



JURISK!

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Risk Management Quarterly

A quarterly publication of Professional Indemnity Insurance Committee, Bar Council Malaysia

NATURE OF CLAIMS UNVEILED: CAUSE: LITIGATION SUB-CAUSATION: VARIOUS

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Chairperson's Message

RISK MANAGE FOR BETTER, EFFICIENT PRACTICE

Generally members of the Malaysian Bar have very little knowledge of the mechanisms of the Malaysian Bar Professional Indemnity Insurance (PII) Scheme. Unless you face a claim or you are threatened with a claim, more often than not you do not bother to find out how the Scheme works. It is also because our legal profession is structured on the basis of legal firms; this results in legal assistants or junior partners not "embracing" the Scheme as the payment of premiums and management of the firm is generally left with the managing partner.

However, it is important that ALL lawyers have a working knowledge of the Scheme in order to understand risk management and to know what to do when faced with a claim or a potential claim. It is incumbent on the managing partners to ensure that their lawyers are well equipped with risk management (RM) skills and they understand how the scheme works to minimise risks to the firm and to ensure that the practice is run efficiently.

In 2011, we carried out a survey to garner feedback from Members. The "Have Your Say" survey was the Department's most detailed survey yet, offering Members questions on the Scheme and its broker, the RM programme as well as questions on the Department's resource tools and publications.

The response to the survey is dismal! Apathy reigns high within the profession. Members are not interested or are not bothered to even respond to our overtures!!! With close to 14,000 Members, we have only received responses from 320 Members. Whilst some have taken the time to send in their survey forms, most of the 320 completed surveys were conducted face-to-face at Bar Council events where our Officers coaxed Members to participate.

So far, the results tabulated from the on-going survey show these disquieting figures:

26% of the 320 Members polled do not know how much their Professional Indemnity Insurance Premiums are!

42% of polled participants are unaware that there are no costs imposed on them when they notify the brokers of a claim or circumstance!

Even with our suite of risk management resources of publications, tools and events, the PII Committee and Department realise that much more work needs to be done to increase the risk management awareness amongst Members. We therefore hope that by exposing Members to the "Whys?" of PII claims – Members will be more attentive to the pitfalls surrounding them. We hope that partners of law firms understand the importance of risk management and ensure that all their employees are well versed with the Scheme. This can only enhance efficiency and reduce risks and it would of course contribute to the profits than can be generated by the firm when it is run efficiently and soundly.

Risk management is not just about avoiding claims. It is a comprehensive and systematic method of raising efficiency and reducing risks.

*Ragunath Kesavan,
PII Committee Chairperson, Bar Council*

Inside This Issue...

...we pull back the covers on Professional Indemnity Insurance (PII) claims' statistics to reveal how litigation casework attracts the highest number of claims in the PII Scheme. Over the course of the Scheme's 20-year history, litigation-based work conducted by lawyers has consistently been at the top of the claims' causes chart.

Whilst it can be argued that due to the high numbers of cases in Malaysia being litigious in nature thereby eliciting equally high percentages in claims; truth be told there are many pitfalls in the course of a litigation case that can trip a lawyer – resulting in a less-than-happy client.

Among the broad-brush sub-causes are bad time management (missing court dates and failing to file course papers in time), poor communication etiquette with clients and incomplete or even wrong legal advice dispensed.

We encourage you to read on further: we provide you historical statistics of the claims as well as case studies of actual past claims. It is our hope that by reading the misfortune of other Members, you will take a keener look at your own practice and amend work-processes that may cause you and your firm harm in the future.

The Jurisk! Team

a dot of ink •

what do you think?

This year marks the 20th year of the Professional Indemnity Insurance. Thanks to Dato' Dr Peter Mooney, all practising lawyers in Peninsular Malaysia are covered under a Mandatory Scheme. Over the years, the scheme has evolved and matured for the benefit of all lawyers.

What do you think? Send your views by fax at 03-2031 6124 or email to pirm@malaysianbar.org.my. We would like to hear from you.

Jurisk! 2011

March & June : **Files. Files. Files.**
 September : **2012 Renewals**
 December : **Billing & Collection**

To read our past articles, log on to www.malaysianbar.org.my and click on *Resource Centre -> Risk Management -> Risk Management Newsletter* or www.praktis.com.my and click on *Risk Management -> Practice Tools -> Jurisk!*

Events in 2011

15 July 2011: **Getting Started! Express**, Kuantan
 21 July 2011: **Risk Management for Staff**, KL
 29 Sept 2011: **Risk Management for Staff**, Alor Setar
 20 Oct 2011: **Getting Started!**, KL
 12 Nov 2011: **Getting Started!**, Kuala Terengganu
 24 Nov 2011: **Risk Management for Staff**, KL

To read the web report of our past events, log on to www.malaysianbar.org.my and type in your search.

• THE RISK MANAGEMENT WORKSHOP

Creating awareness on risk management has always been a challenge in any industry. Each profession has its own risks and ways to deal with the risks. Some are fortunate to have advice and guidelines, but many fall prey to the unexpected due to lack of knowledge.

The PI Insurance & Risk Management Department has been running risk management workshops since 2007 to aid lawyers and law firm staff to better manage their daily work and create a risk aware culture. These workshops are specifically designed and delivered by experienced lawyers and consultants within their field.

