
PROFESSIONAL INDEMNITY INSURANCE

Presenter

Barbara Ligadu ACII

Chartered Insurer

Role of Professionals

- Services of professionals necessary
- Provide Services or gives advice – solicitors, accountants, financial consultancies, Doctors, Publishing house
- Construction professionals – Architect, Civil & Structural Engineers, M & E Engineers, Quantity Surveyor
- Expertise / Professional standards
- Code of Ethics
- Time, money, equipment, technology, people, materials
- Challenging and demanding

Example: A professional project team

The Architect

- user's needs into builder's requirements
- coordinator for regulatory and Technical requirements
- Results desired within time boundaries

The Civil & Structural Engineer

- structural design; practical and safe

The Mechanical & Electrical Engineer

- electricity, lights, air conditioning, water system

The Quantity Surveyor

- manage & control costs
- accurate measurement of work required
- prepare tender/contract documents

Role of a Professional - summary

- Skilled & Specialised
- Qualifications
- High standard of performance & Work Ethics
- Competent/Contractual obligations to use reasonable skill & care

The need for Professional Indemnity Insurance

- Business insurance – alongside other aspects such as Public Liability, Employers Liability
- Rise of consumerism
- Society – legal claims encouraged
- Companies liable to claims & lawsuits
- Increasing number of claims against practising professionals
- Contract for services
- By Statute
- By-Laws on professional ethics, conduct & practice

Tabloid wants to settle libel suit out of court

KUALA LUMPUR: A tabloid facing a libel suit by actress Nur Fazura Shariffuddin has proposed to settle the matter out of court.

Nur Fazura's counsel Muhammad Nasim Shafie informed High Court Justice Abdul Malik Ishak about the offer yesterday when seeking a four-month adjournment of the case pending the proposed settlement.

The judge then fixed Feb 13 for mention of the case.

Nur Fazura had on Aug 30 last year sued the publisher and editor of *Mingguan Warta Perdana* over an article that appeared on May 29.

The article commented on an ongoing case involving Fazi in which she was accused of assaulting a 30-year-old housewife at a pub here.

Nur Fazura, the star of the movie *Gol & Gincu*, named the tabloid's publisher Perda Production House Sdn Bhd and editor Haslinda Hashim as defendants.

The 22-year-old actress seeking a public apology from the defendants and RM500,000 in general damages with interest and costs. She is also seeking aggravated and exemplary damages.

She claimed that the headline and contents of the article had insinuated that she admitted the alleged offence although she did not make such a statement.

The winner of the Malaysia Film Festival's Most Promising Actress award claimed that the defamatory statements had exposed her to odium and con-



Section 6.11.4 Claims

Newspaper have not only high frequency of claims; but also in amounts.

EXAMPLE NO. 1 – NEW STRAITS TIMES 10/12/2006

NATION ◀ 21

RM60m suit filed against papers

KUALA LUMPUR: Senator Datuk Muhammad Abdul Ghani yesterday filed a suit seeking RM60 million in damages from two newspapers.

He claimed that the reports which implicated him in a scam to clone car import permits (APS) were defamatory.

He named The New Straits Times Press (M) Bhd, Berita Harian Sdn Bhd and journalists Hamidah Atan and Shamishul Azree Samshir as defendants in a writ filed at the High Court registry in Wisma Denmark here.

Muhammad, 61, a businessman, is also asking the court to issue an injunction to prevent the defendants from further printing or publishing articles

or reports on the matter and on his companies.

The Kubang Kerian Umno deputy chief said the defamatory articles under the heading "Senator in Cloned AP Scam" was published in the NST on Oct 7 and "Syarikat Milik Senator Klon AP" (Senator's Company Cloning APs) in *Berita Harian* on Oct 8.

In his statement of claim, Muhammad claimed that the defamatory words in the articles meant that he was a greedy and irresponsible person and was unfit to hold public office.

The RM60 million damages sought by him include aggravated damages and exemplary damages. — Bernama

Cotton swabs, surgical gauze and HIV-tainted blood

A COTTON swab left in the womb and a piece of surgical gauze left in the abdomen were among the causes of medical negligence reported this year.

evident — a piece of surgical gauze measuring 30cm x 30cm left behind when she was stitched up after the ovarian surgery.

In the cotton swab case, Khoo Mei Yee

ledah housewife the government blood six years cotton swab case a second operation 26 to remove left in her abdomen surgery in February severe pain at the hospital and a seven times. neon dismissed and gave her a, her abdomen from the surgery and the cause

Court punctures docs' defence

By CHELSEALY. NG
chelsea@thestar.com.my

PUTRAJAYA: Doctors can no longer say that they had done their job just because they did it within the acceptable standards.

