IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 233

HC/S No 565 of 2016

Between

]

Grace Electrical Engineering Pte Ltd

… *Plaintiff*

And

EQ Insurance Company Ltd

… *Defendant*

JUDGMENT

[Insurance] — [Liability insurance] — [Public] — [Construction of policy]
[Insurance] — [General principles] — [Claims]
[Contract] — [Contractual terms] — [Conditions]
[Words and Phrases] — [“any claim hereunder”]

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v
EQ Insurance Co Ltd

[2016] SGHC 233

High Court — HC/S No 565 of 2016
Belinda Ang Saw Ean J
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19 October 2016

Belinda Ang Saw Ean J Judgment reserved.

Introduction

1 The plaintiff, Grace Electrical Engineering Pte Ltd ("Grace Electrical"), has sued the defendant, EQ Insurance Company Ltd ("EQ Insurance"), for an indemnity under a public liability policy DLPAHQ12-000146 issued on 15 March 2012 ("the Policy"), following a fire at No 141, Kallang Way 1, Singapore ("Unit 141"), on 6 September 2012.

2 In 2014, Grace Electrical was sued for fire damage arising from the same fire in Suit No 697 of 2014 ("S 697/2014") brought by Te Deum Engineering Pte Ltd ("Te Deum") as the lessee and occupier of the adjacent property known as No 143, Kallang Way 1, Singapore ("Unit 143"). The neutral citation of the judgment in S 697/2014 is [2016] SCHC 232.

3 Counsel for EQ Insurance, Mr Ramasamy s/o Karuppan Chettiar, explains, at the outset of his oral submissions, that this present action is not dependent on the outcome of S 697/2014 because EQ Insurance's refusal of Grace Electrical's claim to an indemnity is on the basis that Grace Electrical failed to comply with what EQ Insurance asserts are conditions precedent set out in the Policy. In contrast, the position advanced by counsel for Grace Electrical, Mr Ranvir Kumar Singh ("Mr Singh"), is that the contractual provisions relied on is not conditions precedent to liability, and the EQ Insurance's refusal of Grace Electrical's claim is wrongful. EQ Insurance is thus liable to indemnify Grace Electrical for all damages or sums payable in relation to S 697/2014 up to the policy limit of $1 million (less the applicable policy deductible).

4 The main issue in this action is on the construction of three general conditions in the Policy, namely general condition 4 ("GC4"), general condition 9 ("GC9") and general condition 12 ("GC12"). GC4 and GC9 are to be read with general condition 13 ("GC13"). Besides a determination of which of the three conditions is applicable to the particular claim, the primary argument of construction in respect of GC4 and GC9 is whether these conditions are capable of being conditions precedent and if their non-compliance will prevent an indemnity claim under the Policy. In the case of a condition precedent, the insurer is simply not liable to meet the insured's claim as the insured has failed to carry out the steps required of him to establish the insurer's liability. If this court rules that neither GC4 nor GC9 is a condition precedent, the question which naturally arises is whether a non-compliance breach of either as contractual terms is repudiatory of the claim to which the breach related. The parties did not deal with and examine the nature

of such a breach, or inquire into the seriousness of such breach and the consequences thereof. Instead, EQ Insurance's approach was ostensibly this: if the conclusion of this court is that GC4 and GC9 are not conditions precedent, Grace Electrical's claim to an indemnity should succeed unless it is adjudged that GC12 applies to render the action contractually time-barred.

Undisputed facts

5 Grace Electrical was at all material times the occupier of Unit 141, and it was and still is in the business of an electrical contractor. Unit 141 was used by Grace Electrical to assemble, test and commission electrical cables and equipment as well as to repack electrical cables. The mezzanine floor was its office. Unit 141 was also used as a "dormitory" for its foreign workers. I will adopt the expression "workers' quarters" in this judgment as it was a phrase used in various summonses issued against Grace Electrical for fire safety violations. The workers were spread out in different parts of Unit 141. There were electrical cooking appliances, fans and refrigerators in the backyard for the workers' use. It is not disputed that the workers cooked their meals in Unit 141. It is also not disputed that cooking in Unit 141 was known and permitted by Grace Electrical.

6 It is common ground that after the outbreak of the fire on 6 September 2012, EQ Insurance appointed Approved Forensics Sdn Bhd ("Approved") to investigate the fire. Thereafter, Approved issued its report dated 15 January 2013. Prior to the appointment of Approved, EQ Insurance through its loss adjusters, Insight Adjusters and Surveyors Pte Ltd ("Insight") reminded Grace Electrical in a letter dated 11 September 2012 not to discuss liability with any

third party(s) and to forward any third party(s) correspondence in respect of fire damage to any third party's property to Insight.

7 After the outbreak of the fire on 6 September 2012, the Singapore Civil Defence Force ("SCDF") conducted investigations and subsequently issued Summons No SCDF000040-2012 against Grace Electrical on 8 October 2012. Eight charges were levelled against Grace Electrical:

(a) Five charges under s 30(1) of the Fire Safety Act (Cap 109A, 2000 Rev Ed) ("FSA") for unauthorised changes of use of space to accommodation, pantry and storage areas; and

(b) Three charges under s 24(1) of the FSA for carrying out fire safety works without plan approval from SCDF.

8 Grace Electrical's insurance broker, Jackson Clark Insurance Brokers Pte Ltd ("Jackson Clark"), notified Insight of the post-fire summonses, and in a letter dated 30 October 2012 asked Insight to recommend a lawyer to represent Grace Electrical to defend the post-fire summonses. The suggestion then was to appoint "one common lawyer" who could also be instructed to defend any third party claim; and the broker, mindful that if "the charges succeeded it might impact on third party claim", expressed its concern to Insight in plain language.

9 On 17 March 2013, Insight wrote to Jackson Clark to advise that the Policy would not respond to any claim for fire damage to third party property since Grace Electrical had been charged by SCDF for "several violations of

the fire safety regulations", and those violations were in breach of GC9 of the Policy. It is useful to set out the letter in full:

> 17 March 2013
>
> Jackson Clark Insurance Brokers Pte Ltd
> 10 Jalan Besar
> #07-04 Sim Lim Tower
> Singapore 208787
>
> **Attention: Mr Jack Lim**
>
> Dear Sirs
>
> **INSURED: GRACE ELECTRICAL ENGINEERING PTE LTD PUBLIC LIABILITY POLICY NO: DLPAHQ12-000146 FIRE DAMAGE TO THIRD PARTIES PROPERTIES ON 6 SEPTEMBER 2012**
>
> The above matter refers.
>
> Our investigation revealed that your client had been charged by the Singapore Civil Defence force ("SCDF") for several violations of the fire safety regulation.
>
> We draw your attention to the Policy Conditions (9) which states that:-
>
> > *"The Insured shall exercise reasonable care that only competent employees are employed that all buildings ways work plant machinery furniture and fittings are substantial and sound and in proper order and fit for the purposes for which they are used and that all statutory requirements and by-laws and regulations imposed by any public authority are duly observed and complied with."*
>
> Your client appear(sic) to have breached the aforementioned policy condition as they had failed to comply with statutory requirements, by-laws or regulations. This breach of statutory requirements by your client would also put them in a difficult position to defend the Third Parties' claims.
>
> Having carefully considered the circumstances surrounding this matter, we regret to advise that policy liability is not engaged. You may wish to advise your client to deal with the respective Third Parties directly. We will also forward the Third

