



Linking Best Practices and Insurance

Recent updates on claims show that PI claims are up by 20% compared to 2008 with conveyancing/fraud claims at the forefront.

Whilst this is consistent with trends in an economic downturn, it is a concern. If this increase continues, even with a move to the proposed Self-Insurance Fund (SIF), Members may not be able to continue enjoying stable premiums. It is crucial therefore that Members not only recognise the need to identify risk exposures but implement and cultivate active risk management in your firms to reduce the risk of claims.

To get you started, Bar Council has developed a suite of practice resources for your use. Our suite of practice resources includes:

- ▶ Useful articles and tips in Jurisk! on practice management, finances, staff and even 'Green-ing' your firm;
- ▶ A free *Everyday Risk Management for Lawyers e-Guide* that will serve to reduce missteps in file management.

Simply visit the Malaysian Bar website to access these *free* practice tools.

For ideas and suggestions on increasing productivity and time efficiency, consider the *Practice Management Booklets*. For **RM3.00** each, these booklets provide practical advice on various topics from time theft to discount clamouring. Whether you're a litigation or conveyancing lawyer, you could also purchase our *Checklist CD* at **RM8.00**. It provides complete and comprehensive aide-memoirs for litigation and conveyancing matters. Increase your firm's efficiency and productivity with both these items; both are available for sale at the Bar Council secretariat.

On the PII front, Bar Council is pleased to inform that we have successfully negotiated for cover to remain as per existing terms and to maintain base premium at RM1,300.00. This is a positive result as there was an overall drive by insurers (globally) to push rates upwards/reduce coverage amidst concerns of rising number of claims. Negotiations



Inside This Issue

- 1 Editorial
- 3 Would-Be Client Wins US\$2.2M Verdict in Law Office Chair-Collapse Case
- 4 Guide to Completing the Online Proposal Form
- 6 Don't Stress Risk Management
- 10 SIF FAQ 2: PII Scheme vs. Self-Insurance Fund
- 12 Highlights

on the 2010 PII terms were concluded and approved by Bar Council in August 2009. See enclosed all-new **PI Bulletin** for more information. Salient details of the 2010 PII terms and conditions were circulated to all members via Bar Council Circular 251/2009 on 3 September 2009. You can download the Circular from the Malaysian Bar website.

With this renewal season underway, you should have received an email from our broker, Jardine Lloyd Thompson Sdn. Bhd. (JLT) on online submission of your Proposal Form. An initial email requesting for a nominee from your firm to whom JLT will send the username and password is followed by access (to the nominee) to the online Proposal Form.

Inline with our goal to move towards efficient, paperless renewals in the near future, Bar Council strongly encourages use of the online Proposal Form – it's fast, user-friendly and easy to use. See the *Guide to Completing the 2010 Online PII Proposal Form* on Page 4. Members who did not receive or respond to JLT's email should have received print copies of the 2010 PI Proposal Forms via post.

Work on the SIF continues; we have included in this issue a follow-up SIF write-up where we review the differences between the SIF and the current Professional Indemnity Insurance (PII) Scheme. We invite members to read the enclosed **PI Bulletin** for other SIF developments to date.

Coming back to Jurisk!, we hope you enjoy the articles we have featured in this issue. The first is a short article on the link between liability and good furniture, see Page 3 to find the connection. Another noteworthy article is our centrespread special on work stress. Author Martin Goh focuses on this oft-overlooked problem and how it affects the profession. He considers stress as a possible underlying cause of claims, and sets out the myriad stress busters that are available out there. So, '*Don't Stress Risk Management*'!

To end, the PII Committee is committed to ensuring the continued growth and sustainability of the Malaysian Bar PII Scheme. Your feedback is important to ensure the Scheme grows inline with your needs. Let us know how you feel about our efforts, be it on everyday issues with the broker, claims or even if it is suggestions on practice tools we can develop. Call or email our officers at the PII & RM Department.

Thank you.

Ragunath Kesavan President/PII Committee Chairman, Malaysian Bar

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Would-Be Client Wins US\$2.2M Verdict in Law Office Chair-Collapse Case

By Martha Neil *Reprinted with permission from the American Bar Association Journal, 2009.*

Robert Friedrich went to Fetterman & Associates in 2003 seeking representation in an auto accident case. But after his chair collapsed in a conference room at the North Palm Beach, Fla., law firm he wound up with a new tort claim.

A Palm Beach County jury on 6 May 2009 awarded Friedrich and his wife a little over US\$2.2 million in the chair-collapse case, apportioning 67.5 percent of the liability to the furniture store that sold the chair to the firm in 1998 and 32.5 percent to Fetterman, reports a local ABC News affiliate, WPBF.