• GETTING STARTED! WORKSHOP

If you are thinking of setting up a firm or have recently established a firm, this is the workshop for you. The workshop is also attended by lawyers who want a refresher or are joining partnerships. The workshop consists of five core sessions:

- (a) The Fundamentals of Legal Practice
- (b) Accounting & Taxation
- (c) Bar Council & You: Obligations & Privileges
- (d) Conveyancing in a Competitive Climate
- (e) Winning Ways Through Civil Litigation

Gain advice and experience from senior lawyers and consultants to be a better practitioner. Engage in discussions and expand your network with other participants. Past participants have commented their satisfaction with the workshop and encourage their peers to attend. The workshop has been organised since 2007 and has since been conducted in Kuala Lumpur, Johore, Kelantan and Kuala Terengganu.

The Getting Started! Express is a half-day workshop consisting of two modules from the full-day Getting Started! workshop. The workshop is conducted outside from KL and Selangor giving participants a taste of the full-day workshop.

• RISK MANAGEMENT FOR STAFF

Don't have time to train your staff? Sign them up for a one-day training course that would benefit the law firm. Who better to train your staff if not lawyers themselves on subjects of time management, client communication, accounting practices, file management and more. Most if not all of the essentials to assist a lawyer is addressed in this workshop. The workshop benefits all staff in law firms including office managers, paralegals, secretaries and support staff. Four workshops has been organised since 2010 with participation from as far as Sarawak. Topics include:

- (a) Communication: Connecting People
- (b) Accounting with Integrity
- (c) Office Administration: Ace It!
- (d) Risk Management: Productivity @ Work

If you would like more details on the risk management workshops, refer to the back page for scheduled events and circulars issued by Bar Council Circulars and info-posters circulated from time to time. Alternatively, call the department at 03-2032 4511 or drop us an email at pirm@malaysianbar.org.my. Your details will be recorded and we will contact you once a confirmed date is scheduled.

TARGETING RISKS.

CREATING SOLUTIONS.

**MALAYSIAN BAR
MANDATORY PII SCHEME**
**DID YOU
KNOW?**

(1) ...your Firm must notify the broker of a claim, in writing, as soon as practicable?

The Professional Indemnity Insurance policy is a claims-made policy. The first time you and your firm become aware of a claim, your firm has an obligation to notify the brokers. Failure to do so is a breach of the requirements of the terms set out in the policy; and insurers have a right to exclude liability. **Insurers have provided firms with a 60-day period to notify.**

Clause 14, Certificate of Insurance [COI] states you have to notify the broker in writing as soon as practicable:

> *Clause 14(a), COI – “but no later than 60 days of any claim first made against you during the period of insurance”*

> *Clause 14(b), COI – “but no later than 60 days of any notifiable circumstances of which you first become aware of during the period of Insurance...”*

Clauses 14(a) and 14(b), COI highlights two instances where a notification is essential.

1. The first instance that obligates notification is when an actual demand or claim is made. Clause 36(b), COI defines a claim to mean:

*** A demand for, or an assertion of a right to compensation or damages; or**

*** An intimation of an intention to seek compensation or damages**

The above definitions can take the form of a writ, or letter of demand, or other such similar legal avenues whereby the receiver is made aware of a claim against him.

2. The second of which is a circumstance; Clause 36(k), COI defines it as **any fact, circumstance or event which may reasonably be anticipated to give rise to a claim against you at any future time.**

Illustration I

Lawyer X was conducting a weekly check on his clients' cash book and ledger and found some irregularities with the entries. Upon further investigation, Lawyer X realises some money missing from the firm's client account. Before conducting any further due diligence, Lawyer X writes in to Jardine Lloyd Thompson to notify them of a possibility of a claim.

Illustration II

Lawyer Z concludes a case for his Client A by writing a closing letter and returning all original documents. Lawyer Z perceives that Client A is satisfied with the work conducted by Lawyer Z and his law firm. Six months after the file has been closed, Lawyer Z receives a letter of demand from Client A, who makes accusatory remarks about Lawyer Z and the manner in which his case was handled. Lawyer Z immediately writes in to JLT with details of the client, his case and the letter of demand.

(2) ...there are no claims loading imposed on your firm for notifications?

There are no consequences in notifying a claim or a circumstance. As claims' loading is no longer imposed on notifications, firms are encouraged to notify all circumstances that might lead to a claim.

It is only when Insurers are required to pay out any monies in excess of the base excess of the Firm is when claims loading is imposed.