> Parties claim, if any received, to your client for their proper handling.
>
> We trust that you are accordingly advised.
>
> Yours faithfully
> INSIGHT ADJUSTERS AND SURVEYORS PTE LTD
>
> -Sgd-
>
> Director
>
> [emphasis in original]

10 On 13 May 2013, UniLegal LLC ("UniLegal"), solicitors for Grace Electrical, wrote to Insight denying that the latter had breached GC9 and stated that Grace Electrical would claim against EQ Insurance under the Policy. Insight replied on 28 May 2013 and repeated EQ Insurance's position which was to deny liability under the Policy. In the same letter, UniLegal was told that the breach of GC9 had prejudiced Grace Electrical's position.

11 On 15 August 2013, UniLegal informed EQ Insurance that Grace Electrical had received fire damage claims from: (a) Te Deum, the lessee of Unit 143; and (b) Tong Hong Industries Pte Ltd. Essentially, Grace Electrical was giving notice to claim an indemnity under the Policy if found liable. Te Deum's solicitors, Tan Kok Quan Partnership, issued a letter of demand on 5 November 2013, and this letter of demand was notified to EQ Insurance on 7 November 2013, and Grace Electrical repeated its intention to look to EQ Insurance for indemnity, if found liable. On 2 July 2014, UniLegal informed EQ Insurance of the action filed by Te Deum and that whilst Grace Electrical would be defending the action, it would claim against EQ Insurance under the Policy should Grace Electrical be found liable to Te Deum.

12 As regards the post-fire summonses, Grace Electrical pleaded guilty to five of the eight charges, and admitted without qualification to SCDF's Statement of Facts. This was on 16 April 2013. Previously, Grace Electrical had also paid composition fines for similar offences under ss 24(1) and 30(1) of the FSA. The first time such offences were committed was in October 2009 and, then again in May 2012. The relevance of the past offences was in the unauthorised change of use of Unit 141 of parts of factory space to accommodation on both occasions.

13 In its Mitigation Plea dated 16 April 2013, Grace Electrical acknowledged that the fire occurred in Unit 141, and cited "administrative oversight" as an excuse for not seeking approval to use Unit 141. In mitigation, Grace Electrical claimed that its failure to obtain approval was not deliberate. This excuse was made despite Grace Electrical's antecedents recounted in the Statement of Facts.

The Policy

14 The relevant provisions of the Policy provided, as far as material, are as follows:

> THIS POLICY WITNESSETH that subject to the terms, exclusions and conditions contained herein or endorsed hereon or attached hereto [EQ Insurance] agrees to indemnify [Grace Electrical] against:
>
> 1. all sums which [Grace Electrical] shall become legally liable to pay as a damages in respect of… accidental loss of or damage to material property
>
> 2. all costs and expenses of litigation… recoverable by any claimant against [Grace Electrical]…

> in respect of a claim against [Grace Electrical] for damages occurring during the Period of Insurance arising in connection with the Trade or Business and happening anywhere within the Territorial Limits to which the Indemnity expressed in this Policy applies.

15 The terms that EQ Insurance have raised in its defence are found in the section of the Policy titled "Conditions" and are set out as follows:

> 4. [Grace Electrical] shall not without the consent in writing of [EQ Insurance] repudiate liability negotiate or make any admission offer promise or payment in connection with any accident or claim and [EQ Insurance] shall be entitled if it so desires to take over and conduct in the name of [Grace Electrical] the defence of any claim or to prosecute in the name of [Grace Electrical] at its own expense and for its own benefit any claims for indemnity or damage or otherwise against any persons and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and [Grace Electrical] shall give all such information and assistance as [EQ Insurance] may require.
>
> 9. [Grace Electrical] shall exercise reasonable care that only competent employees are employed that all buildings ways work plant machinery furniture and fittings are substantial and sound and in proper order and fit for the purposes for which they are used and that all statutory requirements and bye-laws and regulations imposed by any public authority are duly observed and complied with. Upon any defect being brought to his notice, [Grace Electrical] shall forthwith proceed to make good the same and shall take such temporary precautions to prevent accident as the circumstances may require but so far as practicable no alteration or repair shall without the consent of [EQ Insurance] be made after any occurrence covered by this Policy until [EQ Insurance] shall have had an opportunity of inspecting. [EQ Insurance] shall at all reasonable times have free access to inspect any property. In the event of any defect of danger being apparent to [EQ Insurance]'s inspector EQ Insurance may give notice in writing to [Grace Electrical] and thereupon all liability of [EQ Insurance] in respect thereof or arising therefrom shall be suspended until the same be cured or removed to the satisfaction of [EQ Insurance].

> 12. If [EQ Insurance] shall offer an amount in settlement or disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of such offer or disclaimer have been referred to arbitration under the provisions contained in the Policy or been made subject to pending court action then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
>
> 13. The due observance and fulfilment of the terms provisions and conditions of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of [EQ Insurance] to make any payment under this Policy.

Unless stated otherwise, these terms shall be referred to as "Conditions" generally as they are labelled under the Policy, without any suggestion that they are to be treated as conditions precedent to EQ Insurance's liability under the Policy. There is also GC13 which I will come to shortly.

Issues

16 The issues to be determined in S 565/2016 are:

(a) whether GC4 and GC9, when read with GC13, are conditions precedent to EQ Insurance's liability to make payment under the Policy;

(b) whether Grace Electrical's convictions under the FSA and its admission of the Statement of Facts when it pleaded guilty to the SCDF charges on 16 April 2013 amounted to a breach of GC9; and if so, whether the breach of GC9 is non-compliance with a condition precedent to EQ Insurance's liability to indemnify.

(c) whether Grace Electrical's failure to obtain EQ Insurance's consent in writing before admitting guilt to SCDF's charges amounted to a breach of GC4; and if so, whether the breach of GC4 is non-compliance with a condition precedent to EQ Insurance's liability to indemnify.

(d) whether Grace Electrical's claim to be indemnified under the Policy is time-barred under GC12;

GC13 as a general declaration clause

17 It is not disputed that if a term is construed as a condition precedent to the liability of the insurer, a breach of that term would prevent the insured from bringing a claim for a loss to which the condition relates. The Policy lists a number of terms of the contract under the headings "Conditions", and it includes GC13 which is a general declaration clause to the effect that the conditions are precedent to the *liability* of the insurer. The effect of a general declaration clause like GC13 (that declares a group of terms to be conditions precedent) must be examined with each specified clause in a policy that is purported to be a condition precedent to liability.

