(2020) 21 SAL Ann Rev 619
(Published on e-First 8 July 2021)

19. INSURANCE LAW

YEO Hwee Ying
LLB (Singapore), LLM (London);
Associate Professor, Faculty of Law, National University of Singapore.

I. Introduction

19.1 In 2017, Singapore Academy of Law convened the Law Reform Subcommittee (Insurance) ("the Subcommittee") – on which this author sits – to evaluate the changes introduced by the UK Insurance Act 2015[1] with a view to proposing recommendations for reforming the local corpus of law governing insurance. In 2019, a preliminary consultation paper was circulated by the Subcommittee among the local insurance community and various stakeholders had thereafter proffered their comments. After taking the feedback thus garnered into consideration, the Subcommittee finalised the list of recommendations proposed in the Report on Reforming Insurance Law in Singapore[2] for possible reform of the following areas in Singapore's insurance law:

(a) duty of utmost good faith and related duties;

(b) insurable interest;

(c) brokers' responsibility for unpaid premiums; and

(d) late payment of claims.

19.2 Apart from the Subcommittee's publication of the report containing the insurance law reform recommendations, 2020 was not a particularly fecund year for the development of local insurance law in terms of case law jurisprudence. There were only two interesting District Court cases reported in 2020 relating to certain aspects of insurance law: each applied and iterated well-established principles with no extension or development of new legal principles.

II. "Take reasonable precautions" term in indemnity policy

19.3 The first District Court case, *Linda Er Siew Cheng v Chong Qing (Origin) Steamboat*,[3] stemmed from the injuries suffered by a diner during an unexpected explosion at a steamboat restaurant. Although the

1 c 4.
2 February 2020.
3 [2020] SGDC 125.

facts were apparently quite fiery, the issue was rather less incendiary: the question that arose in two of the defences tendered by the insurer before the court was whether the threshold standard for triggering the policy term concerning the insured's duty to "take reasonable precautions" required recklessness as opposed to mere negligence.

A. Facts

19.4 On 4 April 2015, Linda Er Siew Cheng and her friend went to Chong Qing (Origin) Steamboat ("CQ Steamboat") for late-night supper. During the course of their meal, the gas canister used for cooking steamboat ingredients exploded. As a result, Linda had to be hospitalised because of the burns sustained on her face and upper limbs.

19.5 Initially, Linda commenced proceedings against CQ Steamboat for negligence, alleging that the accident was caused by the waitress who inserted a tissue wad into the safety switch of the steamboat stove which had been repeatedly tripping. When CQ Steamboat in its defence counter-asserted that the explosion should instead be blamed on Swee Huat Engineering ("SH Engineering") which was regularly supplying gas canisters to the restaurant at the time, Linda decided to amend her statement to add an alternative claim against SH Engineering.

19.6 CQ Steamboat was covered under the Cafecare Insurance Policy issued by Liberty Insurance which undertook to indemnify the restaurant against, *inter alia*, all compensations for accidental bodily injuries occurring in connection with the steamboat business. After receiving notification of the insurer's intention to deny liability, CQ Steamboat had no other recourse but to commence third-party proceedings against Liberty Insurance – in addition to, but separately from, the third-party proceedings already lodged by CQ Steamboat against SH Engineering.

B. Holding

19.7 There were thus four parties appearing before the court for this case:

(a) proceedings initiated by Linda against CQ Steamboat and SH Engineering for negligence;

(b) proceedings initiated by CQ Steamboat against SH Engineering for negligence and/or breach of contract; and

(c) proceedings initiated by CQ Steamboat against Liberty Insurance for repudiating liability.

(1) Linda's and CQ Steamboat's claims against SH Engineering

19.8 With regard to Linda's claims against CQ Steamboat and SH Engineering, as well as CQ Steamboat's claim against SH Engineering, the court was presented with three versions of events for consideration when determining the likely cause of the explosion. After a comprehensive evaluation of the parties' testimonies and the supporting evidence, the court found the version put forward by Linda to be the most convincing: since the steamboat stove's safety switch had been deactivated by the waitress's insertion of a tissue wad, the pressure building up in the gas canister could not be released by the tripping mechanism (which, as explained in the instruction manual, should automatically be triggered under such a situation) and would thence have caused the resulting explosion.

