

# RISK management QUARTERLY



**Volume 4**  
Issue 4 December 2005

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A quarterly publication of Professional Indemnity Insurance Committee, Malaysian Bar Council in collaboration with Jardine Lloyd Thompson Sdn Bhd (JLT Malaysia)

<http://www.jltecsolutions.com/barcouncil>

## Editorial

Seasons Greetings and a Happy New Year!

This is our final edition of the RMQ for 2005. It has been an exciting year with much progress being made in relation to the PII Scheme and Risk Management endeavours. In this issue, we will reflect on the year past, all that we have learnt and also look forward to the year ahead.

2005 marked many milestones for the PII Committee; we hosted our very first PII Workshop that saw participation from countries in the Commonwealth jurisdiction. Not only was the Workshop a success, it was an event from which we learnt much and gained valuable information. Insights gained will hopefully aid us pave the way forward in terms of our PII Scheme and risk management projects. We have included the summaries of speeches from Day One of the Workshop in this edition; summaries of Day Two speeches will be in our next issue.

We have also negotiated new terms for 2006, the outcome of which has been fairly favourable for Members, with considerable progress made toward improving the current 2005 PII Scheme terms. A short summary of the 2006 terms has been included for your reference.

However, there is much room for improvement of our Scheme. We intend to conduct a major revamp of the Scheme and revise the No Claims Bonus and Claims Loading structure. Our experiences from the JCC has revealed the harshness and inequitable loading faced by Members, especially the sole proprietors and small firms with contingent claims. Some firms have been driven out of practice due to excessive premiums of up to RM70,000 – RM80,000. Therefore, it is our aim to address all these issues adequately in the coming year.

*Editorial continued next page*

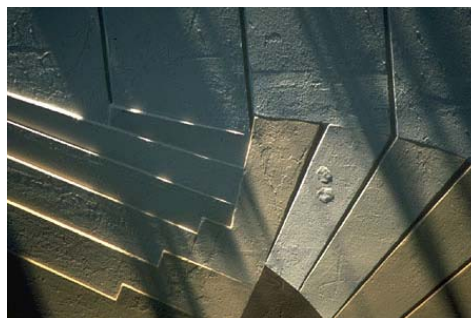
*From page 1*

Our Risk Manager has had a busy year: she underwent Risk Management training in Adelaide, conceptualised a Risk Management Seminar and was actively involved with the CLE Ethics Seminars (for Chambering students). The Risk Management department has also conducted a survey, published the RMQ and is a part of the Bar Council's ongoing ISO exercise. An overview of the Risk Management programme of 2005 has been included.

Additionally, as is our custom, we have in this issue a Risk Management article: *No Excuses for Missing Critical Dates* by Alistair Sim (Marsh UK Limited). Our aim in featuring this article is to continue with our efforts in raising awareness in relation to the importance of having good risk management practices within one's own firm. This article specifically focuses on time limits and timescales – the underlying causes of time claims, methods and fail-safes to prevent time claim errors and omissions.

Finally, the PII Committee is proud to announce that we will be setting up a separate PII Department in January 2006. This department will consist of three Executive Officers dedicated solely to oversee both risk management and professional insurance issues raised by Members. This is to ensure that Members have access to proper, valid and reliable information in respect of PII matters in addition to enhanced delivery of services.

*Ragunath Kesavan*  
*Chairman*  
*Professional Indemnity Insurance Committee*



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*The roots of true achievement  
lie in the will to become the  
best that you can become*

**Harold Taylor**

## RISK MANAGEMENT: NO EXCUSES FOR MISSING CRITICAL DATES

*Alistair Sim is Associate Director in the Professional and Financial Risks Division at Marsh UK Limited. This article first appeared in 'The Journal' (The Online Journal of the Law Society of Scotland, December 2002, page 46) and is reproduced here with their kind permission.*

*Please note that this article was written for Scottish lawyers and some aspects of the article may not be relevant/ applicable in our jurisdiction, the decision to print this article in its entirety is for its overall message on the importance of adherence to timescales.*

Whilst time bar claims are often assumed to be of principal concern to those involved in contentious matters, most areas of practice require adherence to timescales. All practitioners would be well advised to consider how those time limits are managed.