18 The use of the label "condition" or "condition precedent", although a relevant factor, is not decisive of the contractual term's legal effect, especially when the label is attached generally to a number of terms of different nature. Full effect was given to a general declaration clause in *Pilkington United Kingdom Ltd v CGU Insurance Plc* [2004] EWCA Civ 23 by Potter LJ, when read together with the notice provisions requiring the insured to notify the

insurers in writing of any occurrence that might give rise to a claim and to send them immediately every relevant document. It was held that:

> …provisions in a policy which are stated to be conditions precedent 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…

19 On the other hand, it may not be possible to give effect to a general declaration clause because to do so would give rise to absurdity. This happens where a clause cannot be a condition precedent by any stretch of imagination (for instance, if the obligation thereunder can only be performed after the insurer has paid or a provision for rateable proportion in the case of double insurance), it will not be regarded as one notwithstanding the provisions of a general declaration clause: Tan Lee Meng, *Insurance Law in Singapore* (Butterworths Asia, 2nd Ed, 1997) at p 182.

20 Problems can arise when within a particular term labelled as a "condition" there is one part of the clause that can conceivably be treated as being a condition precedent to the insurer's liability, and other parts that cannot. An illustration is *The Directors of the London Guarantee Co v Benjamin Lister Fearnley* (1880) 5 App Cas 911, where the majority of the House of Lords held that a part of a clause was a condition precedent. Similarly, in *Aspen Insurance UK Ltd and others v Pectel Ltd* [2008] EWHC 2804 (Comm), Teare J observed that a particular claims condition that was converted into a condition precedent by a general declaration clause might not

necessarily apply to other policy provisions that fell within the ambit of the general clause.

21 Apart from the workability of the contractual obligation as a condition precedent to liability, other important factors for the court to consider in the construction of the relevant terms would be the purpose of the condition (*Re Bradley and Essex & Suffolk Accident Idemnity Sy* [1912] 1 KB 415 ("*Re Bradley*"), at p 422, *per* Coezens-Hardy MR) or that of the policy itself.

22 The *contra proferentem* rule, where an ambiguity in a document is resolved against the person who prepared it, has also been applied by the Singapore courts in the context of insurance contracts (see for example *Lim Chin Yok Co Ltd v Malayan Insurance Co In* [1974-1976] SLR(R) 265 ("*Lim Chin Yok*")). In *Tay Eng Chuan v Ace Insurance Ltd* [2008] 4 SLR(R) 95 ("*Tay Eng Chuan*") (at [35]), the Court of Appeal observed that the *contra proferentem* rule is "particularly pertinent in insurance policies because these policies are invariably drafted and/or vetted by experts for the benefit of insurers so as to protect the latter's interest". More recently in *Lim Keenly Builders Pte Ltd v Tokio Marine Insurance Singapore Ltd* [2011] 4 SLR 286, the Court of Appeal (at [28]) noted that the *contra proferentem* rule would not apply if the meaning of a clause in an insurance policy was clear from the language of clause itself, having regard to the context of the contract; it would be unnecessary to canvass arguments pertaining to other specific features of the contract.

23 More pertinent to the case at hand, the High Court rejected the application of the *contra proferentem* rule to a general declaration clause

(which was for all intents and purposes *in pari materia* to GC13 of the Policy) in *Stork Technology Services Asia Pte Ltd (formerly known as Eastburn Stork Pte Ltd) v First Capital Insurance Ltd* [2006] 3 SLR(R) 652. At [75] and [77] of the report, Lai Siu Chiu J noted that where there was no ambiguity in the general declaration clause, the *contra proferentem* rule did not apply; it was clear from the wording of the general declaration clause there that the observance of a notice provision in another term labelled as a condition was a condition precedent to the defendant's liability under the policy. In the present case, the express words used in GC13 of the Policy likewise do not give rise to any patent ambiguities to necessitate a construction of the general declaration clause against EQ Insurance: the due fulfilment of "anything to be done or not to be done" by Grace Electrical was expressly drafted and intended to be "conditions precedent to any liability" of EQ Insurance to make payment. The present case should be distinguished from *Lim Chin Yok* or *Tay Eng Chuan*, where either certain words or the operation of the clauses examined in the insurance policies were unclear/ambiguous.

24 Mr Singh relies on *Re Bradley* for the proposition that a no-admission clause similar to GC4 and a reasonable care clause similar to GC9 are not to be interpreted as conditions precedent (through a general declaration clause like GC13). Notably, the particular observations that Mr Singh relied upon were strictly *obiter*. Cozens-Hardy MR (at 421) stated:

> Now it is perfectly clear that some of these so-called conditions are not and cannot be conditions precedent, although some of them may be and are conditions precedent. Nos 1 and 2, dealing with notices, may be conditions precedent. *No 3 [a no-admission clause]*, so far as many meaning can be attributed to it, seems to me not to be a condition precedent. The same remark applies to *No 4 [a reasonable care clause]*, 6, and 7.

> *The question in this appeal, however, turns upon condition 5.* [emphasis added]

25 I do not agree with Grace Electrical that this passage is the *ratio decidendi* of the English Court of Appeal's decision in *Re Bradley*. Cozens-Hardy MR gave no discernible elaboration of his reasoning in the judgment for the *obiter* remarks in the passage to be of assistance to Grace Electrical. I will now proceed to examine the other terms of the Policy disputed by parties. I propose to deal with GC9 first.

GC9 as requiring compliance with all statutory regulations

26 EQ Insurance's contention is that Grace Electrical breached GC9 which requires Grace Electrical to "exercise reasonable care" in ensuring that "all statutory regulations imposed by any public authority are duly observed and complied with". The breach is evidenced by Grace Electrical pleading guilty to the SCDF charges for, *inter alia*, violations of s 30(1) of the FSA. EQ Insurance contends that GC9 is a condition precedent (through GC13, the general declaration clause) in relation to non-compliance with the FSA. It should be noted that on 17 March 2013, EQ Insurance ruled out any engagement under the Policy in light of the SCDF charges (see [9] above).

27 Grace Electrical contends that given the commercial objective of the Policy, it would only be in breach of GC9 if its failure to exercise care to observe statutory regulations was the proximate cause of the fire on 6 September 2012. It argues that any other construction of the clause would be repugnant to the commercial purpose of the Policy, raising the example of a breach of environmental regulations such as allowing breeding of mosquitoes in the premises.

