

# RISK management QUARTERLY



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

## Editorial

The PII Scheme was incepted with the purpose of protecting both the profession and the public alike from financial losses stemming from malpractice or negligence. During its formative years, the Scheme relied heavily on the expertise of insurers and brokers to make pertinent decisions about the Scheme's direction. This reliance contributed to the imbalanced progression of the Scheme.

It has taken more than a decade to unhinge the status quo of the Scheme to ensure the Scheme remains a Scheme run by lawyers, for the benefit of lawyers. Hence all Members need to understand that to move forward, removing the No Claims Bonus (NCB) and improving claims management will be critical for the future.

The overwhelming support for this proposed change at our recently concluded AGM of March 2006 is evident that Members are unimpressed with the existing oppressive terms and conditions imposed upon them on claims notification. The existing claims management process that is archaic and not structured to serve the interests of Members further exacerbates this problem.

In this issue, Jardine Lloyd Thompson Sdn Bhd (JLT) has contributed the "FAQs of the Certificate of Insurance 2006" for your reference. You are advised to read this **FAQ** together with the 2006 Certificate of Insurance to better understand the terms of the professional indemnity insurance policy

Risk management and best practices remain the best tool to nip a problem (in this case, a claim) at the bud. The article "Looking for Mr. (or Ms) Right: How To Choose A Law Partner" intends to assist lawyers who are considering setting up practice and/or going into partnership. It will definitely provide some points to ponder before assuming this important role.

The conclusion to the PII Workshop 2005 Round-up Report highlights the major points discussed by speakers on the final day of the Workshop. It provides the input and suggestions made by speakers from Hong Kong, South Australia and Singapore, amongst others. Some of the speakers' papers can be found at: [http://www.malaysianbar.org.my/component/option,com\\_docman/task,cat\\_view/gid,147/Itemid,119/](http://www.malaysianbar.org.my/component/option,com_docman/task,cat_view/gid,147/Itemid,119/)

The PII & RM Department's calendar for the year 2006 details some programmes and projects we hope to implement for your benefit.

We look forward to your support in the various projects initiated and welcome your feedback.

*Ragunath Kesavan*  
Secretary  
Bar Council

## Looking For Mr. (Or Ms.) Right: How To Choose A Law Partner

By Linda J. Ravdin

Linda J. Ravdin is a shareholder in a 13-lawyer firm, Pasternak & Fidis, P.C., in Bethesda, Maryland. She joined the firm after 28 years of practicing as a solo or in small firms of two to five lawyers. She concentrates in domestic relations in the District of Columbia, Maryland, and Virginia and was named one of the D.C. area's best divorce lawyers by Washingtonian Magazine in 2004. She can be reached at [Lravdin@pasternakfidis.com](mailto:Lravdin@pasternakfidis.com).

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*The art of life lies in a  
constant readjustment  
to our surroundings*

[Okakura Kakuzo](#)

The selection of a law partner is a momentous decision. A law partnership that works well can enhance the professional lives of the partners in ways that one lawyer working alone may not be able to accomplish. A partner who has a high level of professional competence and a good reputation adds value to the firm and to his or her individual partners. A poor choice of partner can mean professional and financial disaster. A partner's ethical troubles or personal misbehavior can tarnish the firm as a whole. A partner's inattention to business development and collection of fees can erode the financial stability of the firm and hurt all partners. What are the essential qualities your partner should have? And what qualities should a prospective partner look for in you?

### **Ethics and Character**

Your partner should be someone who strives to meet the highest standards of ethical conduct in all aspects of his or her professional life. Operating at the borderline is not good enough. Nor is having simply memorized a number of rules sufficient. Your partner should be someone you can trust to have signature authority on your attorney trust account. Your partner should be someone who conducts him- or herself in an ethical manner at all times without being pushed. He or she should have enough appreciation for ethical issues to recognize one when it presents itself. Unfortunately, not all lawyers do. It would be a mistake to take for granted that your potential partner operates as ethically as you do.

A firm can establish procedures to reduce the chances that one partner will be able to commit certain unethical acts, such as misappropriation of funds, but other acts, such as neglect of client matters, cannot effectively be policed by the remaining partners, who will necessarily be concerned primarily with the delivery of services to their own clients. This means your partner should be someone you can trust completely to do the right thing where the conduct of client matters is concerned.

Equally important is the candidate's ethics in dealing with other partners. Partners in a law firm have a fiduciary responsibility to each other and to the firm. Your potential partner should understand that in a firm, partners must be able to act for the greater good of the firm. A lawyer too shortsighted or controlling to act as part of a team will probably be an unsuitable partner. Partners must feel confident that other partners will handle financial matters in a fair and respectful manner, for example that issues about proper credit for

originations will be resolved in the open. Members of a firm should also be committed to disclose errors of any kind that could affect the firm, including possible malpractice or ethical claims, as soon as the issue surfaces. Doing so will give the firm's partners the opportunity to solve a problem before it grows too big to handle.

