Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) *v* Motor Insurers' Bureau Of Singapore
[2012] SGHC 202

Case Number	: Originating Summons No 808 of 2011 and No 580 of 2011
Decision Date	: 04 October 2012
Tribunal/Court	: High Court
Coram	: Quentin Loh J
Counsel Name(s)	: Harry Elias SC, Francis Goh Siong Pheck and Tan Huilin Bernice (Harry Elias Partnership) for the plaintiff; Andre Yeap SC, Lai Yew Fei and Sharmila Jit Chandran (Rajah & Tann) for the defendant.
Parties	: Pacific & Orient Insurance Co Bhd (formerly known as Pacific & Orient Insurance Co Sdn Bhd) — Motor Insurers' Bureau Of Singapore

Insurance – motor vehicle insurance – compulsory

Insurance – companies – regulation

Contract – contractual terms

4 October 2012 Judgment reserved.

Quentin Loh J (delivering the judgment of the court):

1 There are two Originating Summonses before me, one being OS No 808 of 2011 ("OS 808") and the other, OS No 580 of 2011 ("OS 580"). In OS 808, Pacific & Orient Insurance Company Berhad ("P&O Insurance") is the Plaintiff while the Motor Insurers' Bureau of Singapore ("MIB") is the Defendant. P&O Insurance was formerly known as the Pacific & Orient Insurance Company Sendirian Berhard. In OS 580, the positions are reversed where MIB is the Plaintiff while P&O Insurance is the Defendant.

2 These proceedings are mirror applications which revolve around the essential question of whether P&O Insurance, which carries on business as an insurance company in Malaysia with no office in Singapore, is liable to satisfy a Singapore judgement obtained by an injured pillion rider (or by his estate in the event of his death), against its policy holder who is the rider of the motorcycle, in a traffic accident which occurred in Singapore.

3 This is in turn contingent upon the obligations which P&O Insurance has undertaken under a 15 September 1975 Agreement ("Special Agreement") with MIB.

Background Facts

4 The following facts are not disputed. On 21 December 2005, Ravi a/l Mariappen ("Ravi"), a Malaysian, was riding his Malaysian-registered motorcycle with Ganesan a/l Govindaraj ("Ganesan") riding pillion along Benoi Road, Singapore, when there was a collision with a lorry driven by Mohammel Hoque Aminul Hoque ("the lorry driver").

5 Ganesan, who was injured, commenced Suit No 460 of 2008 ("Suit 460") against Ravi. The lorry

driver was subsequently added as a second defendant. On 27 July 2010, final judgment in the sum of S$243,983.68 was entered in Ganesan's favour. Liability was apportioned with Ravi bearing 75% and the lorry driver bearing 25% of the blame for the accident.

6 Ganesan's lawyers had notified MIB on 17 July 2008 that they had commenced proceedings against Ravi and that they had informed P&O Insurance, who had issued a policy dated 12 April 2005 to Ravi in Malaysia, of this. However, P&O Insurance had disclaimed liability on the ground that Ravi had not taken out any insurance for pillion rider cover.

7 MIB took the position that P&O Insurance was an "Insurer Concerned" under the Special Agreement that was binding on P&O Insurance and that the latter should settle the judgment obtained by Ganesan. P&O Insurance disagreed that it was an "Insurer Concerned" and refused to settle the judgment. The parties therefore commenced these proceedings seeking the court's ruling on this and other related issues.

Relevant History of the Motor Insurers' Bureau

8 It bears repeating that the ubiquitous motor vehicle, indispensable to modern life, has an unfortunate inherent capacity to injure, maim or cause the death of other road users or pedestrians as well as inflict property damage. All too often, more than one category of harm is caused. Hence the enactment of social legislation, not long after the widespread use of motor vehicles, to ensure that no vehicle is on the road without compulsory insurance cover for personal injury or death to a third party arising out of the negligent use of the vehicle: see the English Road Traffic Act of 1930 (c 43) (UK). The equivalent legislation in Singapore is the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed), ("MV(TP)A"). Given the contractual nature of insurance, it would be of no comfort to such a victim if, for one reason or another, the insurer was entitled to deny liability or cover to the vehicle owner or driver it has insured. This deficiency was addressed by the MV(TP)A which essentially provided that an insurer who is entitled to avoid liability under the policy to indemnify the vehicle owner and/or driver, must nonetheless first satisfy any judgment for death or personal injury entered against its insured owner and/or driver. It is then entitled to recover that sum from its insured. This allowed the victim, provided it gave due notice of his claim, a direct cause of action against the insurer.