28 In the present case, the relevant commercial objective of the Policy is in EQ Insurance's agreement to indemnify Grace Electrical against "all sums which [Grace Electrical] shall become legally liable to pay as damages in respect of … accidental loss of or damage to material property … happening anywhere within the Territorial Limits to which the Indemnity expressed in this Policy applies". The coverage was, *inter alia*, in respect of Grace Electrical's business as electrical and engineering contractors and the territorial limits included its premises at Unit 141. Notably, the SCDF charges including the previous offences under the FSA are directly relevant as they concern the fire safety of Grace Electrical's premises at Unit 141, which expressly falls under the territorial limit of the Policy. In the present case, the relevant part of GC9 reads:

> [Grace Electrical] shall exercise reasonable care that … all statutory requirements and bye-laws and regulations imposed by any public authority are duly observed and complied with.

29 The quoted text appears to be a catch-all provision that refers to "*all* statutory requirements and bye-laws and regulations imposed by *any* public authority" (emphasis added). GC9 is part of the standard terms of the Policy with the parties merely selecting which term is going to apply to the facts of the particular case. A determination would thus have to be made as to whether there has been a breach of a *relevant* regulatory provision by the insured. The second determination would be to examine if such non-compliance occurred due to the insured's failure to "exercise reasonable care".

30 In the context of the outbreak of fire on 6 September 2012, the inquiry is whether Grace Electrical had within the meaning of GC9 exercised reasonable care that the statutory requirements and regulations imposed by the

FSA were duly complied with. There is no reason to construe GC9 as not applying to the FSA. The liability of EQ Insurance to indemnify the insured under the Policy for accidental loss or damage to property is subject to Grace Electrical complying with statutory requirements such as the FSA. After all, compliance with statutory requirements like s 30(1) of the FSA within the meaning of GC9 is for the fire safety responsibility of Grace Electrical.

31 I now refer to the history of Grace Electrical's non-compliance with s 30(1) of the FSA since 2009 and the findings in S 697/2014 on how the unauthorised change of use of parts of the factory space to workers' quarters increased the fire risk in Unit 141. The finding was that the fire started in Unit 141. I found that the use of the factory premises that had large stock of combustible materials as workers' quarters, and Grace Electrical by its conduct, had compromised the fire safety of the premises ― the fire safety standard of the unit was not adequate for use as workers' quarters and Grace Electrical did nothing to reduce the risk of fire. Fire safety was Grace Electrical's responsibility and any outbreak of fire would present a significant risk to the nearby properties and businesses (see [107] of [2016] SGHC 232). It is useful to set out relevant portions of the judgment:

> 98 As at the date of the fire, [Grace Electrical] was aware that the factory space in Unit 141 was being used as accommodation for it workers. [Grace Electrical] said that there were ten workers living in Unit 141 on the night of the fire. Notably, [Grace Electrical] was fully aware that its use of factory space to house its workers was an unauthorised change of use contrary to s 30(1) of the FSA; and that it was a repeated offender despite being fined for breaching s 30(1) since 2009. Not only had [Grace Electrical] erected a zinc roof to the boundary fence at the rear of Unit 141 to create an enclosed accommodation, cooking and resting area in the backyard, the interior of the building at Unit 141 was also changed from an office space to an accommodation area. I will

focus on s 30(1) of the FSA. The relevant portion of the provision reads:

> **Application for change of use of premises**
>
> 30—(1) Any person who changes the use of a premises shall, if such change of use would cause the existing fire safety measures to become inadequate, prior to carrying out the change, apply to the Commissioner for approval to change the use of the premises.

99 By s 30(3) of the FSA, permission for change of use of premises may be subject to conditions, and the conditions could include the provision of additional fire safety measures in relation to the premises. It is pertinent to note that, a few months before the fire, [Grace Electrical] in May 2012 was fined a second time for violating s 30(1) of the FSA. The location and description of the [Grace Electrical]'s fire safety violations in 2012 read:

> **Location of Fire Safety Violation**: Entrance, Rear and within factory area of 141 Kallang Way 1 Singapore 349185
>
> **Description of Fire safety Violation**: Change the use of factory space to workers dormitory which would cause the existing fire safety measures to become inadequate

100 Besides a fine, [Grace Electrical] was required to desist from the unauthorised activity, that is to say, "alleviate the said fire safety non-compliance/s within 14 days from the date of this notice [ie, 25 May 2012] and to prevent the recurrence of such fire safety non-compliance/s in the premises or part thereof".

101 As stated, [Grace Electrical] was again found to have contravened s 30(1) of the FSA, and post-fire summonses were issued against [Grace Electrical] in October 2012. I have so far been referring to [Grace Electrical]'s unauthorised change of use to workers' quarters. In addition, charge 5 of the post-fire summonses related to the unauthorised change of use of part of the open areas of the compound to storage areas in contravention of s 30(1) of the FSA. [Grace Electrical] admitted to committing similar offences in the past as per the Statement of Fact prepared by SCDF. The first time the offence was committed was in 2009, and then again in 2012, and on both occasions fines were imposed and paid.

> 102 It is indisputable that [Grace Electrical] has had a history of using part of the factory at Unit 141 as workers' quarters. To repeat, on 6 October 2009, [Grace Electrical] had received notices of fire safety offences related to the unauthorised change of use from factory space to workers' quarters and cooking and resting areas, and on 25 May 2012, [Grace Electrical] was again alerted that the use of the factory space as workers' quarters was an unauthorised change of use that would cause the factory's "existing fire safety measures to become inadequate". Specifically, [Grace Electrical] was required by SCDF then to stop using the factory as workers' quarters, but the May 2012 contravention continued into the months before 6 September 2012. The [Grace Electrical]'s workers continued to reside in Unit 141, and it is not disputed that they cooked dinner in the premises on the night of the fire that occurred in the early hours of 6 September 2012.
>
> …
>
> 104 The inadequacies of the existing fire safety measures following an unauthorised change of use are evident from the absence of fire extinguishers and fire hose reel in the backyard of Unit 141. [Mr Teo] testified that the fire extinguisher that the SCDF officers found in the rear of Unit 141 was an expended fire extinguisher that the workers brought back from the construction sites to Unit 141. In my view, [Mr Teo] appreciated that there were no fire extinguishers in the cooking area and that the nearest fire extinguishers were limited to those inside the building. The fire hose reel was also inside the building. … On the whole, I find that [Grace Electrical] did nothing to address SCDF's concerns that the existing fire safety measures that were applicable to a factory were inadequate for workers' quarters. Yet [Grace Electrical] continued to use part of the factory space as workers' quarters even though it had come to light and to the knowledge of [Grace Electrical] months before the fire on 6 September 2012 that the fire safety measures in Unit 141 were inadequate. Put simply, the fire on 6 September 2012 occurred in premises where [Grace Electrical]'s violation of fire safety measures meant that [Grace Electrical] by its conduct had compromised the fire safety of the premises at Unit 141.

32 I have no difficulty, against the factual matrix set out above, in construing GC9 as requiring Grace Electrical to comply with the FSA in the

sense that it should desist from using the factory space as worker's quarters because of fire safety risk. GC9 requires the insured to exercise reasonable care in compliance with statutory requirements, and in this case the statutory breach related to the unauthorised change of use of part of the factory space to workers' quarters. Notably, the fire safety standard that was suitable for a factory was rendered inadequate as a consequence.