### WHAT ARE THE CAUSES OF THESE CLAIMS?

- ◆ No diary system at all!
- ◆ Inconsistent diarying of critical dates
- ◆ Incorrect date diarised, as a result of error as to the facts or law
- ◆ Diary system warnings not acted upon
- ◆ Client not managed properly

### HOW TO PREVENT THESE ERRORS AND OMISSIONS

The following questions featured in a time bar risk checklist from another jurisdiction. If you can genuinely answer 'Yes' to all the following questions, then you ought to be well in control of critical dates and the risk of time bar claims.

### CRITICAL DATE SYSTEMS AND PROCEDURES

- ◆ Does the practice have a formal procedure for recording critical dates and time limits?
- ◆ As part of the practice's induction procedures, are newcomers to the firm/ office/department instructed on the critical date systems and procedures?
- ◆ Are critical dates/time limits researched, identified and diarised as a priority at the outset of every matter?
- ◆ Does this also apply to time limits identified during the course of any piece of work?



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*They say that time changes things, but you actually have to change them yourself*

[Andy Warhol](#)



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*Do, or do not. There is no try*

[Yoda](#)



*A journey of a thousand miles begins with a single step*

**Lao-tzu**

- ◆ Are litigation checklists used to prompt consideration of issues including unusual time limits; periods (eg. nonage) that are disregarded when determining critical dates; whether additional defenders should be convened?
- ◆ Where fee earners from different departments are working on separate aspects of the same matter for a client, or on related matters for the same client, do the systems ensure that all concerned:
  - ◆ are equally aware of all critical dates/time limits?
  - ◆ know who is responsible for compliance with each critical date/time limit?
  - ◆ know who is responsible for keeping the client informed?
- ◆ Are all critical dates/time limits clearly referenced according to:
  - ◆ client?
  - ◆ file reference?
  - ◆ responsible partner?
  - ◆ fee earner(s) handling the file?
  - ◆ action to be taken?
- ◆ Do all diary systems, computerised and manual, contain “countdown dates” to the critical date/time limit, which show the fee earner and warn the responsible partner of:-
  - ◆ the optimum date(s) by which action should be taken?
  - ◆ the absolute last date by which action must be taken?
- ◆ Are critical dates included on the agenda for meetings with the responsible partner and discussed (impending deadlines receiving priority) irrespective of any other business?
- ◆ Where the responsible partner fears that a key date may be missed for any reason, does he/she intervene and reallocate work?
- ◆ Are all fee earners required to conduct a physical check of all their files on a regular basis?
- ◆ Are regular audits conducted by fee earners of other fee earners’ files on a random basis to check, for instance, that critical dates have been correctly identified, diarised and communicated to clients?



*Just because everything is different doesn't mean that everything has changed*

**Irene Peter**

## **MANAGING CLIENTS**

- ◆ Are clients advised of all critical dates and time limits?
- ◆ Are clients advised of the action(s) required by them in order that critical dates are complied with?
- ◆ Are clients advised of the consequences of failure to provide information or to take action which is time critical?

### LEARNING FROM NEAR MISSES

- ◆ Does the [head of department] keep a record of cases where critical dates/time limits would have been missed but for his/her intervention so that appropriate preventive measures may be introduced?
- ◆ Where any critical date has been missed, has the situation been thoroughly investigated and the underlying cause identified and remedied to prevent recurrence?

### CASE STUDIES

Consider the following case studies (some taken from *Ensuring Excellence, Even Better Practice in Practice*) which demonstrate the different ways in which critical date-related errors/omissions can result in claims. In each case, it is arguable that the arrangements referred to in the questions above, including checklists, file reviews and case review meetings would have prevented the claims arising.