Finally, your partner must be someone who deals ethically with employees—both associate attorneys and staff. It should go without saying that a partner who cannot be trusted to avoid behavior that could result in an employment discrimination claim is a partner who cannot be trusted. A partner who takes unfair advantage of staff—for example demanding that a staff member perform personal services or lie to clients or others—is a partner who puts the entire firm at risk.

### Expertise and Quality of Legal Work

Every firm should be committed to maximizing the quality of legal work it delivers to its clients. If you are a young lawyer out of law school only a few years and are considering going into partnership with another young lawyer, you should both be prepared to invest the time and energy to attain a high level of expertise in the practice areas in which you plan to develop business. If you are considering going into practice with an experienced lawyer, that lawyer should already be tops in his or her practice area. In all cases, your partner, and you, should be committed to keeping up with developments in the field, regularly attending or teaching continuing legal education, and continually working to improve skills and expertise.

If the person I was considering going into partnership with practiced in my specialty, I would want that person to have the skills and competence to step in and handle a case of mine if that ever became necessary. I would also want to know that he or she maintains such good files that I could step in for him or her on a case if that became necessary. But I would want to know that my partner will not take advantage of my ability to step in on a case at the last minute by taking off on a trip and leaving me with a lot of emergencies that could have been avoided if he or she had adequately planned. And I would want him or her to know that I conduct my client business so as to minimize the risk that others will be left holding the bag while I am away from the office.

### Practice Management

A law partnership is a business arrangement. Thus, the ability of partners to contribute to managing the business of the firm is essential to the success of the firm. If your potential partner is in a firm now, he or she should have had some exposure to practice management issues that confront firms and may have had some management responsibility. Even a potential partner who has never been in practice may have had some experience managing the delivery of services to clients, dealing with personnel issues, managing resources, or budgeting. Your potential partner should either have enough interest and talent in practice management to make a direct contribution to management or he or she should be willing to let those who are interested and good at it take primary responsibility for overall management of the firm.



*When deeds speak,  
words are nothing*

[African Proverb](#)

Even in a firm where significant management responsibility is delegated to a managing partner, each partner must be able to assume responsibility for managing his or her individual practice. This includes things like work flow management, client development, time management, and setting and collecting fees. Some tasks within these categories can be delegated, of course, but overall responsibility cannot. Your partner candidate must be willing and able to assume responsibility for these important elements of practicing law. He or she should have a strategy for intake of new clients, conflict checking, meeting deadlines, and setting and collecting fees. A potential partner who has a low rate of realization of fees billed may be a lawyer with poor management skills. Moreover, a low realization rate can be a sign of deeper problems, such as poor-quality work and dissatisfied clients.



*Be not afraid of going slowly; be only afraid of standing still*

### Chinese Proverb

### Business Development

It may be that in large firms all partners do not need to be rainmakers. However, few small firms are sustainable unless all partners are able to bring in enough work to feed themselves and those they are responsible for. If your potential partner is an experienced lawyer in an existing practice, he or she should already have a self-sustaining client base. If your partner candidate does not have a self-sustaining practice, is he or she expecting to get overflow work from you? If so, you need to know that before you decide whether to go into practice together. Your partner candidate should be committed to putting in the time and money required to market your firm and should have some ideas about how you can combine forces to market yourselves more effectively than either of you is doing alone.

Your decision whether to practice together should take account of each partner's practice specialty, how the different specialties can support each other, and opportunities for cross-selling. It is important to know what type of clients your potential partner is seeking and how he or she is going about it. Is your partner candidate relying almost entirely on word of mouth to bring in a few high-end clients with large-fee matters? Are you handling a large volume of low-end matters that you bring in through Yellow Pages advertising? If so, your practices may not be compatible. On the other hand, if you and your potential partner have similar strategies for developing business and you each have clients who could benefit from the services of the other, you may have the makings of a successful joint venture.

### Commitment to Client Service

Your partner candidate should be committed to the highest standards of client service. Many commentators have observed that, contrary to what many of us thought when we graduated from law school, clients do not equate good service solely with winning in court. Rather, they care about being heard, about promises kept, about attention to their legal problem, about returned phone calls and responses to letters and electronic mail, about being kept informed. They care about whether their lawyer cares and shows it in everything he or she does. They also care about results. If your partner candidate is an experienced lawyer, he or she should already have a track record of delivering excellent client service. This is true even if your partner candidate has never been in private practice. A lawyer coming from government, a legal services

organization, a general counsel's office, or another legal environment still had to deliver services. Did that lawyer do a good job of delivering those services? If you are inexperienced or are considering going into a partnership with an inexperienced lawyer, you both should be committed to educating yourselves about how to deliver excellent client service: Attend programs devoted to the subject, read, talk to more experienced lawyers, and listen to clients. Make changes in your practice as you learn more about what clients expect.