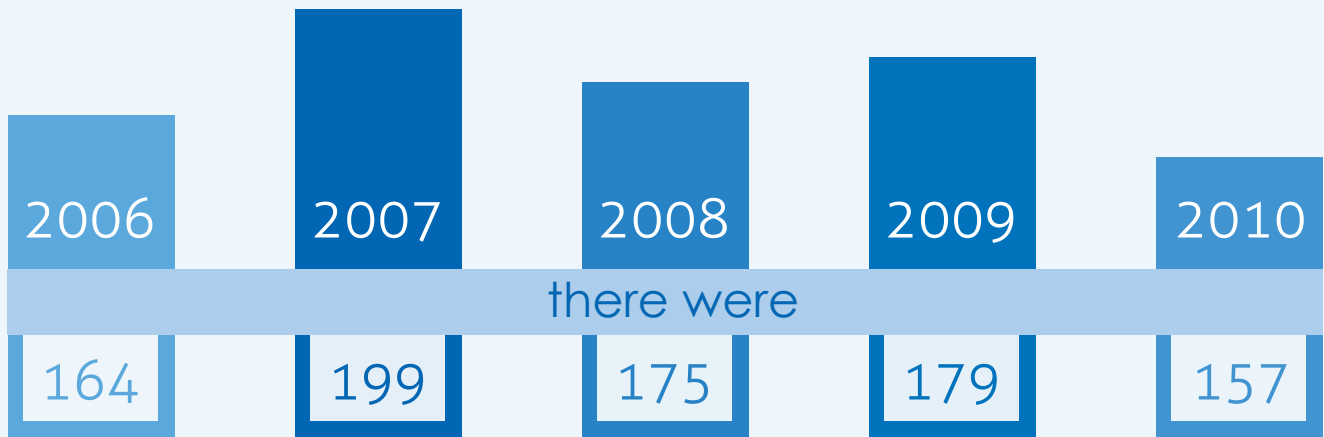
NB: Under the Mandatory PII Scheme, cover is subject always to terms, exclusions, limitations and conditions of the relevant Certificate of Insurance.

The translation on page 10 relating to the Master Policy, Certificate of Insurance and illustrative examples is for guidance only. In the event of inconsistency between the English version and the Bahasa Malaysia version, the English version will prevail.

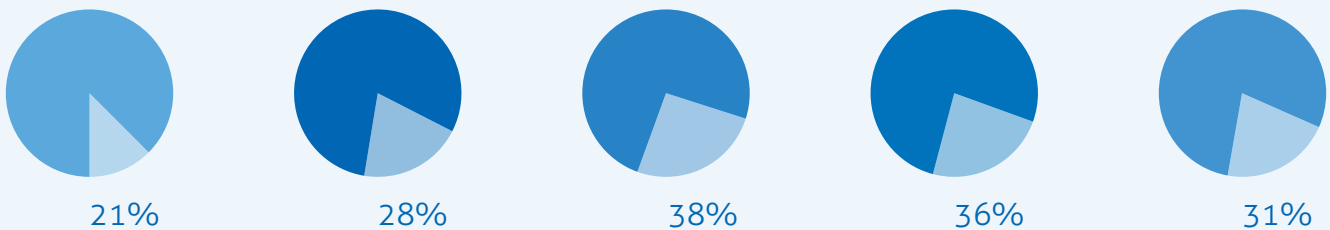
THE NO.1 CAUSE OF CLAIMS LITIGATION



In the year



number of claims notified
.....out of which.....

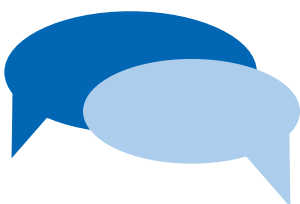


are claims' notifications stemming from the
course of a lawyer's litigation practice.

BUT WHY?

There are many sub-causations contributing to the above.
Among them are:

①



Broken
communications

②



Bad time
management

③



Poor legal
knowledge

Litigation Claims

The following are examples of claims that have arisen in the course of a fi

Case Study 1 : Missed opportunity

Messrs ABC and Associates (ABC) were representing a large corporation, Evergreen Holdings in its defence against a multi-million ringgit lawsuit. The case had stretched on for many years. Due to the prolonged nature of the case, the case file was handed from one lawyer to another, largely due to turnover of the firms' Legal Assistants (LA).

The last LA to oversee the file attended case management where the judge set the matter down for trial. The LA did not record the trial dates on the case file. The LA also did not record the trial dates into the firm's central diary system.

A month after case management and shortly before the trial date, the LA left the firm. At the exit meeting, the Managing Partner of ABC was informed by the LA that he had completed a successful handover. Assurance was also given that all pertinent dates for the cases and files under his watch have been recorded.

The Managing Partner took over Evergreen's files without assigning it to another lawyer. The Managing Partner did not immediately review the files.

On the day of the trial, neither ABC nor Evergreen Holdings was present in court and judgment was awarded in favour of the Plaintiffs.



FAILURE TO APPEAR IN COURT!

- ✗ No proper procedure for the handover of files when the LA was leaving;
- ✗ Placing unwarranted trust on the LA;
- ✗ No mentoring system between Partners and Legal Assistants;
- ✗ Failing to review the files upon taking over especially when it involves a multi-million Ringgit lawsuit for a high-profile client.

Case Study 2 : Absent Counsel

Sam purchased a property and included his 3 siblings (3S) into the title of the property as trustees. Over the course of 20 years, Sam had collected rental income from the property.

Sam fell critically ill and his siblings took over the maintenance of the property, and in doing so, kept what they deemed was their share of the rental monies. Sam eventually recovered and upon discovering the actions of his siblings, took the matter to Court for recovery of the rental income and to remove the 3S from the title.

During the course of the proceedings, Sam established that he purchased the property on his own, and challenged 3S to furnish evidence that they contributed to the purchase price. The siblings' lawyer, Harris, failed to instruct his clients on the matter and no evidence was adduced. The High Court found in favour of Sam.

The 3S instructed Harris to appeal against the decision of the High Court which he did but had not informed the 3S of the date. The appeal was heard and it was struck off. Harris did not inform the 3S of the Court of Appeal's decision and by the time 3S found out, the matter was time barred for an appeal to the Federal Court.



