Recent Developments In Workmen’s Compensation Recovery Claims

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  Unreported, D C Suit No. 4357 of 2001A

• Kamis Bin Satari v Nasir Natarajah [2005] SGHC 188
Brief Introduction

The Workmen’s Compensation Regime and Statutory Right of Recovery

Overall Statutory Framework

• **Strict liability against Employers / Principals**
  - Section 3 and Section 17

• **Workman cannot recover both compensation and common law damages**
  - Section 33 and Section 18(a)
Overall Statutory Framework

• **Three categories of claims**
  (1) Award for incapacity – Section 7 read with Third Schedule
  (2) Wages during medical leave period – Section 7 read with Third Schedule
  (3) Medical expenses – Section 14(3)

• **Employer’s / Principal’s Statutory Right of Recovery against Wrongdoer** – Section 18(b); Indemnity is 100% of amount paid as compensation and not limited to amount or percentage of damages recoverable in an action for damages

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**Section 18 - Remedies both against employer and stranger**

18. Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some other person other than the employer to pay damages thereof

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under the Act, **but he shall not be entitled to recover both damages and compensation**; and

(b) **if the workman has recovered compensation under this Act**, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under Section 17(3), shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.
... cont’d

• Employer / Principal to prove at least 1% liability against the wrongdoer

• Workman’s contributory liability is irrelevant

• Employer / Principal blameless for the workman’s injury

Cosmic Insurance Corp Ltd v United Oil Co Pte Ltd
Facts

- Samuel (workman) was knocked down by a forklift driven by United Oil’s employee
- Employers of Samuel (Protec) paid for his medical expenses
- Workmen’s Compensation insurers indemnified Employers for medical expenses
- Samuel recovered damages against United Oil under common law
- Workmen’s Compensation insurers relied on Section 18(b) to recover the medical expenses against United Oil

United Oil’s main contention

- Plaintiffs cannot rely on Section 18(b) because medical expenses are not ‘compensation’ within the meaning of the Act, and the workman did not recover compensation from Protec nor the Plaintiffs under the Act.
District Judge Tan Boon Khai

- Two requisites to constitute 'compensation'
  - the amount shall be payable in accordance with the Act and its Third Schedule
  - the Commissioner for Labour must assess such amount

- Medical Expenses do not appear in the Third Schedule, and neither were they assessed by the Commissioner for Labour

- No compensation was assessed by the Commissioner for Samuel. He pursued a common law claim

- Conclusion
  - Medical Expenses not recoverable against wrongdoer

... cont’d


  Justice Rajendran had ruled that wages during medical leave and medical expenses were 'compensation' and were recoverable in a Section 18(b) action

  Chua Kim Bak was distinguished because payments made by Commercial Union Assurance were assessed by MOM, and the workman had chosen compensation under the MOM regime as opposed to common law damages
• Upon receiving further submissions from the Plaintiffs, District Judge Tan Boon Khai had to reconsider Chua Kim Bak’s case. It was brought to his attention that medical expenses were in fact not assessed by the Commissioner.

Judge Tan nonetheless maintained his decision on the basis that there was an error in Justice Rajendran’s Judgment.

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**Justice Woo Bih Li**

Medical expenses are not 'compensation'

1. Reading Section 3(1), Section 7 and the Third Schedule of the Act:

   - **Section 3(1)** – employer shall be liable to pay compensation in accordance with the provisions of this Act

   - **Section 7 of the Act** – Subject to the provisions of this Act, the amount of compensation payable shall be in accordance with the provisions of the Third Schedule

   - Paragraphs 1 and 2 of the Third Schedule set out the tables for compensation for awards of incapacity; Paragraph 3 provides the formulae for calculating compensation for incapacity; Paragraph 4 deals with wages during medical leave period
2. Reading Section 14(3) of the Act:

'Where an injured workman is admitted to an approved hospital, the employer shall, in addition to the payment of compensation under this Act, be liable to pay directly to the hospital all fees, …’

Liability of the employer to pay the hospital directly was 'in addition' to, and not part of, the payout of compensation.