### Questions to Ask

Before making a decision to go into a partnership, there are a number of questions you could ask that will give the partner candidate an opportunity to reveal some of the things that matter in a law partnership. Ask questions even if the person you are considering is a close friend. The things you tolerate in a friend may be intolerable in a law partner. Here are some suggested questions:

- How do you see our combined practice developing during the next five years? The next ten years?
- What do you think are the biggest challenges in building a successful practice in your specialty?
- What are your most significant business development activities at the present time? How has your business development strategy changed over time? What are your ideas for how we can combine our marketing efforts?
- In your current practice, do you have a marketing budget? What percentage of your gross receipts do you commit to the marketing budget?
- What do you see as the most significant benefit to you of our joining forces?
- How do you keep up with developments in your specialty? What professional publications do you read regularly?
- How many hours per year of CLE do you either attend or teach?
- Do you routinely use written engagement agreements?
- What is your typical required fee advance for the types of matters you handle most frequently?
- Do you escrow all your unearned fee advances?
- What strategies have you developed to maximize your fee collections?
- What percentage of your billed fees do you collect?
- What are the amounts of the five largest receivables you currently have? What are you doing to collect these fees? Looking back, what would you do differently to avoid this situation in the future?
- How frequently do you send out bills?
- Do you use a time and billing program? Which one? Do you record your time contemporaneously?
- Do you sue clients for outstanding fees?
- What are your strategies for time management? For not missing deadlines? For getting client work out in a timely fashion?
- Do you take vacations? How frequently and for how long?
- When you take vacations, how do you plan for making sure your work is done before you go? How far ahead do you schedule your time out of the office and how far ahead of a trip do you start planning so that your work is up to date?
- How do you plan for making sure you are covered for emergencies, such as a death in the family or a serious illness, in your absence?
- What are your strategies for avoiding malpractice and protecting yourself from malpractice claims?



*The quieter you become, the more you can hear*

**Baba Ramdass**



*Don't stumble over something behind you*

### Seneca

- What are your procedures for intake of potential new clients and for checking conflicts of interest?
- Do you have disability insurance, health insurance, and life insurance? Is your estate planning up to date? Do you have a health care directive?
- Have you taken any continuing legal education on practice management issues? Do you read any publications devoted to practice management issues?
- What do you see as the key practice management issues that we will confront as a firm?
- What do you consider to be the practice management responsibilities that you are best at?
- If you could choose specific practice management issues that you would have primary responsibility for in our firm, what would they be?
- Based on your experience and observations in your current firm, are there things that you would like to do differently with regard to practice management?
- What are the areas of practice management that you feel you need to know more about in order to be more effective in the running of our firm? How do you propose to acquire the knowledge you need?
- What do you consider to be the most appropriate compensation formula for our firm? Do you believe the formula should be totally objective, or should there be subjective elements? How would you see us resolving disputes about compensation?
- What do you like to do when you are not practicing law?
- Have you had any mentors since you became a lawyer? How did they help you to become a better lawyer?
- Have you been a mentor to any younger or less experienced lawyers? Was that a rewarding experience for you?
- What is your view about whether we should hire associates and when?
- Do you want to grow or stay small? What number of partners do you consider optimal?

In addition to asking questions of the prospective partner, you should talk to others—judges, opposing counsel, other lawyers—with whom the partner candidate has worked and hear what they have to say. Some of the questions posed to the partner candidate can also be posed to third parties. You might also exchange with the partner candidate some materials that will give you each a chance to further assess some of the information gleaned through your discussions. For example, request a sample engagement agreement, a sample client invoice, and examples of some internal case management forms, such as a checklist for a type of matter handled frequently, a template for a document created frequently, and a new-client intake checklist. These will give you a sense of how well organized this person is. And, if he or she has been in practice a number of years and does not have any internal forms, ask why.

### **Conclusion**

Practicing law with partners can be a professionally and personally rewarding experience—if you practice with the right partners. Before going into a partnership, do the necessary investigation and ask the right questions. Find out whether the lawyer you are considering is right for you before, not after, you join forces.