33 The phrase used in GC9 is that the insured shall exercise reasonable care to comply with statutory requirements, and "reasonable" means reasonable between the insured and insurer having regard to the purpose of the Policy which is to indemnify the insured against its liability to any third party in respect of the risks covered by the Policy. In *Fraser v B N Furman (Productions) Ltd* [1967] 1 WLR 898 ("*Fraser v Furman*"), Diplock LJ (as he then was) observed (at 906):

> … What, in my judgment, is reasonable as between the insured and insurer, without being repugnant to the commercial purpose of the contract, is that the insured, where he does recognise a danger should not deliberately court it by taking measurers which he himself knows are inadequate to avert it. In other words, it is not enough that the employer's omission to take any particular precautions to avoid accidents should be negligent; *it must be at least reckless, that is to say, made with actual recognition by the insured himself that a danger exists and not caring whether or not it is averted.* The purpose of the condition is to ensure that the insured will not, because he is covered against loss by the policy. [emphasis added]

34 In this particular case, Grace Electrical's history of non-compliance with ss 24 and 30(1) of the FSA is conduct which evidences a reckless disregard of the ordinary standards of reasonableness: *Colinvaux's Law of Insurance* at para 5-083. Put another way, it is conduct that is "reckless": in

the sense referred to by Diplock J (as he then was) in *Fraser v Furman,* a case that concerned a reasonable care clause in relation to taking "reasonable precautions to prevent accidents and disease". Notwithstanding the differences between the language used in GC9 of the Policy and the subject condition in *Fraser v Furman*, Diplock J's remarks are apposite. In that case, Diplock J (at [907]) said that such clauses would only act as a condition precedent to liability when it can be "shown affirmatively that the failure to take precautions … was done recklessly, that is to say with actual recognition of the danger … and not caring whether or not that danger was averted".

35 Locally, our Court of Appeal in *Lim Chin Yok* also referred to Diplock J's comments in *Fraser v Furman* on the standard of recklessness that was needed in such clauses so as not to be repugnant to the commercial purpose of the insurance contract. Although the reasonable care clause in *Lim Chin Yok* was one that related to preventing accidents, the Court of Appeal's reference to *Fraser v Furman* ought to apply to a reasonable care clause in relation to non-compliance with statutory regulations like in GC9 of the Policy.

36 I concluded in S 697/2014 that Grace Electrical was aware that it was housing its workers in the factory contrary to s 30(1) of the FSA and in doing so had compromised the fire safety measures existing in Unit 141. Grace Electrical was aware of the facts which gave rise to its repeated and continual violation of s 30(1) of the FSA. The requirement of GC9 that the insured shall exercise reasonable care to comply with s 30(1) of the FSA was not complied with.

37 In my view, GC9 (through GC13) is a condition precedent to EQ Insurance's liability to indemnify the insured under the Policy. Contrary to Mr Singh's contention, there is no reason to construe the Policy as excluding GC9 from applying as a condition precedent to the insurer's liability in that fire safety was Grace Electrical's responsibility and any outbreak of fire would present a significant risk to the nearby third party property and business. Put another way, the insured is required to comply with fire safety statutory provisions and regulations so as not to increase the insured risk during the period of the insurance (*ie*, 21 February to 20 February 2013), and on the facts in evidence, the unauthorised use of the factory space as workers' quarters (contrary to s 30 of the FSA) happened from May 2012 right through to 6 September 2012. Grace Electrical's breach of GC9 was of a condition precedent, and there is no need to examine whether the non-compliance breach *caused* the relevant loss for which indemnification is being sought under the Policy.

38 To summarise, I find on the present facts that Grace Electrical had been reckless in failing to observe and comply with s 30(1) of the FSA. Grace Electrical's Mr Teo Boon Len ("Mr Teo") conceded during cross-examination that Grace Electrical's contraventions of the provisions in the FSA had not been mere oversights.[1] He could not deny and had to admit that Grace Electrical had "no intention of complying with the law", and had taken a "risk" by acting first without getting the requisite plan approval from SCDF. Accordingly, EQ Insurance is not liable to indemnify Grace Electrical under the Policy in respect of the judgment in S 697/2014. Having decided against

[1] Transcripts (14 July 2016) p 17.

Grace Electrical as regards GC9, it is strictly not necessary to deal with GC4. As the parties have submitted on GC4, I will comment on their arguments in the interest of completeness. I will also come to the argument that GC12 acts as a contractual time bar to Grace Electrical's claim later in the judgment.

GC4 as requiring consent in writing before admission

39 EQ Insurance's next contention is that Grace Electrical breached GC4, a condition precedent, in failing to obtain EQ Insurance's consent in writing before pleading guilty to five out of the eight SCDF charges in Summons No SCDF000040-2012. Grace Electrical's response is that EQ Insurance cannot now invoke GC4 for two reasons: (a) the terms of GC4 do not cover criminal proceedings or criminal charges; and (b) EQ Insurance by its conduct had waived the contractual requirement of written consent under GC4. Insight's letter of 17 March 2013 gave the appearance that the Policy was not engaged and that Grace Electrical was to deal with any third party claim including the SCDF charges. Mr Singh's argument is that Insight's letter was a clear and unequivocal representation by EQ Insurance to Grace Electrical that the latter should handle the SCDF charges as it deemed fit. The relevant part of GC4 in contention relates to the prohibition of an admission "in connection with any accident or claim" without the insurer's written consent.

40 I make two points. The first concerns the waiver argument – that EQ Insurance waived the breach of GC4, a condition precedent. Mr Singh framed issue 2 of his closing submissions as follows: EQ Insurance "cannot insist on [written] consent by virtue of waiver or estoppel or under the doctrine of approbation and reprobation".[2] Other than stating that Insight's letter of 17

March 2013 amounted to a waiver of written consent in GC4, and constituted a clear and unequivocal representation by EQ Insurance to Grace Electrical that the latter should handle the SCDF charges as it deemed fit, the wavier argument is not developed. The next idea that immediately emerged is the doctrine of approbation and reprobation, and the doctrine is used for the argument that Insight's letter precluded EQ Insurance from taking an inconsistent stand, which it was doing by relying on absence of prior written consent, and hence a breach of GC4. Mr Singh's argument is that EQ Insurance having elected to adopt the stance that Grace Electrical is to handle the SCDF charges as it deemed fit, cannot go back and adopt an inconsistent stance.

41 In my view, there can be no "waiver" in its legal sense; the introduction of the doctrine of approbation and reprobation in the context of an adoption of two "inconsistent attitudes" and a need to "elect" is misconceived and conflates principles that do not apply to the facts. There is clearly no argument put in terms of waiver by election (assuming there had been inconsistency) to a question of whether an insurer who denied liability for breach of a condition precedent (*ie* GC9) had waived its right to deny liability on the ground of absence of prior written consent (*ie* GC4).