FAILURE TO ADVISE CLIENT!

- ✗ Lawyer failed to take proper instructions from the Client;
- ✗ No communication between the Lawyer and the Client;
- ✗ Lack of understanding on the fundamentals of the Rules.

s - Case Studies

n's litigation practice. All names of people and places have been replaced.

Case Study 3 : Who is your client?

Kenny was approached by a family to represent their daughter, Wilma, in her divorce proceedings. The first few meetings took place between Kenny and Wilma's father and sister, who both insisted the divorce proceed as soon as possible. They told Kenny that Wilma was in a very unhappy marriage, and that she will be better off when the divorce is final.

Kenny met with Wilma only one time. During this meeting, Wilma made it known to him that she wished for substantial spousal support. They had no other meetings thereafter.

Kenny proceeded to file the divorce proceedings in court. Wilma did not attend these proceedings. The Decree Absolute was granted and a decision was made on maintenance and custody of the child. Wilma received a minimal sum in the maintenance. Upon hearing this, Wilma who was at the custodial hearing, was upset to discover first and foremost, that the divorce was in fact, final, and Kenny had failed to inform her of it.

She sued her lawyer for failing to keep her updated on the case, in which case had she been, she would have supplied additional/supplementary instructions for him.



FAILURE TO SEEK WRITTEN INSTRUCTIONS!

- ✗ Mistake in taking initial instructions from third parties, and not from his actual client;
- ✗ Failure to take proper instructions from the Client when the opportunity arose; and then to not have it confirmed in writing;
- ✗ Making assumptions of the Client's expectations.

Case Study 4 : Make the effort!

Davies & Co were the legal representative of an insurance company, Gold Inc. for over a number of years. Davies & Co were defending them in a suit brought by an aggrieved party.

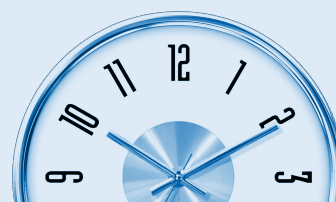
Davies & Co had provided an opinion on liability and opined that the matter should be contested. They lost the case and their client, Gold Inc. was ordered to pay the aggrieved party.

Davies & Co had sent a letter, which was acknowledged received by Gold Inc., asking them for further instructions and whether to appeal.

The period for the appeal had lapsed without any response from Gold Inc. and without any reminder sent by Davies & Co. The aggrieved party applied to execute.

Gold Inc. sent a letter of demand to Davies & Co insisting that the law firm bear half the damages awarded, for failing to appeal on time.

Davies & Co replied in turn, stating that they had written to Gold Inc. to get further instructions, but none was forthcoming.



MATTER TIME BARRED

- ✗ Failed to have a reminder/KIV system and placing red flags for Appeal;
- ✗ As the Lawyer was on a retainer over a number of years with Gold Inc. he should have been proactive and aware of Gold Inc.'s response time; OR there should have been standing instructions agreed with Gold Inc. with regard to filing appeals;
- ✗ Failed to improve the communication channels with Gold Inc. especially with regard to the appeal.

DO's & DON'Ts OF LITIGATION PRACTICE

COMMUNICATION

Record everything in black and white. More so telephone conversations where the client verbally instructs you. Before you act on their instruction, have the client sign-off the written instructions, and file it.

If you are representing a company, ensure you know your point of contact and this is whom you will be liaising with, and receiving directions from.

If the client is causing delays ie reneging on his timeframe to hand over documents, make it known to him the relevance of time limits and the consequences of his continuous delays.

Never leave this unsaid: It is always better to discuss with your client the potential risks, problems and alternatives before you draft and file a claim.

Do not assume you know the best for your client; put forward other means of remedial action to the client eg Alternative Dispute Resolutions.

Do not leave it to the last minute to inform your client and witnesses of dates of court appearances; on trial days ensure you send them reminders to be on time.

TIME MANAGEMENT & PREPAREDNESS

Interview your clients and witnesses as soon as possible to get the best possible recollection from them.

KIV and diarise all pertinent dates, for example especially after (default) judgements are made – the Courts are unforgiving if you do not remember.

Take remedial actions: if time has run out or the matter struck out or a default judgement has been entered, apply for the necessary as soon as possible.

Never assume that your witnesses will not be struck out on the basis of a conflict – do the necessary checks prior.

Do not assume witnesses will always be on hand to meet you and/or prepare their statements. Expert witnesses in particular, are professionals with their own busy schedules.

Do not go overboard – overtraining clients and witnesses will eliminate spontaneity and genuineness when they give evidence at the trial.

LEGAL KNOWLEDGE & EXPERTISE

Familiarise and build your knowledge base of the relevant areas of law you wish to practice in.

If you do wish to take on cases of which its laws you are unfamiliar with, be prepared to conduct extensive research.

Keep abreast with updates and changes through circulars issued by Bar Council, and Continuing Legal Education (workshops, seminars and other events).

Do not take on cases that you are not equipped to handle; for example if you have never handled a maritime law case before, it is best forgo them.

Do not hesitate to refer the client to your peer if you know of someone who is more suited to handle the matter.

Do not take for granted that laws will not be changed – keep up-to-date with these amendments, as well as Court Procedure changes.

