

## AN UNFORGETTABLE EXPERIENCE

### IP Interview No 1:

*The IP who had risk management in place*

IP were the Solicitors for their clients who were the Vendors in the Sale and Purchase Agreements ("SPAs") for the sale of two pieces of land to the Claimant.

Both SPAs contained terms of a stakeholding agreement whereby as Solicitors for the Vendors, the balance Purchase Price was to be held by the IP, only to be released to the Vendors after a lapse of 14 days from the date of presentation of the Memorandum of Transfers ("MOT") for registration at the Land Office.

The duly executed and stamped MOTs were presented for registration at the Wilayah Persekutuan Land Office. However, before the expiry of 14 days, the Purchaser's/Claimant's Solicitors wrote and instructed the IP to withhold payment of the Balance Purchase Price to the Vendors on the grounds that there was a road "set back" of the Properties and by reason thereof the Purchaser/Claimant had requested a reduction in price.

Pursuant to the SPA, the IP released the Balance Purchase Price to the Vendors after the expiry of 14 days from the date of presentation of the MOTs for registration at the Land Office. The Purchaser/Claimant instituted the said civil action against the Vendors and the IP as the Vendors' Solicitors to recover the refund.

The IP then notified the Claim to the Broker, Jardine Lloyd Thompson Sdn Bhd ("JLT") who then passed on the claim to the claim's administrator, Echelon Claims Consultant Sdn Bhd ("Echelon"). The Insurer, through Echelon, notified the IP that their Base Excess for this claim was to be increased pursuant to Clause 11(b) of the 2010 COL.

#### What triggered you to notify the claim under Bar Council's PII Mandatory Scheme?

Pursuant to our rights and coverage under the PII Policy, we wrote and sought the assistance of the Broker who then guided us on the steps and procedures we had to comply with.

#### What could the PII Committee do to further improve the PII Scheme?

We are of the opinion that the PII sought by the Practitioners should clearly stipulate the amount of the Base Excess and should not be subjected to further increases without the express approval of the Insured Practice together with Bar Council's PII Committee. Furthermore, we have full faith and confidence in the PII Committee and place our interest with them.

#### Do you feel Members will be better off if the PII Scheme was based on an open market concept, compared to a Mandatory Scheme?

We believe that for a small firm like ours, the Mandatory Scheme is preferable, simply because under such a Scheme we can seek the assistance of the Bar Council's PII Committee. In our case, at our request, the PII Committee intervened on our behalf and as a result the Base Excess was reduced from RM50,000 to its original RM20,000. We are indeed truly thankful to the PII Committee for the help extended to us.

### Did your firm follow risk management practices when handling this particular case file, and how were you able to prove them?

We submitted to Echelon the memorial transactions recorded on each of our conveyancing files recording the date of the agreement, the date of payment, the deposit paid/received, the searches at the Land Office (for the purchasers) and searches at the Registrar of Companies (if the vendors and purchasers are private and limited Companies), the date of completion, stamp duties and the disbursement incurred.

Since the aforesaid claim issue, we have taken more concrete steps in terms of risk management of our firm. It is our opinion that to improve and/or contribute to risk management, the conveyancing clerk should be properly trained to record and to enter each and every transaction in the risk management book.

### Did you have any unforeseen issues with regards to the Scheme when dealing with its Stakeholders ie Broker, Claims Administrator, Insurer etc?

The Broker, JLT and Echelon were responsive to our claim, and vide one of their earlier correspondence, Echelon wrote and informed us that our Base Excess under our Insurance Policy for this claim has been increased from RM20,000 to RM50,000.

#### In conclusion:

The IP was successful in having the Insurer reinstate their original Base Excess after successfully proving that their firm follows a risk management guideline when dealing with conveyancing matters, as allowed for in Clause 11(b)(i) of the 2010 COI.

## IP Interview No 2:

*The IP who had to settle*

IP was the Panel Solicitor of Gold Bank. Gold Bank then appointed the IP to prepare the security documentation for a credit facility of RM3.5 million to Mr Solo (the Purchaser/Borrower) to finance his purchase of an industrial land, as well as for the IP to prepare the Sale and Purchase Agreement. Mr Solo signed the SPA with the Vendor for RM3.5 million and the SPA was given to Gold Bank. Following IP's advice, Gold Bank released the loan of RM3.5 million to the Vendor.

Shortly after the disbursement, Mr Solo defaulted on his loan, and in the process of recovering the loan, Gold Bank found a 'discrepancy' between the SPA and Memorandum of Transfer ("MOT"); in the SPA the land value was stated at RM3.5 million whereas in the stamped MOT it was RM1.2 million.

Further, Gold Bank discovered that the land search provided by the IP was incorrect as the land was not converted for industrial use and the land office receipt was a forgery. Gold Bank then proceeded to sue IP on grounds of malpractice.

The Panel Solicitor appointed by the Insurer to defend IP advised that the claim should be settled on the following grounds:-

1. The IP as the lawyer representing Mr Solo in the SPA and representing Gold Bank in the loan transaction failed to inform the Bank of the said variation in price/value.
2. The IP's appointment letter clearly required the Firm to ensure all pre-disbursement conditions were met but they had failed to ensure that the land was converted to industrial use. Despite that, IP had given their advice to Gold Bank that the Bank's interest was protected.

**Briefly explain how your Claim's experience began, and how you believe your Claim was handled?**

Initially I was shocked, as I have never been sued in my life. Being completely and fully aware of my rights and my duty under the PII, I notified the Scheme through the proper channels. My claim was then taken over and handled by the right personnel.

**Did your firm follow/have risk management practices when handling this particular case file, and how were you able to prove them?**

Yes, we do have risk management practises in place since commencement of our firm back in 1996. These include the use of checklists, status report between Legal Assistants and Partners, bank statement reconciliation, identity checks of all parties concerned, and document verification with the relevant authorities.

For this particular case, proper risk management on our end, in our Firm, was in place; this includes the fact that we had done all relevant and necessary searches including land search, bankruptcy search, ROC search etc.

**Since this Claim, what other Risk Management steps have you taken? What other procedures do you feel you should pay more attention to?**

We maintain our existing and established risk management practises. At the same time, lawyers must personally supervise the office staff closely and frequently.

**What could the PII Committee do to further improve the PII Scheme?**

I feel existing Mandatory Scheme is good and fair. But the PII Committee should think of a way to punish Firms with very bad PII records.

**In conclusion:**

The Insurers settled the case out of court and IP was imposed with an increased penalty excess of RM50,000 pursuant to Clause 11(b) of the COI.

