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19. INSURANCE LAW

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I. Introduction

19.1 The growth of Singapore insurance case law jurisprudence was not particularly prolific in 2024 as there were not many reported judgments on insurance disputes. That being said, there was one reported case on double insurance and insurers' rights of contribution worthy of discussion in this short chapter.

II. Double insurance and insurers' rights of contribution

19.2 The sole insurance case for consideration is the Magistrate's Court decision in *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd*[1] ("*HSBC Life v MSIG*") which dealt with the right of contribution in double insurance cases, *ie*, where one is insured against the same risk under two different insurance policies issued by two insurers.

A. Factual background

19.3 *HSBC Life v MSIG* involved a claim by HSBC Life against another insurer, MSIG, for half the settlement sum it had paid to an injured worker whose claim for work injury compensation was covered by work injury compensation insurance policies issued by both insurers. The salient facts may be summarised as follows.

19.4 The worker's employer, Long Hui Construction Pte Ltd ("Long Hui"), had in place an annual work injury compensation policy issued

1 [2024] SGMC 43.

by HSBC Life. Long Hui, being a subcontractor under a building project, was also covered under a project work injury compensation policy issued by MSIG and taken out by the main contractor of the said project.

19.5 On 26 October 2019, the worker in question sustained an injury to his right index finger at the work site of the building project. He was engaged in hacking work when a breaker fell on his right hand. He was given two days of medical leave and did not report any other injuries to his employer or the clinic which he visited. Given the relatively short period of medical leave, Long Hui decided there was no need to file any report with the Ministry of Manpower ("MOM"). The main contractor was informed of the accident, but did not inform its insurer MSIG, presumably because it similarly viewed the accident as minor.

19.6 Three days later, on 29 October 2019, the worker visited Tan Tock Seng Hospital ("TTSH") and claimed that he also injured his back, shoulder and knee when he fell during the accident. He subsequently filed a claim on 1 November 2019 under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed)[2] ("WICA") with MOM.

19.7 MOM issued a preliminary assessment of the worker's claim on 21 September 2020 based on 12.5% permanent incapacity ("PI") for his finger and back injuries, which Long Hui's insurer, HSBC Life, was liable to pay. The worker objected to this assessment and sought 22.5% PI for his finger, back, as well as shoulder and knee injuries in reliance on medical reports issued by TTSH.

19.8 HSBC Life informed MSIG of the WICA claim for the first time on 18 November 2020, more than a year after the accident. At this juncture, HSBC Life and the worker were attending pre-hearing conferences with MOM to try to resolve the claim without going to the Labour Court. However, HSBC Life did not mention its intention to settle the claim to MSIG.

19.9 HSBC Life eventually settled with the worker a week later, on 25 November 2020, for an amount based on 17.5% PI for the finger, back and shoulder, and an additional $2,000 for the knee, which was higher than MOM's assessment at a pre-hearing conference. HSBC Life then sought contribution from MSIG for half of the settlement sum, on the basis of double insurance.

2 Cap 354, 2009 Rev Ed.

B. Findings of Magistrate's Court

19.10 The Magistrate's Court dismissed HSBC Life's claim on the grounds that HSBC Life had paid the worker a settlement amount that could not be regarded as reasonable.[3] It was held that in making a payment in excess of its legal liability, HSBC Life had acted as a volunteer.[4] Citing the case of *SHC Capital Ltd v NTUC Income Insurance Co-operative Ltd*[5] ("*SHC Capital*") and the general rule that equity does not assist a volunteer, the Magistrate's Court decided that it would not be equitable to order MSIG to contribute half of the settlement amount of $39,035.44.[6]

19.11 The Magistrate's Court concluded that the settlement amount was not reasonable, given the questionable nature of the worker's various injury claims, the lack of evidence to support them, and the inconsistency between the circumstances of the accident and the alleged injuries.[7] Whilst the Magistrate's Court appreciated HSBC Life's point that it wanted to save costs and avoid a hearing, it was of the view that given the circumstances, settling the worker's claim based on an amount even higher than MOM's assessment was not justifiable.[8]

19.12 In arriving at its decision, the Magistrate's Court had considered HSBC Life's failure to notify MSIG of the accident and the WICA claim in good time, but concluded that this was but one factor in the balance of equity and was not determinative.[9] In this regard, the Magistrate's Court noted that MSIG did not suffer significant prejudice since it would not have been able to actively participate in the WICA claim process anyway, as it was only HSBC Life (in the capacity of Long Hui's insurer) who would be liable under the WICA framework and not MSIG.[10]

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3 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [42].
4 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [41].
5 [2010] 4 SLR 965.
6 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [42].
7 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [37].
8 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [38].
9 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [31].
10 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [30].