The jury also found that the auto accident caused 25 percent of the injuries at issue, reports a local NBC affiliate, WPTV.

Friedrich struck his head on another piece of furniture in the conference room as he fell backwards from the chair, resulting in medical bills of more than US\$200,000.00 and the loss of his job of 16 years, according to the two stations.

"The man sat in a defective chair. The manufacturer should have been responsible for it entirely," says the law firm in a written statement provided to WPBF.

The articles don't include any comment from the furniture store.





MALAYSIAN BAR COUNCIL

Guide to completing the Online Proposal Form

1

LOGGING ON

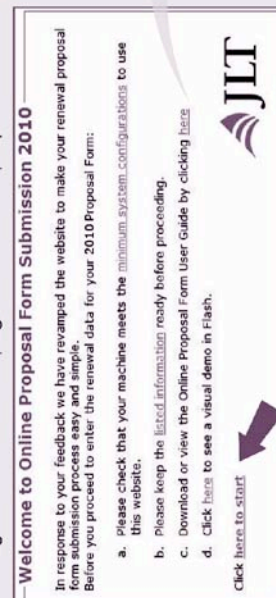
a Open your Internet browser (Internet Explorer/Safari/Firefox) and enter the web site address <http://www.myPII.com.my>



b Click on the button "2010 Proposal Form Online Submission" as indicated.



c You will be brought to the welcome page for the online proposal form submission.



Click on "here to start" as indicated.

Enter your firm code, 2009 certification number and click "Verify" as shown below:

d

Please enter your firm code, 2009 certification number and click the "Verify" button.

Enter Firm Code *

2009 Certification Number *

The system will then prompt you to enter your contact details. (You will only have to do this once. On subsequent visits, once you enter the firm code and certification numbers, you will be taken to Question 1 directly.)

e

Please provide your contact details.

Name *

Telephone Number *

Email

☐ I have read and understood the Terms & Conditions.

After you have provided your details, **click on the check box** to indicate your agreement to the Terms and Conditions. Then click **"Accept And Proceed"**.

*A more detailed online guide is available to help you complete the Proposal Form from the **Help link of the Online Proposal Form.***

2

COMPLETING THE PROPOSAL FORM

This is what the proposal form looks like.

a

For your convenience, the system allows you to copy details from the previous year, and then subsequently edit to update them. The following button at the top of each page allows you to do this:

Show Year 2009 Proposal Form Details

Once you have filled in all the details, click the button "Save & Continue" (bottom of the page) to move on to the next question/page:

b There are 8 questions in total. Once you have filled in all questions, on the completion page, **print** the proposal form and verify that the information has been entered accurately

After that, **click on the check box** and then the **"Submit"** button to submit the proposal form.

Your submission is now complete.

☐ Please tick the checkbox if you agree with the statement above. You may only submit the Proposal Form to JLT if the checkbox is ticked.

c Additional Information:

To view the Proposal form report with the details saved so far.

Takes you to the previous page.

To obtain help on specific questions.

Driving best practices – go online for greater efficiency and convenience

DON'T STRESS RISK MANAGEMENT Stress Relief Tips

YOUR FIRM can play a huge role in 'risk managing' the stress factor at work.

In developing Qantas' new 'Human Factors Risk Management Programme', Louise Raggett, Manager for Human Factors (Qantas), noted that human behaviours are influenced by an organisation's culture. Actively managing safety culture can positively influence behavioural outcomes.³

Drawing from Raggett, here are some suggestions that law firms can easily implement:

Provide lawyers with reasonable time and sufficient briefing to allow understanding of assigned tasks.

Provide lawyers with time off in lieu to compensate for the extra hours invested during peak periods.

Structure work in a team approach so that not every lawyer has to be contactable 24/7 and each lawyer need not work more than 50 hours per week (on average).

Partners and senior staff to set a leading example of good work-life balance.

Have policies where vacation leave must be cleared every work year.

THE INDIVIDUAL LAWYER also needs to play a part and take some affirmative action.

Ideas suggested by the Canadian Bar Association (on their website) include:

Whittle down the workload ~ Divide your work into smaller parts that can be accomplished in shorter intervals.

Develop timelines for bigger projects ~ Start at the very beginning of a file and think it through until the end, outlining all the steps, tasks to be accomplished, limitation periods, key dates, etc.

