

# INSURANCE POCKET SQUARE

## WHAT IS DOUBLE INSURANCE?

The Light in Real Life No.11 by Lin Zihao



### WHY IS THIS QUESTION IMPORTANT?

Double insurance occurs where an insured holds two or more policies which respond to the same risk or are in respect of the same subject matter.

Understanding double insurance allows insureds to maximise coverage (and commercial flexibility) but double insurance does not mean double recovery.



### WHAT IS THE LAW?

The seminal authority on double insurance in Australia is *Albion Insurance Co Ltd v Government Insurance Office of NSW* (1969) 121 CLR 342, which stands for the following proposition:

*There is double insurance when an insured is insured against the same risk with two independent insurers. To insure doubly is lawful but the insured cannot recover more than the loss suffered and for which there is indemnity under each of the policies. The insured may claim indemnity from either insurer.*

This position is also reflected in section 76 of the *Insurance Contracts Act 1984* (Cth) (ICA) (which came later in time from the High Court decision in *Albion*):

1. When two or more insurers are liable under separate insurance contracts to the same insured in respect of the same loss, the insured is **entitled immediately to recover from any one or more of those insurers** such amount as will, or such amounts as will in the aggregate, indemnify the insured fully in respect of the loss.
2. This section does not allow an insured to recover an amount that exceeds:
  - a. the sum insured under the contract between the insured and that insurer; or
  - b. the amount of the loss.

#### INSURED MAY NOT DOUBLE RECOVER

Australian courts have consistently demonstrated that double insurance is not a matter of election, because the rights available under each policy are coordinate, and not inconsistent (see *WSP Structures Pty Ltd v Liberty Mutual Insurance Company t/as Liberty Specialty Markets* [2023] FCA 1157).

An insured can pursue its rights under both policies until it is paid by an insurer for a claim. That is, when money **has actually changed hands** – a mere grant of indemnity which is subject to material facts to be determined or which is not yet performed will not be sufficient. Once money has changed hands and the loss is recovered, there is nothing left for the second insurer to indemnify.

#### NO COMMON LAW DUTY TO DISCLOSE DOUBLE INSURANCE (THOUGH THERE MAY BE UNDER CONTRACT)

There is no common law duty for an insured to disclose to an insurer that part of a risk is already insured under a separate policy, but insurers may seek to include this as a term in their policy.

To this end, section 45 of the ICA provides that a term in an insurance contract which purports to limit or exclude cover on the basis that the insured has other cover available to it is void and unenforceable. However, an insurer may include a term that cover will only be available for loss which is not covered under another, specified policy – this is within the bounds of section 45, provided that the underlying policy is specified with sufficient particularity or is otherwise listed as an exception in section 45. In order for section 45 to apply, the same insured must actually hold both policies (i.e., an insured cannot be a third party beneficiary or ‘additional insured’ under the second policy) (see *Zurich Australian Insurance Ltd v Metals & Minerals Insurance Pte Ltd* (2009) 240 CLR 191).

#### CONTRIBUTION

Where multiple policies respond, an insured may choose, as a matter of commercial judgement, the policy against which it will seek to recover. But equity will protect an insurer who has to suffer the ‘whole burden’ of the loss, where other insurers hold a common obligation to indemnify (see e.g., *AMP Workers’ Compensation Services (NSW) Ltd v QBE Insurance Ltd* (2001) 53 NSWLR 35 at [24]).

Section 76(3) of the ICA provides that:

3. Nothing in this section prejudices the rights of an insurer or insurers from whom the insured recovers an amount or amounts in accordance with this section to **contribution** from any other insurer liable in respect of the same loss.

An insurer may seek contribution directly from another insurer (rather than relying on a subrogated claim in the name of the insured). **This does not affect the insured’s rights to recover** and the Court will determine how the indemnity amount should be apportioned.



### WHAT ARE THE PRACTICAL IMPLICATIONS?

- When a claim arises, insureds should consider all of the possible policies that might respond.
- There may be commercial reasons for choosing to pursue one over another (for example, where a policy limit may be eroded by other policy-holders or where there are ongoing commercial relationships with insurers) and a combination of policies may be required to cover the whole of the loss (where it exceeds the cover available under one policy alone).
- An experienced broker can help insureds assess their current level of cover and identify gaps and overlaps that exist.
- Insurers seeking to position their policy as operating in excess of other available cover must ensure those other policies are expressly identified, as required by section 45(2) of the ICA.

#### Disclaimer

This publication provides information on and material containing matters of interest produced by King & Wood Mallesons. The material in this publication is provided only for your information and does not constitute legal or other advice on any specific matter. Readers should seek specific legal advice from KWM legal professionals before acting on the information contained in this publication.

#### Asia Pacific | North America

King & Wood Mallesons refers to the network of firms which are members of the King & Wood Mallesons network. See [kwm.com](http://kwm.com) for more information.

[www.kwm.com](http://www.kwm.com)

© 2025 King & Wood Mallesons



#### JOIN THE CONVERSATION



SUBSCRIBE TO OUR WECHAT COMMUNITY.  
SEARCH: KWM\_CHINA