9 However, there were still cracks through which claims could fall through and victims were left without compensation. For example, what if for one reason or another, there was no effective insurance cover? What if the driver fled the accident scene and the victim was so severely injured or even killed that the vehicle and its driver could not be traced? What happens if the insurer became insolvent?

10 The first Motor Insurers' Bureau was established in England in 1946. It was a fund financed by all motor insurers in the country to pay compensation to road traffic victims who were unable to recover any compensation for their injuries or claims. This same model was subsequently adopted in Hong Kong, Malaysia and Singapore.

11 Malaysia set up its Motor Insurers' Bureau of West Malaysia, ("MIBWM"), in 1968 and it was based on the English model. Singapore set up its Bureau in 1975 and it was based on the MIBWM model.

12 MIB is an independent public company incorporated on 25 January 1975. It is set up and funded by all general insurance companies and Lloyd's Underwriters carrying on motor business and operating in Singapore. Among its objects in its Memorandum of Association ("MOA") are, at clause 3:

(a) to enter into and give effect of any agreement or agreements and any amendments thereto between the Bureau and any Government Department or duly authorised Government Representative of Singapore for the purpose of ensuring as far as possible that the operation of the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 88) and any statutory modifications thereto and re-enactment thereof and any amendments that may be made thereto shall be just and equitable and achieve to the fullest extent possible the objects for which they were promulgated, and in furtherance of the above objects;

(b) to make compassionate payments or allowances to persons injured and to the dependents of persons killed through the use of motor vehicles as defined in the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 88) or any statutory modifications thereto and re-enactment thereof;

...

(f) to enter into binding agreements with its members or any of them ... for such other purposes as may be conducive to efficient, economical or expeditious discharge of its obligations and furtherance of its objects.

13 Article 13 of MIB's Articles of Association provides as follows:

Every member shall be bound to further to the best of its ability the objects, interests and influences of the Bureau and shall observe these Articles and any regulations which may be promulgated from time to time for the administration of the Bureau and any Agreements which may be entered into between the Bureau and such member.

14 On 22 February 1975, two agreements were entered into:

(a) First, MIB entered into an agreement with the Minister of Finance. This was known as the Principal Agreement. The Principal Agreement sets out the obligations of the MIB to compensate victims of road accidents under certain conditions. These were basically where there was no effective insurance for the vehicle involved, where the driver of the vehicle could not be traced or where the insurer had become insolvent.

(b) Second, MIB entered into an agreement with all insurance companies and Lloyds Underwriters which sold motor insurance policies in Singapore, ("motor insurance business"). This was known as the Domestic Agreement. The Domestic Agreement specifies the situations and conditions under which an insurance company is liable to compensate victims of a road accident.

15 When any subsequent insurer applied for a licence from the Monetary Authority of Singapore, and part of its insurance portfolio was motor insurance business, it was a condition of its licence that it had to sign an agreement with the MIB and agree to the terms of the Domestic Agreement.

16 The underlying rationale of a scheme like the Motor Insurers' Bureau is to fulfil the social aim of providing compensation for all road accident victims where for some reason there was no effective insurance policy to cover the liability and it was also to help spread the risk among all insurers issuing motor insurance policies within the jurisdiction in cases of untraced drivers and insolvent insurers. Hence MIB had the right to call for contributions from all insurers to meet its liabilities. In addition, the concept of the "Insurer Concerned" was a practical measure adopted to save administrative costs and relieve the MIB from the need to have qualified staff to investigate, process and deal with or settle claims of such victims.