## FREQUENTLY ASKED QUESTIONS OF THE CERTIFICATE OF INSURANCE 2006

Questions	Answers
Who is insured?	<ul style="list-style-type: none"> <li>◆ Partner / Sole Proprietor.</li> <li>◆ Employees – Qualified &amp; Non-Qualified.</li> <li>◆ Estate &amp; Legal representatives of the above.</li> </ul>
What is insured?	<ul style="list-style-type: none"> <li>◆ Civil liability for claims arising from conduct of private legal practice for work customarily and legitimately performed by lawyers in Malaysia.</li> <li>◆ Damages payable to claimant including claimant's costs &amp; defence costs</li> <li>◆ Limit applies each and every claim arising out of ONE underlying cause.</li> <li>◆ Disputes as to what "legal practice" is will be decided by President of Bar Council.</li> </ul>
What is my insurance limit?	<ul style="list-style-type: none"> <li>◆ Mandatory Limit is based on the number of lawyers in the firm.</li> <li>◆ Minimum Limit is RM250,000 for the 1<sup>st</sup> lawyer, increasing by RM50,000 for each additional lawyer.</li> <li>◆ Maximum Mandatory Limit is RM2,000,000.</li> <li>◆ Top-Up can be purchased to increase your Mandatory Limit.</li> </ul>
What to notify?	<ul style="list-style-type: none"> <li>◆ Writs / letters of demand / any assertion of a threat to sue.</li> <li>◆ Any circumstance that may lead to a claim.</li> </ul>
When to notify a claim?	<ul style="list-style-type: none"> <li>◆ As soon as practicable BUT no later than 30 days of any claim first made against you during the Period of Insurance.</li> </ul>
What happens after I notify?	<ul style="list-style-type: none"> <li>◆ Insurer appoints a Panel Solicitor – within 14 days where writs have been served.</li> <li>◆ Insurer takes conduct of the investigation, defence or settlement.</li> </ul>
Is defamation covered?	<ul style="list-style-type: none"> <li>◆ Yes, but limited to RM250,000 each claim and in the aggregate.</li> </ul>
Is misconduct covered?	<ul style="list-style-type: none"> <li>◆ No. BUT innocent partners and employees of the Firm will be indemnified up to RM250,000 each claim and in the aggregate subject to special conditions.</li> <li>◆ Misconduct by employee(s) is covered up to Firm's Limit.</li> </ul>
What are the conditions precedent to Insurer's liability?	<ul style="list-style-type: none"> <li>◆ Your due observance of Policy terms, conditions and endorsements.</li> <li>◆ Accuracy of answers in your proposal forms.</li> </ul>
Does innocent non-disclosure void my insurance?	<ul style="list-style-type: none"> <li>◆ No. BUT the Insurer has the right to recover any monies paid from the partners/ sole proprietor of the Firm.</li> </ul>
When can a claim be voided by Insurers?	<ul style="list-style-type: none"> <li>◆ Failure to cooperate after notification.</li> <li>◆ Knowingly reporting false or fraudulent claims.</li> </ul>
When do I seek a 3 <sup>rd</sup> party decision?	<ul style="list-style-type: none"> <li>◆ Whether a type of work is covered - <b>BC President</b></li> <li>◆ Whether to settle or dispute a claim – <b>Senior Lawyer</b></li> <li>◆ Disputes with Insurer – <b>Sole Arbitrator</b></li> </ul>
What does Base Excess mean?	<ul style="list-style-type: none"> <li>◆ It is the amount to be paid by the Firm towards any one claim or defence costs.</li> <li>◆ The Base Excess increases if claim arises from conveyancing of land or building, conflict of interest and dishonesty of partner</li> </ul>
What claims are excluded?	<ul style="list-style-type: none"> <li>◆ <b>[a]</b> Known claims <b>[b]</b> Fee Disputes <b>[c]</b> Suits in non-Malaysian Courts <b>[d]</b> Trading debts <b>[e]</b> Financial warranties <b>[f]</b> Personal Injury <b>[g]</b> Misconduct <b>[h]</b> Insured vs Insured <b>[i]</b> Disputes with employees <b>[j]</b> Radioactive/Pressure waves/War <b>[k]</b> Personal financial guarantee or undertaking given in bad faith <b>[l]</b> Disciplinary actions &amp; Fines &amp; Penalties from the Disciplinary Board</li> </ul>
Will I be covered if I retire? In the event of death, will my estate be protected?	<ul style="list-style-type: none"> <li>◆ If there is a claim against you after you retire or a claim against your estate, you are covered up to the last Limit of Indemnity you had, subject to the last Base Excess BUT you must have been insured for a minimum of 12 months under a Master Policy.</li> </ul>
What is a 'claims-made Policy'?	<ul style="list-style-type: none"> <li>◆ It is a liability policy that provides coverage for a loss if the claim is first reported or filed during the Policy Period.</li> </ul>
What is 'Retroactive Cover'?	<ul style="list-style-type: none"> <li>◆ You have protection for all work done since the date of establishment of your Firm.</li> </ul>

This document is prepared by Jardine Lloyd Thompson Sdn Bhd as a summary of the Certificate of Insurance 2006 and serves as a guide for members of the Bar. Please read the Certificate of Insurance 2006 for the full terms and conditions.