#### Thinking Ahead

Mr Joiner slipped and hurt his back on an icy ladder at his work. His solicitor raised an action against his employers just within the triennium, relying on breach of the employers' common law duties. After a debate had been discharged and a couple of Minutes of Amendment allowed, the case came again before the Sheriff, who refused leave to amend yet again and dismissed the action on the pleadings as they stood, holding the common law case irrelevant. A statutory case would have had considerably higher prospects of success but had not been pled. Following an unsuccessful appeal, Mr Joiner sued his solicitor and recovered a substantial sum.

#### When A Triennium Isn't A Triennium

Harry had always wanted to take a trip in a hot air balloon. To mark twenty five years with the company, his colleagues clubbed together and arranged for him to go on a trip. Weather conditions on the day were less than ideal. Harry protested that he considered it far too windy to be taking off but the operators assured him that there was no problem. They made the point that there would be no refund if he decided not to go ahead. After a fairly turbulent take off, the flight had to be cut short because of the stormy conditions. In the course of an emergency landing, Harry was thrown out of the basket and sustained fairly serious injuries to his back and fractured an ankle and both wrists. Harry's solicitor advised him that he appeared to have a strong case against the balloon operators. The solicitor was meticulous in advising Harry of the timescale for bringing his claim and he was careful to note the critical dates on the file and in his diary system.



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*Success isn't permanent, and failure isn't fatal*

**Mike Ditka**



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*It's kind of fun to do the impossible*

**Walt Disney**



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*If you want to make enemies, try to change something*

**Woodrow Wilson**

Two and a half years on, prompted by the countdown reminders which had been set up in his diary system, the solicitor raised proceedings when it seemed that negotiations with the operators' insurers were going nowhere. At this stage, it was pointed out by the solicitors instructed by the operators' insurers that the prescriptive period in this claim was two years, not three years as Harry's solicitor had assumed.

### **Time Bomb**

A firm of solicitors had a computerised diary system which generated a print-out at the beginning of each week of those matters with critical dates in the following three calendar months. An assistant who had been with the firm for only a few months and had been allocated one personal injury case left for another job. On his departure, no one took any steps to change the information in the computer system to ensure his critical dates would appear on the weekly printout of one of the other court assistants. None of the court assistants therefore received any warning on their print-outs about the critical dates on the file previously handled by the ex-assistant.

### **Missed Date - Client's Fault?**

Sometime after 13 January 2002, solicitors were consulted by Mr X regarding the pursuit of an Application to the Employment Tribunal for unfair dismissal. It appeared that Mr X's employment had been terminated on 13 January 2002 which meant that the Application required to be lodged by 12 April 2002. An application dated 8 April was received by the Office of the Employment Tribunal on 9 April and acknowledged by them on 10 April. It subsequently transpired that Mr X had been dismissed from his employment on 6 January 2002 and on that basis his Application was out of time. A claim has been intimated against the solicitors for failure to lodge an Application timeously with the Employment Tribunal.

These case studies will be considered further in a future issue of this page.

The information in this page is (a) intended to provide guidance on matters of practical risk management and not on issues of law, (b) necessarily of a generalised nature and (c) not intended to endorse or recommend any particular product or service. It is not specific to any practice or to any individual and should not be relied on as stating the correct legal position.



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*We don't see things as they are, we see them as we are*

**Anais Nin**

## 1st MALAYSIAN PII WORKSHOP 17-18 NOV 2005: ROUND UP REPORT Part I

In conjunction with the recently held 13<sup>th</sup> Malaysian Law Conference in Kuala Lumpur, the Professional Indemnity Insurance (PII) Committee hosted its very first PII Workshop – conceived specifically for the legal profession in Malaysia. This unique event was a two-day Workshop held on 17 and 18 Nov 2005 at the PWTC, Kuala Lumpur.

Aptly themed “*The Professional Indemnity Insurance Scheme – The Way Forward*”, the Workshop featured speakers, all experts in their respective fields, from Law Societies, Insurers and Reinsurers, Brokers, Risk Management Firms, Legal Practitioners and Academicians from various Commonwealth countries.