17 When the MIBWM was set up in Malaysia in 1968, the free flow of traffic between Singapore and Malaysia caused a problem. Because Singapore vehicles could enter West Malaysia freely, MIBWM found it had to compensate victims of road accidents on West Malaysian roads caused by Singapore vehicles without a right to seek recovery because its equivalent of the Domestic Agreement was only signed with insurers registered in Malaysia. Malaysian insurers were thus left to shoulder the entire financial burden in relation to Singapore vehicles travelling on Malaysian roads. Consequently, pursuant to discussions between the regulators on both sides of the Causeway, Singapore insurers signed special agreements to be bound as if they were bound by MIBWM's Memorandum and Articles of Association and their equivalents of the Principal and Domestic Agreements. When Singapore set up the MIB seven years later in 1975, there was therefore already a precedent to deal with the problem of Malaysian vehicles on Singapore roads. Hence motor insurers transacting motor insurance business on both sides of the Causeway had to enter into agreements with the MIB or MIBWM respectively.

Pacific Insurance and the MIB

18 P&O Insurance carried on its insurance business in Malaysia and was therefore not an original signatory to the Domestic Agreement. However, on 15 September 1975, P&O Insurance, like many other Malaysian insurance companies then and subsequently, signed an agreement with MIB, known as the Special Agreement ("Special Agreement"). The Domestic Agreement was annexed to the Special Agreement and P&O Insurance agreed "...to be bound by the Articles of Association of the Bureau... in every way as if the Company were a member of the Bureau". The Special Agreement therefore placed P&O Insurance in the same contractual position as any other member of MIB.

19 At the time of the Special Agreement, the motor vehicle insurance regimes in Singapore and Malaysia were largely the same, if not *in pari materia*. In particular, whilst it was compulsory to have insurance cover for liability to third parties, it was not mandatory for the owners and/or drivers of motor vehicles to carry obtain insurance cover for injury to their passengers or pillion-riders.

20 This position changed in 1980, when Singapore made passenger cover mandatory through an amendment to the MV(TP)A. This created a divergence between the compulsory motor vehicle insurance requirements in Malaysia and Singapore which persists to this day. The Malaysian Road Traffic Ordinance 1958 (Ord 49 of 1958) did not require such coverage, and the position remains the same in the current legislation governing motor insurance in Malaysia, *viz*, the Road Transport Act 1987 (Act 333).

21 On 24 September 1998, MIB entered into a Supplemental Agreement with its members introducing some changes to the Domestic Agreement. The key amendment was an update of references to the MV(TP)A so that the scheme would operate against the backdrop of the current version of this statute, Chapter 189, instead of Chapter 88.

22 These differences have now given rise to the dispute and the interpretation of the clauses within the various agreements signed by the parties.

The Dispute between the MIB and P&O Insurance

23 In the Special Agreement entered into between P&O Insurance and the MIB, recital 2 reads as follows:

> WHEREAS
>
> ...

(2) [P&O Insurance] is desirous of entering into an agreement with the Bureau whereby [P&O Insurance] agrees to be bound by the Articles of Association of the Bureau, the Agreement between the Bureau and the Members and the Agreement between the Bureau and the Minister of Finance, copies whereof are annexed hereto, in every way as if [P&O Insurance] were a member of the Bureau, and the Bureau has accordingly agreed to enter into this Agreement upon and subject to the terms and conditions set forth.

Insofar as this expresses the aim or intention of the parties, it is consistent with what I have set out above. It also forms part of the relevant context or factual matrix within which this agreement was entered into.

24 Turning to the actual terms of the agreement, clauses 1 and 2 of the Special Agreement provide:

1. ... [P&O Insurance] hereby covenants with the Bureau that it will in every respect comply with every obligation imposed upon Members of the Bureau by the Articles of Association of the Bureau and in particular will subscribe such funds to the Bureau and furnish such returns of gross premium income in respect of all motor vehicle insurance effected in Singapore as are required by Members...

2 [P&O Insurance] further covenants with the Bureau that it will comply with every obligation imposed upon Members of the Bureau by the Memorandum of Agreement between the Bureau and its members (a copy of which is annexed hereto) in every respect as if [P&O Insurance] were an "Insurer" for the purposes of the said Agreement and in particular undertakes and binds itself to the Bureau to make any payment demanded under Clauses 6 and 7 of the said Agreement and to furnish the Council of the Bureau such particulars of its premium income as the Council may require.

