

RMQ

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Editorial

Preparations for the 2008 PII Renewal will be the primary focus of the PII Committee this quarterly. This is to ensure smooth and prompt handling of the usual influx of 11th hour PII applications that coincides with Sijil Annual renewals every year. The PII Committee is also gearing up for the PII Scheme's transition into a "self insurance" vehicle – thus, requiring advance preparation and planning to streamline a functioning working mechanism for this "self insurance" vehicle.

In line with these endeavours, the PII Committee held an open tender for the Malaysian Bar's Professional Indemnity Insurance Scheme 2008 in April 2007. The Tender Notice appeared in the New Straits Times on 20 April 2007 and received many enquiries from interested insurance brokers. Interested bidders were given till 30 April 2007 to submit a non-refundable Tender Bond to participate in the Tender Exercise. Three (3) insurance brokers submitted bids for the Tender, and presented their proposals on 1 June 2007 to both the PII Committee and Council members.

The selection of our PII Scheme 2008's insurance broker will be based on the insurance broker that is able to meet the Tender Requirements as set out by the Bar Council/PII Committee. Some of the **critical areas** that were given emphasis included:

- A. **Broking Services/Insurer** - Proposed basis of total remuneration for the services provided, local insurer recommended, premium allocation model proposed to distribute the premium amongst members, etc.
- B. **Administration of the Scheme** - Infrastructure and/or systems that will be implemented to manage the Scheme.
- C. **Claims Management** - Proposal for Claims Management, how data for risk management analysis will be captured, how insurer/reinsurers handle claims, etc.
- D. **Future Proposal** – As the Bar Council is targeting a move towards a "self-insured fund" in the next 2 - 3 years, brokers are to detail how they intend to put the Committee in the best possible position to assess the viability of such future alternative structures for the Scheme. They also need to list the various factors that need to be assessed and considered; inclusive timelines and key deliverables.

The Committee remains committed to ensuring that the PII Scheme 2008 provides equitable coverage for members, whilst improving its service delivery – especially in light of the negative inferences and media coverage about lawyers which stands to cast a disparaging light on the entire profession. Details of the changes to our Scheme, future plans and structure that we envision for the PII Scheme can be found in the Q & A Session: PII Scheme 2007.

We've initiated our dedication to service by featuring the profile of the PII & RM Department officers and also Committee members who are driving the Scheme forward. Additionally, the Business Continuity article we've included in this issue is to highlight to members oft-neglected issues such as business interruptions due to natural disasters, calamity, etc.

The PII & RM Department are constantly involved in new projects targeted for members. Don't forget to check the Calendar of Events 2007 to see other projects in the pipeline.

Ragunath Kesavan
Chairman,
PII Committee



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2007/08 PII Committee



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Committee Members

- | | |
|--------------------------|----------------------------------|
| 1. Mr. Lawrence Pereira | 7. Mr. Dhinesh Bhaskaran |
| 2. Mr. Ng Seng Kiok | 8. En. Razlan Hadri Bin Zulkifli |
| 3. Mr. Lee Leng Guan | 9. Mr. G K Ganesan |
| 4. Mr. George Varughese | 10. Mr. T Kuhanandan |
| 5. Mr. Amardas Jethanand | 11. Mr. Murelidaran Navaratnam |
| 6. Mr. Arthur Wang | 12. Mr. Ravindra Radha Krishnan |

PII & RM Department



Corrinne Wong, Risk Manager.

Corrinne was appointed Risk Manager for the Malaysian Bar's Professional Indemnity Insurance (PII) Scheme in Jan 2005. With her appointment, she brings more than 10 years working experience encompassing operational/credit/non-credit risk management, recovery, legal advisory, general/life insurance financial planning, etc from both the banking and insurance industry.

Corrinne's responsibilities as Risk Manager include the setting up of a comprehensive and efficient Risk Management programme for the Malaysian Bar's PII Scheme. She is also involved in monitoring the operation of the PII scheme and to propose suitable measures for its overall improvement – i.e. improvement in claims experience leading to lower premiums, excesses and better coverage.

Corrinne received her LL.B (Hons) from University of London. She also obtained professional certificates (life insurance and general insurance) from the Malaysian Insurance Institute in 1991 and has been an Associate Member of the Association of Banks Malaysia since 2001.

Vinodhini Samuel, Executive Officer.

Vino was admitted to the Malaysian Bar in 1996. Prior to joining the Secretariat in Jan 2003, she was in active practice in Klang and Kuala Lumpur, focused on general litigation. She has served as EO to various Committees and managed the Membership Department for 2 years in 2004-2006.

Currently, she oversees the PII unit, including assisting the PII Committee; handling appeals against premium; and attending to complaints and enquiries pertaining the Scheme. She also assists the Shipping and Admiralty Law, Islamic Finance and Criminal Law Committees.