The informal atmosphere contributed greatly to its success with speakers and delegates alike having a sense of camaraderie throughout the two days.



L-R: Mr. Ragunath Kesavan (MBC), Mr. K Anantham (Skrine), Ms Susan Forbes and Mr. Michael Gill

### SPEAKER HIGHLIGHTS DAY ONE

The Workshop’s first session was a good elucidation of PII Schemes from around the Commonwealth jurisdiction: we had Mr. Ragunath Kesavan, PII Chairman as the very first speaker on the Malaysian Bar’s PII Scheme followed by Mr. Michael Gill who gave an insight into the New South Wales Scheme, ending with Ms Susan Forbes who presented a short history of the Canadian experience.



L-R: Mr Tony Mitchell, Mr Frank Maher, Mr Ragunath Kesavan, Ms Susan Forbes, Mr Michael Gill, Mr Matthew Gosling, and Mr Mahindrajit Singh



Mr. Ragunath Kesavan

**Mr. Ragunath Kesavan**  
**PII Committee Chairman, Malaysian Bar Council**  
***“Malaysian Experience – The Way Forward”***

Mr. Ragunath’s candid and informal delivery on the Malaysian Bar’s PII Scheme from its inception in 1992 to-date was informative. He divided his speech into segments, starting with a brief outline of the history of the Scheme before moving on to the technicalities of the Scheme and, ending with a critique of the current Scheme and the positive steps which have been taken or put in place to further enhance the Scheme.

The Scheme is unique as it is the first and only mandatory scheme for professionals in Malaysia. It currently covers approximately 12,000 members carrying out functions and services which are customarily and legitimately performed by lawyers in Malaysia.

Mr. Ragunath also highlighted that the inculcation of a risk management culture in the profession was high on the PII Committee’s list of priorities. This will aid Members in managing and reducing their individual and overall exposures. Therefore, to complement this effort, members have to understand how the PII Scheme operates and move away from the current sentiment that the Scheme is an additional burden to the difficulties of running a practice.



Mr. Michael Gill

**Mr. Michael Gill**  
**Senior Insurance Partner – Phillips Fox**  
***“New South Wales: Lawyers’ Professional Indemnity”***

Mr. Michael Gill traced the history of LawCover, their experience and gave his ideas as to what’s important, what has worked and what he thinks is good for Schemes in general.

He spoke about their Scheme’s inception as a voluntary professional indemnity scheme in the 1960s that was then remodelled to a compulsory Scheme in 1979. This Scheme was again re-evaluated in 1986 and, based on the findings, the Law Society embarked on a Mutual Fund (SMIF years)<sup>1</sup>. Mr. Gill then sketched out the effects of the Law Society’s move from SMIF towards HIH Insurance Limited (HIH<sup>2</sup>), the eventual collapse of HIH and its effects. To round up, Mr. Gill summarised that regardless of the competitive advantages and

<sup>1</sup> Michael Gill, *Lawyers’ Professional Indemnity: New South Wales*, pg.6

<sup>2</sup> HIH comprised several separate government-licensed insurance companies, including HIH Casualty and General Insurance Limited, FAI General Insurance Company Limited (FAI), CIC Insurance Limited (CIC) and World Marine and General Insurances Limited (WMG). HIH wrote many types of insurance in Australia, the USA, and the UK. In Australia, this includes compulsory insurance (such as workers’ compensation and compulsory third party motor vehicle) and non-compulsory insurance (such as home contents and travel insurance). According to the HIH 2000 Annual Report the company had gross premium revenue of \$2.8 billion, total assets of \$8.0 billion, total liabilities of \$7.1 billion, with net assets of \$900 million.



cost efficiencies of well-regulated and well-run mutuals, the political environment in Australia at the moment is not supportive of a move to a mutual and therefore the future of the NSW PI Scheme now lies with the Australian Prudential Regulatory Authority (APRA) approved general insurance company which will be tested in coming years.