The Memorandum of Agreement referred to in clause 2 refers to the Domestic Agreement between the MIB and its Members.

25 Clause 3(1) of the Domestic Agreement provides that:

If a Judgment is obtained in Singapore against any person (hereinafter referred to as the "Judgment Debtor") in respect of liability required to be insured by the Compulsory Insurance Legislation the Insurer Concerned will satisfy the Original Judgment Creditor if and to the extent that the Judgment has not been satisfied by the Judgment Debtor within twenty-eight days from the date upon which the person in whose favour it was given is entitled to enforce it.

Clause 1 of the Domestic Agreement defines the terms "Insurer Concerned" and "Compulsory Insurance Legislation" as follows:

"Insurer Concerned" means the Insurer who at the time of the accident which gave rise to a liability required to be insured by the Compulsory Insurance Legislation was providing an insurance against such liability in respect of the vehicle arising out of the use of which the liability of the Judgment Debtor was incurred.

"Compulsory Insurance Legislation" means the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 99) and any statutory modifications thereto or any re-enactment thereof.

26 P&O Insurance contends that it is not bound to pay out to passengers or pillion riders for the following interconnected reasons:

(a) It is not an original signatory to the Domestic Agreement of 22 February 1975 and it has no business presence in Singapore. It is also a member of MIBWM and it had signed the Special Agreement on 15 September 1975, subject always to terms and conditions of its insurance policy;

(b) In September 1975, the legislation regulating compulsory insurance cover was largely the same, if not *in pari materia*, in both Singapore and Malaysia, so insurance cover for passenger liability was not compulsory and the Special Agreement it had signed in September 1975 did not stipulate that passenger liability was compulsory;

(c) It became compulsory to have insurance cover for passenger liability in Singapore in 1980 but this was not compulsory in Malaysia then or even today. P&O Insurance being an insurance company registered in Malaysia without any presence in Singapore, is regulated by the then Malaysian Road Traffic Ordinance 1958 and the Road Transport Act 1987 now; it is not subject to s 4(1)(a) of the MV(TP)A;

(d) P&O Insurance has warned their policy holders in their motor insurance proposal forms that it is the responsibility of the policy holder to extend their policy to obtain cover legal liability to passengers if they enter Singapore, as it is an offence to drive their vehicle without this cover there; P&O Insurance does offer this extended cover, for an additional premium;

(e) P&O Insurance does not qualify as an "Insurer Concerned" under clause 1 of the Domestic Agreement unless the insured user of a Malaysian registered vehicle has purchased additional cover for passengers or pillion riders. This is because clause 1 states that the insurer must have been, at the time of the accident, "*providing* an insurance against *such* liability" (emphasis added). P&O Insurance's motor insurance policy does not provide cover for liability to passengers or pillion riders; but motor vehicle owners and/or drivers can purchase a separate personal accident protection plan which provides such extended cover from P&O Insurance.

27 I cannot accept the argument that P&O Insurance signed the Special Agreement on 15 September 1975, subject always to the terms and conditions of its insurance policy. That phrase and condition does not appear anywhere in the Special Agreement. Neither can that term be implied as it is not necessary for business efficacy nor does it pass the officious bystander test.

28 It is clear and unarguable otherwise that by clause 2 of the Special Agreement, P&O Insurance covenanted with the MIB to comply with every obligation imposed upon members of the MIB by the Domestic Agreement as if P&O Insurance was a party to thereto. A copy of the Domestic Agreement was expressed to be annexed the Special Agreement. In fact, it will be seen from recital 2, set out above at [23], that the Articles of Association of the MIB, the Domestic Agreement and the Principal Agreement were all expressed to be annexed to the Special Agreement. Additionally, P&O Insurance expressly agreed to be bound by the Articles of Association of the MIB. It is not part of P&O Insurance's case that it did not possess or did not know what was contained in those documents.