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

*Continued from RMQ Dec 2005 (Vol 4 Issue 4)*

### DAY TWO

Day 2 began with the South Australian experience - both the director of Law Claims and their Risk Manager were present to discuss their experiences from both perspectives – Ms Janet Grundy on the Scheme’s history and Ms Katrina Bochner on their present Risk Management Education Programme. The session ended with Ms Sylvia Low representing Bizibody Technology who are Consultants to the Law Society of Singapore in the design and implementation of the PRIMELAW<sup>1</sup> Practice Management Standards.



*Ms Janet Grundy*

#### **Ms Janet Grundy, Director, Law Claims, Law Society of South Australia “Professional Indemnity Insurance Scheme – The South Australian Perspective”**

Ms Grundy began by setting out the various Schemes in place in the territories in Australia. The South Australian cover differs from NSW in that it covers both solicitors and barristers. She then focused on the features of the South Australian Scheme, providing information on terms and conditions of their Scheme and illustrations before moving on to the types of claims that Law Claims face and the costs involved.

Ms Grundy continued by sharing the South Australian experience with the delegates – showing us that PI Schemes in any jurisdiction basically share almost similar characteristics. This she achieved through examining the history of the South Australian Scheme and the factors which have influenced its development. She also analysed whether the Scheme has fulfilled the objectives set for it and then identified the current and future challenges that the Scheme may face.

Ms Grundy then laid out various external factors that played a role in determining the South Australian PI Cover from 2001 to date, she included the fall of HIH and its subsidiary FAI, Sept 11 events, how various reforms in Australia, namely Australian Prudential Regulatory Authority (APRA) and the Tort Law Reforms have all influenced PI Rates in South Australia.<sup>2</sup>

Before ending, she expounded on the current South Australian Scheme which is a monopoly Scheme. She listed the Scheme’s benefits as:

- ♦ Its provision of compulsory PII for legal practitioners for the benefit of consumers of legal services in the state.

<sup>1</sup> PRIMELAW is an award by the Law Society of Singapore to law practices in recognition of their commitment towards achieving and maintaining excellence in practice management.

<sup>2</sup> Jan Grundy, ‘PII Scheme – The South Australian Perspective’, p.7

- ◆ Run-off cover and non-avoidance provisions which would unlikely be available to all practitioners.

**Ms Katrina Bochner,  
Risk Manager – Law Claims, Law Society of South Australia  
“Risk Management for the Legal Profession in South Australia”**

The Risk Management programme in South Australia did not begin until 1996 although before 1996 statistics were kept and trends noted. Nevertheless, a programme was begun and by 1997, the legal profession in South Australia had appointed their first Risk Manager. Ms Bochner however stressed the importance of localising any programme in order for practitioners to feel that they had ownership of both problem and solution.<sup>3</sup>

The South Australian RM Education programme consists of a strong interactive component which incorporates:

- ◆ The explanation of risk management as a *concept*,
- ◆ Aids for practitioners to manage the retainer, from its commencement to its conclusion, with emphasis on good communication skills
- ◆ Practice management issues, for example, internal systems
- ◆ Handling legal issues, for example, conflicts of interest, analysing strategies, managing transferred files, and
- ◆ Creation of a paper trail to prove appropriate action and advice.

In summary, lawyers in South Australia are never without resources when they do have questions. So successful was the South Australian programme that by the end of 1998, approximately 1,220 out of a total of 1,453 practitioners had undertaken the entire course.<sup>4</sup>

Other initiatives they have included in their programme include provision of risk management education to students, *pre-admission*, development of new programmes and the publication of a quarterly newsletter.<sup>5</sup>

Ms Bochner then took a look at the statistics thus far to illustrate the extent their Risk Management Education programme has assisted in arresting their claims and risk areas. She also outlined the challenges that the programme currently faces and new initiatives that are being looked at on a continual basis:

- ◆ New sessions
- ◆ New format for presentation
- ◆ Monthly newsletter
- ◆ RM practice reviews

Their Scheme now has 8 programmes at varying stages of readiness - 1 ready for commencement in early 2006 and 2 more in development. In 2004/ 2005 alone, they had 57 sessions presented to 614 attendees. Graduates seeking admission were not left out either with 10 sessions hosted for them. The South Australian RM Education Programme also held presentations at the State Legal



Ms Katrina Bochner

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<sup>3</sup> Katrina Bochner, Slide 4 Powerpoint Presentation

<sup>4</sup> Katrina Bochner, Slides 5 – 7 Powerpoint Presentation

<sup>5</sup> Katrina Bochner, Slide 9 Powerpoint Presentation

Convention, Country Practitioners' Conference and Bar Reader's Course.<sup>6</sup>



Ms Sylvia Low

**Ms Sylvia Low,  
Director- Bizibody Technology Pte Ltd  
“Managing Practice Risks through PRIMELAW”**

Ms Low started her paper by briefly outlining the historical milestones of the Singapore PI Scheme which began with the setting up of the Professional Practice Sub-Committee in 1993.