19.9 Based on this finding of fact as to what constituted the cause of the accident, the court decided in favour of Linda's claim against CQ Steamboat and consequently dismissed the claims lodged respectively by Linda and CQ Steamboat against SH Engineering.

(2) CQ Steamboat's claim against Liberty Insurance

19.10 Hence, the key issue before the court was whether CQ Steamboat had breached certain conditions incorporated into the policy by Liberty Insurance, which submitted the following arguments for repudiating liability:

(a) CQ Steamboat did not, as required by the policy, "take all reasonable precautions to prevent loss, damage or accidents including … supervision of employees".

(b) CQ Steamboat did not, as required by the policy, "take all reasonable precautions to prevent loss, damage or accidents including … compliance with all statutory obligations".

(c) Liberty Insurance also relied on the provision that all benefits under the policy would be forfeited if CQ Steamboat "shall not comply with our [that is, Liberty Insurance's] requirements or shall hinder or obstruct us [that is, Liberty Insurance]" during the post-accident investigations.

(a) Defence 1 – Inadequate supervision of employees

19.11 For its first defence, Liberty Insurance asserted that CQ Steamboat's safety precautions were "lacklustre to the point of recklessness" in that the restaurant had been reckless when performing the following duties:

(a) failing to ensure that its employees were properly trained;

(b) failing to verify that its employees were well versed in the instruction manual and, more specifically, had understood how to deal with the warning signs associated with the steamboat stoves; and

(c) failing to identify potential fire-safety hazards.

19.12 Before a decision could be reached on this first defence, the court had to revisit the interpretation of the standard term "take all reasonable precautions" by applying the well-settled test of recklessness first propounded in *Fraser v BN Furman (Productions) Ltd*[4] ("*Fraser*") and subsequently endorsed in *Lim Chin Yok Co Ltd v Malayan Insurance Co Inc*.[5] The threshold was recklessness instead of mere negligence: to be in breach of the term "take all reasonable precautions" contained in the Cafecare Insurance Policy (or other similar policies), the insured must be held to have acted recklessly, the rationale being that negligence is a mainstay in a third-party liability policy and it would be "repugnant to the commercial object of the contract" to interpret such a term so widely as to include mere negligence.[6] The high bar set for recklessness required "actual recognition by the insured himself that a danger exists, and not caring whether or not it is averted".[7] In addition, the recklessness must be personal to the insured (that is, CQ Steamboat) rather than any of its employees (that is, the waitress who served Linda's table).

19.13 The facts led the court to conclude that Liberty Insurance had failed to show CQ Steamboat as having been reckless in supervising its waitresses. The evidence presented to the court did not offer any indication that inserting a tissue wad into the safety switch of the steamboat stove was a systemic practice authorised or condoned by (or even known to) CQ Steamboat. The inference, then, was that there was no actual recognition by CQ Steamboat itself that a danger existed. At most, the court found the waitress to be negligent when she responded to Linda's complaint of the steamboat stove's repeated tripping by resorting to the

4 [1967] 1 WLR 898. This case went even further than the earlier case of *Woolfall & Rimmer Ltd v Moyle* [1942] 1 KB 66 ("*Woolfall & Rimmer*") which interpreted the duty spelt out in the "taking reasonable precautions" provision to be limited to that of the insured's personal negligence. In essence, the court in *Woolfall & Rimmer* held that in a delegated task (to his employee or independent contractor as the case may be) there would be compliance so long as the insured had selected a competent person to perform that task under circumstances where it was reasonable to delegate.

5 [1974–1976] SLR(R) 265 at [18].

6 *Fraser v BN Furman (Productions) Ltd* [1967] 1 WLR 898 at 905–906.

7 *Fraser v BN Furman (Productions) Ltd* [1967] 1 WLR 898 at 905–906.

insertion of a tissue wad instead of seeking advice from senior staff with more experience handling such stoves.

(b) Defence 2 – Non-compliance with statutory obligations

19.14 The second defence raised by Liberty Insurance was that CQ Steamboat had failed to take reasonable precautions in complying with statutory obligations as investigations revealed that the restaurant did not have, at the time of the accident, a valid licence for storing liquified petroleum gas and butane on the premises. However, the court pointed out that, on a proper construction of the condition contained in the Cafecare Insurance Policy to "take all reasonable precautions to prevent loss, damage or accidents including … compliance with all statutory obligations", Liberty Insurance would have to show both of the following:

> (a) there was a breach of a statutory obligation by CQ Steamboat; and
>
> (b) in so doing, CQ Steamboat had failed to take reasonable precautions to prevent loss, damage or accidents.