42 As stated, EQ Insurance declined to meet any liability under the Policy for non-compliance with GC9, and it came to this position after it investigated the fire. It is not a case where Insight's letter of 17 March 2013 gave the appearance that EQ Insurance would be dealing with any third party claim

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[2] Plaintiff's Closing Submissions, p7.

under any reservation of right. On 17 March 2013, EQ Insurance invoked GC9 only. EQ Insurance would not have been able to rely on GC4 on 17 March 2013 simply because the plea of guilt was *later* in April 2013. As such, there can be no wavier of a contractual right to speak of on 17 March 2013. This first point is not about after-discovered conduct (that is to say, that EQ Insurance was not aware that Grace Electrical pleaded guilty to the SCDF charges until after the action started in 2014). The state of affairs was that GC4 could not be invoked as a ground on 17 March 2013 as no actual plea of guilt was taken then.

43 The second point relates to EQ Insurance's conduct. I take Mr Singh as saying that EQ Insurance was "blowing hot and cold" having declined liability for non-compliance breach of GC9, and Insight's letter gave the appearance that Grace Electrical was to handle the SCDF charges as it deemed fit, and that was precisely what Grace Electrical did. Grace Electrical's Mr Teo explained that the plea of guilt was done out of "convenience" to "save time and legal costs".[3]

44 Estoppel is referred to in issue 2 of Grace Electrical's closing submissions. However, there is no mention of "estoppel" in arguments, presumably because it was not pleaded. What Grace Electrical is trying to say is that EQ Insurance would be blowing hot and cold in invoking GC4 as a defence long after Grace Electrical pleaded guilty in April 2013. If anything, there is semblance of a viable argument of estoppel by the insurer's conduct preventing the latter from raising GC4 as a defence or right. To elaborate, a

[3] Transcript (14 July 2014), p 7.

party may by its conduct preclude itself from setting up a later ground (*ie*, GC4). As Lord Denning MR observed in *Panchaud Freres SA v Establishments General Grain Company* [1970] 1 Lloyd's Rep 53 at 57:

> The basis of [estoppel by conduct] is that a man has so conducted himself that it would be unfair or unjust to allow him to depart from a particular state of affairs which another has taken to be settled or correct…

45 EQ Insurance was aware of the SCDF charges as it was advised of the same on 30 October 2012. On 17 March 2013, Insight referred to the SCDF charges, and declined liability under the Policy by relying on GC9. Insight thus advised EQ Insurance to "deal with the "respective Third Parties directly". Grace Electrical was left to deal with both the SCDF charges and any third party claim, if any, and was informed that EQ Insurance would forward any third party claim it received to Grace Electrical "for their proper handling". After Grace Electrical pleaded guilty in April 2013, Insight continued to rely on the breach of GC9 on 28 May 2013. As stated, on 13 May 2013, UniLegal denied Grace Electrical breached GC9 and even if there was a breach of GC9, EQ Insurance was still not absolved from liability under the Policy for any third party claim arising from the fire. GC4 could not be invoked as a ground later after the guilty plea in April 2013 as EQ Insurance still relied on one ground (*ie* GC9) and its position was reiterated on 28 May 2013.

46 Notwithstanding the observations above, estoppel by conduct was not pleaded, and as such, it cannot be relied upon at this stage. Fortunately for Grace Electrical, there is a separate argument that it can realistically turn to, namely the construction argument.

47 Grace Electrical's construction argument is that GC4 does not apply to criminal proceedings or charges, and for that proposition it relies on *Cosmic Insurance Corp Ltd v Hup Chuan Guan Trading Co and another* [1990] 2 SLR(R) 319 ("*Cosmic Insurance*"). In that case, Chan Sek Keong J (as he then was) held (at [14]) that a similar condition "plainly referred to civil claims and had nothing to do with criminal charges" and thus dismissed the appeal. The question before Chan J was whether an arbitrator had erred in law when he ruled that the appellants/insurers were not entitled to rely on Condition 5 of a commercial vehicle policy since the respondents/insured had pleaded guilty to road traffic charges without the appellants' written consent. Condition 5 read:

> *No admission … shall be made* by or on behalf of the Insured without the written consent of the Corporation ***which*** shall be entitled if it so desires to take over and conduct in his name the *defence or settlement of any claim*… [emphasis added]

48 I agree with Grace Electrical that GC4 of the Policy is phrased in wider terms than Condition 5 in *Cosmic Insurance*, and GC4 reads as follows:

> [Grace Electrical] shall not without the consent in writing of [EQ] … *make any admission … in connection with any accident or claim* ***and*** [EQ] shall be entitled if it so desires to take over and conduct in the name of [Grace Electrical] the *defence of any claim* or to prosecute in the name of [Grace Electrical] at its own expense and for its own benefit *any claims for indemnity* or damage or otherwise against *any persons* and shall have full discretion in the conduct of *any proceedings* and in the settlement of *any claim* and the Insured shall give all such information and assistance as the Company may require. [emphasis added]

There are two parts to the contractual provisions: the first requires written consent before an admission is made, and the second entitles the insurer to take over and conduct proceedings be it in defence or prosecution of any claims. Chan J's plain reading of the second part of Condition 5 – that it

referred to civil claims and have nothing to do with criminal charges – applies with equal force to GC4 of the Policy; "claims" in GC4 refer to third party civil claims against Grace Electrical for which EQ Insurance might be obliged to indemnify Grace Electrical under the Policy.

49 Arguably, and in a proper case, GC4 could be construed to include "admissions" made in criminal proceedings if the admissions were "in connection with" an insured accident or third party civil claim for which EQ Insurance might have to indemnify Grace Electrical. With this interpretation, whether, factually, Grace Electrical's plea of guilt would constitute a breach of GC4 depends on a factual inquiry to examine whether what was admitted as a fact in the criminal proceedings could be taken as a relevant fact in the civil proceedings that is based on negligence.

50 Be that as it may, in this case, the plea of guilt itself *per se* does not amount to an "admission" within the meaning of GC4. The SCDF charges were for offences of strict liability under the FSA, and the plea of guilty entered by Grace Electrical in no way implied negligence on the part of Grace Electrical, which was the cause of action pursued by Te Deum against Grace Electrical in S 697/2014. This was also the view taken by Chan J in *Cosmic Insurance* when he commented (at [15] albeit by way of *obiter*) that the road traffic regulation governing the condition of tyres when used in a motor vehicle was one of strict liability and did not imply any negligence.

51 Grace Electrical's guilty plea did not seem directly consequential. The significant features of S 697/2014 are the events in May 2012 and Grace Electrical's conduct thereafter leading up to the night of the fire. Grace

Electrical was fined for violation of s 30 of the FSA in May 2012 and despite the fine, it did not stop using the premises as worker's quarters. There was nothing controversial about the antecedents to turn them into admissions.