Wong Li Chin, Executive Officer.

LiChin was appointed as an Executive Officer in Sept 2005 with the primary role of assisting the Risk Manager in implementing the Malaysian Bar Council's Risk Management programme. Presently, she manages the RM Publication projects and oversees the Department's annual PII & RM Survey.

She is equally involved in PII-driven activities and efforts – assisting the Risk Manager in organising the PII Workshop in Nov 2005, researching and writing papers, handling member queries and complaints on PI matters, and assisting the PII Committee, including preparation of the PII Committee's annual general report. LiChin received her LLB from the University of Leicester; she completed her CLP in 2006.

Top Up Insurance: A Risk Transfer Tool

The Malaysian Bar's Professional Mandatory Indemnity Insurance (PII) Scheme is a **claims-made** policy. It is different from occurrence-based insurance policies, for example, motor vehicle insurance.

Under a **claims-made** policy, the relevant policy applicable is *not* the policy as at the *date of negligence* but is the date the claim is first discovered or the insured first becomes aware of a circumstance likely to give rise to a claim and **notified** their insurers.¹

What is Top Up Insurance?

The current mandatory limit for the Malaysian Bar's PII Scheme starts at RM250,000 (for a sole proprietor or the first lawyer in any one firm) and increases by RM50,000 for each additional lawyer up to a maximum of RM2 million.

Therefore, the number of lawyers in a firm will determine the firm's Mandatory Limit. This may or may not be sufficient based on the firm's needs.

Top-up insurance provides *additional* coverage where your firm's Mandatory Limit is insufficient to accommodate the exposure, and business and/or clientele risks that are specific to your firm. These risks may translate to a serious burden on your firm

or worse case scenario, could cripple the operation of your firm, if not given adequate consideration.

How Does Top Up Insurance Work?

In our Scheme, when a claim is notified to Insurers, their first step is to establish policy liability under your Mandatory Policy. Should your Mandatory Policy cover the claim, any amount payable by the Insurers will only be to the amount of your firm's Mandatory Limit.

If your firm's Mandatory Limit is *insufficient* to meet the claim, the additional amount **has to be met by your firm**. However, if your firm has purchased Top-up insurance, this additional amount will be met by the Top-up policy insurers, up to the limit of the Top-up insurance purchased.

Hence, where your firm engages in larger/complex transactions and the potential exposure is beyond your firm's Mandatory Limit, obtaining Top-up insurance should feature prominently in your firm's strategic risk management review and annual budget. It functions as a very important *risk transfer* tool, in that, it will shift your firm's risks (professional liability) to an insurer in the event things go awry.

¹ <http://www.lawsociety.ie/newsite/documents/Committees/PIpn.pdf>

Acknowledgement

It is noted that in the RMQ March 2007 issue, accreditation for the "A – Z of Risk Management" was omitted in error. The "A – Z of Risk Management" was adapted from an article that was prepared by AFP Consulting's risk management team. It first appeared in the Law Society Gazette, the weekly journal of the Law Society of England and Wales; it was then reprinted in "The Alexander Forbes Guide to Risk Management for Solicitors" booklet. We regret the omission on our part and apologise for any inconvenience caused.

Top Up Insurance: 5 Facts You Need To Know!

1 The Bar Council/ PII Committee does not endorse any particular insurer/broker for the purchase of Top-up insurance.

- ◆ *Legal firms are free to purchase Top-up insurance from any insurer/broker.*

It is important that any Top-up insurance you obtain is **follow-form** of the Scheme's Mandatory Policy and wording, in that, the terms and conditions are *identical* to your Mandatory Policy's terms and conditions.

- ◆ *This is to ensure that your firm is adequately covered in the event of a claim. Some Top-up insurance may have exclusion clauses that differ from your Mandatory Policy (See No. 5).*

3 If you have purchased Top-up insurance from a different insurer, they must be notified **separately** of any claims. This is to ensure that you do not breach their policy conditions, which may negatively affect your coverage.

- ◆ *The Top-up insurance purchased through our current brokers (and from the Top-up insurers they have secured) is follow-form of your firm's Mandatory Policy. You need only notify the broker once in the event you have a notification.*

‘ It is important that any **Top Up** insurance you obtain is **follow-form**, i.e. the terms and conditions are *identical* to your **Mandatory Policy's** terms and conditions. ’

4 Top-up insurance can be bought on a pro-rated basis.

- ◆ *Sometimes, a higher cover is only required for a specific transaction/retainer. So a firm may purchase Top-up mid way in any year;*
- ◆ *However, it is important to note that this then makes it necessary for the firm to continue to obtain, at least the same level of cover for a considerable period of time, as PI cover is provided on a claims-made basis.*

5 Certain types of Top-up policies purchased may have exclusions that firms may not be aware of, but may have an impact at the time they need to make a notification.