• Where the Commissioner did not assess the amount payable, the amount could not be considered as 'compensation'.

• Justice Rajendran had proceeded on the basis that all the sums claimed in Chua Kim Bak’s case had been assessed accordingly. There was an error in Chua Kim Bak’s case and that error should not be perpetuated.

• Conclusion

  Affirms the decision of District Judge Tan Boon Khai. Appeal dismissed.
Judge urges an amendment to clarify the Act

'I would also raise another significant issue, that is, where a workman recovers compensation under the WCA, to what extent is someone like Cosmic entitled to be indemnified? … I can see the justice in allowing the indemnity to extend to such expenses but the point is not free from argument in view of the terms of Section 14(3). I would urge an amendment to the WCA to clarify the position and to avoid injustice.'

Justice Woo Bih Li

Holiday Tours & Travel Pte Ltd v Amir Sahib Bin Adam Sahib and Allied Containers Services Pte Ltd
Facts

- Hasri was driving his employer’s bus in the course of employment when he was involved in a 3-vehicle chain collision. The bus was the second vehicle in the chain. The last vehicle was driven by one Amir. Amir was employed by Allied Containers
- Hasri received all 3 categories of payments under the Act, i.e. the award for incapacity assessed by MOM, wages during medical leave and medical expenses.
- The Workmen’s Compensation insurers relied on Section 18(b) to recover their losses against Amir and Allied Containers

District Judge Aedit Abdullah

- 2 conflicting authorities
- The Act operates alongside the common law to create a specific regime with certain characteristics. The statutory regime has limitations simply because it is a statutory framework. The existence of these limitations is not reason to take an expansive approach to interpretation
- Prefers the approach of Justice Woo Bih Li over Justice Rajendran’s
- Conclusion
  Medical Expenses are not recoverable in a Section 18(b) action even if the workman had received compensation that was assessed by MOM
Chapter not closed …

both parties are pursuing
Appeals to the High Court

Current position

• Whether the workman accepts compensation assessed under the Act or opts to pursue common law damages, the Medical Expenses paid by the employers pursuant to the Act are not recoverable in a Section 18(b) action
Queries

Any options available to employers and Workmen’s Compensation insurers to recover Medical Expenses against the wrongdoer?

Now that the employers and the Workmen’s Compensation insurers are unable to avail to Section 18(b) at all, perhaps redress may be indirectly sought through the worker against the wrongdoer?

However, the worker is generally prohibited from recovering under common law in the event his accepts compensation under the Act (Section 33). So, is there no redress against the wrongdoer if the worker decides not to pursue common law?

Where the worker opts to reject compensation assessed under the Act and pursues a common law claim, perhaps it may be prevailed upon the worker to include Medical Expenses (settled by his employees pursuant to the Act) in his common law claim against the wrongdoer? However, will such indirect recovery be successful in Court?

Difficulties

Imposing upon the workman a condition that payment of his medical expenses is conditional upon his agreement to recover these monies if and when he pursues a common law action against the wrongdoer, may not be a condition that the Court will up-hold.

Medical expenses were not made voluntarily. It is compulsory payment imposed by legislation. Right to recover indirectly through workman may be challenged by the defendant on this basis.

Even if difficulties are overcome, there is no assurance that workman will pay recovered amounts over to the employers.
Facts

- Kamis’ colleague Nasir was driving his employers’ vehicle. Kamis (passenger) was injured while he was alighting from the vehicle.
- Kamis instructed lawyers to claim for common law damages against Nasir.
- Kamis also accepted payment from his employers’ Workmen’s Compensation insurers ($11,025) as assessment of compensation in MOM.
- Meanwhile, his lawyer obtained a $5,000 interim payment of damages from the employers’ motor insurers.
- The employers’ motor insurers applied to strike out the common law action. The insurers also claimed for the return of the $5,000 interim payment.
• **Motor insurers’ contention**