If something goes wrong, they can no longer use this reason as a defence in court when they are sued for negligence.

This was the decision of the Federal Court in a landmark decision that has raised the standards for medical professionals when carrying out their duty.

The nation's highest court was deciding on a negligence suit by quadriplegic Foo Ho Na against Assunta Hospital and a consultant orthopaedic surgeon.

Doctors will now not only have to perform their jobs according to the normal acceptable standards but also to do so after seeking the best advice possible.

The three-man Bench Federal Court unanimously ruled that the Bolam test adopted from a 1957 negligence case in England could no longer be used as the yardstick to measure the degree of negligence.

(The Bolam principle, in substance, restrains the courts from scrutinising and evaluating the professional conduct of a doctor, possessing a special skill and competence.

(The doctor is not negligent if he acts within a practice accepted as proper by a body of his own peers who possess similar skills and competence as the doctor in question.

(It matters not that there exists another body with a differing opinion that does not accept the action taken by the doctor.

(It is enough that he has acted in accordance with one of the bodies of opinion and the courts can never declare his action to be in any way negligent.

(This over protective and deferential approach conforms to the well-known phrase that "the doctor knows best.")

Instead, the Bench decided that doctors here must now act within the standards of a competent professional as laid down in the 1992 Australian High Court case of *Rogers vs Whitaker*.

(The Whitaker case held that a doctor has a duty to warn a patient of any material risk involved in a proposed

treatment.

(A risk is considered material if a reasonable person in similar circumstances will attach significance to the risk, or if the doctor is, or should be, cognizant that the particular patient will express concern about the risk.)

(In that case, Maree Whitaker became essentially blind after an unsuccessful operation on her right eye caused sympathetic ophthalmia in her left eye.)

"There is a need for members of the medical profession to stand up to the wrongdoings, as is the case of professionals in other professions," said Chief Judge of Malaya Justice Siti Norma Yaakob in her judgment.

"In so doing, people involved in medical negligence cases will be able to obtain better professional advice and the courts will be apprised with evidence that will assist them in their deliberations," she added.

This judgment is even more significant as Siti Norma heard the appeal in 2002 together with former Chief Justice Dzaiddin Abdullah and current Chief Justice Ahmad Fairuz Sheikh Abdul Halim, who was then the Chief Judge of Malaya.

Avoidance of claims



- Negligence
- Defamation of Character
- Copyright Infringement
- Loss of Data

TAKE DUE CARE

EVEN THE MOST
CONSCIENTIOUS BUSINESS
BOUND TO HAVE SLIP UP !!

What is Professional Indemnity Insurance?

INSURING CLAUSE

- Sum insured stated in policy schedule
- Claims made against the Assured
- Notified during the period of insurance
- Actual or alleged breach of professional duty
- Negligent act, error or omission
- Committed or allegedly committed
- By or on behalf of the Assured

COST AND EXPENSES

- Investigation
- Defence
- Settlement of any Claim

LIMIT OF LIABILITY

- Limit stated in the schedule of the policy
- Total aggregate liability
- For all claims
- Include all costs & expenses
- Any one period of insurance

EXCESS CLAUSE

Insurer liable for that part of each and every claim which exceeds the amount of the excess stated in the schedule

EXCLUSIONS

- Contractual Liability – assumed liability under contract
- Legal Jurisdiction
- Employers Liability
- Prior Circumstances
- War & Terrorism
- Nuclear Assemblies
- Assured Duties

EXCLUSIONS

- Dishonesty
- Defamation
- Infringement
- Products
- Insolvency/Bankruptcy of Assured
- Seepage and Pollution
- Mould and Asbestos
- Fines/Penalties
- Retroactive Date

CLAUSES/EXTENSIONS

- Jurisdiction Clause
- Premium Warranty
- Dishonesty of Employees*
- Loss of Documents*
- Libel and Slander*
- Infringement of copyright*
- Financial Related Entity*

INFORMATION REQUIRED BY INSURER

- Indemnity Limit

- Applicant Details
 - Entities to be insured
 - Contact Details
 - Gross Income/Fees – previous, current & projected

- Resources
 - Partners, Principals & Directors
 - Professionally Qualified Employees
 - Sub-Contractors & Consultants

- Insurance History

PROFESSIONAL INDEMNITY INSURANCE IN MALAYSIA

- Era of globalisation
- A new creation
- Statutes/Acts – Lawyers, Insurance Brokers, Insurance Adjusters, Stockbrokers
- Quantity Surveyors low levels of exposure
- Not immune to allegations of negligence
- Attractive to insurers

THANK YOU FOR LISTENING