In 2001, their Law Committee selected the UK LEXCEL standard as a model for the Singapore Law Profession's own standard and negotiated a “knowledge buy out” of the Lexcel Standard.

2002 – 2003 marked the period of consultation with Managing Partners of firms, PI Insurers and Practice Management consultants on the adaptation of the LEXCEL standard to suit local practice conditions. All their efforts culminated in Dec 2003 with the launch of PRIMELAW.<sup>7</sup>

In essence, Ms Low provided a brief yet enlightening summary of PRIMELAW standards, their principles and how PRIMELAW has benefited the Singapore Legal Profession.<sup>8</sup>

She also stressed the importance of

- ◆ Practice management
- ◆ Client Relationships
- ◆ Standard of legal service provided

for which, in Singapore the benchmark is the PRIMELAW standard.



Mr. Shasi Gangadharan

**Mr. Shasi Gangadharan,  
Vice President – Chubb Specialty Insurance Manager, Asia Pacific  
Zone, Chubb Group of Insurance Companies.  
“Insuring Professionals: A Perspective from Insurer on Issues, Trends  
and Developments in Professional Indemnity Insurance”**

Mr. Shasi's talk was an overview of insuring professionals, what the current status of the industry is and how the insurers approach them.

His focus was primarily on Professional Indemnity/ Liability Insurance and its special features:

- ◆ That it is a highly specialised area and that common areas of professional indemnity such as lawyers, architects and accountants are not commonplace to many insurers
- ◆ The reduction in market players due to collective unfavourable claims experience plus the formation of programmes and associations by many involved professions.

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<sup>6</sup> Katrina Bochner, Slide 22 Powerpoint Presentation

<sup>7</sup> Sylvia Low, Slide 3 Powerpoint Presentation

<sup>8</sup> Sylvia Low, Slides 4 – 6 Powerpoint Presentation

- ◆ Problem of perceptions due to the losses for lawyers programmes historically

He also touched on concerns that are developing in relation to losses, taking into account briefly the loss experience of the lawyers PI Scheme in countries such as Hong Kong and Singapore as well as architects and engineers whose PI Schemes are suffering from rate decreases and an increasing number of claims being reported. Reference was also made to the increase in claims and exposures and how certain developments, for example, sales practices, disclosure culture, expansion of legal liability, etc. has led to limitation in capacity, rising premiums, restrictions in coverage and change in underwriting models.

Before concluding, he also touched on emerging issues that are common in relation to insuring professionals apart from the loss experience, particularly coverage issues:

- ◆ Broad form issues, for example, civil liability and cover for claims
- ◆ Firms with areas of practice that are highly exposed
- ◆ Insurers taking an active role in risk management of professional services

His examples included claims-made basis policies, definition issues under the policies, challenges posed by development of technology. He also highlighted how lines are becoming more blurred due to the convergence of practices and imposition of regulatory limits and requirements which do not always coincide.

**Mr. Jonathan Miles**  
**Product Manager, Professional Lines, Property & Casualty, Asia Division**  
**Swiss Reinsurance Company**  
**“Sustainability of Professional Indemnity Schemes”**

Mr. Miles' paper was a discussion on the main challenges faced by PI Schemes around the world, namely:

- ◆ Volatility – the sectors most affected, for example, economic trends, severity, insurance cycles
- ◆ Identifying warning signs early
- ◆ Targeted risk engineering
- ◆ Coverage
- ◆ Participation

(Illustration of all the above was made by reference to Australia)

His proposals for sustainability are to:

- ◆ Consider longer term arrangements with insurers/ reinsurers to reduce volatility and create partnership approach
- ◆ Capture emerging risks input from scheme participants, law associations, insurers and reinsurers and others.
- ◆ Develop watchlist and forecasting model.
- ◆ Consider using E-solution to capture, transmit and monitor risk management information and compliance
- ◆ Tailor risk benchmarking and risk engineering programme.