19.15 Although it was established that prior to the explosion, CQ Steamboat had not applied for a licence as required by the Fire Safety Act,[8] there was no hint among the evidence adduced before the court of any failure by the restaurant to take reasonable precautions to prevent loss, damage or accidents. The fact that the Singapore Civil Defence Force had no issue in approving CQ Steamboat's post-accident application for a two-year licence (which was backdated to 1 July 2014 and thus covered the night the gas canister exploded) proved to be of significance to the court which then inferred that the restaurant had all along met the requirements stipulated for the storage of liquified petroleum gas and butane on its premises. Hence, the violation was not in the storage of these substances but in the lack of a licence for doing so. Since CQ Steamboat was not even aware of the need for such a licence before the occurrence of the accident but had dutifully complied after being apprised of its statutory obligation, it could not be held as having been reckless in failing to obtain this particular document. Referring once again to the test of recklessness spelt out in *Fraser*, the court thus ruled that CQ Steamboat's omission in the present case was not "made with actual recognition by the insured himself that a danger exists, and not caring whether or not it is averted".

19.16 Before considering the insurer's next defence, the court had to distinguish between the present case and the earlier case of *Grace Electrical*

8 Cap 109A, 2000 Rev Ed.

Engineering Pte Ltd v EQ Insurance Co Ltd[9] ("*Grace Electrical*") which Liberty Insurance also relied on. In contrast to CQ Steamboat being found in the present case to be non-reckless as regards non-compliance with statutory obligations, the insured plaintiff (Grace Electrical Engineering) in the earlier case had been manifestly reckless in that it was a repeat offender known for its history of non-compliance with the Fire Safety Act although it was fully aware of its statutory obligations prior to the factory fire outbreak. In addition, the Singapore Civil Defence Force had repeatedly fined Grace Electrical Engineering and even instructed it to cease using factory premises for housing workers but the contravention still continued.

(c) Defence 3 – Non-cooperation with insurer's requirements

19.17 Liberty Insurance's final defence pertained to the $300 fine that CQ Steamboat paid after the Singapore Civil Defence Force issued on 8 April 2015 a Notice of Fire Safety Offence for not having a licence as stipulated by the Fire Safety Act. According to Liberty Insurance's argument, CQ Steamboat failed to provide during the post-accident investigations any document relating to the fine and had by this reckoning breached the condition contained in the Cafecare Insurance Policy warning that all benefits would be forfeited if the insured did not comply with the insurer's requirements.

19.18 It transpired that CQ Steamboat did orally inform Liberty Insurance's loss adjuster of the fine during a meeting held on 9 June 2015. However, when replying to the loss adjuster's follow-up e-mail (dated 11 June 2015) requesting for the Singapore Civil Defence Force's letter regarding the fine, CQ Steamboat replied thus:[10]

> I mistakenly thought that SCDF would give me a letter with regards to the fine imposed but I realised that SCDF only advised me verbally that if I want to store more than the maximum amount of 250kg gas, I would have to submit an application and a fee in order to do so. SCDF did not actually give me an official letter. … If there is still a need for the official letter to assist in your investigation, you may contact SCDF or my gas supplier Union Energy Corporation Pte Ltd personally to obtain it.

19.19 The court did not accept Liberty Insurance's interpretation of this e-mail reply as representing that CQ Steamboat had only been given a verbal warning – with the accompanying argument that the verbal-warning statement conveyed to the loss adjuster was untrue

9 [2016] SGHC 233.

10 *Linda Er Siew Cheng v Chong Qing (Origin) Steamboat Pte Ltd* [2020] SGDC 125 at [44].

since the Singapore Civil Defence Force did issue a Notice of Fire Safety Offence when imposing the fine. Instead, the court placed emphasis on CQ Steamboat's recommendation for the loss adjuster to approach the Singapore Civil Defence Force for the fine-related letter. Noting that a copy of this letter had indeed been obtained by the loss adjuster (albeit some three weeks later), the court dismissed as baseless Liberty Insurance's assertions that CQ Steamboat did not comply with the insurer's requirement and all benefits should, according to this (rather unconvincing) line of reasoning, be forfeited.