Before concluding, he also touched briefly on the claims experience in New South Wales, highlighting problem areas and describing the safeguards and risk management practices they have employed over the years. He further elaborated on their comprehensive Risk Management Education Program, its objectives, methodology, key components, and achievements thus far.

### **Ms Susan Forbes** **Director of Insurance – Law Society of British Columbia** **“A Short History of a Canadian Lawyers’ Insurance Program”**

“A Short History of a Canadian Lawyers’ Insurance Program” was a concise, relevant and constructive discourse on the 34-year history of the Law Society of British Columbia by Ms Forbes<sup>3</sup>.

She outlined their programme right from its very inception in 1971, the reasons and objectives behind that step, the structural changes and coverage expansions that have taken place in the intervening years.

Ms Forbes then moved on to describe the current Scheme of the Law Society of British Columbia and its structure. She highlighted the critical components of their programme as:

- ◆ Claims-handling and the factors which contribute to their very successful and well-received handling of claims
- ◆ Coverage
- ◆ Statistics – how vital it is for any PI Scheme to own and utilise them effectively.
- ◆ Having two separate approaches to their Risk Management activities:
  - (i) Focused risk management which Ms Forbes deemed most effective as it is targeted specifically at recent developments in the law or practice traps that could give rise to claims against the unaware or uninformed.
  - (ii) Offering risk management education through publication and presentation.



Ms Susan Forbes

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However, on Thursday, 15 March 2001, HIH received approval from the NSW Supreme Court to place HIH into provisional liquidation. Tony McGrath of KPMG was appointed as provisional liquidator to HIH and 17 of its controlled entities. Provisional liquidation is a temporary form of administration that gives HIH time for the provisional liquidators to review HIH operations and assess the financial position. HIH insurance is now in run-off, which means it is managing its outstanding claims and not writing any new business. This could take several years to complete; some have suggested as long as 10 years. **Source:** [http://www.aph.gov.au/library/intguide/econ/hih\\_insurance.htm](http://www.aph.gov.au/library/intguide/econ/hih_insurance.htm)

<sup>3</sup> Susan Forbes, A Short History of a Canadian Lawyers’ Insurance Program, pg. 2



Mr. Frank Maher

**Mr. Frank Maher**  
**Partner – Legal Risk**  
**“Risk Management Programme for the Profession – The Link with Insurance”**

Mr. Frank Maher’s speech was an insightful discourse of the experience in England and Wales. He discussed their:

- ◆ PI Scheme
- ◆ Claims Experience
- ◆ Risk Management Systems
- ◆ Getting buy-in
- ◆ The link between risk management and insurance

Mr. Maher candidly touched on the history of PI in the English Legal Profession and it’s problems – how they began with a Master Policy in 1976, the move to SIF and all its inherent problems, the experiences learnt from that period and how the open market was similarly problematic.<sup>4</sup>

Mr. Maher also looked at the advantages of a master policy and/ or mutual fund:

- ◆ Consistent claims handling by Law Society approved panel
- ◆ Allows for coordination on major claims – lending claims, financial services
- ◆ Can settle cases in the interests of the profession where liability is unresolved between two or more firms
- ◆ Represents the whole profession – can take test cases economically
- ◆ In the case of a mutual, not subsidising other professions and, in theory, ploughing back profits into the fund



He also made a comparison between PI claims in the UK and the USA/ Canada<sup>5</sup> by type of work:

	<b>UK</b>	<b>USA &amp; CANADA</b>
Personal Injury	17%	32%
Property	46%	16%
Matrimonial	5%	10%
Company/ Commercial	5%	9%
Probate, Estates and Trusts	7%	9%

Reasons behind client dissatisfaction, *inter alia*, poor service, inefficiency, time taken, a lack of interest in the case, inexperience, poor communication<sup>6</sup> and current issues surrounding the PI Scheme in the UK now including firms limiting liability<sup>7</sup>, etc. were also delved into.

