870-12

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MALAYAN INSURANCE CO., INC., **Petitioner,**	**G.R. No. 184300**
	Present:
- versus -	CARPIO, *J.*, *Chairperson,* BRION, PEREZ, SERENO, and REYES, *JJ.*
PHILIPPINES FIRST INSURANCE CO., INC. and REPUTABLE FORWARDER SERVICES, INC., **Respondents.**	Promulgated: JUL 11 2012

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DECISION

REYES, *J.*:

Before the Court is a petition for review on *certiorari* filed by petitioner Malayan Insurance Co., Inc. (Malayan) assailing the Decision[1] dated February 29, 2008 and Resolution[2] dated August 28, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 71204 which affirmed with modification the decision of the Regional Trial Court (RTC), Branch 38 of Manila.

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring; *rollo*, pp. 12-25.

[2] Id. at 27.

Antecedent Facts

Since 1989, Wyeth Philippines, Inc. (Wyeth) and respondent Reputable Forwarder Services, Inc. (Reputable) had been annually executing a contract of carriage, whereby the latter undertook to transport and deliver the former's products to its customers, dealers or salesmen.[3]

On November 18, 1993, Wyeth procured Marine Policy No. MAR 13797 (Marine Policy) from respondent Philippines First Insurance Co., Inc. (Philippines First) to secure its interest over its own products. Philippines First thereby insured Wyeth's nutritional, pharmaceutical and other products usual or incidental to the insured's business while the same were being transported or shipped in the Philippines. The policy covers all risks of direct physical loss or damage from any external cause, if by land, and provides a limit of ₱6,000,000.00 per any one land vehicle.

On December 1, 1993, Wyeth executed its annual contract of carriage with Reputable. It turned out, however, that the contract was not signed by Wyeth's representative/s.[4] Nevertheless, it was admittedly signed by Reputable's representatives, the terms thereof faithfully observed by the parties and, as previously stated, the same contract of carriage had been annually executed by the parties every year since 1989.[5]

Under the contract, Reputable undertook to answer for "all risks with respect to the goods and shall be liable to the COMPANY (Wyeth), for the loss, destruction, or damage of the goods/products due to any and all causes whatsoever, including theft, robbery, flood, storm, earthquakes, lightning, and other *force majeure* while the goods/products are in transit and until actual delivery to the customers, salesmen, and dealers of the COMPANY."[6] The contract also required Reputable to secure an insurance policy on

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3 Id. at p. 40.
4 Id.
5 Id.
6 Records, p. 266.

Wyeth's goods.[7] Thus, on February 11, 1994, Reputable signed a Special Risk Insurance Policy (SR Policy) with petitioner Malayan for the amount of ₱1,000,000.00.

On October 6, 1994, during the effectivity of the Marine Policy and SR Policy, Reputable received from Wyeth 1,000 boxes of Promil infant formula worth ₱2,357,582.70 to be delivered by Reputable to Mercury Drug Corporation in Libis, Quezon City. Unfortunately, on the same date, the truck carrying Wyeth's products was hijacked by about 10 armed men. They threatened to kill the truck driver and two of his helpers should they refuse to turn over the truck and its contents to the said highway robbers. The hijacked truck was recovered two weeks later without its cargo.

On March 8, 1995, Philippines First, after due investigation and adjustment, and pursuant to the Marine Policy, paid Wyeth ₱2,133,257.00 as indemnity. Philippines First then demanded reimbursement from Reputable, having been subrogated to the rights of Wyeth by virtue of the payment. The latter, however, ignored the demand.

Consequently, Philippines First instituted an action for sum of money against Reputable on August 12, 1996.[8] In its complaint, Philippines First stated that Reputable is a "private corporation engaged in the business of a common carrier." In its answer,[9] Reputable claimed that it is a private carrier. It also claimed that it cannot be made liable under the contract of carriage with Wyeth since the contract was not signed by Wyeth's representative and that the cause of the loss was *force majeure, i.e.*, the hijacking incident.

Subsequently, Reputable impleaded Malayan as third-party defendant in an effort to collect the amount covered in the SR Policy. According to

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7 Id. at 267.
8 Docketed as Civil Case No. 96-79498; id. at 1-4.
9 Id. at 15-22.