19.20 In addition, the court drew attention to the Privy Council case of *Diab v Regent Insurance Co Ltd*[11] where, for nine years after the accident, the insured did not bother to provide details of the items destroyed by fire. In contrast to Liberty Insurance's successful efforts in the present case to acquire (without too much delay) the information it needed during the post-explosion investigations, the defendant insurer (Regent Insurance) in the Privy Council case had not been afforded the opportunity, given the nine-year lapse, to conduct a thorough inquiry into the losses suffered during the fire.

C. Remarks

19.21 In general, insurers have – for a very long time – been enjoying many advantages as they are at liberty, when drafting their policy documents, to incorporate various terms and conditions that strengthen their hands in attempting to mitigate risks. In contrast, the insured take out indemnity policies simply because they know carelessness often triggers losses. Comparing how these conflicting motivations affect the business practices of the insurers and the coverage expectations of the insured allows the term "take reasonable precautions" to be viewed in its proper perspective: when structured as a condition precedent to the insurer's liability for claims, this particular term may be deemed by any insured who had been adversely impacted to be both paradoxical and self-defeating as, in effect, the insurer is (on the one hand) offering protection by issuing the policy to the insured whilst (on the other hand) removing coverage by inserting such a condition. Recognising this, the courts have set very high thresholds for the insured to run afoul of this common law duty to "take reasonable precautions" to avoid accidents. After all, human beings are wont to be careless and the courts therefore insist that more egregious conduct has to be warranted: instead of mere carelessness, there must be recklessness on the part of the insured to not

11 [2007] 1 WLR 797.

only recognise the danger but also to be deliberately blind to it or not bothered by it.

19.22 It is thus heartening to note that in the present case the court decided against an insurer which similarly attempted to reject the insured restaurant's claim by resorting to the term "take reasonable precautions". This 2020 case and the earlier case of *Grace Electrical*[12] have resolutely acknowledged the need to continue upholding the high threshold when dealing with the issue of whether an indemnity policy covers losses that have been caused by the insured's negligence.[13] The following observations are worth noting:

(a) While both of them are similar in that they affirm that only the threshold of recklessness will give effect to the purpose of indemnity policies in covering the insured against liability (in negligence) towards third parties, these two cases are also usefully different in their factual matrix as they provide contrasting examples of the insured's mental state when breaching statutory obligations. CQ Steamboat was found in the present case to be sloppy and careless (but not reckless) in failing to apprise itself of its statutory obligation to apply for a gas-storage licence whereas Grace Electrical had been indisputably reckless in the earlier case as there was flagrant repeated *culpa* in the knowing disregard of the safety laws despite multiple warnings from the authorities. Given that both cases involve non-compliance with statutory obligations, it is a salutary reminder of the practical implications of the courts imposing a high bar for recklessness (requiring "actual recognition by the insured himself that a danger exists, and not caring whether or not it is averted").

(b) Another useful reminder proffered by the present case is that such recklessness must be personal to the insured itself (that is, CQ Steamboat) and merely showing recklessness on the part of a third party such as any of the insured's employees (for example, CQ Steamboat's waitresses) will prove to be insufficient. As emphasised by Diplock LJ in *Fraser*,[14] the recklessness must be "by the insured himself". For this reason, attention should also be paid to the meticulous effort undertaken by the court in carefully distinguishing between the mental state of the insured restaurant (which was eventually found to be non-reckless in its

12 See para 19.16 above.

13 See also *Kay Lim Construction & Trading Pte Ltd v Soon Douglas (Pte) Ltd* [2013] 1 SLR 1; *QBE Insurance (International) Ltd v USL Asia Pacific Pte Ltd* [2012] SGDC 84; and *HBZ International Exchange (S) Pte Ltd v L'Union des Assurances de Paris IARD* [1992] 3 SLR(R) 602.

14 See para 19.12 above.

supervision of waitresses) and the mental state of the waitress who served Linda's table (and who was subsequently held to have been, at least, negligent in inserting the tissue wad into the steamboat stove's safety switch).