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<sup>4</sup> Frank Maher, Slide 2 Powerpoint Presentation  
<sup>5</sup> Frank Maher, Risk Management Programme for the Profession: The Link with Insurance, pg. 4  
<sup>6</sup> Frank Maher, Risk Management Programme for the Profession: The Link with Insurance, pg.6  
<sup>7</sup> Frank Maher, Risk Management Programme for the Profession: The Link with Insurance, pg.8

Mr. Maher then moved on to address emerging risks due to:

- ◆ Globalisation
- ◆ Larger Claims
- ◆ Conflicts
- ◆ E-mail Risk
- ◆ Anti-money laundering

Before ending, he spoke in detail on Risk Management: its standards, tools, practices and the ways in which risks can occur and be avoided – effective risk management and, finally, gains that can be obtained from maintaining risk management culture. He then explained a little of the LEXCEL<sup>8</sup> standard which is a framework designed to aid law firms in managing risks.

He concluded by stating that we are not looking at eliminating risk but making informed choices about it.

**Mr. Tony Mitchell**  
**Managing Director, Financial Solutions –**  
**JLT Risk Solutions Asia Pte Ltd**  
**“Fundamentals of Lawyers’ PI Schemes From the Broker’s**  
**Perspective”**

Mr. Mitchell started by stating the ground rules, key principles and options in relation to PI Schemes. He also summarised the advantages and disadvantages of all basic options available to PI Schemes.

Using the PII Scheme of the Malaysian Bar as illustration, he made specific reference to matters such as the Bar’s responsibilities towards its members as well as to the public. He also touched on the mechanics of the Scheme.

He then sketched an outline of the current position of the Scheme and elaborated on the role of Jardine Lloyd Thompson Sdn Bhd (JLT) in the revamp of the Scheme since JLT became broker in 2005. He included details of the goals realised as a result of the close collaboration between JLT and the Bar Council and touched on the goals which is hoped will be achieved in 2006.

Mr. Mitchell also touched on claims management and looked at the claims history of the Scheme thus far. He then went on to frame possible suitable



Mr. Tony Mitchell

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<sup>8</sup> *Lexcel is the United Kingdom Law Society’s **practice management quality mark**. Written specifically for the legal profession, it incorporates the best elements of ISO9000 and Investors in People and specifically places them in the legal context. It allows all types and sizes of firms and legal departments to undergo independent assessment to certify that certain practice management standards are being met. Lexcel first saw the light of day in 1998. Since then, more than 500 firms and legal departments have registered for assessment – with over 425 of them gaining accreditation* ([http://www.lawsociety.org.uk/documents/downloads/LexcelLink45631\\_01.pdf](http://www.lawsociety.org.uk/documents/downloads/LexcelLink45631_01.pdf), Dec 2005).

future structures while at the same time looking at developments in other countries – Hong Kong, Australia, Canada and Singapore.

Mr. Mitchell's speech, in many ways complemented Mr. Ragnath Kesavan's presentation in that he looked at PII Schemes from a Broker's point of view – giving an insight, and clarifying some of the queries and concerns Mr. Ragnath had highlighted earlier with regard to the Malaysian Bar Scheme.



Mr. Mahindrajit Singh

**Mr. Mahindrajit Singh,  
Lecturer, Faculty of Law, University Technology MARA  
“Risk Management & Professional Indemnity Insurance – Issues,  
Principles and Practice”**

Mr. Mahindrajit began with an introduction to the concept of risk, risk management and the need for insurance. He then went on to discuss

- ♦ The issues, principles and practice governing professional indemnity insurance,
- ♦ The meaning of professional indemnity;
- ♦ The policy cover: the limit of indemnity, exclusions and extensions;
- ♦ The self-insured excess clause;
- ♦ What an underwriter wants to know; the proposal form and the basis of contract clause;
- ♦ Assessment of the risk; and the policy wordings

Finally, he also briefly discussed the principles and procedure of claims.