DO'S

DON'TS

IN ESSENCE...

COMMUNICATION

RECORD EVERYTHING	Prepare detailed retainer letters.	KNOW YOUR CLIENT	Speak to them regularly; brief them at every milestone.
	Put client's verbal orders in black and white.		Understand what your client hopes to achieve.
	Always end case with closing letter.		Manage their expectations – refrain from giving them false hope.

TIME MANAGEMENT

MASTER DIARY	Be disciplined! - Log every appointment.	MANAGE YOUR WORKLOAD	Know when you have too much on your plate.
	Put a money value on your time – you will appreciate it more.		Split your day into chunks of time ie for court, research, client etc.
	Assign a staff to be Master Diary-Keeper.		Ask for needed extensions early on.

LEGAL KNOWLEDGE

KNOW YOUR STRENGTHS	Build your knowledge base.	KNOW YOUR LIMITATIONS	Learn to say "No".
	Teach others what you know.		Education never stops. Attend relevant courses.
	Make your work easier – use checklists.		Seek advice when unsure.

SKIM MANDATORI PII
BADAN PEGUAM MALAYSIA
**TAHUKAH
ANDA?**

(1) ...firma anda wajib membuat *notification* kepada broker tentang sesuatu tuntutan, secara bertulis, secepat yang dapat dilaksanakan?

Polisi di bawah Insurans Indemniti Profesional adalah polisi berdasarkan *claims-made policy*. Apabila anda dan firma mula mengetahui tentang sesuatu tuntutan, firma anda mempunyai kewajipan untuk membuat *notification* kepada broker. Kegagalan berbuat demikian adalah melanggar kehendak syarat-syarat yang dinyatakan di dalam polisi dan syarikat insurans berhak untuk membuat pengecualian liabiliti. Pihak insurans memberi Firma tempoh 60 hari untuk membuat *notification*.

Fasal 14 *Certificate of Insurance* [COI] menyatakan bahawa anda perlu membuat *notification* kepada broker secara bertulis secepat yang dapat dilaksanakan:

> Fasal 14 (a), COI - "*but no later than 60 days of any claim first made against you during the period of insurance*"

> Fasal 14 (b), COI - "*but no later than 60 days of any notifiable circumstances of which you first become aware of during the Period of Insurance...*"

Fasal 14 (a) dan 14 (b) COI memaparkan dua keadaan di mana *notification* adalah penting.

1. Contoh pertama yang mewajibkan *notification* adalah apabila terjadi tuntutan sebenar, atau tuntutan dibuat. Fasal 36 (b), COI mentakrifkan tuntutan (*claim*) sebagai:

* ***A demand for, or an assertion of a right to compensation or damages; or***

* ***An intimation of an intention to seek compensation or damages***

Definisi di atas boleh mengambil bentuk writ, surat tuntutan, atau lain-lain saluran undang-undang yang serupa di mana penerima dibuat menyedari akan tuntutan yang dibuat terhadapnya.

2. Contoh kedua adalah bergantung kepada *circumstance*; Fasal 36 (k), COI mentakrifkannya sebagai ***any fact, circumstance or event which may reasonably be anticipated to give rise to a claim against you at any future time.***

Ilustrasi I

Peguam X mewakili Pelanggan B dalam saman litigasi. Pelanggan B merupakan plaintif dalam saman itu. Peguam X gagal untuk memasukkan tarikh mahkamah ke dalam diariannya. Oleh yang demikian, dia gagal untuk hadir di hari perbicaraan menyebabkan saman itu digugurkan. Peguam X menenangkan Pelanggan B dengan memberi jaminan untuk membuat segala yang perlu agar saman itu dapat dihidupkan semula. Peguam X perlu membuat *notification* selepas perkara itu digugurkan walaupun pada hakikatnya klien B mengesahkan bahawa tiada tindakan lanjut akan diambil terhadap Peguam X.

Ilustrasi II

Dalam ketiadaan tuntutan sebenar, tiada garis panduan yang boleh dijadikan rujukan kepada yang dimaksudkan sebagai *circumstance* yang akan atau tidak akan menyebabkan tuntutan. Adalah lebih baik untuk mengambil langkah berhati-hati agar tidak membuat kesilapan. Ambil kesempatan sepenuhnya terhadap hak anda di bawah Polisi dengan menghantar secara bertulis mengenai sebarang keadaan yang berpotensi kepada Broker atau, buat panggilan terus kepada mereka sekiranya ada sebarang keraguan.

(2) ...tiada beban tuntutan yang dikenakan ke atas firma sekiranya *notification* dibuat?

Tiada akibat yang akan terjadi sekiranya membuat *notification* tentang sesuatu tuntutan atau *circumstance*. Oleh kerana *claims' loading* tidak lagi dikenakan ke atas *notification*, firma digalakkan untuk membuat *notification* semua *circumstance* yang mungkin akan

membawa kepada tuntutan. *Claims' loading* akan hanya dikenakan apabila penanggung insurans dikehendaki membuat pembayaran yang melebihi *base excess* Firma.

Nota: Di bawah Skim Mandatori PII, perlindungan adalah tertakluk kepada terma, pengecualian, had dan syarat-syarat 'Certificate of Insurance'.