(c) Actually, Liberty Insurance relied on a co-operation provision for its third defence (when it unsuccessfully attempted to employ this particular condition as the basis for advancing the argument that CQ Steamboat did not comply with its requirements during the inquiry into the circumstances surrounding the gas canister's explosion). In fact, such co-operation provisions are routinely incorporated by insurers into their policies so as to facilitate the processing of claims. There is obviously a need to ensure that the entire course of the investigation will be as smooth and timely as possible in order for the insurer to arrive at an evaluation of the claim – whether to pay, adjust, settle or deny compensation.

19.23 As it turned out, the course of events in the present case happened to be in CQ Steamboat's favour and the court had no difficulties in dismantling the ill-conceived arguments put forward by Liberty Insurance to justify its initial intention to deny liability. The following alternate scenarios may, on the other hand, have led to a shift in the court's deliberations:

(a) The case might have been decided differently had Liberty Insurance been insistent in demanding that CQ Steamboat specifically produce the official letter from the Singapore Civil Defence Force in respect of the $300 fine. This scenario would then pose the following intriguing question: what was the precise extent of assistance that CQ Steamboat was obliged to render to Liberty Insurance as specified by the provision in the Cafecare Insurance Policy warning that all benefits would be forfeited if the insured did not comply with the insurer's requirements?

(b) Another follow-up question (related to the discussion in the preceding sub-paragraph) that ought to have been considered as well in the present case was whether the explanation furnished by CQ Steamboat as to why it did not have at hand the Singapore Civil Defence Force's letter, together with its off-the-cuff instruction to the loss adjuster on how to obtain such a document, would amount to compliance with Liberty Insurance's hypothetical demand should it refuse to comply with the imperative to physically produce the official letter.

(c) If insurers intend at the inception to exclude liability where the requisite licences or permits have yet to be obtained by the insured, they are recommended to explicitly stipulate for it in

their policy documents rather than rely overly on the generalised term "take reasonable precautions" to deal with such (and other foreseeable) scenarios. Different considerations will then apply, as illustrated in the recent case of *Aspen Insurance v Sangster & Annand Ltd*.[15]

(d) Although not entirely clear from a reading of the judgment, all the parties in the present case appeared to have conceded that the terms relied on by Liberty Insurance for its first two defences had been made conditions precedent to the insurer's liability for claims. If this was not so, however, the court's deliberations would then be very much different.

III. Authorised driver's right to indemnity

19.24 The second District Court case, *AIG Asia Pacific Insurance Pte Ltd v AXA Insurance Pte Ltd*,[16] essentially arose from the claims lodged by two passengers (who took a ride in a company vehicle) for the injuries they sustained during an accident due in part to the driver (who was authorised to drive the company vehicle). The driver and the two injured passengers were employees of Vision Marine Engineering ("VM Engineering") which had the following policies in force at the time of the accident:

(a) Work Injury Compensation Policy issued by AIG Insurance; and

(b) Commercial Vehicle Policy issued by AXA Insurance.

19.25 Of particular concern in this case was the construction of the exclusion provision contained in AXA Insurance's policy (and also commonly found in the other commercial vehicle policies available on the market). There was no dispute that the exclusion in question disentitled the primary insured from claiming when its employees suffered injuries during an accident involving its vehicle. Instead, the key issue raised in AXA Insurance's contention was whether such an exclusion was also applicable to the employee who had been appointed by the primary insured as "Authorised Driver" and who might accordingly be regarded as the secondary insured. This key issue also entailed the corollary need for the court to clarify whether the insurer's liability to indemnify the secondary insured (that is, the Authorised Driver) should be regarded as separate and distinct from its liability to indemnify the primary insured (that is, the policy-holder).

15 [2019] QBD (Comm Ct) 217.
16 [2020] SGDC 102.

A. Facts

19.26 Since Erh was employed to (among his other duties) drive the company vehicle, VM Engineering included him as the Authorised Driver in the Commercial Vehicle Policy. On a particular working day, Erh ferried several colleagues (including Das and Balakrishnan) in VM Engineering's vehicle which unfortunately collided with a company vehicle that was owned by Vikash International and driven by its employee Muthusamy.