Laugh ~ Laughing reduces stress, improves your immune system and reduces anxiety and tension in your body. People will like you more. People will trust you more. People will want to be with you and the people who want to be with you are the sort of people you would like to be with.

Exercise ~ Keep active and make sure you get exercise every day. It can be as simple as taking a 20 or 30 minute walk. Biking, swimming, walking, competitive sports, gardening... Do something active every day.

Sleep ~ Get 7 to 8 hours of sleep every night. You will find yourself fresher and more vigorous if you get a proper night's sleep.

Outdoors ~ Spend time outdoors and catch that breath of fresh air and ray of sunshine.

Do something you like regularly ~ Reading, music, cooking, trekking, mountain climbing, triathlons... Keep your mind open and willing to learn new things and explore new activities. The point is to make sure you do it and if possible, do more of it.

Keep in touch with the people who are important to you. Invest in them ~ Make talking to a friend a daily affair or send a note/email to someone who you think would like to hear from you.

Set aside scheduled time for family and community activities so that you don't have the option of simply putting it off until later.

List your accomplishments and take time to feel good about just how much you've accomplished in a day.

Take regular holidays, a minimum of two weeks a year, preferably a month.

Remember... Most successful lawyers thrive because they've recognised there's life outside the law office.

DON'T STRESS RISK MANAGEMENT

By Martin Goh Echelon Risk Consulting Asia Pte Ltd

Stress as an Underlying Cause of Claims?

Saying that incorrect or inappropriate legal advice can lead to claims against lawyers and law firms is stating the obvious. It might be surprising to note however, that the actual underlying cause of most claims is not related to legal advice – Olivia Burren from St. Paul Travellers Professional Risks Ltd. observes that about 90% of all claims arise from an underlying administrative error.¹

Claims statistics for the Malaysian Bar PII Scheme seem to corroborate Burren's observations – between 2001 and 2008, only 13% of all claims resulted from incorrect advice and/or ignorance of the law – majority of claims appear to have arisen from oversight, forgetfulness, and/or carelessness.

Although nobody is above such human errors, it is quite another story if such oversights and mistakes occur with alarming frequency as a result of work stress. Although stress is difficult to define because it is a highly subjective phenomenon that differs for each individual, it is clear (from a range of surveys and studies) that stress at work is negatively correlated to performance at work – something that personal experiences and anecdotal evidence will attest to. In a way, it is analogous to *common mode failure* - where one event causes multiple systems to fail.

Stress and Lawyers

It is common knowledge that the practice of law is often incredibly stressful. Lawyers often deal with people or organisations in trouble. They also often work with interpersonal conflict in circumstances that invite moral discomfort, in a profession that can be aggressive, adversarial, competitive and combative... and we haven't even talked about the hours yet.

Some, or perhaps all, of the following might sound familiar:

- Inheriting 200 files in your first week and being expected to handle the files with minimal guidance/supervision from bosses.
- Working 16-hour days for long stretches during peak periods.
- Perpetually being on call – After office hours (even if it was a 16-hour day), over weekends, during personal leave, public holidays and when you are overseas.

Although stress seems to be a defining trademark of being a lawyer, it seems that little is being done to address the issue – The Survey on Working Conditions conducted by the Bar Council National Young Lawyers Committee in 2007 shows that almost 50% of young lawyers are not satisfied with work related pressures in practice and over 66% are considering leaving the profession within the next 5 years.

Effects of Stress

A report by HR consultancy, Cubiks², notes that high employee stress levels can have a major negative impact on the individual and organisational performance and that most employers either don't fully appreciate the risks associated with stress or are taking a calculated gamble that stress won't affect them. This supports Burren's observations that the underlying causes of most claims against lawyers result from the immense pressure lawyers are under.¹

Maybe it's time to take a deeper look at stress as a very real underlying cause of negligence/claims. This might include instances such as, failure to appear at hearings, appearing in the wrong court, mistakes in pleadings, forgetting to file cause papers/appeal notices or records, failing to carry out a land search, failing to file a caveat once a purchaser has paid a deposit and glaring mistakes in letters which may amount to defamation.

It is clear then that a part of managing your risks as a law firm should include managing stress-related risk factors. This not only has implications for claims, but would also drive positive effects in areas such as talent attraction, retention and succession planning, thereby contributing towards positioning your firm for long-term success.