Common types of exclusion clauses we have seen in some Top-up insurance policies here in Malaysia include:

- ◆ “Financial work”
- ◆ Loss of documents
- ◆ Dishonesty
- ◆ Employee embezzlement
- ◆ No run-off cover
 - * *Run-off cover is required to cover the eventuality of a claim arising after a lawyer has ceased practice.*
 - * *Run-off cover is vital so as to prevent a lawyer from becoming personally liable in the event of a claim arising after he has ceased practice.*
- ◆ Retroactive cover is limited, for example, coverage is limited to
 - * *The year of purchase only;*
 - * *Several years earlier.*

When you are obtaining Top-up Policy, you should pay attention to the **coverage** and **protection** available. Do **NOT** choose a policy just to **show** that your firm has Top-up cover!

When Disaster Strikes: Fight or Flight?

You have come into work and

- ◆ You find that your accounts clerk of 10 years has left his set of office keys, ID tag and letter of resignation on your table. Application for PC is due in a month and your auditors are coming tomorrow.
- ◆ Your legal assistant has just informed you that some of your important client files have been affected by the recent manhole sewerage overflow at the Jalan Duta Court complex.
- ◆ There has been a power outage in your office building and they do not expect power to be restored until tomorrow morning.
- ◆ Someone left the tap running in the office pantry over the weekend and now half your office is swimming in two feet of shallow water.

Is your firm equipped to deal with any of the above scenarios?

The reality of the matter is, business interruptions

1. That have the potential to interrupt or destroy a law firm can come in many forms, and usually, they are in forms not unlike the above scenarios!
2. For any law firm is a question of “when”, *not* “if”, and they can hit at any time, in all shapes and sizes.¹ Remember, “accidents/disasters” do not make appointments!²

Business interruptions can affect a firm’s principal(s), certain staff/departments, or even the firm as a whole. There are six (6) broad categories that fit this description of business interruptions:³

- (a) *Natural Disasters*: Flood, fire, earthquakes.
- (b) *Technology Disruption*: Computer failure (virus, hardware or data loss).
- (c) *Infrastructure Failure*: Building defects (roof collapse), water damage from sprinkler systems or floods, telephone or power outages.
- (d) *Health Scares*: Epidemics, pandemics (SARs, Bird Flu, HFM disease).
- (e) *Criminal Elements*: Violent crimes (robbery,

workplace assault), cyber crimes (hacking), sabotage by disgruntled employees/unhappy clients. Loss or theft of client files, documents, identity fraud, etc.

- (f) *Human Resource Shortcomings*: Resignation or extended illness of key staff or lawyers, sudden death or disability, succession crisis.

Simple events like a burst pipe, to loss of your firm’s master diary, to a sole proprietor having a stroke/heart attack could prove catastrophic if contingency plans are not in place. Hence, foresight, along with some planning and preparation beforehand is critical in minimising the impact of any accident or disaster, large or small.⁴ How prepared is your law firm?

Managing Unscheduled Business Interruptions

The fundamental objective of business interruption and contingency planning is business continuity – keeping operations running, being able to service clients, maintaining client confidence, maintaining regular cash flow, and similar strategic activities for survival.⁵

“Business interruptions for any law firm is a question of “when”, not “if”, and they can hit at any time, in all shapes and sizes.”

¹ Edward Poll, ‘Notifying the People Around You’, GP Solo, December 2006, pg. 1

<<http://www.abanet.org/genpractice/magazine/2006/dec/notifyingthepeople.html>>

² ‘When Lightning Strikes... Are You Prepared?’, LawPro, July 2002, Vol. 1, Issue 2, pg. 2

³ Edward Poll, ‘Disaster Communication: Develop a Plan and Know How to Execute It’, GP Solo, November 2006, pg. 1 <<http://www.abanet.org/genpractice/ereport/2006/nov/disaster.html>>

⁴ http://www.practicepro.ca/practice/Practice_Interruptions.asp

⁵ Dennis Duitch & Terri Oppelt, ‘Disaster and Contingency Planning: A Practical Approach’, GP Solo, Spring 1998, pg. 1, <<http://www.abanet.org/genpractice/magazine/1998/spring-bos/duitch.html>> (cited henceforth as Duitch & Oppelt)

20 Questions To Ask Yourself

How Ready Are You for Business Interruption(s)

