consultants, the Legal Aid or other solicitors to make a similar claim before signing the Contract and that he has provided Sure with all information which is **true and accurate.** The Victim agrees not to **settle** his claim on his own after the signing of the Contract. He would not appoint or retain the service of other consultants, the Legal Aid or other solicitors in pursuing his claim.
3.01	The Victim agrees to the signing of an irrevocable **Power of Attorney** in favour of Sure.
4.01	Sure has the right to **terminate** the Contract if the Victim does not accept any reasonable advice of the solicitor or Counsel appointed by Sure and Sure is not required to compensate the Victim.
5.01	For any **breach** of contract by the Victim, he agrees to compensate Sure for any resultant loss. The compensation shall be 20% of the compensation (which does not include any amount stated in a compensation assessment certificate issued by the Labour Department) or the sum incurred by Sure (whichever is higher) as liquidated damage.
Power of Attorney & Letter of Authorisation	Irrevocable and granting Sure "**absolute power**" to handle the case on behalf of the Victim, which includes giving instructing to solicitors and Counsel and settling the claim.

Note: Contract 4 does not contain any provision on:

- ✧ The type of legal fees covered – whether costs of appeal, costs of executing the judgment, etc. are included?
- ✧ Who is responsible for the costs of the other party in the event that the claim

fails?

- ✧ Definition of 'compensation' – whether judgment interest included?
- ✧ What happens if the Victim dies or is declared bankrupt during the proceedings?
- ✧ Whether the Victim has been advised of the availability of Legal Aid, the option of consulting independent lawyers, etc.?

Contract 5: Hong Kong Claims Association Ltd. ("HKCA")

The copy of Contract 5 supplied to the SCRA is not completely legible.

Clause	Content
Preamble	**Administration Fee: 22%** of all compensation and interest received (Note: Contract states 38% in print which was amended to 22% in manuscript).
1	Victim to appoint HKCA as his **agent** with full authority to deal with his claim including settlement and receipt of compensation. It appears (illegible) that HKCA is to pay the requisite **"expenses"**. In the event that the claim cannot be settled, solicitor/Counsel will be **appointed by the Victim** or with his agreement to commence litigation.
2	**Services: Administrative** assistance, to facilitate communication with the other party and if necessary, provide **financial support** but will not be responsible for the provision of legal opinion.
5	If the victim dies or loses his ability, the service will **continue**.
Client's Acknowledgement of rights and obligations	Victim understands his right to consider **Legal Aid** and to instruct his own lawyer. If the action cannot be reasonably resolved or settlement cannot be reasonably reached and the circumstances require, HKCA will suggest to the Victim to take legal action.
Power of Attorney	Unless HKCA provides a written consent, the victim should **not terminate** the Power of Attorney. In the event where the Victim dies, has been declared bankrupt or has lost his ability, the Power of Attorney remains valid.

Note: Contract 5 does not contain any provision on:

- ✧ Assuming that "expenses" include legal fees, the type of legal fees covered – whether costs of appeal, costs of executing the judgment, etc. are included?

- ✧ Involvement of insurance company.
- ✧ Who is responsible for the costs of the other party in the event that the claim fails?
- ✧ When the Administration Fee is payable?
- ✧ What happens in case of payment-in?

Contract 6: Fordman Limited ("Fordman")

Paragraph	Content
2	Victim agrees to pass his case to Fordman's **appointed solicitors** for recovery.
2	**Service charge**: 25% of the "net recovered amount" ie the compensation after deducting legal costs, medical fees and other disbursements incurred.
2, 3	**Services**: Fordman will pay for the Victim's solicitor's fees, medical fees and all disbursements in advance "and/or indemnify [the Victim's] costs, including party to party cost".
3(1)	It is a condition and warranty that if the Victim does not accept any **payment-in**, all costs of further proceedings as from the date of the payment-in will be solely borne by him.
3(2)	It is a **condition precedent** that Fordman will be "excluded" from any of its responsibilities absolutely if the Victim has "made any **misstatement**, misrepresentation and/or false material before and/or in the course of this (sic.) proceedings".

Note: Contract 6 does not contain any provision on:

- ✧ The type of legal fees covered – whether costs of appeal, costs of executing the judgment, etc. are included?
- ✧ Involvement of insurance company.
- ✧ When Fordman's charges are payable?
- ✧ What happens if the Victim dies or is declared bankrupt during the proceedings?
- ✧ Whether the Victim has been advised of the availability of Legal Aid, the option of consulting independent lawyers, etc.?
- ✧ What happens if the action fails (paragraphs 2 and 3 are **ambiguous**)?

Payment Acknowledgement: 香港意外傷亡權益會 (HK Association for Accidental Injuries or Death)

The SCRA has been supplied with only a Payment Acknowledge in respect of the fees paid to this RA.