*PII WORKSHOP NOV 2005 – ROUND UP REPORT Part II to be continued in RMQ Vol 5 Issue 5*



Welcome Reception at Bon Ton Restaurant, Ceylon Hill



JARDINE LLOYD THOMPSON  
SDN BHD (16674K)

**SUMMARY OF MAIN TERMS FOR YEAR 2006**  
**THE MALAYSIAN BAR PROFESSIONAL INDEMNITY INSURANCE SCHEME**

[Please refer to the 2006 Certificate of Insurance for full details]

No.	Item	Description
1.	<b>Base Premium</b>	The Base Premium is RM1,500 per Legal Practitioner. This is then subject to Responsibility, Work, and Claims loading, as applicable.
2.	<b>Mandatory Limit &amp; Base Excess</b>	The Mandatory Limit and Base Excess of a Firm are based on the number of Legal Practitioners in the Firm.  The Base Excess is the amount of an insured loss arising from any notified Claim or Circumstance or Defence Costs for which the Insured/Firm is financially responsible.
3.	<b>No Claim Bonus (NCB)</b>	For 2006, Insurers have revised the NCB as follows: <ul style="list-style-type: none"> <li>a. For Firms with <b>NO notified claims or circumstances</b> since 1.1.2001 : 50%</li> <li>b. For Firms with <b>CLOSED claims or circumstances</b> which did not incur any payment since 1.1.2001 : 40%</li> </ul>
4.	<b>Responsibility Ratio</b>	<b>Ratio of UNQUALIFIED STAFF to LEGAL PRACTITIONERS:</b> <ul style="list-style-type: none"> <li>a. Firm has 6 or more staff to one Legal Practitioner : 10% loading</li> <li>b. Firm has more than 10 staff to one Legal Practitioner : 15% loading</li> </ul>
5.	<b>Work Loading</b>	<b>TYPE OF WORK:</b> Based on the total percentage of fees derived from <i>residential and commercial conveyancing and civil litigation work</i> . Scale is as follows: <ul style="list-style-type: none"> <li>a. 20 – 30% : 7.5% loading</li> <li>b. 31 – 50% : 12.5% loading</li> <li>c. 51 – 75% : 17.5% loading</li> <li>d. over 75% : 22.5% loading</li> </ul>
	<b>Claims Loading</b>	This will be applied to Firms who have reserves set by Insurers against their <b>notifications [claims and circumstances] from 1.1.2001 to-date</b> .  Firms who have notified only ONE Circumstance <b>or</b> only ONE Notice of Demand against which Insurers have set a nominal reserve will enjoy a <b>reduced NCB</b> .  Claims Loading follows the Legal Practitioner.  <i><b>Example:</b> Legal Practitioner A, who was a partner or sole proprietor at Firm X, leaves Firm X to join Firm Y. If Firm X had a notification, the premium for Legal Practitioner A at Firm Y will carry a Claims loading. The premium for Firm Y will be determined by its own claims record.</i>  <b>Note:</b> In some cases special excesses may apply.
7.	<b>Defamation</b>	Defamation claims are subject to an annual aggregate limit of RM250,000. The Base Excess of the Firm as stated in the Schedule of the Certificate of Insurance will apply.
8.	<b>Dishonesty of Partner</b>	Claims in respect of Dishonesty of partner(s) [not employees] are subject to an annual aggregate limit of RM250,000. However, this cover is only available if the Firm satisfies the provisions of Clause 7.2. of the Certificate of Insurance.  The Excess stated in Clause 6.3[c] of the Certificate of Insurance will apply.
9.	<b>Conflict of Interest</b>	The Base Excess will apply to claims arising out of a Legal Practitioner acting in conflict of interest <b>provided</b> the Firm has obtained a written waiver from its client.  Otherwise, the excess stated in Clause 6.3[a] of the Certificate of Insurance will apply.
10.	<b>Notification of Claims</b>	Firms are required to act in accordance with Clause 5.3 of the Certificate of Insurance and notify claims to the brokers as soon as practicable but no later than 30 days from the date the Firm first becomes aware of the claim.