- 1 Does your office have a working fire alarm or smoke detectors or water sprinklers?
- 2 Does your office have working fire extinguishers?
- 3 Do you have in mind an alternative site from which your law firm can operate from in the event your principal worksite is unavailable?
- 4 Do you keep minimal office supplies, stationery (e.g. firm letterhead) offsite?
- 5 Do you store blank cheques in a secure, offsite location?⁶
- 6 Do you have an up-to-date inventory of your office and everything in it?⁷
 - * *This inventory is essential to your business continuity plans and for insurance purposes.*
- 7 If a partner or any member of staff died or left suddenly, what critical information is likely to go with them?
 - * *Would other staff able to take over or close their files, and ensure your client's interests are protected in that time the file is being transferred?*⁸
- 8 Does your firm have staff that are in sole possession of critical information (important dates, passwords, file and document locations, etc), vendor information, combination or keys to the safe, accounting information?⁹
 - * *Everything entrusted solely to one person can simply vanish!*
 - * *Therefore, when such staff depart, obtain all keys, computer disks and other proprietary or confidential documents that may have been taken home or offsite.*¹⁰
 - * *Sharing information, formalising certain procedures, and centralising systems like calendars and billing may help mitigate loss.*¹¹
- 9 Do you have at least one portable computer with a spare battery?¹²
- 10 Can you continue to service your clients without your computers?¹³
- 11 Have you ever considered installing a computer program that will be able to *undelete/reclaim* files that are inadvertently or *intentionally* erased?
- 12 Have you ever tried restoring your backup data? Does it work?
- 13 Ever considered a "buddy system" with another lawyer wherein you keep a copy of their critical information and they keep a copy of your critical information?¹⁴
- 14 Are your client records, critical client documents (e.g. wills, powers of attorney), critical business papers, etc kept in fire/flood proof cabinets or storage vaults?
- 15 Is it common for all staff to leave client files or documents of active matters on their desks or the floor whereas mostly old files/matters are stored safely in (fire/flood proof) cabinets?
 - * *The greater the amount of critical files/documents (e.g. land titles, wills) you have left in the open, the greater your exposure to liability in the event of a disaster.*
- 16 Does your firm have a copy of your master diary? If it is an electronic diary, do you back it up daily and store it offsite?
- 17 Do you have a list of court contacts, vendors, banks, opposing counsel, insurance agents, etc to notify of your situation, in the event of an emergency?
 - * *It is important that a copy of this list is kept offsite and accessible at all times.*
- 18 Have you considered taking photos of your office, equipment or furnishing?
 - * *Such pictures would come in handy for insurance purposes.*
 - * *Don't forget to take 'aftermath' photos in the event your firm suffers damage.*
- 19 Do you maintain a 'rainy-day' fund?
 - * *Such monies would be essential in helping your firm survive the aftermath of a disaster.*
- 20 Does your firm have insurance coverage? If so, what types of insurance has your firm purchased?
 - * *It is important that you have insurance to cover property loss, loss of revenue, reconstruction of records and configuration of computer systems.*
 - * *Where possible, your insurance should cover restoration of valuable papers, laptops, etc. as well.*
 - * *General liability insurance would cover instances of personal injury that may be the fault of your firm.*
 - * *Fidelity bond insurance to cover employee theft is also another type of insurance worth considering.*

Business Continuity Plans:

Communication 101

Central to any disaster recovery is communication with the firm's staff, clients, vendors, courts, and others who make your practice work.¹⁷

- 1 Do you have a list of your staff and their after hour contact numbers stored at your home?
- 2 Would your staff know who to call in the event of an emergency?
 - * *Develop a **telephone tree** and brief all staff on who they should call in an emergency.*
 - * *It is also vital to assign staff with pre-assigned responsibilities to contact each other and establish their condition and whereabouts in the event of an "accident/disaster".*
- 3 Have you provided selected staff with paper and electronic copies of internal telephone lists?
- 4 Do you have a copy of your client database with critical information, including names, phone numbers and addresses?¹⁸
 - * *The copy of your client database could be in soft copy on a portable hard drive or better yet a paper print out.*
- 5 If you do keep a copy of your client database and other contacts, how often do you update this information?
- 6 Do you have an appointed staff who will contact clients to inform them of the situation and provide them available emergency telephone numbers?
- 7 Do you have a plan to determine the current status of each active matter and communicate with your clients about them?¹⁹
- 8 Do you have a **referral contact with another firm** so that you can ask them to handle key practice matters, for example, requesting continuance or rescheduling a deposition?²⁰

Did You Know?

- ♦ Not storing and backing up your firm's data and work could be more of a threat to your practice than leaving your firm's doors wide open in the night when you leave the office! It would actually be easier to replace the contents of your office than all the data on your computer.¹⁵
- ♦ Any disruption of your firm's revenue stream, especially a disruption that lasts for more than 48 hours, could have significant impact on your practice. As well as the usual ongoing expenses, e.g. payroll, you may have to finance a myriad of disaster-related costs.¹⁶