29 It is stipulated in clear and unambiguous language in clause 3(1) of the Domestic Agreement that if a judgment is obtained in Singapore against any person in respect of liability which is required to be insured by the Compulsory Insurance Legislation, the "Insurer Concerned" must satisfy that judgment within a stipulated period. The definitions of the terms "Insurer Concerned" and "Compulsory Insurance Legislation" are found in clause 1 of the Domestic Agreement as already set out above at [25].

30 P&O Insurance contends that it is not an "Insurer Concerned" for the purposes of clause 3(1) of the Domestic Agreement because according to the definition of this term in the Domestic Agreement, it is clear that to be an "Insurer Concerned" that insurer must have been *providing* an insurance against "*such liability*", *ie*, passenger or pillion-rider liability. Since P&O Insurance did not cover passenger or pillion rider liability, they are not an "Insurer Concerned".

31 In my judgment, this is not the true and proper construction of clause 3(1) of the Domestic Agreement and of the definition of the term "Insurer Concerned". The starting point must be to consider the obligation undertaken by P&O Insurance under clause 3(1) of the Domestic Agreement. The first requirement is that a judgment has been obtained in Singapore against a person in respect of liability which has to be insured under the Compulsory Insurance Legislation.

32 Compulsory Insurance Legislation is defined as the MV(TP)A *and* any statutory modifications thereto or any re-enactments thereof. Accordingly P&O Insurance has expressly undertaken to accept modifications to the MV(TP)A or statutory re-enactments thereof. It is not something static or frozen in time when P&O Insurance signed the Special Agreement in September 1975.

33 If such a judgement is not satisfied within the stipulated time or not in full, then the "Insurer Concerned" has to satisfy that judgment or the shortfall. In that context, the phrase "such insurance" clearly refers to "such" policy that was issued by the Insurer as was required by the compulsory insurance regime in law, *ie*, the MV(TP)A, as it stood at that point in time.

34 It cannot matter that that Insurer and its policy did not cover passenger or pillion rider liability because that was the whole purpose and rationale for such a scheme, *ie*, where there was no *effective* insurance cover, the victim was assured of compensation and that was dealt with by the Insurer who issued the motor policy.

35 The definition of "Insurer Concerned" also makes clear by elaboration, that the insurance company which issued the policy to the judgment debtor remains an "Insurer Concerned". This was notwithstanding that, for example, the insurance was obtained by fraud, misrepresentation, non-disclosure of material facts, mistake, or that there was some term, description, limitation, exception or condition of the insurance policy or of the proposal form on which it was based expressly or by implication excludes the insurer's liability whether generally or in the particular circumstances in which the judgment debtor liability was incurred, or even in the situation where the judgment debtor was in unauthorised possession of the vehicle by which liability incurred on the part of the judgment debtor arose.

36 Furthermore, it should be noticed that within the definition of "Insurer Concerned" there is a reference to "the liability of the Judgment Debtor", which suggests that clause 1 of the Domestic Agreement draws internal distinctions between the *specific* liability incurred by the judgment debtor and the *general* class of liability covered by Compulsory Insurance Legislation. If not for such a distinction, the specific reference to "the liability of the Judgment Debtor" would constitute otiose verbiage in an otherwise tightly worded document. On the plaintiff's interpretation, "the liability of the Judgment Debtor" can be substituted with the single pronoun "it" and the meaning of clause 1 would be unchanged. I therefore attribute significance to the specific words used in the drafting of the provision, and as such would reject the plaintiff's interpretation.

37 In my judgment, clause 3(1) of the Domestic Agreement and the definition of "Insurer Concerned" in clause 1 of the Domestic Agreement refers to an insurer which covers any form of liability which is also the subject of the MV(TP)A. It follows from this that clause 3(1) operates to place an obligation on such insurers to satisfy judgment debts arising from *other* forms of liability

covered by the MV(TP)A but not expressly included in the insurance policy, such as passenger liability in the present case.

38 I am fortified by what is stated in Poh Chu Chai, *Law of Life, Motor and Workmen's Compensation Insurance* (Lexis Nexis, 2006, 6th ed) at 652, *viz*, that the MIB was incorporated primarily as "...an attempt by motor insurers to bridge the apparent gaps that have arisen in the scheme of compulsory motor insurance provided under the Motor Vehicles (Third Party Risks and Compensation) Act."