C. Further remarks

19.13 The decision in *HSBC Life v MSIG* casts further illumination on what it means to be a volunteer in the context of the equitable remedy of contribution in double insurance cases. The Magistrate's Court's reasoning that an insurer who makes a payment for which it is "actually not liable" or which is "in excess of its actual legal liability" appears to be anchored in the maxim that equity does not assist a volunteer as propounded in the High Court case of *SHC Capital*. Overall, the Magistrate's Court's reasoning appears to tie together the concept of reasonableness of a settlement to the concept of officiousness.

19.14 With the foregoing in mind, it is worth revisiting what exactly had been decided in the case of *SHC Capital* (which was featured in the insurance chapter of the 2010 issue of this publication). *SHC Capital* laid down the principles governing when an insurer may avail itself of contribution from another insurer. The High Court noted that the remedy of contribution, having its roots in equity, is restitutionary in nature and aimed at preventing the unjust enrichment of a defendant who has been conferred a benefit by the plaintiff's payment.

19.15 *SHC Capital* involved two insurers who issued separate workmen compensation policies, both covering a worker's claim for personal injuries sustained in the course of employment. Only one of the policies contained a non-contribution clause which would, in a case of double insurance, mean that the insurer was not liable for the loss. However, as the other defendant insurer had denied that its policy covered the loss (the High Court in these proceedings disagreed with the defendant insurer's position and held that its policy was on risk and covered the loss), the claimant insurer had to fully indemnify the loss "out of practical necessity",[11] despite the legal efficacy of the non-contribution clause in its policy. The High Court was therefore satisfied that the claimant insurer's indemnification of the loss was neither voluntary nor without regard to the absence of legal liability on account of the non-contribution clause and concluded that the claimant insurer therefore had a right to seek contribution from the defendant insurer.[12]

19.16 On a closer reading of *SHC Capital*, it would appear that the High Court had actually rejected a blanket application of the general rule

11 *SHC Capital Ltd v NTUC Income Insurance Co-operative Ltd* [2010] 4 SLR 965 at [47].

12 *SHC Capital Ltd v NTUC Income Insurance Co-operative Ltd* [2010] 4 SLR 965 at [47].

that equity does not assist a volunteer.[13] *SHC Capital* explored the outer contours of this general rule and held that beyond legal compulsion, practical necessity could dictate whether or not a claimant can be characterised as having acted as a volunteer.

19.17 This expanded reading of the general rule aligns neatly with first principles of the law of restitution. In this regard, where a plaintiff confers on a defendant a benefit which saves the defendant a "factually necessary expense", the plaintiff is generally entitled to recover from the defendant on the basis of the defendant being unjustly enriched.[14] It has further been suggested that whether an expense is factually necessary depends on its reasonableness (as opposed to its inevitability) and, in a commercial context, it suffices that the expense was necessary as a matter of commercial reality.[15]

19.18 A wider reading of the general rule also coheres with the call for "principled pragmatism" (or in other words, a "common-sense approach") to inform the analysis of whether a settlement is reasonable, as elucidated in the Court of Appeal case of *Britestone Pte Ltd v Smith & Associates Far East, Ltd*[16] ("*Britestone*") (which was then followed in the case of *SYT Consultants Pte Ltd v QBE Insurance (Singapore) Pte Ltd*[17] ("*SYT Consultants v QBE*"), discussed in last year's edition of this review). Notwithstanding that *Britestone* concerned a slightly different issue of whether one may claim *reimbursement* of a settlement amount which had already been agreed with the injured party from an upstream defaulting party, the "principled pragmatism" reasoning may arguably be extended to questions of *contribution*, given both remedies' roots in restitution and unjust enrichment.[18] As highlighted in *SHC Capital*, save for the distinction in that for cases of contribution both the claimant and defendant are to be jointly and/or severally liable to the same third party in respect of the same debt, the two concepts of reimbursement and contribution are similar.[19]

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13 See also Robert Merkin QC, Laura Hodgson & Peter J Tyldesley, *Colinvaux's Law of Insurance* (Sweet & Maxwell, 13th Ed, 2022) at para 12-204, where the authors cited *SHC Capital* for the observation that "[t]he wider view of contribution has also found favour in Singapore".