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- ⁶ Daniel Pinnington & David Bilinsky, 'Preparing Your Finances for the Unexpected', *Managing the Finances of Your Practice*, LawPRO, pg 16 (cited henceforth as Pinnington & Bilinsky) <www.practicepro.ca/practice/Managing_Finances_booklet.pdf>
 - ⁷ Pinnington & Bilinsky, pg 17
 - ⁸ Suzanne Rose & Jim Calloway, 'Steps to Take in a Recovery Effort', *GP Solo Magazine* June 2002, pg. 2 (cited henceforth as Rose & Calloway) <<http://www.abanet.org/genpractice/magazine/2002/jun/rosecalloway.html>>
 - ⁹ *Ibid.*
 - ¹⁰ Edward Poll, 'Disaster Planning After the Apocalypse', *Law Practice Today*, October 2005, pg. 2 <<http://www.abanet.org/lpm/lpt/articles/mtt10051.html>>
 - ¹¹ Rose & Calloway, pg. 2
 - ¹² Bruce L. Dorner, 'Getting Up and Running', *GP Solo*, December 2006, pg. 1 (cited henceforth as Bruce Dorner) <<http://www.abanet.org/genpractice/magazine/2006/dec/gettingupandrunning.html>>
 - ¹³ Patricia A. Yevics, 'Preventing Data Disasters with a Good Backup Plan', *GP Solo*, Spring 1997, pg. 3 (cited henceforth as Patricia Yevics) <<http://www.abanet.org/genpractice/magazine/1997/springtpg/index.html>>
 - ¹⁴ Bruce Dorner, pg. 1
 - ¹⁵ Patricia Yevics, pg. 1
 - ¹⁶ Pinnington & Bilinsky, pg. 16
 - ¹⁷ Edward Poll, 'Notifying the People Around You', *GP Solo*, December 2006, pg. 1 <<http://www.abanet.org/genpractice/magazine/2006/dec/notifyingthepeople.html>>
 - ¹⁸ Bruce Dorner, pg. 1
 - ¹⁹ Wells H. Anderson, 'Learning to Crawl: Relocation Coping Strategies', *GP Solo*, December 2006, pg. 2, <<http://www.abanet.org/genpractice/magazine/2006/dec/learningtocrawl.html>>
 - ²⁰ Edward Poll, 'Notifying the People Around You', *GP Solo*, December 2006, pg. 1 <<http://www.abanet.org/genpractice/magazine/2006/dec/notifyingthepeople.html>>

Business Continuity Plan: To Dos

The key to your successful navigation of a crisis will be your people and your main goal is to get them the instructions, training and tools to be able to do the job when that unfortunate time comes.²¹

To Dos

- ◆ Focus on keeping your law firm running, not just the computers!²²
- ◆ Focus on practical issues and whether your BCP will ultimately be workable.²³
- ◆ Write your BCP as “guidelines” rather than excessive detail²⁴ - keep the plan simple and understandable.
- ◆ Your BCP should set forth a schedule of who does what.²⁵
- ◆ **Communicate your BCP to all staff!** There is no point in having a BCP, if all staff are unaware of the procedures and steps to take in an emergency.
- ◆ Identify staff who will play key roles in the disaster recovery. Ensure that you appoint backup staff in case these key staff are unavailable.²⁶
 - * *Some people react better than others in a crisis situation, identify them.*
- ◆ Run fire drills.
- ◆ Send selected staff for training in handling disasters/crisis.
- ◆ Have dry runs and tests with staff on your BCP. Give your staff a chance to learn the skills that they will need and to practice enough to be comfortable.²⁷
- ◆ Keep your BCP updated. Although it would seem a challenging feat depending on the size of your firm and number of staff, it is important that you review and revise your BCP at least once a year. Otherwise, it may be useless when you need it most.²⁸
- ◆ Establish a rally point a safe distance away from your office so you can confirm that everyone is accounted for.
 - * *Your staff are your firm’s most precious resource!*²⁹
- ◆ Create a disaster recovery file that includes photocopies of important materials, printouts of client information, tech support telephone numbers, serial numbers of all hardware and office equipment, and other pertinent information.
 - * *A physical file makes it more convenient to drop in new or updated information when you buy new software or hire a new employee, instead of putting it aside with good intentions.*
 - * *Include a printout of the office calendar and update it regularly. Make at least two (2) copies of both the plan and the file. Store one in the office, and one offsite.*³⁰
- ◆ Identify alternative manual procedures to perform critical functions normally handled by computers.³¹
- ◆ Restore your backups and see what really happens.
- ◆ Prepare a list for emergency preparedness – flashlights, water, food, blankets, toilet facilities.
- ◆ Have a written succession plan! A clear plan for succession can help the firm survive, and can smoothen the transition, should a primary ‘rainmaker’ or managing partner dies.³²

Your law firm can, and even may, survive a disaster without a BCP, but having one clearly will increase your chances of success.³³ The biggest of impact of a “accident/disaster” would be on your firm’s cash flow: billable hours will be lost, staff morale may be affected thus affecting productivity, the longer your firm’s recovery time, the more likely your clients are to take their business elsewhere.