39 This is also referred to in the pre-amble to the Principal Agreement entered into between MIBS and the Minister of Finance on the same day as the Domestic Agreement, a copy of which was also annexed thereto, which states that the *raison-d'etre* of the scheme was "to secure compensation to third party victims of road accidents in cases where, notwithstanding the provisions of the Motor Vehicles (Third-Party Risks and Compensation) Act (Chapter 88) relating to compulsory insurance, the victim is deprived of compensation by the absence of insurance, or of effective insurance." [note: 1] The practical effect of the scheme is fully fleshed out in clause 3 of the Principal Agreement:

> If judgment in respect of any liability which is required to be covered by a policy of insurance under the Act is obtained against any person or persons in any Court in Singapore and either at the time of the accident giving rise to such liability there is not in force a policy of insurance as required by the Act or such policy is ineffective for any reason (including the inability of the insurer to make payment) and any such judgment is not satisfied in full within twenty-eight days from the date upon which the person or persons in whose favour such judgement was given became entitled to enforce it then the Bureau will, subject to the provisions of this Part of this Agreement, pay or cause to be paid to the person or persons in whose favour such judgement was given...

40 As counsel for MIB, Mr Andre Yeap SC, submits, clause 3 of the Domestic Agreement simply represents a transmission of MIB's mirror obligation under the Principal Agreement to its members via the "Insurer Concerned" mechanism. This is confirmed by clause 4 of the Domestic Agreement:

> All payments made by an Insurer under Clause 3(1) hereof shall be deemed to be made in discharge of the liability of the Bureau under the Annexed Agreement to make the same.

41 The whole scheme of a motor insurance bureau rests on providing a social safety net for accident victims which fall through gaps in the compulsory insurance cover. The concept of the "Insurer Concerned" is to cut down administrative costs of a bureau, which would have to be borne at the end of the day by all general insurers issuing motor policies. I accept the evidence set out in Mr Chew Loy Kiat's affidavit, which explains the "Insurer Concerned" concept as having been "designed as a practical measure to achieve administrative convenience and save costs, by relieving [MIB] from investigating, handling and settling claims from victims of road accidents in cases where there is an Insurer Concerned." Further, "[t]he concept works by the 'swings and roundabouts' principle, as all compensation payments by the [MIB] under the Principal Agreement are indirectly financed by all its members". [note: 2]

42 Moreover, the whole idea of getting Singapore registered insurers who issue motor policies to sign up with the MIBWM and Malaysian registered insurers who issue motor policies to sign up with MIB is for the convenience of the motoring public in both countries *and* importantly for the protection of potential victims from the use of motor vehicles. Motorists and motorcyclists can seamlessly travel into Singapore or Malaysia and third parties in the other country will always be protected against the

possibility of being left without compensation for death or personal injury caused by a Singapore or Malaysian vehicle. This regime was agreed to by all motor insurers who had signed up with the MIB and MIBWM. P&O Insurance's current position detracts from both the motor insurance bureau scheme and the reciprocal registration arrangement between MIB and MIBWM.

43 My attention was also drawn to an apparently similar case of *Kurnia Insurance (Malaysia) Berhad v Koo Siew Tai* (Originating Summons No 383 of 2010) ("*Kurnia*"), which concerned issues broadly similar to the matter before me. The plaintiff in that case was also a Malaysian insurance company and it sought a declaration that it was not liable to satisfy any judgment for damages against the second defendant, as well as an injunction restraining both defendants from making any claim against the MIB for the same sum. The second defendant was the policy-holder and owner of the vehicle involved in an accident, and the first Defendant was his pillion. I draw comfort from the fact that Prakash J dismissed both of the plaintiff's applications. Unfortunately though, there was no occasion for the learned judge to provide written grounds of her decision.