Clause	Content
(1)	In accordance with the **Contract** signed with the RA, the Claimant agrees to a **Service Fee** being **25%** of the **Employee's Compensation** received. The Claimant also agrees to the payment of such fees from the Compensation **by his solicitor** by way of a cash cheque.
(1) (sic.), (2)	The Claimant solemnly declares his **understanding** of the Service Fee charged for the **professional services** rendered by the RA. The Claimant is **very satisfied** with the services rendered and the Compensation received and agrees to the payment of Service Fee.
(3)	The claimant agrees that the RA may use the information concerning his action for the **promotion** of its business and that the RA is authorised to store all information and documents in relation to the action in computer hard-disk or CD and to destroy the originals of all correspondences and documents.

Appendix III

telegraph.co.uk
News home
Breaking news
Business news
Crossword Society
Factfiles
Law reports
Matt cartoon
Obituaries
Opinion
Picture galleries
Text alerts
Weather
Week at a glance
Your view

About us
Contact us

'Ambulance-chasing' firms need curbing, says charity

By Joshua Rozenberg, Legal Editor
(Filed: 13/12/2004)

People entitled to compensation for personal injury are being failed by "ambulance-chasing" claims firms, according to a report today from Citizens Advice.

These so-called "claims farmers" – who are not lawyers – should now be regulated, the charity says.

It points out that costs in "no win, no fee" cases can end up being far larger than customers are led to believe and in some case may be more than the damages paid.

In one example reported to a Citizens Advice Bureau, a Devon woman won her case but was left with just £15 – less than one per cent of her £2,150 compensation award - after hidden legal fees. A man from Lancashire won £1,250 for a work accident but ended up nearly £2,400 in debt after taking out insurance which would have paid the defendant's costs had he lost.

Another example was a Warwickshire man who won £7,500 for loss of earnings and injuries from an accident at work but was left with just £400 after the solicitor's costs were deducted.

The growth of claims management companies has led to high-pressure sales tactics by unqualified staff, the report says. Unscrupulous salesmen have been known to approach accident victims in hospitals.

One West Midlands claims management firm persuaded a woman to sue her husband because she had been injured when she was a passenger in the car he was driving, says the report, entitled No Win, No Fee, No Chance.

Citizens Advice hopes companies selling "no win, no fee" agreements will become supervised under proposals to be announced this week by Sir David Clementi, who will report to the Government on regulating the legal profession.

Since legal aid was abolished for personal injury in 2000, Citizens Advice Bureaux have handled 130,000 problems relating to such claims.

David Harker, the organisation's chief executive, said: "Many people think that 'no win, no fee' does genuinely mean they won't have to pay anything. In reality the costs are hidden and could wipe out their compensation. They could even end up owing money."

► 10 November 2004: Falconer's ultimatum to 'ambulance-chasers'
► 3 August 2003: End this compensation nightmare, say judges

To : Mr. Anthony Chan SC
From: Steven Liu
Re: Summary of the events concerning a recovery agent

Madam Wong ("Wong") suffered injury from an accident in the course of employment on 15th July 2003.

Madam Suen ("Suen"), who is the sister of Wong's husband also worked at the same site of Wong and suffered injury from an accident in the course of employment on 17th July 2003, which was 2 days after Wong.

Wong and Suen live together in a village house in Pat Heung, Yuen Long, New Territories.

One Mr. Chung, a taxi driver who lives in the same village, also a friend of Suen's family approached them and claimed himself to be a claims consultant with expertise in recovering compensation from employers. He also produced a name card to them.

Suen was the first to enter into a contract with the claims consultant. The contract was printed in English and Chinese. Suen was told that 18% would be deducted from her recovered amount as recovery fees. Apart from this, she did not have to pay a single cent. I do not have a copy of Suen's contract but I will come back to the terms of the contract in Wong's case which I have a copy.

I was told that Suen signed the contract in a solicitors firm. A female staff of the firm asked Suen to sign on 2 pieces of papers; no copy was given to Suen.

Not long after the signing of the contract, Suen was led by a representative of the recovery agent to the Legal Aid Department ("LA") to apply for legal aid in respect of her injury in both ECC and common law claims. She was told to nominate a specific firm of solicitors so that her legal fees would be paid by LA.

A certificate for legal aid was granted on 8th October 2004.

Madam Wong

The same Mr. Chung approached Wong in about November 2004. She was told the same story and led to a solicitors firm in Central to sign a contract with the recovery

agent. The agent told her that the solicitors firm was a partner of the recovery agent and would handle her case efficiently. She was greeted by one Ms. Lee of the law firm and given a contract in both Chinese and English. She signed on the contract in the presence of Ms. Lee and the recovery agent. She was not given any copy of the contract she signed. However she knew that the recovery agent would charge her 25% of the recovered amount. She was told that she did not have to pay anything apart from the 25%.