Section 18(a) prohibits the workman from recovering against the wrongdoer for common law damages as well as compensation

• **Kamis’ contention**

He was mistaken. He thought the $11,025 was interim payment of damages under common law. The $5,000 received as interim damages from the motor insurers has been spent, and he cannot repay

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**District Judge Valerie Thean**

• Court need not investigate into the contention of mistake

• Kamis cannot receive money under the Act and yet press his claim in Court

• If indeed Kamis had recovered compensation by mistake, he must take steps open to him under the Act if any, before pressing on with his claim in Court

• Conclusion
  Rules in favour of the motor insurers
Justice Woo Bih Li

• A workman is not barred from pursuing common law damages if he received workmen’s compensation in ignorance of his right, or if he did not know he was receiving payment as compensation. He may avoid the consequences of the genuine mistake by returning the compensation.

• In this case however, Kamis did not make a genuine mistake.

• Conclusion
  Common law action is struck out. $5,000 ordered to be paid by Kamis to the motor insurers.

Query

• The Act does not address the issue of receiving compensation under a mistake. In a case of a genuine mistake and the workman is unable to return the compensation received, will the Court allow the workman to continue with his common law claim in the interim? Possibly yes.

  If so, what are the options available to the Workmen's Compensation insurers to recover the compensation paid under mistake? Section 18(b) recovery against the wrongdoer? Adding themselves as an interested party in the common law suit between workman and wrongdoer? Seek redress from the workman directly?
The general views expressed herein are not meant to be relied on as legal advice and you should consult your own lawyers for specific legal advice.

THANK YOU

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**MINISTRY OF MANPOWER**  
**REPUBLIC OF SINGAPORE**  
**NOTICE OF ASSESSMENT OF COMPENSATION**  
**WORKMEN'S COMPENSATION ACT (CAP 354)**

### Part I - Particulars of Claim:
- **Case Reference No.**: [Redacted]  
  (please quote this reference no. in your correspondences)
- **Name of Worker**: [Redacted]
- **FIN No.**: [Redacted]
- **Date of Accident**: 18/10/2006
- **Age**: 26
- **Average Monthly Earnings**: $750.00
  (includes bonus)

### Part II - Amount of Compensation:

### Part III - Parties Involved:
1. **(1) Payer**: [Redacted]
2. **(2) Employer**: [Redacted]
3. **(3) Claimant**: [Redacted]

### Part IV - Important Notes:

1. **To all parties**:
   - (a) In pursuance of the Workmen's Compensation Act (CAP 354), I have made an assessment on the amount of compensation for permanent incapacity payable by the payer to the claimant as stated in Part II above.
   - (b) If any party disputes this assessment, he must give notice of objection to me in writing, stating PRECISELY the grounds of objection within 14 days from the date of service of this Notice.
   - (c) If no objection is received by me from any party within 14 days of the service of this Notice, this assessment shall be deemed to have been agreed upon by all parties and shall have the effect of an Order under Section 25(2) of the Workmen's Compensation Act (CAP 354). No appeal shall lie against such an Order.

2. **To payer**:
   - (a) If you have no objection to this assessment, you are required to make payment within 21 days from the date of service of this Notice, by:
     - [ ] paying the stated amount of compensation directly to the claimant and retaining proof of payment/acknowledgement of receipt of compensation from the claimant for future reference/verifications.
     - [X] sending me a crossed cheque made payable to the "COMMISSIONER FOR LABOUR, SINGAPORE".
   - (b) You are advised to adhere strictly to the payment deadline. If no payment is made, the claimant will be advised to enforce this Order for the amount compensable at the Subordinate Court (Bailiff's Section).

3. **To claimant**:
   - (a) You are advised NOT to accept any payment of compensation if you have any objection to this assessment.

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SOON KIM YEN  
COMMISSIONER UNDER  
THE WORKMEN'S COMPENSATION ACT (CAP 354)

(This is a computer generated letter. No signature is required.)

