

# Why Members Must Understand the Importance of Timely Notification

## Case Study 1: Please Notify in Writing

By Melissa Anne Kraal

**SHAN & GOOI (suing as a firm of advocates & solicitors) v CAPITAL INSURANCE BERHAD & 3 ORS [2011] MLJU 440**

### The Facts

The insured practice, Shan & Gooi ("S&G"), purchased Professional Indemnity Insurance ("PII") Policies through the Malaysian Bar's Mandatory PII Scheme as follows:-

Policy Year	Period of Insurance	Insurer
1999/2000	01.07.1999 – 31.12.2000	Malaysia National Insurance Berhad ["MNI"]
2001	01.01.2001 – 31.12.2001	Malaysia National Insurance Berhad ["MNI"]
2002	01.01.2002 – 31.12.2002	Capital Insurance Berhad ["CIB"]

Sometime on 13.8.1999, one of S&G's Partners discovered that monies had been misappropriated from S&G's office account and clients' account and they suspected a clerk had perpetrated the fraud. When one of the Partners contacted the PII claims administrator at that time, Cunningham Toplis (M) Sdn Bhd ("Cunningham"), on 18.8.1999, he alleged that he was advised to notify only when an actual claim is made against S&G. However, Cunningham also faxed the claims notification guidelines to S&G on 20.8.1999 following the oral notification.

Sometime in 2002, several clients whose monies had been misappropriated filed two separate suits against S&G ("the Suits"). Pursuant to the terms of the 2002 Policy, S&G wrote a letter dated 28.6.2002 to the PII claims administrator

for year 2002, Crawford & Company Adjusters (M) Sdn Bhd ("Crawford"), to notify the Suits. Via letter dated 11.10.2002, Crawford informed S&G that CIB's policy is not triggered and advised S&G to notify MNI since the claim arose during the insurance period of the 1999/2000 Policy.

On 18.10.2002, S&G wrote to Cunningham to notify them of the Suits. There was no reply from Cunningham until 1.8.2003 when Cunningham informed S&G that they were awaiting instructions from the Insurers. There was more silence from Cunningham and MNI despite S&G's reminder on 23.11.2003. As a result S&G initiated legal action against CIB and MNI for indemnity in respect of the Suits.

### Tips & Tricks

S&G was successful in their action against MNI but not successful against CIB. The case stands out to show how important timely and written notification is to you as an Insured Practice.

In notification parlance, it is easy to differentiate between a notifiable circumstance from a letter of demand ("LOD") and a writ of summons ("Writ"). An LOD or Writ essentially means that there is **already a claim made against your firm**. However there are occasions and definite events that you encounter which may concern you, even if you don't personally think a claim will materialise. Just notify these!

When an event or circumstance or a string of events or circumstances happen, the best thing to do is simply notify the Broker in writing, detailing as much as possible, of the said events you have just encountered.

**There are no consequences and no claims loading in notifying a claim or a circumstance. It is only when the Insurer is required to pay out monies in excess of your Firm's Base Excess that a claims loading is imposed.**

One of the main benefits of notifying a circumstance early is that you can discuss the events and the possible solutions with one of the panel solicitors; in most cases this has avoided the circumstance from developing into a claim against a firm.

Notifying early and in writing may avoid your firm facing the predicament of S&G.