44 My attention was also drawn to *Cosmic Insurance Corp Ltd v Ong Kah Hoe (trading as Ong Industrial Supplies) and another* [1996] SGHC 42 ("*Cosmic Insurance (No 1)*"). Kan J, in allowing the Defendants' application to set aside default judgment obtained in favour of the Plaintiff, appeared to be of the view that the insurer would not be liable to make payment if the insured had acted outside of the terms of the policy:

> 14 The second defendant may have driven the lorry with the authority of the first defendant, but he was driving when his licence was suspended. Since he was driving when he was not licensed to drive, he was not an authorised driver for the purposes of the policy, and he was not a person insured by the policy. Proceeding from that, the plaintiffs were not required by s 9(1) to satisfy the judgment against him.

45 Unfortunately, this issue was not explored further at trial before Rubin J in *Cosmic Insurance Corp Ltd v Ong Kah Hoe (trading as Ong Industrial Supplies) and another* [1997] SGHC 237 ("*Cosmic Insurance (No 2)*"), which was decided on grounds that are not relevant to the issues in these proceedings. With respect, excessive weight should not be placed on *Cosmic Insurance (No 1)*, as it arose on an interlocutory appeal in which it was sufficient for the defendant to show that he had merits to which the court should pay heed, and consequently allow him to proceed to trial by setting aside the default judgment. There was no determination at that stage but the matter was left to the trial judge to make a determination.

46 The reasons set out above are sufficient to dispose of the issues raised in these proceedings where I have held in favour of MIB. However I will now deal with two, in my view, subsidiary points raised by the parties, neither of which is determinative of the issues set out in the respective Originating Summonses.

P&O Insurance did not sign the Supplemental Agreement

47 Counsel for P&O Insurance, Mr Harry Elias SC, submitted that it was significant that other insurers signed a Supplemental Agreement on 24 September 1998 but P&O Insurance did not.

48 It is important to note that this is a buttressing argument because P&O Insurance's refusal to sign the Supplemental Agreement will only advance its case if such a refusal constitutes unilateral withdrawal from the Special Agreement, or if the Supplemental Agreement was a novation of the Domestic Agreement. There are clear factors which obstruct the plaintiff's progress along both routes. The plaintiff remains a member of MIB, and indeed has made payment to passengers pursuant to its

obligations under the Special Agreement in a previous case albeit under protest. There is also no suggestion that the Supplemental Agreement was a novation, particularly because the pre-amble states:

> The parties hereto are desirous of implementing certain amendments and/or changes and/or modifications to the 1975 Members' Agreement.

Furthermore, it is plainly evident, on the face of the Supplemental Agreement, that there is no novation of the Domestic Agreement. P&O Insurance remains bound by the Special Agreement which it signed in September 1975 with the MIB.

49 I agree with Mr Andre Yeap SC, that the terms of the Supplemental Agreement do not affect any obligations undertaken by P&O Insurance under the Special Agreement. The Supplemental Agreement dealt with two main areas.

50 The first is that it updated references to the "Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 88, 1970 Rev Ed)" to the "Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed)" ("MV(TPR)A"). I have already referred to the definition of "Compulsory Insurance Legislation" in clause 1 of the Domestic Agreement which catered for modifications or re-enactments of the MV(TPR)A with the words: "and any statutory modifications thereto or re-enactments thereof."

51 The second aspect was an amendment to the definition of "Insurer Concerned". The first and relevant portion of the original definition, set out in [25] above was retained, word for word. The clarification as to when an insurer still remained an "Insurer Concerned" was also retained word for word. The amendments made to the latter part of the definition as to when an insurer ceases to be an insurer concerned and motor trade policies are irrelevant to this case.

52 The Supplemental Agreement expressly provided that, save for the amendments contained in the Supplemental Agreement, none of which are relevant to this case, the 1975 Domestic Agreement "...shall remain in full force and effect."

53 None of these amendments affect the present case. Consequently, the fact that P&O Insurance did not sign the Supplemental Agreement does not buttress its case that its obligations are somehow confined to the MV(TP)A as it stood in September 1975. In entering and remaining party to the Special Agreement the plaintiff has bound itself to compensate third-parties for liabilities in accordance with its terms.

The P&O Insurance Certificate of Insurance that was Issued

54 Mr Harry Elias SC also stressed the fact that his client does cover pillion-rider liability but at an additional premium. He added that his client also did warn their insureds, when they filled in the proposal form, that it is an offence under Singapore law to enter Singapore without extending their motor insurance to cover legal liability to passengers.