19.27 Das and Balakrishnan thereafter sought to claim for their accident-inflicted injuries:

(a) As for Das (who commenced proceedings against Erh, VM Engineering, Muthusamy and Vikash International), an interlocutory judgment was entered against all four defendants on a joint and several basis – with 70% liability against Erh and VM Engineering and the remaining 30% liability against Muthusamy and Vikash International.

(b) As for Balakrishnan (who commenced proceedings against Erh and VM Engineering), an interlocutory judgment was entered against both defendants. Subsequently, VM Engineering added Muthusamy and Vikash International as third parties.

19.28 Holding the view that both Work Injury Compensation Policy and Commercial Vehicle Policy were engaged, AIG Insurance proposed that it and AXA Insurance should each pay 50% of the compensation amounts due to Das and Balakrishnan – based on the doctrine of contribution in insurance law when there exist two overlapping policies covering the same risks. However, AXA Insurance objected to this equal-contribution proposal because it intended to deny liability under an exception provision contained in the Commercial Vehicle Policy. In addition, AXA Insurance argued that neither AIG Insurance nor VM Engineering had rights that could be enforced against it and by this reckoning both of them did not have any standing to seek a declaration that it ought to bear 50% of the compensation payments.

B. Holding

19.29 There were thus two issues brought by the three parties before the court for this case:

(a) substantive issue concerning AXA Insurance's reliance on the exception provision to deny liability; and

(b) procedural issue concerning the standing of AIG Insurance and VM Engineering to seek declaratory relief.

(1) Exemption provision in commercial vehicle policy issued by AXA Insurance

19.30 Under the Commercial Vehicle Policy, AXA Insurance would indemnify the insured (that is, VM Engineering) as well as any Authorised Driver in the event of company vehicle accidents but it was also explicitly stated that this was subject to the so-called "Limits of Liability". One of the exceptions was that AXA Insurance "shall not be liable in respect of … death of or any bodily injury to any person in the employment of the insured arising out of and in the course of such employment". AXA Insurance argued that it could rely on this particular exception to deny liability after learning that all the passengers in the company vehicle (including Das and Balakrishnan) were employed by VM Engineering and had been ferried by Erh on company business at the time of the accident.

19.31 At the very outset, the court reminded AXA Insurance that under Singapore law such an exception did not apply to claims lodged against the Authorised Driver by other employees of the insured company. This was the position authoritatively adopted in the local appellate case of *China Insurance Co Ltd v Teh Lain Lee*[17] ("*China Insurance*") where the policy issued by China Insurance contained provisions that were exactly the same as the corresponding provisions included by AXA Insurance in the Commercial Vehicle Policy for the present case. In addition, the Court of Appeal in this earlier case had cited in support several passages from the much earlier case of *Richards v Cox*[18] ("*Richards*") which helped to clarify the following:

(a) The insurer's liability to indemnify the Authorised Driver was separate and distinct from its liability to indemnify the insured company.

(b) The exception being contested applied only to the insured company (since it was the policyholder) and should thus not be extrapolated to include the Authorised Driver (since the insured company's staff who had been injured during the vehicle accident was not under the employ of the Authorised Driver).

19.32 To support its contention, AXA Insurance alerted the court to the fact that the exception provision in its Commercial Vehicle Policy

17 [1974–1976] SLR(R) 820.
18 (1942) 74 Ll L Rep. 23; [1942] 2 All ER 624.

also happened to use the same wording as that employed by the insurer in the District Court case of *Blue Speed Construction Pte Ltd v Tang Aba*[19] ("*Blue Speed*") where the policy in question was recently held (in an oral decision) to be not engaged – contrary to what had been robustly decided decades ago in *China Insurance* as well as *Richards* where the respective policies (under similar operating circumstances) continued to remain engaged and the Authorised Drivers in these two earlier cases were consequently not denied coverage for accidents involving fellow employees who lodged claims because of their injuries. Regrettably for AXA Insurance, the brief oral grounds delivered in this unreported case were viewed as not very convincing since there was no reference at all to what the Singapore Court of Appeal had authoritatively articulated in *China Insurance*.

(2) Declarations sought by AIG Insurance and VM Engineering

19.33 AXA Insurance's principal assertion was that the Commercial Vehicle Policy was not engaged. Even if this particular policy was engaged, AXA Insurance further asserted that Erh was the only party who had standing to approach it whereas AIG Insurance and VM Engineering did not have the requisite standing.