Terjemahan berkaitan 'Master Policy', 'Certificate of Insurance' dan contoh ilustrasi adalah sebagai panduan sahaja, dan sekiranya terdapat perbezaan antara Bahasa Inggeris dan terjemahan Bahasa Malaysia, versi Bahasa Inggeris akan digunakan.

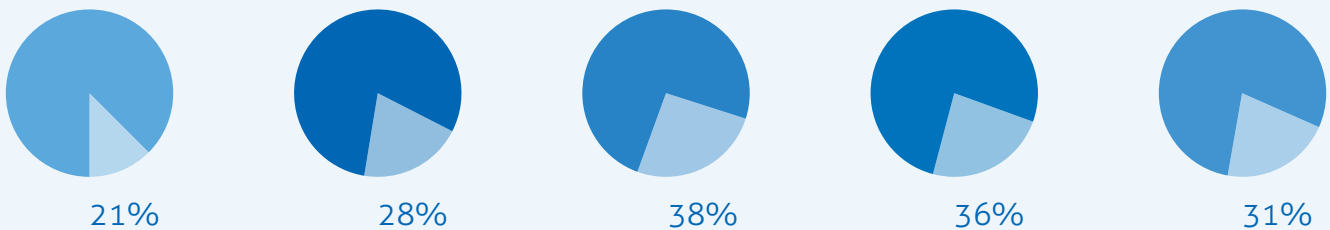
PUNCA UTAMA TUNTUTAN LITIGASI



Dalam tahun



*notification dibuat
.....dimana.....*

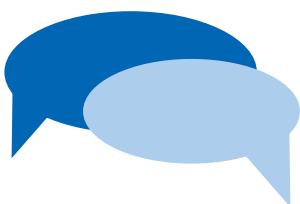


*adalah notification yang berpunca
daripada amalan litigasi*

MENGAPA?

Terdapat banyak sub-penyebab yang menyumbang kepada statistik di atas. Antaranya:

①



Kelemahan komunikasi

②



Pengurusan masa yang salah

③



Pengetahuan yang lemah

Tuntutan Litiga

Berikut adalah contoh tuntutan yang pernah diuruskan oleh seorang peguam atau firma gu

Kajian Kes 1 : Terlepas Peluang

Tetuan ABC dan Rakan-rakan (ABC) mewakili sebuah perbadanan besar, Evergreen Holdings dalam membuat pembelaan terhadap tuntutan mahkamah yang bernilai jutaan ringgit. Kes itu berlarutan selama bertahun-tahun menyebabkan fail kes diserahkan daripada seorang peguam kepada yang lain kerana pembantu undang-undang di ABC yang ditugaskan untuk menjaga fail itu silih berganti (meninggalkan firma).

Pembantu undang-undang terakhir yang menyelia fail ini menghadiri pengurusan kes di mana hakim menetapkan tarikh perbicaraan. Tarikh tersebut tidak direkodkan di dalam fail kes oleh pembantu undang-undang. Beliau juga tidak merekodkan tarikh perbicaraan dalam sistem diari pusat firma.

Sebulan selepas pengurusan kes, dan sejurus sebelum tarikh perbicaraan, pembantu undang-undang meninggalkan firma. Pada mesyuarat keluar firma, beliau memaklumkan kepada Rakan Pengurusan ABC bahawa semua kes-kes di bawah seliaannya telah diserahkan dengan sempurna. Jaminan diberikan bahawa semua tarikh penting bagi kes dan fail di bawah seliaannya telah direkodkan dengan sempurna.

Rakan Pengurusan mengambil alih kesemua fail kes tanpa memberikan kepada peguam lain. Beliau juga tidak terus mengkaji semula fail-fail tersebut.

Pada hari perbicaraan, tiada wakil dari pihak ABC dan Evergreen Holdings yang hadir di mahkamah dan penghakiman yang dibuat berpihak kepada pihak Plaintiff.



Kegagalan Untuk Hadir Di Mahkamah!

- ✗ Tiada proses penyerahan fail yang wajar sebelum pembantu undang-undang meninggalkan firma;
- ✗ Tidak ada sistem mentor antara Rakan Firma dan pembantu undang-undang;
- ✗ Kegagalan untuk mengkaji semula fail sewaktu mengambil alih terutama apabila melibatkan tuntutan mahkamah yang bernilai besar terhadap klien yang berprofil tinggi.

Kajian Kes 2 : Peguam Tidak Berkomunikasi

Sam membeli hartanah dan memasukkan nama tiga adik-beradiknya (3S) dalam hak milik harta tanah yang dibeli sebagai pemegang amanah. Sepanjang 20 tahun, Sam telah mengutip hasil pendapatan sewa daripada harta tersebut.

Sam sakit tenat dan adik-adiknya mengambil alih penyelenggaraan harta tersebut. Sebahagian daripada kutipan sewa yang dianggap adalah bahagian atau hak mereka disimpan. Setelah pulih, Sam mendapat tahu tentang perbuatan 3S dan mengambil tindakan mahkamah bagi mendapatkan kembali pendapatan sewa dan membuang 3S dari pemilikan harta tanah tersebut.

Sepanjang prosiding, Sam membuktikan kenyataannya bahawa beliau membeli harta itu sendiri, dan mencabar 3S untuk memberi keterangan dan bukti dakwaan mereka menyumbang kepada pembelian harta tersebut. Peguam 3S, Harris, gagal untuk mengarah kliennya mengenai perkara itu dan tiada bukti yang telah dikemukakan. Mahkamah Tinggi memihak kepada Sam.