[18/06/07]  
DATE OF SERVICE  
(Pass-dated to facilitate compliance)
NOTES FOR ALL PARTIES

1 INTEREST FOR LATE PAYMENT

Please note that payment must be made to the claimant within 21 days from the date of service of this Notice of Assessment. If payment is not made on or before the due date, Section 24(5) of the Workmen’s Compensation Act (CAP 354) provides that the employer/insurer is liable to pay the Commissioner interest at the following rates:-

(a) 1.5% for each month or part thereof of the assessed amount from the date of service of this Notice of Assessment;

(b) 3% for each month or part thereof of the assessed amount after expiry of six months from the date of service.

2 WAGES FOR MEDICAL LEAVE

In addition to the amount of compensation stated in this assessment, the employer is required under Paragraph 4 of the Third Schedule of the Workmen’s Compensation Act (CAP 354) to compensate the workman for the medical leave as follows:-

(a) full wages for the period of outpatient medical leave up to a maximum of 14 days if hospitalisation is not required; and/or

full wages for the period of hospitalisation medical leave up to a maximum of 60 days if hospitalisation is necessary (A workman is deemed to be hospitalised if he is certified by a registered medical practitioner of an approved hospital to be hospitalised, though he may not be physically hospitalised for any reason whatsoever);

(b) if the medical leave exceeds 14 days or 60 days as the case may be, thereafter the amount payable is two-thirds of the average monthly earnings.

The maximum entitlement for compensation of medical leave wages is one year.

3 HOSPITAL FEES AND CHARGES

An employer is liable to pay for all medical expenses/hospital charges incurred by the workman and the costs of artificial limbs and surgical appliances as are certified by the medical practitioner under Sections 13 & 14 of the Workmen’s Compensation Act (CAP 354), subject to the maximum amount payable under the Workmen’s Compensation (Hospital Charges) Notification.
A Case Study On The Effect Of A Condition Precedent Notice Clause In Insurance Policies
‘Stork Technologies Services Asia Pte Ltd v First Capital Insurance Limited’

Elaine Tay
Partner, Rajah & Tann
29 October 2007

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I. Introduction to the case of Stork Technology v First Capital Insurance

II. The position in Singapore on the 'Notice Prejudice Rule'

III. Elements to be satisfied to find waiver
• Claim against Insurers arose out of claim against Insured in Suit No. 1523 of 2002.

• Suit No. 1523

  – Insured engaged to refurbish and fabricate standby slip joint under a subcontract with Cooper Cameron (S) Pte Ltd ('Cameron') for use on board an oil drillship, 'The Energy Searcher'.

  – Insured found liable in tort for the sum of USD750,000 in damages suffered due to fracture in slip joint when used on board the oil drillship.
Introduction To The Case

Pertinent Dates for Policy Cover

Works for slip joint carried out in: June – Dec 98

Period of cover under Zurich Policy: 01.07.98 – 30.06.99

Period of cover under Winterthur Policy: 01.07.00 – 30.06.01

Failure in slip joint when put in use: 16.03.01

Introduction To The Case

• Products Liability Extension Cover under Zurich’s policy

‘The Company will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay as compensation in respect of …2. Property Damage occurring during the Period of Insurance within the Geographical Limits of this Policy as a result of an Occurrence and caused by the Insured’s Products.’

‘Occurrence means an accident … which result in … property damage…’
Introduction To The Case

• Products Liability Extension Cover under Winterthur’s policy

‘…this Policy is extended….to indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay by way of direct compensation for damage or injury suffered in the course of the Business consequent upon …2. accidental loss of or damage to property…caused by or in connection with or arising from…(a) anything manufactured sold supplied…(c) anything repaired serviced tested or processed by the Insured or any Employee and occurring within the Territorial Limits during any Period of Insurance but not prior to the date of this Extension.’