52 A related argument concerns the question of whether it is against public policy to prevent an insured from electing to plead guilty to a criminal offence. In *Lickiss v Milestone Motor Policies at Lloyd's* [1966] 1 WLR 1334, Lord Denning MR at 1339 affirmed the trial judge's reasoning that it is contrary to public policy for such clauses to be read to entitle insurers to insist on conducting the defence of insured persons in criminal proceedings; a man who is accused is entitled to have a solicitor of his own choice, or to defend himself if he likes. In criminal proceedings, the insured's unfettered freedom of choice as to his or her plea that should be taken is highly important, and any restraint imposed by such a condition (if intended to do so) would be contrary to public policy and should not be construed in this way: *The Law of Liability Insurance* at para 9-270.

53 For the various reasons stated above, there was no breach of GC4; EQ cannot rely on GC 4 as a defence to its liability under the Policy.

GC12 as a contractual time bar to Grace Electrical's claim for indemnity

54 GC12 of the Policy is a contractual time bar. EQ Insurance's case is that it repudiated liability on 17 March 2013 via Insight's letter, and hence the 12-month period in GC12 ran from 17 March 2013. By the time Grace Electrical brought its third party action against EQ Insurance on 14 July 2014, Grace Electrical's action was time-barred by virtue of GC12.

55 On the other hand, Grace Electrical disagrees with the contractual time bar defence and contends that time has not yet started to run for two reasons: (a) there is a distinction between the notification of occurrence of an insured event giving rise to a claim and the making of a claim (with the latter being that which was needed to trigger GC12), relying on a Court of Appeal decision in *Federal Insurance Co v Nakano Singapore (Pte) Ltd* [1991] 2 SLR(R) 982 ("*Federal Insurance*"); and (b) a claim for indemnity under the Policy can only be made against an insurer when the existence and amount of liability to the third party has been determined and established by action, arbitration or agreement, citing *Bradley v Eagle Star Insurance Co Ltd* [1989] AC 957 ("*Eagle Star*") and *William McIlroy (Swindon) Ltd v Quinn Insurance Ltd* [2011] EWCA Civ 825 ("*William McIlroy*"). In *Federal Insurance,* Chan Sek Keong J (as he was then, and delivering the judgment of the Court of Appeal) considered the question of time-bar in the context of an insurance clause similar to GC12:

> …*if a claim is made and rejected* and no action or suit is commenced within three months after such rejection or, in case of arbitration taking place as provided herein, within three months after the arbitrator or arbitrators or umpire have made their award, all benefit under this policy shall be forfeited. [emphasis added]

56 The Court of Appeal followed *Boshoff v South British Insurance Co, Ltd* [1951] 3 TPD 481; [1951] 3 SALR 481 ("*Boshoff*") and distinguished (at [23]) on the one hand, notification of an incident giving rise to a claim from the making of a claim itself on the other hand, and eventually held that a letter relied on by the insurer to constitute evidence of a claim having been made merely gave a breakdown of the insured's claim and made no demands of payment:

> … an essential element in the "making" of a claim is the making of a demand or request, express or implied, for payment. A claim is made when a demand or request for payment is made. It is not made by a mere notification of the happening of the insured event giving rise to a claim.

57 As for the argument that a claim had been made by the insured on the day of the relevant incident when it notified the insurers of the accident, the Court of Appeal held that such an assertion confused the notification of the occurrence of an insured event giving rise to a claim and the making of a claim.

58 In *Shimizu Corp v Lim Tian Chuan and another (The Tai Ping Insurance Co Ptd, third party)* [1993] 2 SLR(R) 45 ("*Shimizu Corporation*"), L P Thean J (as he then was) considered a similar clause and followed *Federal Insurance* and *Boshoff*. The insured defendants in *Shimizu Corporation* had submitted a claim form that stated the estimated amount of loss or damage to their own property and had also indicated that damage was caused to a third party, the amount of which was then *unknown*. Thean J held (at [27]) that no claim had been made through that claim form "for the *amount* which the defendants were called upon to pay to a third party" (emphasis added). Thean J thus followed *Boshoff's* proposition that a "claim" must be "a demand for an indemnity in a particular amount".

59 However, in *Chiu Teng Construction Co Pte Ltd v The Hartford Insurance Company (Singapore) Ltd* [2001] SGHC, Woo Bih Li JC (as he then was) opined at [120]–[126] that *Boshoff* was authority for the following three propositions, with *only the first* (and not the second and third) of the three being accepted in *Federal Insurance* by the Court of Appeal:

(a) a claim against an insurer means a demand or assertion of a particular right;

(b) the demand must be for a particular amount; and

(c) the amount must be fixed by a court or by agreement.

60 Woo JC's comments were made *obiter* though. The appeal against Woo JC's decision was dismissed in *Hartford Insurance Co (Singapore) Ltd v Chiu Teng Construction Pte Ltd* [2002] 1 SLR(R) 152 without any discussion on this point.

61 In the present case, the coverage of the Policy has to be borne in mind. Under the Policy, EQ Insurance agrees to indemnify the insured against "all sums which the [insured] *shall become legally liable to pay* as damages in respect of …accidental loss of or damage to material property…" (emphasis added).[4] After the fire, Grace Electrical gave notice of the incident which in the Policy's context meant notification of the incident rather than of any claim (see Condition 3 of the Policy). Indeed, UniLegal's letters to Insight did not make any "claim" under the Policy; they were notifications that the insured would look to the insurer for indemnity in the event of any third party claim. In particular, UniLegal's letter of 7 November 2013 informed EQ Insurance that it would be resisting Te Deum's claim for fire damage but would look to EQ Insurance for indemnity if it was found liable to Te Deum. It was plain that there was no assertion of an existing cause of action under the Policy. As

[4] AB2

stated, the action here is for a declaratory relief in the event Grace Electrical is held liable in S 697/2014.

62 *Walker v Pennine Insurance Co Ltd* [1979] 2 Lloyd's Rep 139 ("*Walker*") concerned a motor policy that included cover for the insured's liability for personal injury to a third party. In that case, the plaintiff after receiving notice of a claim to be made by his passenger arising from a collision that both were involved in, wrote to the defendant insurer stating that he "will expect to be indemnified under the terms of his policy of insurance". Sheen J held that this amounted to be a "claim" within the deemed abandonment clause that is materially similar to GC12 of the Policy presently, rejecting the plaintiff's argument that it was necessary to have an amount claimed before there was a claim. On appeal, Roskill LJ upheld the decision and noted that one could, within a deemed abandonment clause, "have a claim by the assured for indemnity against a potential liability, long in advance of any claim against the assured by a Third Party being agreed or determined either as to liability or quantum or both".