²¹ Dennis Kennedy, ‘Ten Tips for Dealing with Disaster Recovery and Business Continuity Issues’, Law Practice Today, October 2005, pg. 2 <<http://www.abanet.org/lpm/lpt/articles/mgt10053.html>> (cited henceforth as Dennis Kennedy)

²² Duitch & Oppelt, pg. 1

²³ Duitch & Oppelt, pg. 1

²⁴ *Ibid.*

²⁵ Wells H. Anderson, ‘Learning to Crawl: Relocation Coping Strategies’, GP Solo, December 2006, pg. 1 <<http://www.abanet.org/genpractice/magazine/2006/dec/learningtocrawl.html>>

²⁶ Dennis Kennedy, pg. 1

²⁷ Dennis Kennedy, pg. 2

²⁸ Ed Poll, ‘Notifying the People Around You’, GP Solo, December 2006, pg. 1 <<http://www.abanet.org/genpractice/magazine/2006/dec/notifyingthepeople.html>>

²⁹ Bruce Dorner, pg. 2

³⁰ Rose & Calloway, pg. 2

³¹ Duitch & Oppelt, pg. 1

³² Edward Poll, ‘Disaster Planning After the Apocalypse’, Law Practice Today, October 2005, pg. 1 <<http://www.abanet.org/lpm/lpt/articles/mtt10051.html>>

³³ Rose & Calloway, pg. 1

CALENDAR

of Events: 2007

January '07

9 January: Newsletter
RMQ Dec '06

17 Jan: Bar Council CLE
Ethics Lecture: RM Session

18 Jan: Johor Bar CLE
Ethics Lecture: RM Session

February '07

28 Feb: Bar Council CLE
Ethics Lecture: RM Session

March '07

2 Mar: ISO 9001:2000 Certification Audit
NQA External audit for PII & RM Department

8 - 10 Mar: National Maritime Conference
'Malaysia as a Maritime Nation: Meeting Expectations'

26 Mar: PII & RM
PII 2007 & RM Briefing for Bar Council Secretariat Officers (Follow-up Session)

April '07

5 Apr: Newsletter
RMQ Mar '07

5 & 12 Apr: RM Training @ KL Legal Firms:
Risk Management for Practitioners

14 Apr: Penang Bar CLE
Ethics Lecture: RM Session

20 Apr: Broker Tender 2008
Open Tender for Broker Services for the MBC's PII Scheme 2008 Begins (Advertised in NST)

18 & 25 Apr: RM - JLT Interactive
RM Systems Meeting

30 Apr: RM Brochure
Reinventing Your File Transfer System

30 Apr: Broker Tender 2008
Deadline to participate in Broker Tender.

May '07

RM Training @ State Bars:
Risk Management for Practitioners
4 May : KL Bar
18 May : Malacca Bar
24 May : Kedah/Perlis Bar
25 May : Penang Bar

4 May: PII Committee Meeting

5 May: RM Training @ Legal Firm
Risk Management for Practitioners

9 May: Bar Council CLE
Ethics Lecture: RM Session

10 & 28 May: RM - JLT Interactive
RM Systems Meeting

15 May: Broker Tender 2008
Deadline for Submission of Broker Tender Proposal

June '07

1 Jun: PII Committee Meeting

5 - 8 Jun: LawAsia
20th Biennial LawAsia Conference, Hong Kong

16 Jun: RM Training @ Legal Firm
Risk Management for Practitioners

Newsletter
RMQ Jun '07

RM: Bar Council CLE
Professional Standards Course

July '07

6 Jul: PII Committee Meeting

18 Jul: Johor Bar CLE
Professional Standards Course

RM Training @ Johor Bar
Risk Management for Practitioners

RM @ Bar Council: Getting Started.
A workshop for lawyers setting up practice.

RM: Legal Practice Review 2007

RM: Bar Council CLE
Professional Standards Course

August '07

3 Aug: PII Committee Meeting

RM: Legal Practice Review 2007

RM: Bar Council CLE
Professional Standards Course

RM: Penang Bar CLE
Professional Standards Course

September '07

7 Sep: PII Committee Meeting

RM: Bar Council CLE
Professional Standards Course

RM: Legal Practice Review 2007

PII & RM: Survey 2007 Begins

October '07

5 Oct: PII Committee Meeting

29 - 31 Oct:
The 14th M'sian Law Conference

Newsletter
RMQ Sep '07

RM: Bar Council CLE
Professional Standards Course

PII & RM: Survey 2007 Ends

November '07

2 & 30 Nov: PII Committee Meeting

RM: Bar Council CLE
Professional Standards Course

RM 2008 Calendar

December '07

RM: Bar Council CLE
Professional Standards Course

RM:
Practice Area Checklists

* The PII & RM Department's Calendar of Events is subject to change.
* For more information on any events, do contact the PII & RM Department.