3S mengarah Harris untuk membuat rayuan terhadap keputusan Mahkamah Tinggi. Selepas membuat rayuan, Harris tidak memaklumkan 3S tentang tarikh rayuan tersebut. Rayuan didengar dan digugurkan. Harris tidak memaklumkan keputusan Mahkamah Rayuan kepada 3S mengenai perkara itu. Apabila akhirnya 3S mendapat tahu, masa sudah terlambat untuk membuat rayuan ke Mahkamah Persekutuan.



Kegagalan Untuk Menasihati Klien!

- ✗ Peguam gagal untuk mengambil arahan yang sempurna dari klien;
- ✗ Tiada komunikasi antara peguam dan klien;
- ✗ Kurang kefahaman berkenaan asas-asas peraturan.

si - Kajian Kes

an litigasi. Nama dan tempat telah diubah untuk tidak merujuk kepada sesiapa yang berkaitan.

Kajian Kes 3: Siapakah Pelanggan Anda?

Kenny telah didatangi oleh sebuah keluarga untuk mewakili anak perempuan mereka, Wilma, dalam prosiding perceraian. Dalam beberapa mesyuarat di antara Kenny dengan bapa dan adik Wilma, mereka (bapa dan adik Wilma) menegaskan perceraian harus dibuat dengan secepat mungkin. Mereka memberitahu Kenny bahawa Wilma tidak bahagia dalam perkahwinan itu, dan perceraian akan membuat Wilma rasa lebih baik.

Kenny bertemu dengan Wilma hanya sekali. Dalam pertemuan ini, Wilma memberitahu bahawa dia mahukan saraan tanggungan untuk isteri dengan jumlah yang besar. Mereka tidak bertemu lagi selepas itu.

Kenny meneruskan untuk memfail prosiding perceraian, Wilma tidak menghadiri mahkamah. Dekri mutlak telah diberikan, dan keputusan yang dibuat terhadap kos tanggungan dan penjagaan kanak-kanak.

Wilma diberikan jumlah minimum untuk tanggungan isteri. Apabila mendengar keputusan ini, Wilma yang hadir ketika itu berasa sedih kerana dua sebab; penceraian sememangnya muktamad dan Kenny gagal untuk memaklumkan.

Wilma menyaman peguamnya kerana gagal untuk memberitahu perkara yang terkini mengenai kesnya. Menurut Wilma, sekiranya diberitahu, dia akan memberikan arahan tambahan ataupun berlainan.



Kegagalan Untuk Mendapatkan Arahan Bertulis!

- ✗ Kesilapan mengambil arahan daripada pihak ketiga, dan bukan dari klien yang sebenar;
- ✗ Kegagalan untuk mengambil arahan yang sempurna daripada klien (ketika peluang terbuka) dan mengesahkan secara bertulis;
- ✗ Membuat andaian terhadap harapan klien.

Kajian Kes 4: Perlu Berusaha!

Davies & Co adalah wakil undang-undang sebuah syarikat insurans, Gold Inc., untuk beberapa tahun. Davies mempertahankan mereka dalam saman yang dikemukakan oleh sebuah pihak yang tidak berpuas hati.

Davies & Co telah memberikan pendapat mengenai liabiliti dan berpendapat bahawa perkara itu perlu dipertandingkan. Mereka kalah kes itu dan pelanggan mereka, Gold Inc., telah diarahkan untuk membayar pihak tersebut.

Davies & Co telah menghantar surat kepada Gold Inc., yang diakui penerimaannya, meminta mereka untuk memberikan arahan selanjutnya atau mengemukakan rayuan.

Tempoh bagi rayuan itu luput tanpa sebarang jawapan dari Gold Inc. dan tanpa sebarang peringatan yang dihantar oleh Davies & Co. Pihak tadi memohon untuk membuat pelaksanaan.

Gold Inc. menghantar surat tuntutan kepada Davies & Co menegaskan bahawa firma guaman tersebut wajar menanggung separuh daripada ganti rugi yang dianugerahkan kerana gagal membuat rayuan pada masanya.

Jawapan yang diberikan oleh Davies & Co adalah bahawa mereka telah menulis kepada Gold Inc. untuk mendapatkan arahan selanjutnya, tetapi tiada yang diterima.



Kegagalan Untuk Menjejak Masa!

- ✗ Gagal mempunyai sistem peringatan/KIV; dan meletakkan tanda mustahak untuk Rayuan;
- ✗ Sebagai peguam yang telah lama berurusan dan mempunyai retainer dengan Gold Inc, dia sepatutnya pro aktif dan peka terhadap masa yang akan diambil oleh Gold Inc; atau sepatutnya mempunyai arahan yang dipersetujui dengan Gold Inc berkaitan memfail rayuan;
- ✗ Gagal untuk memperbaiki komunikasi dengan Gold Inc, terutama dengan mengambil kira rayuan tersebut.

TIP BERGUNA AMALAN LITIGASI

KOMUNIKASI

Rekod setiap butiran. Lebih-lebih lagi perbualan telefon di mana klien memberi arahan secara lisan. Sebelum bertindak atas arahan mereka, pastikan persetujuan arahan yang diberikan klien dirakam dan difail.