Reputable, "it was validly insured with [Malayan] for ₱1,000,000.00 with respect to the lost products under the latter's Insurance Policy No. SR-0001-02577 effective February 1, 1994 to February 1, 1995" and that the SR Policy covered the risk of robbery or hijacking.[10]

Disclaiming any liability, Malayan argued, among others, that under Section 5 of the SR Policy, the insurance does not cover any loss or damage to property which at the time of the happening of such loss or damage is insured by any marine policy and that the SR Policy expressly excluded third-party liability.

After trial, the RTC rendered its Decision[11] finding Reputable liable to Philippines First for the amount of indemnity it paid to Wyeth, among others. In turn, Malayan was found by the RTC to be liable to Reputable to the extent of the policy coverage. The dispositive portion of the RTC decision provides:

> WHEREFORE, on the main Complaint, judgment is hereby rendered finding [Reputable] liable for the loss of the Wyeth products and orders it to pay [Philippines First] the following:
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> 1. the amount of ₱2,133,257.00 representing the amount paid by [Philippines First] to Wyeth for the loss of the products in question;
> 2. the amount of ₱15,650.00 representing the adjustment fees paid by [Philippines First] to hired adjusters/surveyors;
> 3. the amount of ₱50,000.00 as attorney's fees; and
> 4. the costs of suit.
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> On the third-party Complaint, judgment is hereby rendered finding [Malayan] liable to indemnify [Reputable] the following:
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> 1. the amount of ₱1,000,000.00 representing the proceeds of the insurance policy;
> 2. the amount of ₱50,000.00 as attorney's fees; and
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> 3. the costs of suit.
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> SO ORDERED.[12]

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10 Id. at 31.
11 *Rollo*, pp. 35-45.
12 Id. at 44-45.

Dissatisfied, both Reputable and Malayan filed their respective appeals from the RTC decision.

Reputable asserted that the RTC erred in holding that its contract of carriage with Wyeth was binding despite Wyeth's failure to sign the same. Reputable further contended that the provisions of the contract are unreasonable, unjust, and contrary to law and public policy.

For its part, Malayan invoked Section 5 of its SR Policy, which provides:

> Section 5. INSURANCE WITH OTHER COMPANIES. The insurance does not cover any loss or damage to property which at the time of the happening of such loss or damage is insured by or would but for the existence of this policy, be insured by any Fire or Marine policy or policies except in respect of any excess beyond the amount which would have been payable under the Fire or Marine policy or policies had this insurance not been effected.

Malayan argued that inasmuch as there was already a marine policy issued by Philippines First securing the same subject matter against loss and that since the monetary coverage/value of the Marine Policy is more than enough to indemnify the hijacked cargo, Philippines First alone must bear the loss.

Malayan sought the dismissal of the third-party complaint against it. In the alternative, it prayed that it be held liable for no more than ₱468,766.70, its alleged pro-rata share of the loss based on the amount covered by the policy, subject to the provision of Section 12 of the SR Policy, which states:

> 12. OTHER INSURANCE CLAUSE. If at the time of any loss or damage happening to any property hereby insured, there be any other subsisting insurance or insurances, whether effected by the insured or by any other person or persons, covering the same property, the company shall not be liable to pay or contribute more than its ratable proportion of such loss or damage.

On February 29, 2008, the CA rendered the assailed decision sustaining the ruling of the RTC, the decretal portion of which reads:

> **WHEREFORE**, in view of the foregoing, the assailed Decision dated 29 September 2000, as modified in the Order dated 21 July 2001, is **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees in favor of Reputable is **DELETED**.
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> **SO ORDERED**.[13]

The CA ruled, among others, that: (1) Reputable is estopped from assailing the validity of the contract of carriage on the ground of lack of signature of Wyeth's representative/s; (2) Reputable is liable under the contract for the value of the goods even if the same was lost due to fortuitous event; and (3) Section 12 of the SR Policy prevails over Section 5, it being the latter provision; however, since the ratable proportion provision of Section 12 applies only in case of double insurance, which is not present, then it should not be applied and Malayan should be held liable for the full amount of the policy coverage, that is, ₱1,000,000.00.[14]

On March 14, 2008, Malayan moved for reconsideration of the assailed decision but it was denied by the CA in its Resolution dated August 28, 2008.[15]

Hence, this petition.