PII Scheme: Q & A 2007

In 2006, our PII Chairman, Mr Rangunath Kesavan sat down for a candid, in-depth interview, on our PII Scheme with the Malaysian Bar Council's Web Reporter. They spoke at length on our PI Scheme's history, its problems and the Scheme's future direction.

Now, a year later, the RMQ team picks up from where the interview left off to see what changes/developments have taken place.

Q You mentioned in your 2006 interview, that the PII Scheme as it existed, was *not* working. How has that changed in the past year?

In 2006, instead of protecting members, our Scheme was a burden on members. We saw 14% of our members (those with claims) paying 50 – 60% of the *total premium pool*. The reason for this was two-fold: the introduction of No Claims Bonus (NCB) in 2003 which necessitated a change in our claims loading structure. NCB also contributed to a growing non-notification culture amongst members – members refused to notify for fear of losing their NCB and being loaded.

2007 saw drastic changes to both these structures. We removed the NCB structure and revamped the claims loading structure. The 2007 claims loading structure only loads a member upon payout by the Insurers; it does *not* penalise a member upon notification. This change is for the better, a positive move towards a more equitable Scheme.

Q How do the 2007 terms and conditions differ from that of 2006?

This year, we no longer have

- ♦ *Punitive and excessive loading structures for firms with claims experience.* It is hoped that this change will encourage members to start notifying circumstances/claims and avoid a culture of self-defence in spite of PI cover. We do not want our members to obtain PI merely for the sake of getting their 'Sijil Annual' every year. We would like members to see PI as a benefit to their firm, as opposed to an added liability.
- ♦ *Work/hazard/responsibility loading.* This translates to mean a flat premium that applies across the board to all lawyers.
- ♦ *Removal of the Insured vs Insured Exclusion.* We have now also extended cover to insured vs. insured claims, wherein a lawyer, representing his client, sues another lawyer and is countersued by that lawyer.

Q What are the tangible development/progress made in 2007?

We are making significant inroads into managing the **six (6) main problems** I highlighted to you last year, that is: gaining control of the Scheme, poor claims management, inability to obtain information, data and statistics from the Insurers, NCB, arbitrary claims loading, and member apathy.

Gaining Control of the Scheme. As mentioned, the Malaysian Bar Council (MBC) now has set up its own PII & RM Department. Slowly, the department is building up its expertise and involving itself more in the day to day running of the Scheme.

Poor Claims Management. Echelon CC S/B (Echelon), the third party claims administrator, for the MBC's PII Scheme, commenced operations in early 2006. In addition to managing claims notified since 2006, in March 2006 the team began taking over (from Crawford Loss Adjusters) the 2001 – 2005 claims files. The audit of all back year files from 2001 has given us more certainty on accuracy of reserves maintained. This puts us in a better bargaining position with Insurers when negotiating terms and conditions.

Having said that, although the appointment of Echelon has vastly improved administration of our claims management, there is still room for improvement in terms of level of service and competence. The PII Committee is committed to ensuring that there is such improvement through review and members' feedback.

Inability to Obtain Information/Data/Statistics. The iClaims system which supports Echelon is now up and running. Data mining on claims is being done periodically; this is proving to be very useful in our risk management projects and in assisting the PII Committee in determining the direction of the

Scheme, and negotiating the terms and scope of PI coverage for the Malaysian Bar.

NCB/Claims Loading. As mentioned earlier, our NCB structure has been removed. Claims loading structure has also now been changed to load members **only upon payout by insurers**. This change has contributed to increased efficiency and diligence in resolving claims and settlement, thus benefiting members afflicted by claims.

Member Apathy. Since 2005, the PII Committee and PII & RM Department's consistent efforts have helped increase member awareness of the PII Scheme, the workings of the PII Scheme, as well as risk management systems and procedures. Our various workshops, seminars, publications, roadshow have served us well in raising the profile of both PII and risk management in the Malaysian Bar's daily work.

You mention all these positive changes, but there was a big uproar late last year over the removal of NCB that even resulted in a motion calling for its reinstatement at the November 2006 EGM, were you expecting such a backlash?

Yes. Simply because the ideology behind NCB/claims loading is a very good one: reward the good, punish the bad. It made sense and subscribed to the notion of 'justice served'.

The reality of it was unfortunately not so. We saw fellow lawyers self-defending, rather than notifying their claims, lawyers leaving practice due to their inability to pay their high loadings. Instead of evoking concern among members, these scenarios were accepted as the norm; members saw PI purely as a means to an end to obtaining their Sijil Annual.

The PII Committee knew that pushing for such change would be an uphill task as it meant having to (1) change the profession's mindset, (2) explain to members the necessity for such changes, and (3) drive in the importance of having PII.

What damage control efforts were in place/launched to counter this backlash?