14 Tang Hang Wu, *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) at para 03.039.

15 Tang Hang Wu, *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) at para 03.040.

16 [2007] 4 SLR(R) 855 at [65].

17 [2022] SGHC 251.

18 *SHC Capital Ltd v NTUC Income Insurance Co-operative Ltd* [2010] 4 SLR 965 at [38].

19 *SHC Capital Ltd v NTUC Income Insurance Co-operative Ltd* [2010] 4 SLR 965 at [36].

19.19 Apart from the general rule, it is also worth examining the more precise proposition that "no right of contribution … exists at law if the claimant has paid to a creditor *in excess of its legal liability*" [emphasis added], as was cited in *SHC Capital*[20] and later quoted in the present case of *HSBC Life v MSIG*.[21] The origins of this proposition appear to stem from the case of *Legal and General Assurance Society Ltd v Drake Insurance Co Ltd*[22] ("*Legal and General*") which is part of a line of English double insurance cases discussed in the judgment of *SHC Capital*. To briefly summarise, the claimant insurer in *Legal and General* had indemnified the injured party in full, notwithstanding the existence of a rateable proportion clause in its policy which would limit its liability to indemnifying 50% of the loss in the event that there was double insurance. The English Court of Appeal agreed with the argument advanced by the defendant insurer that the claimant insurer was not entitled to claim contribution as its payment of an amount in excess of its legal liability was made voluntarily.

19.20 A common thread which therefore runs throughout the cases of *Legal and General* and *SHC Capital* is that the claimant insurers' liability was a question of absolutes, as determined by parties' agreements under contract. In indemnifying the injured party, they would either act beyond their *contractual* liability to pay out under the policy, or they would not. This stands in contrast with the facts of the present case of *HSBC Life v MSIG*, where the issue of "legal liability" is, arguably, a lot greyer and a matter of subjective degree. "Legal liability", as understood in the context of *HSBC Life v MSIG*, refers not to HSBC Life's contractual liability to pay out under its policy, but whether the settlement amount it agreed to was an accurate reflection of its insured Long Hui's actual liability at law to the injured worker. Viewed in this light, the substance of the dispute in *HSBC Life v MSIG* may be distinguished from that of *Legal and General* and *SHC Capital*, where the issue of whether the claimant insurer had acted "in excess of its legal liability" in the latter two cases had to do with whether there was an obligation to indemnify at all under the policy, in the very first instance.

19.21 It is therefore somewhat ill-fitting to employ the extent of one's "legal liability" as a metric of assessing whether one had acted voluntarily in cases like *HSBC Life v MSIG*, where it is the overall commensuration of the settlement sum with the loss to be indemnified that is called into

20 *SHC Capital Ltd v NTUC Income Insurance Co-operative Ltd* [2010] 4 SLR 965 at [41].

21 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [23].

22 [1992] QB 887.

question. With respect, this appears to be what the Magistrate's Court had done by holding that HSBC Life's compensation of $39,035.44 should, in circumstances where the worker's various injury claims were "questionable", be seen as payment in excess of its legal liability such that HSBC Life should be characterised as a volunteer in respect of the payment.[23]

19.22 This tension can possibly be reconciled by adopting the criterion of reasonableness (in place of whether one had acted "in excess of its legal liability") to determine whether a claimant insurer had acted voluntarily when entering into a settlement with an injured party which it was liable to indemnify. At a foundational level, this tempers the concept of acting as a volunteer discussed above with the flexibility and pragmatism of factual necessity. Indeed, the Magistrate's Court in *HSBC Life v MSIG* appears to have endorsed the reasonableness of a settlement as a touchstone of voluntariness by primarily basing its decision on its view that the settlement reached by HSBC Life with the injured worker "could not have been regarded as reasonable".[24] Viewed from this perspective and with all due respect, instead of finding that HSBC Life was not entitled to any contribution from MSIG at all, a more equitable or fairer outcome would perhaps have been for MSIG to contribute half of what would be a reasonable settlement amount. That means that HSBC Life would only be seen to be a "volunteer" in respect of the amount in excess of what it reasonably should have paid to the worker. After all, it was not disputed that HSBC Life was legally liable towards the worker – it is only the extent/quantification of that legal liability that was challenged.