Introduction To The Case

• Condition precedent Notice Provision under Winterthur’s Policy (Condition 3 read with Condition 10)

Condition 3

'In the event of any occurrence which may give rise to a claim under this Policy the Insured shall
(a) immediately give notice and full particulars in writing to the Company;
…
(c) immediately forward to the Company upon receipt every letter claim writ summons or process in connection therewith
(d) immediately notify the Company when the Insured has knowledge of any impending prosecution inquest or inquiry.'
Introduction To The Case

**Condition precedent Notice Provision under Winterthur’s Policy (Condition 3 read with Condition 10)**

*Condition 10*

'The due observance and fulfilment of the terms of the Policy so far as they relate to anything to be done or complied with by the Insured and the truth to the best of the Insured’s knowledge and belief of the information furnished to the Company in connection with this insurance shall be conditions precedent to any liability of the Company.'

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**Pertinent Events leading to Insured’s Claim against First Capital**

- Insured’s receipt of letter dated 18 July 2002 from M/s Stephenson Harwood ('SH’s letter'):
  - act for owners, charterers and managers of 'The Energy Searcher';
  - 'catastrophic failure' on 16 March 01 of slip joint which Cameron and Insured refurbished in June – Dec 98;
  - 'we have been instructed to investigate the cause of the failure…and the extent of (Insured's) liability, if any';
  - requesting for documents;
  - application for provision of documents if not provided within 7 days
Introduction To The Case

• SH’s letter disregarded by Insured.

• 11 Sept 02: Insured served with pre-action discovery application by, inter alia, Energy Searcher’s owners. Insured instructed lawyers.

• 12 Sept 02: Insured informed Zurich of application.

• 18 Sept 02: Insured informed Winterthur of application
  – cursory reference to SH’s letter, copy not provided;
  – works performed in 1998, slip joint used in March 01;
  – Zurich, insurers in 1998 informed, McLarens appointed

• 3 Oct 02: Winterthur’s response to Insured

  ‘From the documents provided, we note that your contract with Cooper Cameron (Singapore) Pte Ltd was in 1998 at which time we were not on risk. In view of the aforesaid, we are filing our papers away.’

• 21 Dec 02: Suit No. 1523 filed

• June 03: Writ in Suit No. 1523 served on Insured
Introduction To The Case

• 13 Apr 04: Zurich informed Insured loss occurred outside policy period, no cover

• 16 April 2004: Insured’s letter to Winterthur
  – informed of Zurich’s position;
  – requested Winterthur to review the issue
  – defending claim through lawyers, ‘trial is scheduled sometime in Sept / Oct 2004

Introduction To The Case

• 21 – 23 Apr 04: Insurer (First Capital) obtained certain documents from Insured on a without prejudice basis

• 9 July 04: Insurer repudiated liability under Winterthur’s Policy by way of a letter from their solicitors due to, inter alia, Insured’s failure to comply with notice provision

• 10 Aug 04: Insurer received copy of SH’s letter

• 10 Nov 05: Insured commenced OS 1720/2005 against Insurer for, inter alia, indemnity under the Winterthur’s Policy in respect of damages found against Insured in Suit No. 1523
Introduction To The Case

Main Issues in OS 1720

• Was Insured obliged to comply with Condition 3 (read with Condition 10) in respect of SH’s letter?

• If yes, did the Insured so comply?

• Can the Insurer rely on such non-compliance to deny liability under the Policy even if the Insurer did not suffer any prejudice as a result of such non-compliance?

• Did the Insurer waive such compliance by virtue of its letter of 3 Oct 02?