19.34 VM Engineering countered that it had standing but the three grounds raised to support its position were found by the court to be ill-conceived. Instead, the court drew attention to VM Engineering's right to seek contribution from Erh as they were joint tortfeasors. Such a joint tortfeasor relationship arose either from the interlocutory judgments separately obtained by Das and Balakrishnan or from VM Engineering's vicarious liability over Erh's tortious acts. In the court's opinion, it was highly likely that the two injured employees would pursue VM Engineering (instead of Erh) to satisfy their claims. Under the circumstances, VM Engineering would have a right of contribution against Erh and by this reckoning AXA Insurance (which was already deemed by the court to be liable to Erh) would be required to satisfy this contribution claim as well.

19.35 Likewise, AIG Insurance countered that it had standing too but the argument it submitted was found by the court to be without merit. Instead, the court pointed out that AIG Insurance's standing actually arose from the expectation that VM Engineering would also turn to the Work Injury Compensation Policy to satisfy the claims of the two injured employees. If then AIG Insurance satisfied these claims, it would accordingly be entitled to exercise its right of subrogation by stepping

19 DC/OSS 90/2019.

into VM Engineering's shoes to claim against Erh as a joint tortfeasor and by this reckoning AXA Insurance (which was already deemed by the court to be liable to Erh) would be required to satisfy this subrogation claim as well.

19.36 The court therefore concluded that AIG Insurance and VM Engineering had enforceable rights against AXA Insurance. In addition, it was not disputed that these two plaintiff companies had a real interest in seeking declarations and there was a real controversy among the parties that had to be resolved via litigation. Since the various requirements of standing (as spelt out in *Tan Eng Hong v Attorney-General*)[20] were all satisfied, both AIG Insurance and VM Engineering were held by the court as having the requisite standing to seek declarations against AXA Insurance.

19.37 Apart from AIG Insurance's equal-sharing proposal, there was no other suggestion proffered on how the liabilities ought to be apportioned between the two insurers. Seeing no reason why this equal-sharing recommendation should not be accepted, the court granted a declaration that AIG Insurance and AXA Insurance must equally bear the two injured employees' damages, legal costs and reasonable disbursements.

C. Remarks

19.38 In general, a motor vehicle policy will cover the policy-holder as well as anyone driving with his/its permission (that is, the Authorised Driver). Although the Authorised Driver is officially not the policyholder (since he is merely the secondary insured), he is expected to comply with the policy conditions as much as the policyholder (who is effectively the primary insured). However, there may be certain conditions that are specifically targeted at the policyholder and consequently they ought not to affect the Authorised Driver. The exclusion inserted by AXA Insurance into its Commercial Vehicle Policy (that the insurer "shall not be liable in respect of … death of or any bodily injury to any person in the employment of the insured arising out of and in the course of such employment") is an example of such a condition.

19.39 The question of whether this particular exclusion applies to the Authorised Driver had already been decisively settled eight decades ago in the English appellate case of *Richards*[21] which has since been endorsed by the Singapore Court of Appeal in *China Insurance*.[22] Hence, it is

20 [2011] 3 SLR 320 at [12].
21 See para 19.31 above.
22 See para 19.31 above.

somewhat surprising to find that after all these years the rule in *Richards* should again be raised for yet another airing in the present case. Indeed, *Richards* is far too firmly entrenched in the local legal landscape to be blown aside by a mere sidewind.

19.40 As has already been mentioned,[23] the insurers in *Blue Speed*[24] and the present case had relied on exclusion provisions that were worded the same as that employed by China Insurance four decades ago. The insurers in these two recent cases should have taken the cue from the *China Insurance* judgment and amended their exclusion provisions to reflect their intentions so as to avoid China Insurance's costly mistake. There was, for example, no such ambiguity detected in the exclusion provision that had been sufficiently re-phrased by the insurer in *Lees v Motor Insurers' Bureau*[25] where Lord Goddard LCJ took the opportunity to remind the insurance industry that "the rights of injured persons … should really turn upon the precise wording of the policy".[26]

23 See paras 19.31 and 19.32 above.
24 See para 19.32 above.
25 [1952] 2 QB 210.
26 *Lees v Motor Insurers' Bureau* [1952] 2 QB 210 at 214.