19.23 It is also curious why the Magistrate's Court, in the process of determining whether the settlement entered into by HSBC Life was reasonable, did not appear to consider the non-exhaustive list of relevant factors set out in *Britestone*[25] and subsequently followed in *SYT Consultants*.[26] This list included various other matters such as the content of negotiations, whether there was an opportunity accorded to the ultimate payor to be involved in negotiations, and whether the settlement figure was objectively and properly calibrated against the context of the entire factual matrix. Instead, the Magistrate's Court's analysis appears to have been essentially confined to the issue of whether HSBC Life would have been liable for at least as much as the settlement amount – in

23 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [41].
24 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [43].
25 *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [54].
26 *SYT Consultants Pte Ltd v QBE Insurance (Singapore) Pte Ltd* [2022] SGHC 251 at [52].

particular, whether the accident could have caused the worker's injuries of a nature that leads to PI and if the accident could have caused injuries to the various parts of the body as alleged by the worker.[27] With respect, this line of inquiry undertaken by the Magistrate's Court to establish reasonableness is the very approach which was rejected in *SYT Consultants* for being overly narrow and mechanical. Arguably, an application of the more "nuanced and comprehensive" analysis propounded in *Britestone* of whether the settlement reflects actual liability would invite a more holistic consideration of other factors, such as the existence of alternative expert opinion on the worker's injuries as set out in the medical reports issued by TTSH, the desire to avert further legal proceedings and MSIG's level of involvement in or awareness of HSBC Life's negotiations with the worker. It would be interesting to know if the Magistrate's Court would have arrived at a different decision if it had applied the list of considerations set out in *Britestone*.

19.24 Reasonableness aside and notwithstanding the Magistrate's Court's ultimate finding that the settlement amount paid by HSBC Life was unreasonable, an interesting hypothetical question which arises for consideration is whether the Magistrate's Court could have ordered MSIG to contribute a prorated amount constituting MSIG's due share of a reasonable settlement amount. Whilst such alternative relief did not appear to be argued or sought for by HSBC Life, it would be consistent with the underlying principles of unjust enrichment for the court to award such relief, as MSIG has nonetheless been conferred a benefit in the form of its liability to indemnify being extinguished by HSBC Life's payment. Such a power to adjust the amount of contribution is codified under Irish statute, where s 22(1) of the Irish Civil Liability Act 1961[28] states, *inter alia*:

> Where the claimant has settled with the injured person in such a way as to bar the injured person's claim against the other concurrent wrongdoers, the claimant may recover contribution in the same way as if he had suffered judgment for damages, if he satisfies the court that the amount of the settlement was reasonable; and, *if the court finds that the amount of the settlement was excessive, it may fix the amount at which the claim should have been settled*. [emphasis added]

There is, however, no similar provision under Singapore's written laws.

19.25 Finally, while the Magistrate's Court had clarified in closing that the decision in *HSBC Life v MSIG* should not be taken as suggesting that

27 *HSBC Life (Singapore) Pte Ltd v MSIG Insurance (Singapore) Pte Ltd* [2024] SGMC 43 at [34] and [35].

28 No 41 of 1961.

every WICA claim must be challenged or taken to adjudication before contribution from a co-insurer is possible, it cannot be denied that insurers sometimes face obstacles in establishing they are entitled to contribution from their co-insurers. Annual insurers like HSBC Life who insure the employers of injured workers appear to be caught between a rock and a hard place – for one, they are held primarily responsible for work injury compensation under the WICA framework and are not allowed to object on grounds of double insurance.[29] At the same time, there is a possibility that a claim for contribution towards a settlement arrived at is later challenged by a co-insurer for being unreasonable. To mitigate these difficulties and tilt the assessment of reasonableness to be in one's favour as far as possible, it would be prudent for insurers to keep their co-insurers informed of the progress of WICA claims and to offer opportunities for their co-insurers to provide inputs in the overall management of the claim.

29 Work Injury Compensation Act 2019 (2020 Rev Ed) s 26. See also Singapore Parl Debates; Vol 88, Sitting No 7; Page 597; [21 November 2011] (Minister of State for National Development and Manpower, BG [NS] Tan Chuan-Jin).