Malayan insists that the CA failed to properly resolve the issue on the "statutory limitations on the liability of common carriers" and the "difference between an 'other insurance clause' and an 'over insurance clause'."

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13 Id. at 25.
14 Id. at 20-24.
15 Id. at 27.

Malayan also contends that the CA erred when it held that Reputable is a private carrier and should be bound by the contractual stipulations in the contract of carriage. This argument is based on its assertion that Philippines First judicially admitted in its complaint that Reputable is a common carrier and as such, Reputable should not be held liable pursuant to Article 1745(6) of the Civil Code.[16] Necessarily, if Reputable is not liable for the loss, then there is no reason to hold Malayan liable to Reputable.

Further, Malayan posits that there resulted in an impairment of contract when the CA failed to apply the express provisions of Section 5 (referred to by Malayan as over insurance clause) and Section 12 (referred to by Malayan as other insurance clause) of its SR Policy as these provisions could have been read together there being no actual conflict between them.

Reputable, meanwhile, contends that it is exempt from liability for acts committed by thieves/robbers who act with grave or irresistible threat whether it is a common carrier or a private/special carrier. It, however, maintains the correctness of the CA ruling that Malayan is liable to Philippines First for the full amount of its policy coverage and not merely a ratable portion thereof under Section 12 of the SR Policy.

Finally, Philippines First contends that the factual finding that Reputable is a private carrier should be accorded the highest degree of respect and must be considered conclusive between the parties, and that a review of such finding by the Court is not warranted under the circumstances. As to its alleged judicial admission that Reputable is a common carrier, Philippines First proffered the declaration made by Reputable that it is a private carrier. Said declaration was allegedly

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[16] Article 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

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(6) That the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished; x x x.

reiterated by Reputable in its third party complaint, which in turn was duly admitted by Malayan in its answer to the said third-party complaint. In addition, Reputable even presented evidence to prove that it is a private carrier.

As to the applicability of Sections 5 and 12 in the SR Policy, Philippines First reiterated the ruling of the CA. Philippines First, however, prayed for a slight modification of the assailed decision, praying that Reputable and Malayan be rendered solidarily liable to it in the amount of ₱998,000.00, which represents the balance from the ₱1,000.000.00 coverage of the SR Policy after deducting ₱2,000.00 under Section 10 of the said SR Policy.[17]

Issues

The liability of Malayan under the SR Policy hinges on the following issues for resolution:

1) Whether Reputable is a private carrier;
2) Whether Reputable is strictly bound by the stipulations in its contract of carriage with Wyeth, such that it should be liable for any risk of loss or damage, for any cause whatsoever, including that due to theft or robbery and other *force majeure*;
3) Whether the RTC and CA erred in rendering "nugatory" Sections 5 and Section 12 of the SR Policy; and
4) Whether Reputable should be held solidarily liable with Malayan for the amount of ₱998,000.00 due to Philippines First.

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17 Records, p. 310.

The Court's Ruling

On the first issue – Reputable is a private carrier.

The Court agrees with the RTC and CA that Reputable is a private carrier. The issue of whether a carrier is private or common on the basis of the facts found by a trial court and/or the appellate court can be a valid and reviewable question of law.[18] In this case, the conclusion derived by both the RTC and the CA that Reputable is a private carrier finds sufficient basis, not only from the facts on record, but also from prevailing law and jurisprudence.

Malayan relies on the alleged judicial admission of Philippines First in its complaint that Reputable is a common carrier.[19] Invoking Section 4, Rule 129 of the Rules on Evidence that "an admission verbal or written, made by a party in the course of the proceeding in the same case, does not require proof," it is Malayan's position that the RTC and CA should have ruled that Reputable is a common carrier. Consequently, pursuant to Article 1745(6) of the Civil Code, the liability of Reputable for the loss of Wyeth's goods should be dispensed with, or at least diminished.

It is true that judicial admissions, such as matters alleged in the pleadings do not require proof, and need not be offered to be considered by the court. "The court, for the proper decision of the case, may and should consider, without the introduction of evidence, the facts admitted by the parties."[20] The rule on judicial admission, however, also states that **such**

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[18] *Philippine American General Insurance Company v. PKS Shipping Company*, G.R. No. 149038, April 9, 2003, 401 SCRA 222, 227.

[19] *Rollo*, p. 29.