He also emphasised the importance of



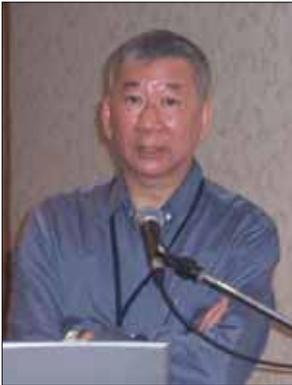
*Mr. Jonathan Miles*

- ◆ Risk management practices and the long-term benefits - “prospective effect of risk management” - that will ensue from such practices.
- ◆ Proactive risk identification

### **Mr. Peter Lo**

#### **President – Law Society of Hong Kong**

#### **“Administering the Professional Indemnity Scheme – Some Lessons Learnt”**



*Mr. Peter Lo*

Mr. Peter Lo gave a very light-hearted account of his personal experiences with regard to his involvement in the Hong Kong PI Scheme. He briefly described the highlights of the Scheme for lawyers and also shared the legal profession’s reaction to the HIH collapse which ultimately affected the manner in which their Scheme was run. The HIH collapse was also one of the main driving forces behind the Hong Kong Law Society’s PI Committee’s decision to consider other options for the long-term benefit of their members and PI Scheme in general.

He surmised that, in essence, the insurance underwriting criteria is ultimately based on commercial and business acumen which seeks profitability and monetary gains; hence it may never run parallel with the Profession’s concerns. As such, their Scheme’s future rests with their Members - to succumb to these concerns or continue to resist these changes. Ideally, he hopes that a comfortable balance is agreed by all the stakeholders concerned.

### **FORUM:**

Both forums were lively and constructive with moderator, speakers and delegates alike being very forward and earnest in their views which contributed greatly to knowledge sharing.

#### **DAY 1:**

#### **ARE LAWYERS CHOOSING WISELY: COMMERCIAL MARKET VS MUTUAL MARKET?**

On Day 1, we were privileged to have Mr. Michael Gill as our forum moderator and of course the panellists which consisted of: Mr. Rangunath Kesavan, Ms Susan Forbes, Mr. Mahindarjit Singh and Mr. Matthew Gosling of LawCover. The session had a continuous flow with many aspects, positive and negative, of both markets being discussed in detail. This was greatly aided by the fact that all present were happy to share information, experiences and their insights on the subject matter as well as answer queries from the delegates.

#### **DAY 2:**

#### **REAPING THE REWARDS OF RISK MANAGEMENT IN LEGAL PRACTICE: FACT OR MYTH?**

Ms Katrina Bochner of Law Claims kindly obliged to be our Moderator on Day 2, and we had on our panel Ms Sue Mawdsley (Legal Risk), Ms Janet Grundy and Mr. Mahindarjit Singh. The session was enlightening with a frank debate on the subject matter, the pros and cons of having a Risk Management Programme as well as the effectiveness of initiating such an endeavour.

### FEEDBACK

The feedback was encouraging in that most participants left the Workshop satisfied with its overall production, content and networking opportunities.

Ms Susan Forbes, Mr. Peter Lo and Mr. Michael Gill were commended for their informative and insightful papers but it is important to note that all speakers were equal in their constructive, enlightening and candid contributions.

To put it succinctly, the Workshop was an overall success – with not only informative and effective papers presented but a motivated crowd that was very interactive with the speakers during the Q&As and the two forums.

### CONCLUSION

This unique gathering of law societies, insurers, reinsurers; and brokers allowed us to experience and share everyone's unique history and be party to their future plans and ideas.

Most jurisdictions began with compulsory schemes – most states in Australia had one in place, so too did Canada, the United Kingdom and ours included.<sup>9</sup>

Benefits of a compulsory Scheme:

- ◆ Association / Bar would be in position to negotiate better terms and more reasonable rates of premiums as the whole profession was insured.
- ◆ Security for the client
- ◆ Security for the practitioner<sup>10</sup>

The debate regarding PI Schemes will no doubt continue as demonstrated by the papers presented by all speakers with some schemes presently sufficient and performing satisfactorily while other schemes are re-evaluating their positions and embarking on new endeavours in an effort to improve and further develop their schemes. It is important though, to note that in all jurisdictions, they are in accord on a few central issues, that is, the importance of:

- ◆ Claims management
- ◆ Risk management education programmes, and
- ◆ Ownership and effective usage of statistics

To summarise, the Workshop demonstrated that regardless of jurisdiction or country, all PI Schemes have faced somewhat similar problems, similar claims albeit at different times and with variable levels of success due to local circumstances and regulations. However, continuous access to knowledge and information among key stakeholders of these schemes may be the key to addressing what the future has in stall for these schemes.