Prior to making the change, we openly discussed this matter at the March 2006 AGM, where members present gave their overwhelming support for the proposed change in NCB and claims loading structures.

The PII Committee spoke constantly about this issue to members, I wrote about the issue, detailing the

intricacies of the problem in almost *all my editorials* in the RMQ 2006. This proposed change was even discussed at Council level.

Subsequently, we went on a roadshow (the PII 2007 Roadshow) to all State Bars to explain these changes and why they were necessary for our PII Scheme's future and sustainability.

How has feedback been since then?

I believe there are those members who are still unhappy but they understand the reason for change. Take for example, during the PII 2007 Roadshow late last year, most members who came were initially very resentful and adamant that these changes were unacceptable. However, once the session ended, and they had had their concerns and queries addressed, most were appeased and could see why the PII Committee pushed for this change in 2007.

The latest PII buzz word seems to be "SIF", what is "SIF" and what's all the excitement about?

"SIF" stands for "self-insured fund". The LPA authorises the MBC to establish and maintain a fund or funds for the purpose of providing PII. The MBC is tentatively targeting a move to a self-insured model in the next 2 - 3 years. When conceptualising our three-year plan in 2006, the idea was mooted and given the go-ahead by the PII Committee. We are now awaiting a viability report on such a move before we plan our next step.

You may have heard that we held an Insurance Broker Tender recently. We have requested the participating brokers to present a model, structure/framework, timelines and key steps and milestones that are required of the MBC in order to ensure a smooth transition to a self-insured model and that the model is ultimately sustainable and profitable. Once the Committee has reviewed all the models provided, the proposal will be presented to Council and ultimately set out to the members to decide at the next AGM.

What further changes can the Malaysian Bar expect to see in the next 2 – 3 years?

The changes expected are linked closely to the materialisation of the MBC's own self-insured structure. Over the next 2 – 3 years much of the focus/discussion will revolve around the successful implementation and running of the self-insured structure.

We are on the web!
www.myPII.com.my

What's New?

RM Brochure: Reinventing Your File Transfer System

File transfers are the norm in any legal firm. For myriad reasons, files can be transferred from a partner to a legal assistant, between legal assistants, or from another firm. Notwithstanding due diligence exercises performed or undertakings from the other party, lawyers inheriting these files may also be inheriting a claim in waiting, if the file was badly managed previously.

The PII & RM Department has therefore introduced a short and concise checklist in a brochure to assist lawyers who "inherit" files. We've also included in this brochure "little known facts" that are part and parcel of file management in any legal firm.

- ! Look out for the brochure in your May/June Praxis.
- ! You can also download it from myPII.com.my or the Malaysian Bar website's 'Resource Centre'.

RM Legal Practice Review: We would like to come and see you!

The PII & RM Department is continuing with our Legal Practice Review project this year and we've scheduled July to September 2007 to visit 30 law firms!

Our officers will talk to you about your firm's operational processes, methods and systems. We will cover four (4) main areas: office management, accounts management, general litigation and real estate conveyancing. Each session will take no longer than 3 hours.

Our aim is to

- Provide an objective assessment of your firm's operational processes.
- Make recommendations (if any) to help your firm reduce or eliminate any identified issues that may lead to increased exposure to risk of claims.

- ! A report of the findings and recommendations will be made available to your firm.
- ! There will be **NO** costs involved on your part in this Review!
- ! For more information, call LiChin @ 03 - 2032 4511.

Next Edition:

Fire Your Clients. Or Your Staff. Or Yourself.

Most lawyers, generally lead hectic lives: mountains of paper work, deadlines, administrative work, phone messages to return, demanding clients, etc. Does this however, necessarily mean that they should work themselves to an eventual burnout?

In her article, Mary L. C. Daniel explores the "hazards" that come with being a lawyer. She talks about avoiding and negating the effects of daily practice stress. She also provides practical suggestions for things to do to address the most common causes of stress and subsequent burnout whilst in practice.

Coming in July 2007: "Getting Started"

A Workshop for lawyers setting up practice.

Disclaimer:

In compiling the information contained in this newsletter, the Malaysian Bar Council and Jardine Lloyd Thompson Sdn Bhd have used their best endeavours to ensure that the information is correct and current at the time of publication. We do not accept any responsibility for any error, omission or deficiency.

Material in the newsletter is intended to provide general information and should not be considered a substitute for the applicable PII Master Policy and Certificate of Insurance together with its Schedule. We strongly advise that you refer to the applicable Master Policy and Certificate for the full terms and conditions.

For more details and information, please contact PII & RM Department.

We are always looking at ways to improve this newsletter and work towards ensuring that any areas of interest which concerns Risk Management will be highlighted in this newsletter. We therefore welcome hearing from you on matters relating to this newsletter and the PII Scheme.



Every accomplishment begins with a decision to try.

Edward T Kelly



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