[20] *Asia Banking Corporation v. Walter E. Olsen & Co.*, 48 Phil. 529, 532 (1925).

allegation, statement, or admission is conclusive as against the pleader,[21] and that **the facts alleged in the complaint are deemed admissions of the plaintiff and binding upon him**.[22] In this case, the pleader or the plaintiff who alleged that Reputable is a common carrier was Philippines First. It cannot, by any stretch of imagination, be made conclusive as against Reputable whose nature of business is in question.

It should be stressed that Philippines First is not privy to the SR Policy between Wyeth and Reputable; rather, it is a mere subrogee to the right of Wyeth to collect from Reputable under the terms of the contract of carriage. Philippines First is not in any position to make any admission, much more a definitive pronouncement, as to the nature of Reputable's business and there appears no other connection between Philippines First and Reputable which suggests mutual familiarity between them.

Moreover, records show that the alleged judicial admission of Philippines First was essentially disputed by Reputable when it stated in paragraphs 2, 4, and 11 of its answer that it is actually a private or special carrier.[23] In addition, Reputable stated in paragraph 2 of its third-party complaint that it is "a private carrier engaged in the carriage of goods."[24] Such allegation was, in turn, admitted by Malayan in paragraph 2 of its answer to the third-party complaint.[25] There is also nothing in the records which show that Philippines First persistently maintained its stance that Reputable is a common carrier or that it even contested or proved otherwise Reputable's position that it is a private or special carrier.

Hence, in the face of Reputable's contrary admission as to the nature of its own business, what was stated by Philippines First in its complaint is

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21 *Del Rosario v. Gerry Roxas Foundation, Inc.*, G.R. No. 170575, June 8, 2011, 651 SCRA 414, 424-425, citing *Alfelor v. Halasan*, 520 Phil. 982, 991 (2006); see also *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 366 (2006).

22 *Del Rosario v. Gerry Roxas Foundation, Inc.*, id.

23 Records, pp. 15-25.

24 Id. at 30.

25 Id. at 43-46.

reduced to nothing more than mere allegation, which must be proved for it to be given any weight or value. The settled rule is that mere allegation is not proof.[26]

More importantly, the finding of the RTC and CA that Reputable is a special or private carrier is warranted by the evidence on record, primarily, the unrebutted testimony of Reputable's Vice President and General Manager, Mr. William Ang Lian Suan, who expressly stated in open court that Reputable serves only one customer, Wyeth.[27]

Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public. On the other hand, a private carrier is one wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public.[28] **A common carrier becomes a private carrier when it undertakes to carry a special cargo or chartered to a special person only**.[29] For all intents and purposes, therefore, Reputable operated as a private/special carrier with regard to its contract of carriage with Wyeth.

On the second issue – Reputable is bound by the terms of the contract of carriage.

The extent of a private carrier's obligation is dictated by the stipulations of a contract it entered into, provided its stipulations, clauses, terms and conditions are not contrary to law, morals, good customs, public order, or public policy. "The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private

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26 *Lee v. Dela Paz*, G.R. No. 183606, October 27, 2009, 604 SCRA 522, 536.

27 TSN dated September 26, 1997, p. 4.

28 *Loadmasters Customs Services, Inc, v. Glodel Brokerage Corporation and R&B Insurance Corporation*, G.R. No. 179446, January 10, 2011, 639 SCRA 69, 80.

29 *Valenzuela Hardwood and Industrial Supply, Inc. v. CA*, 340 Phil. 745, 755 (1997).

carrier. Public policy governing common carriers has no force where the public at large is not involved."[30]

Thus, being a private carrier, the extent of Reputable's liability is fully governed by the stipulations of the contract of carriage, one of which is that it shall be liable to Wyeth for the loss of the goods/products due to any and all causes whatsoever, including theft, robbery and other *force majeure* while the goods/products are in transit and until actual delivery to Wyeth's customers, salesmen and dealers.[31]

On the third issue – other insurance *vis-à-vis* over insurance.