***Selected papers can be found at:***

[http://www.malaysianbar.org.my/component/option,com\\_docman/task,cat\\_view/gid,147/Itemid,119/](http://www.malaysianbar.org.my/component/option,com_docman/task,cat_view/gid,147/Itemid,119/)

<sup>9</sup> Jan Grundy, 'PII Scheme – The South Australian Perspective', p.1

<sup>10</sup> Jan Grundy, 'PII Scheme – The South Australian Perspective', p.1



# PII & RM DEPARTMENT 2006 CALENDAR

## January 2006

- ✓ Ethics Lecture: RM Session in Johor Bahru
- ✓ RMQ, December 2005

## February 2006

- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ Ethics Lecture: RM Session in Penang
- ✓ JLT/PII Committee 3-Year Plan Workshop
- ✓ Joint Claims Committee (JCC) Hearing 2

## March 2006

- ✓ Audit of Open Claim(s) Files: 2001 - 2005
- ✓ JCC 2(a) & 3

## April 2006

- ✓ Audit of Open Claim(s) Files: 2001 - 2005
- ✓ Brochure: Risk Management Flowchart
- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RM Seminar in legal firm
- ✓ RMQ, March 2006

## May 2006

- ✓ Audit of Open Claim(s) Files: 2001 - 2005
- ✓ Ethics Lecture: RM Session in Kuala Lumpur

## June 2006

- ✓ Audit of Open Claim(s) Files: 2001 - 2005
- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ Legal Practice Review: Pilot Programme

## July 2006

- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RMQ, June 2006

## August 2006

- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RM Seminar: Sole Proprietors

## September 2006

- ✓ Annual PII/ RM Survey
- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RM Brochure

## October 2006

- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RMQ, September 2006

## November 2006

- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RM Seminar: Sole Proprietors

## December 2006

- ✓ Ethics Lecture: RM Session in Kuala Lumpur
- ✓ RM Brochure



Majlis Peguam  
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Circular No. 8/2006 - 8 Mar 2006

Dear Members,

**RE: PROFESSIONAL INDEMNITY INSURANCE & RISK MANAGEMENT (PII & RM) DEPARTMENT**

We are pleased to announce that the PII & RM Department has been set up at the Bar Council Secretariat. The department consists of:

1. Ms. Corrinne Wong, Risk Manager
2. Ms. Wong Li Chin, Executive Officer
3. Ms. Vinodhini Samuel, Executive Officer

We are hopeful that the setting up of this Department will ensure that Members have access to valid and reliable information in respect of risk management and PII matters, in addition to enhanced delivery of services.

You can either write in to the PII & RM Department, Bar Council Malaysia, or fax your queries to **03 2031 6124**. Alternatively, you may contact:

<b>RISK MANAGEMENT</b>	<b>PII SCHEME</b>
<p><b>Ms. Corrinne Wong</b> <b>Risk Manager</b> corrinne@malaysianbar.org.my Tel: 2031 3003 ext 190 Direct Line: 2072 1614</p> <p><b>Ms. Wong Li Chin</b> <b>Executive Officer</b> lcwong@malaysianbar.org.my Tel: 2031 3003 ext 150 Direct Line: 2032 4511</p>	<p><b>Ms. Vinodhini Samuel</b> <b>Executive Officer</b> vino.bs@malaysianbar.org.my Tel: 2031 3003 ext 141 Direct Line: 2032 1870</p>

Thank you.  
Yours Sincerely,  
Ragunath Kesavan  
PII Committee Chairman  
Bar Council Malaysia



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We're on the Web!  
See us at:

[www.jltecsolutions.com/barcouncil](http://www.jltecsolutions.com/barcouncil)

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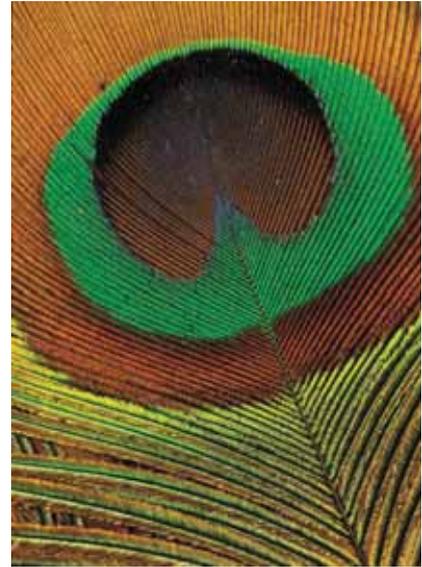
In compiling the information contained in this newsletter, the Malaysian Bar Council and JLT have used their best endeavours to ensure that the information is correct and current at the time of publication. We do not accept any responsibility for any error, omission or deficiency.

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 at 03 - 2723 3388.

### 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.*



*It's choice - not chance - that determines your destiny*

[Jean Nidetch](#)

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