The Position In Singapore On The ‘Notice Prejudice Rule’
The Position In Singapore On The ‘Notice Prejudice’ Rule

General Principles

• Purpose of notice provision

‘…to enable the insurer to perform his role as dominus litis and to investigate accidents and claims at the earliest possible opportunity.’ – per Justice Bingham in the case of Pioneer Concrete (UK) Ltd v National Employers Mutual General Insurance Association Ltd [1985] 1 Lloyd’s Rep 274

• Strict compliance of conditions precedent

‘Such clauses should not be treated as a mere formality which is to be evaded at the cost of a forced and unnatural construction of the words used in the policy. They should be construed fairly to give effect to the object for which they were inserted, but at the same time so as to protect the assured from being trapped by obscure or ambiguous phraseology.’ - MacGillivray on Insurance Law, at para 19-35
The Position In Singapore On The ‘Notice Prejudice’ Rule

‘When a term found in an insurance policy is properly construed by the courts as a condition precedent to the liability of the insurer, the term has to be strictly complied with by the insured before the Insurer comes under a liability to the insured.’ - Principles of Insurance Law, Poh Chu Chai, 5th Edition, pg 359

Position under English Law

• Strict compliance of condition precedent notice provisions, 'notice prejudice' rule not recognised (cf America, Australia’s Insurance Contracts Act)
  – Pioneer Concrete (UK) Ltd v National Employers Mutual General Insurance Association Ltd [1985] 1 Lloyd's Rep 274
  – Shinedean Ltd v Alldown Demolition (London) Ltd [2006] BLR 309
The Position In Singapore On The ‘Notice Prejudice’ Rule

‘... there is no determinative principle that a duty on the insured to provide relevant information within a reasonable time will not be broken if, in the end, it turns out there is no prejudice to insurers. Insurers are entitled to know whether they stand, and under this policy [the insurer] were entitled to receive the information in good time, whether they were in the end prejudiced by the failure to achieve this or not.’ - per Lord Justice May in the case of *Shinedean Ltd v Alldown Demolition (London) Ltd* [2006] BLR 309 at page 314

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The Position In Singapore On The ‘Notice Prejudice’ Rule

- ‘Impossibility’ and ‘ignorance’ are no excuse to comply with such provisions
  - *Cassel v The Lancashire and Yorkshire Accident Insurance Company (Limited)* (1885) 1 T.L.R. 495
Prior to Stork v First Capital Insurance

- Position under Singapore law was not clear
  - Tan Thuan Seng & Ors v UMBC Insurans Sdn Bhd [1998] 1 SLR 887, applied Barrett Brothers (Taxis) Ltd v Davies
  - but Justice Judith Prakash recognised 'the importance the law ascribes to due compliance with insurance conditions and' accepted 'that exceptions to the rule should be strictly delimited.'

After Stork v First Capital Insurance

- Clear that 'Notice prejudice' rule is not recognised under Singapore law

- Justice Lai Siu Chiu's decision in favour of the Insurers was upheld by the Court of Appeal:
  - Insured was obliged to comply with the notice provision with regards to SH’s letter
  - A period of 2 months delay in informing Insurers of SH’s letter was not in compliance with the duty to 'immediately' inform the Insurers of the same
The Position In Singapore On The ‘Notice Prejudice’ Rule

– Common law position does not require an insurer to prove prejudice before he can rely on a breach of a condition precedent in a policy. Case of Pioneer Concrete applied.

– Purpose of notice provision is to protect the insurer, who will ultimately be the paymaster in the usual course of events.

– It is for the insurer, not the insured to determine the issue of liability.

Elements To Be Satisfied To Find Waiver
Elements To Be Satisfied To Find Waiver

- One of Insured’s argument was that Insurer waived compliance of the notice provision by virtue of Insurers’ letter of 3 October 02 stating that it was not ‘on risk’

- Argument rejected by Justice Lai and Court of Appeal
  ‘the party who purportedly waived compliance of the notice must be apprised of the full facts’ – per Justice Lai at para 74 of her judgment in Stork v First Capital
  – Insurer was not aware of Insured’s breach of notice provision in respect of SH’s letter.
  – Insurer could only have been apprised of full facts after having sight of SH’s letter, which was only provided by Insured on 10 April 04.

Elements To Be Satisfied To Find Waiver

- Must have acted in such a way as to clearly evince a decision to relinquish right to avoid policy in reliance of notice provision
  – Insurer’s letter of 3 Oct 02 rejected cover on the basis that the Policy did not apply.
THANK YOU

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Q & A