Malayan refers to Section 5 of its SR Policy as an "over insurance clause" and to Section 12 as a "modified 'other insurance' clause."[32] In rendering inapplicable said provisions in the SR Policy, the CA ruled in this wise:

> Since Sec. 5 calls for [Malayan's] complete absolution in case the other insurance would be sufficient to cover the entire amount of the loss, it is in direct conflict with Sec. 12 which provides only for a pro[-]rated contribution between the two insurers. Being the later provision, and pursuant to the rules on interpretation of contracts, Sec. 12 should therefore prevail.
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> x x x x
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> x x x [T]he intention of both Reputable and [Malayan] should be given effect as against the wordings of Sec. 12 of their contract, as it was intended by the parties to operate only in case of double insurance, or where the benefits of the policies of both plaintiff-appellee and [Malayan] should pertain to Reputable alone. But since the court *a quo* correctly ruled that there is no double insurance in this case inasmuch as Reputable was not privy thereto, and therefore did not stand to benefit from the policy issued by plaintiff-appellee in favor of Wyeth, then [Malayan's] stand should be rejected.
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> To rule that Sec. 12 operates even in the absence of double insurance would work injustice to Reputable which, despite paying premiums for a [₱]1,000,000.00 insurance coverage, would not be entitled

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30 *Home Insurance Co. v. American Steamship Agencies, Inc., et al.*, 131 Phil. 552, 555-556 (1968).
31 Records, p. 266.
32 *Rollo*, p. 6.

> to recover said amount for the simple reason that the same property is covered by another insurance policy, a policy to which it was not a party to and much less, from which it did not stand to benefit. Plainly, this unfair situation could not have been the intention of both Reputable and [Malayan] in signing the insurance contract in question.[33]

In questioning said ruling, Malayan posits that Sections 5 and 12 are separate provisions applicable under distinct circumstances. Malayan argues that "it will not be completely absolved under Section 5 of its policy if it were the assured itself who obtained additional insurance coverage on the same property and the loss incurred by [Wyeth's] cargo was more than that insured by [Philippines First's] marine policy. On the other hand, Section 12 will not completely absolve Malayan if additional insurance coverage on the same cargo were obtained by someone besides [Reputable], in which case [Malayan's] SR policy will contribute or share ratable proportion of a covered cargo loss."[34]

Malayan's position cannot be countenanced.

Section 5 is actually the ***other insurance clause*** (also called "additional insurance" and "double insurance"), one akin to Condition No. 3 in issue in *Geagonia v. CA*,[35] which validity was upheld by the Court as a warranty that no other insurance exists. The Court ruled that Condition No. 3[36] is a condition which is not proscribed by law as its incorporation in the policy is allowed by Section 75 of the Insurance Code. It was also the Court's finding that unlike the other insurance clauses, Condition No. 3 does not absolutely declare void any violation thereof but expressly provides that the condition "shall not apply when the total insurance or insurances in force at the time of the loss or damage is not more than ₱200,000.00."

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33 Id. at 22-23.

34 Id. at 6.

35 311 Phil. 152 (1995).

36 Condition No. 3 states: The insured shall give notice to the Company of any insurance or insurances already affected, or which may subsequently be effected, covering any of the property or properties consisting of stocks in trade, goods in process and/or inventories only hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated therein or endorsed in this policy pursuant to Section 50 of the Insurance Code, by or on behalf of the Company before the occurrence of any loss or damage, all benefits under this policy shall be deemed forfeited, *provided however*, that this condition shall not apply when the total insurance or insurances in force at the time of the loss or damage is not more than ₱200,000.00.

In this case, similar to Condition No. 3 in *Geagonia*, Section 5 does not provide for the nullity of the SR Policy but simply limits the liability of Malayan only up to the excess of the amount that was not covered by the other insurance policy. In interpreting the "other insurance clause" in *Geagonia*, the Court ruled that **the prohibition applies only in case of double insurance**. The Court ruled that in order to constitute a violation of the clause, **the other insurance must be upon the same subject matter, the same interest therein, and the same risk**. Thus, even though the multiple insurance policies involved were all issued in the name of the same assured, over the same subject matter and covering the same risk, it was ruled that there was no violation of the "other insurance clause" since there was no double insurance.

Section 12 of the SR Policy, on the other hand, is the ***over insurance clause***. More particularly, it covers the situation where there is over insurance due to double insurance. In such case, Section 15 provides that Malayan shall "not be liable to pay or contribute more than its ratable proportion of such loss or damage." This is in accord with the *principle of contribution* provided under Section 94(e) of the Insurance Code,[37] which states that "where the insured is over insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract."