Jika anda mewakili sebuah syarikat, pastikan anda mengenali wakil perantara syarikat tersebut. Ini merupakan orang hubungan dan tempat penerimaan arahan.

Jika pelanggan itu menyebabkan kelewatan seperti tidak memenuhi janji menghantar dokumen pada masanya, tegaskan kepadanya kepentingan had masa serta akibat kelewatan yang berterusan.

Jangan dibiarkan tanpa perhatian: Penting untuk berbincang dengan klien tentang potensi risiko, masalah dan alternatif sebelum menyediakan draf dan memfail tuntutan.

Jangan membuat andaian anda tahu apa yang terbaik untuk pelanggan anda, kemukakan cara lain sebagai tindakan pemulihan kepada pelanggan contohnya, Penyelesaian Pertikaian Alternatif.

Jangan biarkan pada saat akhir untuk memberitahu klien dan saksi tentang penampilan di mahkamah; pada hari bicara, pastikan anda menghantar peringatan untuk tiba tepat pada masanya.

PENGURUSAN MASA DAN PERSEDIAAN

Temubual klien dan saksi secepat mungkin bagi mendapatkan maklumat yang masih segar diingatkan mereka.

SDP dan masukkan dalam diari semua tarikh penting, contohnya selepas penghakiman (ingkar) dibuat - Mahkamah tidak akan bertimbang rasa jika anda tidak ingat.

Ambil tindakan pembetulan: sekiranya masa telah tamat, kes digugurkan atau penghakiman ingkar telah dibuat, buat permohonan yang diperlukan secepat mungkin.

Jangan beranggapan bahawa saksi tidak akan digugurkan atas dasar konflik - lakukan pemeriksaan yang diperlukan sebelum kes bermula.

Jangan anggap saksi akan mengadakan masa untuk menemui anda dan/atau menyediakan kenyataan mereka. Saksi pakar khususnya, adalah profesional yang mempunyai jadual yang sibuk.

Jangan terlalu ghairah – melatih klien dan saksi dengan keterlaluan akan menghilangkan spontan dan ketulusan apabila mereka memberikan keterangan pada perbicaraan itu.

PENGETAHUAN UNDANG-UNDANG DAN KEPAKARAN

Biasakan dan bina asas pengetahuan anda dalam bidang undang-undang yang ingin diamalkan.

Bersedia untuk menjalankan penyelidikan yang menyeluruh bagi kes yang bidang undang-undang anda tidak fasih.

Ikuti perkembangan dan perubahan terkini melalui surat pekeliling yang dikeluarkan oleh Majlis Peguam, dan Pendidikan Berterusan dalam Undang-undang (bengkel, seminar dan acara lain).

Jangan ambil kes-kes yang anda tidak bersedia untuk tangani. Sebagai contoh, jika anda tidak pernah mengendalikan kes undang-undang maritim, adalah lebih baik jika kes itu tidak diambil.

Jangan teragak-agak untuk merujuk klien kepada rakan anda jika anda tahu seseorang yang lebih sesuai untuk mengendalikan perkara itu.

Jangan membuat anggapan bahawa undang-undang tidak akan berubah - sentiasa peka dengan pindaan terbaharu serta perubahan dalam Prosedur Mahkamah.

PADA DASARNYA...

KOMUNIKASI

REKODKAN SEGALANYA	Sediakan surat retainer yang terperinci.	KENALI PELANGGAN ANDA	Beri taklimat kepada klien pada setiap tahap penting kes.
	Rekod arahan lisan pelanggan secara bertulis.		Memahami apa yang pelanggan anda berharap untuk mencapai.
	Tamatkan kes dengan surat tutup.		Sedari keperluan klien - jangan beri harapan palsu.

PENGURUSAN MASA DAN PERSEDIAAN

DIARI UTAMA	Berdisiplin! – Pastikan semua tarikh temujanji direkodkan.	URUSKAN BEBAN KERJA ANDA	Ketahui apabila anda mempunyai terlalu banyak kes untuk diuruskan.
	Nilaikan masa anda - anda akan lebih menghargainya.		Bahagikan masa dalam sehari untuk mengendalikan kerja.
	Lantik satu kakitangan khusus untuk uruskan Diari Utama.		Meminta lanjutan yang diperlukan dari awal lagi.

PENGETAHUAN UNDANG-UNDANG DAN KEPAKARAN

KETAHUI KEKUATAN ANDA	Bina asas pengetahuan anda.	KETAHUI BATASAN ANDA	Belajar berkata "Tidak".
	Tunjuk ajar pada yang lain pengetahuan anda.		Pendidikan tidak pernah berhenti. Hadiri kursus yang berkaitan.
	Buat kerja anda dengan lebih mudah - guna senarai semak.		Dapatkan nasihat sekiranya anda tidak pasti.

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Risk Management Highlights

APRIL - JUNE

Jurisk! on DISHONESTY

- Find out the alarming statistics on embezzlement within law firms
- Read case studies of actual claims
- Protect you law firm from embezzlement with our tips and suggestions

Risk Management for Staff Workshop

24 June 2012 at Bar Council, Kuala Lumpur

Start 

Have You Got Your Kit?



All our risk management practice tools in one handy resource

For more information, contact the PI Insurance & Risk Management Department at 03-2032 4511 or email pirm@malaysianbar.org.my