A few days later, she received a phone call from the recovery agent who requested her to apply for legal aid. She was companied by the agent to LA and there proceeded with the application. She was told that she must nominate a particular solicitor so that LA would then pay her legal fees. She was told to nominate Mr. Alan Wong of Alan Wong & Co to be her solicitor of choice. She signed the contract with the recovery agent in the office of Alan Wong & Co before going to LA.

A few days after applying for LA, Wong's husband was not very happy that Wong had to pay 25% while Suen paid only 18%. The family approached me through the introduction of a common friend.

Before referring them to a firm of solicitors, I suggested Wong and Suen must ask for a copy of the contract they signed from the recovery agent.

Wong telephoned Mr. Chung, the taxi driver and her request was referred to one Mr. Davis Wong ("DW").

DW called Wong many times after the request and represented that the charge could be reduced to 20%. She was requested to go to the same firm of solicitors to sign another contract as soon as possible.

Wong was slow to entertain such request. On 31st December 2004, DW called Wong again and said to her that he must see Wong as soon as possible preferably even on the next day, 1st January 2005 since there was a very important document to be signed by Wong.

I found the request suspicious and decided to accompany Wong to see DW with a committee member of Pat Heung Rural Committee in a Chinese restaurant. I told Wong not to disclose our identity and just describe us as friends.

Wong showed up on time and produced us his name card bearing Claudis Jones Adjusters Associates (o/b Fordman Ltd) and Davis Wong, surveying Manager. P.I. & Claims Specialist. (exhibit 1).

During the meeting, he firstly showed the first contract signed by Wong in both English and Chinese version with a red chop marked "CANCELLED". He told Wong in front of us that since her case was approved by LA, LA regulations would only allow them to charge a percentage not exceed 20. He further requested Wong to sign on a pre-printed English document so that his company could then comply with the LA Regulations.

I pointed out to DW that according to the second paragraph of the contract, Wong has to pay 20% based on the net recovered amount after deducting legal costs, medical fees and other disbursements incurred. But she was also referred to apply for LA. At the end, LA would also deduct those fees from her recovered amount, so she would have to pay more than the 20% which was different from what she was told by your company.

DW replied that it would not happen if Wong nominated the partner firm of solicitors of his company which Wong had done. Their partner firm of solicitors was on the list of LA. As long as the firm was on list, LA would pay everything, so Wong only has to pay 20%. When I was trying to ask further, DW shifted the topic quickly and said to me that since I was not a lawyer and a claims consultant, I would have difficulty in understand their profession. As long as we trust him, everything would be fine.

DW also produced an original confirmation letter issued by LA. The letter was addressed to the solicitors and to be returned to LA after signing by the lay client. He requested Wong to sign on the document as well and said to Wong not to tell anyone since this document was supposed to be signed by Wong in the office of the solicitor and it was a confidential document between the solicitors and their client. Since the firm was a partner of his company, he took that document to Wong to save her trouble from traveling to Central again.

Wong took over the documents and said to DW that she would only sign them after consultation with her husband.

DW became very nervous and shouted to Wong to have the documents back. Wong refused and said since those documents bearing her name, she was entitled to have a

copy and seek advise before execution.

DW threatened us that he would call the police. He also called Mr. Chung and asked him to come to the restaurant immediately.

Wong took the documents to the bookstore and photocopied it. She gave DW a copy and left.

Document 2; English contract dated 24th November 2004.
Document 3; Chinese contract dated 24th November 2004.
Document 4; English contract dated 29th December 2004.
Document 4; confirmation letter from LA (not available in my file).

On that night, Mr. Chung went to the home of Wong chasing for the documents. He swore that he would not overcharge Wong and demanded the documents. Wong refused, a fight almost occurred between Chung and Wong's husband.

Immediately after the public holiday, Alan Wong & Co called Wong and requested her to sign on the letter and return to their office ASAP otherwise LA may refuse her future application.

I referred Wong to another from of solicitors after the incident.

Madam Suen

In light of the events of Wong, Suen was thinking to terminate the recovery agent as well as the solicitors. Mr. Chung then caused her a lot of trouble. On one hand she was told that if she terminated the contract with the recovery agent, she would be sued and bound to lose the case with costs. On the other hand Chung told her that he would tell the insurance company that she had in fact fully recovered, he would have her followed and video-taped and the tapes would be give to the insurance company to disprove her claims. Suen was very scared, even after a full consultation with a solicitor, she finally decided to stay with the recovery agent and their "partner firm".