Clearly, both Sections 5 and 12 presuppose the existence of a double insurance. The pivotal question that now arises is whether there is double insurance in this case such that either Section 5 or Section 12 of the SR Policy may be applied.

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[37] See De Leon, H. and De Leon, Jr., THE INSURANCE CODE OF THE PHILIPPINES, Annotated (2010).

By the express provision of Section 93 of the Insurance Code, double insurance exists where the same person is insured by several insurers separately in respect to the same subject, interest and risk. The requisites in order for double insurance to arise are as follows:[38]

1. The person insured is the same;
2. Two or more insurers insuring separately;
3. There is identity of subject matter;
4. There is identity of interest insured; and
5. There is identity of the risk or peril insured against.

In the present case, while it is true that the Marine Policy and the SR Policy were both issued over the same subject matter, *i.e.*, goods belonging to Wyeth, and both covered the same peril insured against, it is, however, beyond cavil that the said policies were issued to two different persons or entities. It is undisputed that Wyeth is the recognized insured of Philippines First under its Marine Policy, while Reputable is the recognized insured of Malayan under the SR Policy. The fact that Reputable procured Malayan's SR Policy over the goods of Wyeth pursuant merely to the stipulated requirement under its contract of carriage with the latter does not make Reputable a mere agent of Wyeth in obtaining the said SR Policy.

The interest of Wyeth over the property subject matter of both insurance contracts is also different and distinct from that of Reputable's. The policy issued by Philippines First was in consideration of the legal and/or equitable interest of Wyeth over its own goods. On the other hand, what was issued by Malayan to Reputable was over the latter's insurable interest over the safety of the goods, which may become the basis of the latter's liability in case of loss or damage to the property and falls within the contemplation of Section 15 of the Insurance Code.[39]

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[38] Id. at 298.

[39] Section 15. A carrier or depository of any kind has an insurable interest in a thing held by him as such, to the extent of his liability but not to exceed the value thereof.

Therefore, even though the two concerned insurance policies were issued over the same goods and cover the same risk, there arises no double insurance since they were issued to two different persons/entities having distinct insurable interests. Necessarily, over insurance by double insurance cannot likewise exist. Hence, as correctly ruled by the RTC and CA, neither Section 5 nor Section 12 of the SR Policy can be applied.

Apart from the foregoing, the Court is also wont to strictly construe the controversial provisions of the SR Policy against Malayan. This is in keeping with the rule that:

> "Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy is prepared by the insurer. **A contract of insurance, being a contract of adhesion, *par excellence,* any ambiguity therein should be resolved against the insurer**; in other words, it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from noncompliance with its obligations."[40] (Emphasis supplied)

Moreover, the CA correctly ruled that:

> To rule that Sec. 12 operates even in the absence of double insurance would work injustice to Reputable which, despite paying premiums for a [₱]1,000,000.00 insurance coverage, would not be entitled to recover said amount for the simple reason that the same property is
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> covered by another insurance policy, a policy to which it was not a party to and much less, from which it did not stand to benefit. x x x[41]

On the fourth issue – Reputable is not solidarily liable with Malayan.

There is solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires.

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[40] *Eternal Gardens Memorial Park Corporation v. Philippine American Life Insurance Company*, G.R. No. 166245, April 9, 2008, 551 SCRA 1, 13, citing *Malayan Insurance Corp. v. Hon. CA*, 336 Phil. 977, 989 (1997).

[41] *Rollo*, p. 24.

In *Heirs of George Y. Poe v. Malayan Insurance Company., Inc.*,[42] the Court ruled that:

> [W]here the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party[-]liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. **The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code; while that of the insurer arises from contract, particularly, the insurance policy.**[43] (Citation omitted and emphasis supplied)

Suffice it to say that Malayan's and Reputable's respective liabilities arose from different obligations – Malayan's is based on the SR Policy while Reputable's is based on the contract of carriage.

All told, the Court finds no reversible error in the judgment sought to be reviewed.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated February 29, 2008 and Resolution dated August 28, 2008 of the Court of Appeals in CA-G.R. CV No. 71204 are hereby **AFFIRMED**.

Cost against petitioner Malayan Insurance Co., Inc.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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42 G.R. No. 156302, April 7, 2009, 584 SCRA 152.
43 Id. at 172-173.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

MARIA LOURDES P. A. SERENO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296
The Judiciary Act of 1948, as amended)