What to do

Relieve stress with tips on our Centrespread (Page 6 & 7)

Conclusion

Whilst it is vital for lawyers to pay close attention to the legal advice being given to clients, let's not ignore other factors that might be important in helping to manage claims. **Manage your risks... Don't stress.**

1. Olivia Burren, Risk Management in Solicitors' Professional Negligence Claims, St. Paul Travellers Professional Risks Ltd, 2004.
2. Cubiks, 'Hot Under The Collar: How Stress Is Impacting On The 21st Century Business Environment', November 2002.
3. Raggett, A New Human Factors Risk Management Program for Qantas, 11 November 2006.

Continuing with our FAQ Series on the Self-Insurance Fund (SIF), we review, in this edition, the differences between the SIF and the current Professional Indemnity Insurance (PII) Scheme.


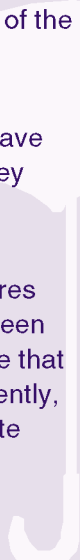
PII Scheme vs. Self-Insurance Fund

What differences will members see between the current PII Scheme and the Proposed SIF Scheme?



Members may be concerned about how the proposed Self-insurance Fund (SIF) will affect them. In the table below, we review the key areas of the PII Scheme and the changes Members can expect. As will be seen from the table below, in many cases there will be no material change from the current PII scheme.

	Current PII Scheme	Proposed Self-Insurance Fund
Description	The current PII Scheme primarily relies upon commercial insurers.	The proposed SIF would be a centrally managed fund established by the Bar Council to pay for Member's PI Claims. Insurance would still be used to protect against large/ accumulation of claims.
Insurer	Pacific & Orient Insurance Co Berhad	Pacific & Orient Insurance Co Berhad
Master Policy	The Master Policy is the 'umbrella' document signed between the insurer and the Bar Council. It sets out salient policy terms, coverage for retired and deceased Members. It also makes reference to the Certificate of Insurance.	The Master Policy will be amended to reflect the indemnity provided by the Self-Insurance Fund. The Bar Council will determine the size of the SIF, with a view of ensuring long-term, affordable PI protection for Members. This will be based on a thorough actuarial analysis of our claims trends.
Certificate of Insurance	Individual firms currently receive a Certificate of Insurance, providing details on the terms and conditions of cover under the PI Scheme.	The Certificate of Insurance will note the existence of the SIF; no other changes are envisaged.
Schedule of Insurance	Individual firms receive a Schedule of Insurance, providing details relevant to their firm regarding names of lawyers, premium, relevant limits and base excess.	No changes envisaged.
Limit of Indemnity	Each Member is indemnified up to the mandatory limit of their firm, above the applicable base excess.	Overall, there will be no changes to the limits of indemnity with the SIF.

	Current PII Scheme	Proposed Self-Insurance Fund 
Limit of Indemnity	The mandatory limit varies by firm, depending on the number of practicing lawyers. This ranges from RM250,000.00 (1 lawyer) up to a maximum RM2m (36 lawyers or more).	
Coverage	With the support of the insurance broker, the Bar Council negotiates with insurers the terms and conditions of coverage for Members. The terms, conditions and exclusions of the PII Scheme are detailed in the Certificate of Insurance.	The Bar Council will be able to exercise more control over negotiations, as the Scheme will be less reliant upon insurers.
Premium/ SIF Contribution	2009: RM1, 300.00 per lawyer.	The objective would be to try and ensure premium rates remain stable so that Members can budget annually for their PI cover.
Claims Reporting & Administration 	Currently, Members notify claims to our insurance broker, Jardine Lloyd Thompson Sdn. Bhd. Claims are managed by Echelon Claims Consultants, which acts as the dedicated Third Party Claims Administrator to the Scheme.	No expected changes to current process.
Legal Requirements 	<p>The administration of the Scheme is subject to the provisions of Section 78A of Legal Profession Act 1976 (LPA), which authorises the Bar Council to maintain a commercial-insurer PII Scheme to protect Members against professional liability.</p> <p>The current PI Scheme is specifically governed by the Legal Profession (Professional Liability) (Insurance) Rules 1992 (1992 Rules).</p>	<p>No changes required to Section 78A. Legal opinion obtained from Senior Counsel confirms that Section 78A (1)(b) LPA 1976 empowers the Bar Council to make such rules to set up a SIF, subject to approval of the Attorney General.</p> <p>Amendments to 1992 Rules, incorporating SIF elements have been presented to the Attorney General's Chambers and are pending review.</p> <p>Standard Operating Procedures (SOPs) and protocols have been developed. These will ensure that the SIF is administered efficiently, consistent with good corporate governance.</p> 

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Terms and conditions apply, see Circular 252/2009.

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We are always looking for ways to improve this newsletter and work towards ensuring that all areas related to risk management is highlighted as appropriately.