**NOTE:** Due to revisions which may be made for 2006, the Clause numbers of the Certificate of Insurance as stated above may be changed in due course.

## 2005 RISK MANAGEMENT PROGRAMME OVERVIEW



*Whatever you do will be insignificant, but it is very important that you do it*

**Mahatma Gandhi**



*Problems are only opportunities in work clothes*

**Henry Kaiser**

The Risk Management Programme (RM Programme) began to take shape with the appointment of Corrinne Wong as Risk Manager in January 2005. A year on, we are building on that and setting up a dedicated PII/ RM Department based at the Secretariat.

### The Programme

Very quickly, Phase One of the RM Programme commenced with the publication of a quarterly in March 2005 simply titled **RISK MANAGEMENT QUARTERLY**. This 16-page newsletter is into its 4<sup>th</sup> edition; with a total print of 24,000 copies sent to all legal firms.

The Risk Manager also became actively involved with the Bar Council's ongoing RM Programme. Since June 2005, she has:

- ◆ Conducted a total of 8 Ethics Seminar sessions for students in chambers, reaching approximately 700 students. This included a session for students in chambers at the Johor State Bar in July 2005.
- ◆ Participated in a joint presentation on Risk Management held by the CLE Committee wherein, the Malaysian Bar's PII Scheme broker – Jardine Lloyd Thompson Sdn Bhd representative, Ms Ratnawati Osman, Corrinne Wong (Risk Manager, PII Scheme) and Tunku Farik Ismail (Messrs Azim, Tunku Farik & Wong) provided some insight to participants on risk management from their perspectives.

From 30 July – 11 September 2005, a survey was conducted to gauge the level of awareness the Members of the Bar had about the PII Scheme. The dismal response and results showed that much remains to be done through the RM Programme.

This increasing need to move the RM Programme forward saw the appointment of Ms Wong Li Chin as Risk Officer in September 2005. Ms Wong's engagement, in addition to the new Executive Officer that will be joining the PII/ RM Department in January 2006, will complement and aid the development of the RM Programme.

In November, the Risk Manager and Officer assisted the PII Committee in organising a successful and meaningful two-day workshop themed "Professional Indemnity Insurance: The Way Forward". The Workshop was held in conjunction with the 13<sup>th</sup> Malaysian Law Conference on 17 November 2005.

Lastly, the PII/ Risk Management Department is working hand in hand with other Departments in the Bar Council towards obtaining the ISO 9001:2000 certification by March 2006. The initial step of documenting the work processes and procedures of our respective departments has begun and is progressing towards completion. The PII/ Risk Management Department has completed work procedures and is reviewing its publication and survey procedures.

### Future Programmes

Next on the agenda will be the PII/ Risk Management Road Show expected to take place during the 1<sup>st</sup> quarter of 2006 that will travel to the various State Bars. This road show will feature members of the PII Committee, senior lawyers, Brokers, Insurers and the Risk Manager who will speak to Members on, *inter alia*, the 2006 Scheme, Risk Management, and claims management.

Other future programmes include:

- ◆ Developing a Practice Review for Law Firms
- ◆ Developing a Seminar for New Practitioners, and
- ◆ Drafting a Case Study



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*No matter how good  
you get you can  
always get better and  
that's the exciting part*

[Tiger Woods](#)



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*To accomplish great things,  
we must not only act,  
but also dream; not only plan,  
but also believe*

[Anatole France](#)



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## Next edition

- **Risk Management Article**  
Looking For Mr. (Or Ms.) Right:  
How To Choose A Law Partner
- **1st Malaysian PII Workshop**  
**17-18 Nov 2005:**  
Round Up Report Part II
- **PII Roadshow 2006**  
**Schedule**
- **FAQs**

### Disclaimer:

In compiling the information contained in this newsletter, the Malaysian Bar Council and JLT 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 JLT – Bar Council PII Department.



*Do not fear to be eccentric in opinion, for every opinion now accepted was once eccentric*

**Bertrand Russell**

### Footnote:

*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.*

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