

# Case Study: Avoiding Corporate Negligence

Written by Tan Sue Vern, Jardine Lloyd Thompson

*“Negligence is the rust of the soul, that corrodes through all her best resolves.”*

- Owen Feltham

It only takes a snail to create a landmark case in negligence! Similarly, a lawyer only needs to make the smallest error to face the possibility of a suit. Corporate matters often involve greater risks as they generally entail large sums of money. This is especially so when those dealings involve the granting of loan facilities.

The case study below demonstrates the adverse implications when you do not have some basic risk management practice.

The Insured Practice (IP) was appointed by Radleys Finance International Berhad (RFIB) to prepare documentations with regards to a facilities agreement for the sum of RM45,000,000.00 granted, Sealand Industries Sdn Bhd (SISB). Among the documentations prepared by the IP was a Corporate Guarantee. Later, by mistake, IP misstates the loan sum as RM25 million instead of RM45 million. Sometime later, SISB defaulted in its repayment to RFIB. RFIB, realised the error but proceeded to obtain judgment against SISB for the sum of RM25 million. Therefore, RFIB brought an action against the IP in negligence for the balance of RM20 million plus interest. IP was subsequently found negligent by the court.

Upon reviewing IP's chronology of events, the easily identifiable weak areas are:-

1. When the IP sent RFIB the first draft of the documents, the person in charge in RFIB's end instructed IP to forward the same draft documents to SISB in the interest of time. **Hence, it would appear that the IP prepared the documents in a rush.**
2. Even when drafts were sent to SISB for feedback and if SISB had noticed the error, they would have no reason to correct it.
3. Drafts were prepared by a clerk and there was no evidence that either the lawyer or partner had checked it before it was sent to RFIB and SISB.
4. Except for the drafts and signed documents, IP's file contained no correspondence, meeting notes, file notes or even teleconversation notes to indicate the flow of events from the start of the brief to signing.
5. IP's partner figured that RFIB (the bank/client) would check the important details especially the loan sum.

## **Avoid Making The Same Mistakes!**

1. Never shift the burden of identifying errors in the documents to the client! It remains your duty as a solicitor to ensure that documents are properly and accurately drafted!
2. Always keep track of correspondences – write down teleconversation and meeting notes and practice emailing clients' minutes of meetings to confirm details of discussions and their instructions. Occasionally, do a spot check on files to ensure that these correspondences are up to date!
3. When dealing with final drafts before they are executed, it is advisable to refer back to documentations containing the client's instructions.
4. As part of the handover process, firms should ensure that all files are in order including correspondences and important dates.

In this case, the IP was found to be negligent by the court. The court awarded nominal judgment against the IP on the grounds that the claimant in the action against IP failed to prove that the IP's negligence caused its loss. In this case, the claimant did not manage to claim any monies from the judgment sum from the Corporate Guarantor. As such, it could not be said that the loss arose from IP's negligence. Nevertheless, the IP suffered a loss from its negligent handling of the matter. Such a loss could have easily been avoided by good risk management practices.