55 The Certificate of Insurance issued to Ravi comprised 3 pages. P&O Insurance points to the bottom of the first page where there is a reference in small print to the policy to which the Certificate related was issued in accordance with various statutes (including the "Motor Vehicles (Third Party Risks and Compensation) Ordinance 1960 (Republic of Singapore)") to bolster its case that their policy did not cover passenger or pillion rider cover required under the MV(TP)A, while MIB points to the third page where under the heading "Legislation", there is a reference to the "Motor Vehicles (Third

Party Risks and Compensation) Act (Cap 189)".

56 This does not assist either party. The rights and obligations of MIB and P&O Insurance are governed by the written agreement they entered into and not any particular insurance certificate issued by P&O Insurance.

Context and Social Legislation

57 I have already referred to the nature of social legislation covering the use of motor vehicles and the unfortunate consequences for victims where the owner or driver cannot satisfy the judgment obtained by the victim and where there is no effective insurance cover. I do not think there is any right-thinking member of or entity in our society, be it an insurer, a businessman, a vehicle owner, a legislator, or even the man on the street, who will disagree that such a state of affairs is undesirable.

58 Schemes like that of a motor insurance bureau perform a crucial function. Its laudable objectives cannot be denied. This is supported by motor insurers, both financially and morally, as responsible corporate citizens. The exchange of correspondence in the past, between the MIB, MIBWM, the Insurance Commissioner (as he was then called), Persatuan Insuran Am Malaysia (PIAM or the insurance association of Malaysia) and Bank Negara all show or at least point to their support of the schemes in place in Malaysia and Singapore.

59 It is thus unfortunate that cases like this occur. Perhaps it may have been due to financial considerations or pressure. When the Special Agreement was signed in September 1975, the rate of exchange was around MYR1.00 to S$0.9348 [note: 3] or S$1.00 was equivalent to MYR1.0697. When Ganesan obtained his judgment on 27 July 2010, the exchange rate was around S$1.00 to MYR2.3408 and on 27 September 2012 it was around S$1.00 to MYR$2.500. However it will be a misfortune for society on both sides of the Causeway if this laudable scheme unravels due to such financial reasons.

Decision and Declaration

60 For the reasons set out above, I grant the declaration sought by MIB in OS 580. I declare that on a true and proper construction of the Agreement dated 22 February 1975 between the Honourable Minister of Finance and MIB (referred to herein as the Principal Agreement), the MOA dated 22 February 1975 between MIB and its members (referred to herein as the Domestic Agreement), the Agreement dated 15 September 1975 between MIB and P&O Insurance (referred to herein as the Special Agreement), and the terms of P&O Insurance's policy of motor insurance:

(i) if a driver of a Malaysian registered motor vehicle insured by P&O Insurance is involved in an accident in Singapore, personal injury is caused to a passenger of the said vehicle, liability for such personal injury being excluded or not covered by the terms of P&O Insurance's policy of motor insurance, and judgment is obtained in Singapore by the said passenger against the said driver but such judgment is not satisfied in full within 28 days, and all other pre-conditions to liability under clause 3 of the Principal Agreement being either satisfied or inapplicable as the case may be, then P&O Insurance is obliged to satisfy the said judgment obtained by the said passenger to the extent that it remains unsatisfied; and

(ii) if MIB is to satisfy the said judgment obtained by that passenger, to the extent that it remains unsatisfied in the situation referred to above, MIB is entitled to recover this amount from P&O Insurance which shall indemnify MIB for all amounts, costs and/or interest paid by MIB in connection with the judgment.

The application by P&O Insurance in OS 808 is therefore dismissed.

61 Costs will follow the event. MIB is entitled to its costs in OS 580 and OS 808 with due regard for the overlap.

[note: 1] Affidavit of Chew Loy Kiat at p58

[note: 2] *Ibid* at p13

[note: 3] See http://fxtop.com/en/historates.php?A=1&C1=MYR&C2=SGD&DD1=15&MM1=09&YYYY1=1975&B=1&P=&I=1&DD2=26&MM2=09&YYYY2=2012&I accessed on 27 Sep 2012.

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