63 In *William McIlroy*, the English Court of Appeal addressed and distinguished *Walker*. Although he agreed (at [42]) that Roskill LJ's negative treatment of Devlin J's proposition in *West Wake Price & Co v Ching* [1956] 2 Lloyd's Rep 618 ("*West Wake Price*") was accurate to the extent that *West Wake Price* was indeed not considering a contractual time-bar/deemed abandonment clause, Rix LJ noted that Roskill LJ in *Walker* seemed to have had "regarded notification of a third party claim or a merely potential claim to be identified as constituted a 'claim'" for the purposes of the deemed abandonment clause in *Walker*. Rix LJ in *William McIlroy* went on to affirm

Devlin J's *obiter* consideration of the possible meanings of "claim" in the context of an indemnity clause in *West Wake Price*, where Devlin J said that:

> The essence of the main indemnity clause – as indeed of any indemnity clause – is that the assured must prove a loss. The assured cannot recover anything under the main indemnity clause or make any claim against the underwriters *until they have been found liable and so sustained a loss*. If judgment were given against them for the sum claimed, they would have undoubtedly have sustained a loss… [emphasis added]

64 To summarise, the proposition in *William McIlroy* is that a "claim" in a deemed abandonment clause (such as GC12 of the Policy) involves the assertion of a cause of action, and in the context of an indemnity for third party liability, the accrual of the cause of action would only occur upon ascertainment of the liability and quantum of a third party claim, before such a claim can sensibly be spoken of as being abandoned. Rix LJ hence extended the application of the principle in *Post Office v Norwich Union Fire Insurance Society Ltd* [1967] 2 QB 363 ("*Post Office*") (that the insured's right to be indemnified under a liability insurance policy arises only once the insured's liability to the third party is ascertained and determined by agreement, award or judgment) to the context of deemed abandonment clauses in public liability insurance policies:

> … it makes no sense to think that an insured may have become time barred in a claim under such a policy before, possibly years before, he has any cause of action to bring it. Normally a time bar operates in respect of a cause of action and not before a cause of action has even matured. … In such circumstances, if "claim" can be given a different meaning which would avoid such consequences, it should be. As it is, the observations of Devlin J suggest that the primary meaning of "claim" in liability insurance would support the appeal.

65 The principle on the accrual of cause of action in liability insurance policies as stated in *Post Office* was later affirmed by the House of Lords in *Eagle Star*.

66 Returning to the second and third elements in *Boshoff* that was adopted by the Court of Appeal in *Federal Insurance,* the two elements and the decision in *William McIlroy* essentially equate the "object" that is claimed to the insured's "cause of action" against the insurer, which is based on the line of cases from *Post Office*, and it accrues only upon establishment of liability and quantum of the underlying third party claim. The "particular right" in the first *Boshoff* element is the right to the indemnification of liability to the relevant third party, which only arises once the insured's liability to the third party is ascertained and determined by agreement, award or judgment.

67 This principle discussed above applies in the present case given the express wording of the Policy. I repeat the indemnification coverage set out at the beginning of the Policy and it states that:

> [EQ Insurance] agrees to indemnify [Grace Electrical] against all sums which [Grace Electrical] shall become *legally liable* to pay as damages in respect of … accidental loss of or damage to material property … in respect of a *claim against [Grace Electrical] for damages* occurring during the Period of Insurance… [emphasis added]

68 The word "claim" is used in different contexts throughout the Policy with different meanings, where at times the word "claim" would refer to third party claims against Grace Electrical (*eg* the quotation just above, as well as Conditions 3 and 5, and GC4), at times it would refer to Grace Electrical's claim against EQ Insurance (*eg* Condition 7 and GC12), and at times it would

be uncertain (*eg* the clause on electronic date exclusion). In Condition 7 of the Policy which refers to "the time of any claim arising under this Policy", it would be logical and sensible to equate the time of a claim arising to be the time when a cause of action accrues against EQ Insurance, *ie* only upon ascertainment of liability and amount in the underlying third party claim and not based on mere notification of a potential claim. Similarly, in GC12, the reference to "any claim hereunder", as opposed to when the clause is phrased as when "a claim is made" (as was the case in *Federal Insurance*) would lead the court to be inclined towards adopting an interpretation of "claim" consistent with that of "a claim arising". The accrual of a cause of action against the insurer EQ Insurance would thus be a pre-condition before a "claim hereunder" would exist. Thus, the time as to when this cause of action accrues is relevant in considering whether a "claim hereunder" arises or is existent.

69 For completeness, I make two other comments. First, for a contractual term to impose a contractual time-bar where time starts running before even a cause of action by the insured against the insurer even accrues, clear and precise words have to be used.

70 Second, EQ Insurance in its Defence dated 2 June 2016 only relies on the letter of 17 March 2013 as evidence of EQ Insurance's disclaimer of liability for a "claim"[5] which purportedly arose during the meeting between Grace Electrical and Insight, EQ Insurance's loss adjuster, on 10 September 2012 ("the 10 September 2012 Meeting"). It is EQ Insurance's case that the 10

[5] Defence, paras 13(d) and (e).

September 2012 Meeting was referred to in a letter by Insight to Grace Electrical dated 11 September 2012 which was titled "CLAIM UNDER EQ INSURANCE COMPANY LIMITED'S PUBLIC LIABILITY POLICY NO: DLPAHQ12-000146 FIRE DAMAGE TO THIRD PARTIES PROPERTIES ON 6 SEPTEMBER 2012", and hence this letter evinces that the "claim" arose from the 10 September 2012 Meeting. However, on the face of this letter, apart from the word "claim" in the title of the letter, nothing points to a *demand* or *request* for indemnification being made at the 10 September 2012 Meeting. The letter merely acknowledges that Insight had been appointed "to deal with the above incident" under the terms of the Policy. On the face of the letter, I cannot find that EQ Insurance has proven on a balance of probabilities that a demand for indemnification was made, as opposed to a mere "notification of the occurrence of an insured event giving rise to a claim" or "notification of a third party claim or of a merely potential claim" (see *Federal Insurance* at [21] and *William McIlroy* at [42] respectively).

71 For the reasons stated, GC12 is not applicable to bar this action.

Conclusion

72 I now summarise the conclusions reached in this judgment:

(a) Grace Electrical's non-compliance with the FSA was a breach of GC9, a condition precedent, and EQ Insurance is not liable to indemnify Grace Electrical in respect of its liability in S 697/2014.

(b) Grace Electrical's failure to obtain EQ Insurance's consent in writing before pleading guilty to SCDF charges was not a breach of GC4, a condition precedent; and

(c) The contractual time bar in GC12 is not applicable to the facts of this case.

73 Accordingly, this action is dismissed with costs.

Belinda Ang Saw Ean
Judge

Ranvir Kumar Singh and Cheah Saing Chong (Unilegal LLC) for the plaintiff;
Ramasamy K Chettiar and Wee Qianliang (Central Chambers Law Corporation) for the defendant.