

Professional Indemnity

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Premium Reduced But Coverage Enhanced!

The compulsory Professional Indemnity Scheme has been renewed with enhanced coverage despite a 3% reduction in the Standard Primary Premium. Ordinarily, coverage enhancements attract additional premium, but in this instance the Scheme Broker, Lockton Companies

(Singapore) Pte Ltd, working closely with the Professional Indemnity Committee, negotiated coverage for privacy breach costs at no additional premium. Instead, as mentioned herein the Scheme Standard Primary Premium has been reduced.

The new coverage for breach of privacy provides for the following:

- notification costs to individuals or entities whose private information has been disclosed or to any applicable regulatory bodies
- legal representation costs at any formal inquiry in respect of privacy breach
- forensic consultant's costs to determine the cause and extent of privacy breach

First Party Loss

These costs are essentially first party loss, meaning an insured's own loss which is not covered by a third party liability policy such as the Scheme Policy. Third Party liability policies are designed to cover only losses suffered by a third party and not by the insured, a first party. Further, the use of computer systems and other information technology devices has increased the risk of privacy breach significantly. Additionally, in Singapore and many other jurisdictions, laws have been passed to protect personal data of individuals. In responding to these changes, the insurance markets offer standalone cyber risk insurance, which provides coverage for both first party

and third party losses. Privacy breach costs such as those mentioned above are included as first party loss cover in cyber risk policies.

Before offering cyber risk insurance to any proposed insured, insurers need to review *inter alia* that insured's policies, systems and procedures relating to the protection of private information in their care, custody and control. However, with regard to privacy breach costs coverage under the Scheme Policy, the Scheme Broker has worked hard to obtain it without the need for the insured members to provide such information.

Mitigation/Avoidance

Privacy breach costs coverage is only applicable to private information belonging to clients and others, who are not an insured under the Scheme Policy. Further, this coverage is only available to such costs that are reasonable and necessary to mitigate or avoid a breach or potential breach of privacy.

Any insured wishing to claim privacy breach costs must notify in writing of the breach or potential breach of privacy to the Scheme Broker upon discovery of the same during the Scheme Policy Period. In addition, the insured must advise the

action intended to be taken and obtain the Scheme insurers' consent before incurring any costs and expenses in respect of the breach or potential breach of privacy.

Limit And Excess

The full Limit of Indemnity and the Excess applicable to an insured under the Scheme Policy apply to privacy breach costs. In the event a breach of privacy gives rise to a claim for civil liability covered under the Scheme Policy, any payment made for privacy breach costs will reduce the Limit of Indemnity available for the claim.

Members should take note that the provision of this coverage does not mean that they can be lax in safeguarding private information entrusted to them. Whether such information is in physical or electronic form, members are obliged to protect them against unauthorised disclosure of the same. More vigilance is required when information is in digital form in a computer system because of the vulnerability of such system(s). In this regard, members are urged to read the last two issues of the Professional Indemnity Law Letters (October/December and July/September 2015) which deal respectively with personal data protection, and risks associated with information technology. ●

Risk And Compliance – Benefits of Risk Management

The Scheme Broker together with The Law Society of Singapore kicked off the calendar year with a seminar on the above-captioned topic on 6 and 7 January 2016. The seminar was held in the afternoons on those two days, the second day being a repeat session.

Mr. Calum McLean, Risk Manager at Lockton Companies, U.K., conducted the seminar. He addressed the participants on *inter alia*:

- (i) rationale for risk management;
- (ii) information security and fraud (including anti-money laundering);
- (iii) developing risk register; and
- (iv) risk management strategies.

The seminar concluded with workshops focusing on hypothetical scenarios based on the claims experience under the Scheme. Some interesting discussions and suggestions to manage the risks presented in the hypothetical scenarios are set out below.

Litigation time limits

A key risk area is missed deadlines in personal injury claims, where a claimant has a relatively short time of three years before his or her claim is time-barred. Other claims arise from the operation of Order 21 Rule 2(6), which deems a cause or matter to be discontinued if no step or proceeding is taken in the matter for a period of one year.

When asked for ideas to manage such risks, some participants described a practice of programming alerts in their e-mail systems which would send reminder e-mails to them and their staff at pre-set dates and times. Other participants described the traditional pen-and-paper method of logging imminent and future deadlines into their diaries. Yet other participants stated that they carry out regular file reviews which would catch any looming deadlines.

All these methods can be effective depending on one's file load and staff connectivity. Some participants highlighted that they are small practices which do not have the resources for state-of-the-art technology to track their

files and dates. It may not be necessary to adopt the latest technology. Simple, low-cost methods are fine so long as one effectively manages the risk of missing timelines.

Stamp duty in conveyancing

Another key risk area is conveyancing. Net incurred claims in this practice area alone amounted to approximately S\$8.5million in the past 5 years. Stamp duty penalties have increased in frequency, accounting to about 18% of the claims quantum.

Some practitioners and their staff were caught unaware of the Additional Buyer's Stamp Duty ("ABSD") introduced on 8 December 2011 and the subsequent revised rates on 12 January 2013. Consequently, they failed to advise their clients on the correct stamp duty payable. They therefore faced with sizeable claims by furious clients for the penalties imposed on them.

Keeping up with the regulations in your practice areas is of utmost importance. Not every change in the law will make the headlines. One simple way to keep updated is to bookmark the websites of relevant regulatory bodies in your web browser and access them daily.

"Scope creep"

One participant described a phenomenon known as "scope creep". As a matter progresses, or even after it concludes, the client asks for or expects legal advice and services which fall outside the initially agreed scope. It is easy to be drawn into an excluded scope, as seen in one of the hypothetical scenarios from the workshop:

An existing client engages Webber to act for him in the purchase of a unit in a development site. The client is keen to save on legal fees and is negotiating many elements himself. The client obtains a letter of offer for funding from a bank and forwards the letter to Webber, who places the letter in his file. The transaction proceeds smoothly but completion is delayed pending resolution of certain issues which the

client is negotiating. 6 months later, shortly before completion, Webber receives an angry call from the client, who informs Webber that the offer of funding expired 3 months ago as stated in the letter. The client is unable to obtain alternative funding and commences a claim against Webber for the lost development value of the site.

The response from the participants was unanimous. Webber was at fault for failing to advise the client on the funding arrangement because he had knowledge of the contents of the funding offer letter. Even if Webber had excluded advice on funding arrangements from the scope *ab initio*, it might not be an adequate defence to the claim.

Some participants said they would have refused to accept the letter on the basis that it concerned funding arrangements which fell outside the retainer, and that they would have highlighted this to the client. Other participants admitted they might have done what Webber did, i.e. unthinkingly accept the letter and simply place it in the file without perusing its contents. Constant awareness and enforcement of one's scope is evidently a live issue.

Conclusion

The seminar was very interactive and encouraging, with useful suggestion from some participants. It also revealed some negatives namely the following, which merit consideration:

- Lack of awareness and understanding of Anti Money Laundering
 - > Inconsistency in obtaining passports
 - > Lack of awareness of fraud risks
 - > Additional checks, particularly with remote/foreign clients
 - > Absence of wider client and transaction vetting
- Inconsistent use of letters of engagement and lack of clear scoping
- Significant use of legal clerks and secretaries without effective supervision
- File audits not a widely recognised concept
- Lack of use of practice management systems (and lack of awareness of cloud-based practice management solutions that can assist even small practices operate efficiently and more safely) ●