

## **SIVA SUBRAMANIAM (RESUME I)**

- 1.** Mr. Siva Subramaniam qualified with an Honours Degree in Law (LLB) from the University of Wales, Aberystwyth. He pursued his pupillage training at Cheong Wai Meng & Van Buerle and was called to the Malaysian Bar as an Advocate & Solicitor in March 1997. He is also called to the Bar of England and Wales as a Barrister by the Honourable Society of the Inner Temple.
- 2.** He joined the employment of Kumar, Sitham & Co., Penang, a well-known litigation based firm in Penang where he handled civil and criminal matters. He also handled third party claims work particularly for People's Insurance and United Oriental Assurance. Later he was employed with Brijnandan Singh Bhar & Co., as a Legal Assistant and was again involved in third party claims work for UMBC Assurance and MUI Insurance. Mr. Siva then joined as a Partner with Adam Bachek & Associates, Penang wherein he was heading the litigation department, particularly for third party claims and acting for Takaful Nasional Insurance, Malaysia National Insurance, Arab Malaysian Assurance and Mayban General Assurance.
- 3.** He also frequently handles appeals in the High Court, (including leave application) at the Court of Appeal and the Federal Court.

However, claims pursuant to road accidents is one of his area of specialization. He conducts all categories of accident claims litigated in the lower and higher courts. This includes drafting opinions and advice on the same to the respective panel of insurance companies. Fraudulent claims in insurance matters are frequently handled by him. He has successfully proven by way of litigating the cases that a large number of these claims are fraudulent, thus this goes to show the extent whereby he has protected the interest of these insurance companies.

4. He also does labour and industrial court matters, defamation, shareholders dispute, company matters and divorce cases especially in relation to custody of child and division of property between both parties and other general civil matters, such as fire claims and property damage claims including claims in relation to economic loss.
5. Mr. Siva also conducts training in general civil procedure with emphasis on bodily injury claims and how to detect fraudulent claims.
6. He also has a Diploma in Admiralty Law from Lloyd's Maritime Academy, with special emphasis on the 'wet' part of Shipping Law.

7. His recent foray is in international commercial arbitration, where he sat and passed Part A of the course conducted by the University of New South Wales, Sydney. He is well versed in all areas of commercial arbitration and has a sound understanding and working knowledge of UNCITRAL Model Law 1985 and UNCITRAL Rules 2010, the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958, Malaysian Arbitration Act 2005, SIAC Arbitration Rules 2010, ICC Arbitration and ADR Rules 2012, LCIA Arbitration Rules 1998, ICSID Rules and other various institutional rules. He is a Member of the Chartered Institute of Arbitrators (MCI Arb).
  
8. Mr. Siva Subramaniam also has an LLM postgraduate degree in International Commercial Law & Practice from the University of Edinburgh, which he successfully completed in June 2017. Currently Mr. Siva Subramaniam is embarking upon another postgraduate degree in law, wherein the area of specialization is International Dispute Resolution (LLM) with Queen Mary, University of London commencing from 2018-2020. He has just completed 4 modules on the following subjects of International Commercial Arbitration – Theory & Context, Investment Treaty Arbitration, International Arbitration – Selected Issues and Investment Arbitration – Substantive Protection. The last module he needed to complete

before graduating is a 20,000 word dissertation on a topic of interest.

9. Mr. Siva Subramaniam is willing to conduct training for members of the CIETAC and other professional bodies on Advocacy in Arbitration and also on the various applicable rules of international arbitration, including investment treaty arbitration.

### **SIVA SUBRAMANIAM (RESUME II)**

#### **Civil Litigation/Public Liability/Insurance**

10. Siva Subramaniam handles matters relating to public liability matters in areas of tort such as breach of statutory duty by public utility board and causing damages to claimant/s. This involves drafting pleadings and advising the client by way of an opinion with issues relating to the claim and the extent of liability in relation to the act of negligence caused.
11. For matters involving insurance fraud, he proceeded in filing for declaration in **High Court** by way of motion and supporting affidavit vide **sec 96(3) of the Road Transport Act 1987** to obtain order in

terms to declare since there is a breach of policy condition by insured therefore no coverage is extended on date of incident.

**11.1** In the case of **Tokio Marine Insurans (M) Berhad v Tenaga Nasional Berhad, Kangar High Court, Originating Summons No.: 24-150-2008**, he filed for a declaration order in the High Court due to breach of policy condition by the insured i.e notifying the loss to our insurer client after a period of 5 years. An order was granted to one of the prayer requesting for non coverage of the insurance policy on the date of the loss.

**11.2** In the case of **Commerce Assurance Bhd v Maxcare Marketing Sdn Bhd at Kuala Lumpur High Court, Originating Summons No.: 24-1857- 2005**, he filed for a declaration stating that no coverage is provided for non-disclosure of material information fact in the policy form, which may lead the policy to be **null** and void. This material information goes to the very crux of the coverage, as the insured has another existing insurance policy only for third party and thus did not have a comprehensive insurance policy, therefore he purchased the latter after the loss of the subject matter and subsequently lodged a police report at a later date to initiate an insurance claim.

12. He has also experience in filling for intervening proceeding to set aside ex-parte order obtained on grounds of prejudice to clients.

12.1 In the case of **Mahani Binti Mohd Zain v Lee Slew See & Lee Thean Khing as Intervener, Penang High Court, Originating Summons No.: 24-1776-2008**, he filed a Summons-in-Chambers to set aside the ex-parte order which was obtained as the Applicant's Solicitors did not serve the same on us being the Solicitors for the interveners for an ongoing case at the lower court. He submitted in the High Court that such ex-parte order obtained is highly prejudicial to our client's in the lower court as this will materially affect the capacity of the Plaintiffs case bringing the suit (since both the Plaintiffs Solicitors and ourselves, as the Defendant's Solicitors have 'closed' our case and submitted on various procedural laws).

### **Interlocutory Application for General Civil Cases**

12.2 Filing for summary judgment against matters where there are no triable issues to be decided and proceeding to contest the matter by way of affidavits with the Defendant's counsel.

**12.3** Filing application to vary/amend a Consent Order by way of Summons in Chambers with a supporting affidavit.

### **Criminal Cases**

**12.4** Appeal to the High Court from the lower court on sentencing and punishment by the Magistrate or the Sessions Judge for various charges as provided under the relevant penal laws of the country such as **Penal Code, Dangerous Drugs Act 1952, Firearms Act 1960, Regulations & Firearms [Increased Penalties] Act 1971**, etc.,.

**12.5** Filing for revision of a sentence imposed by the lower court judge and thereby requesting the High Court Judge to call for the notes of evidence and to review the case wholly and then for the High Court Judge to remit the said case to the lower court with suitable directive.

**12.6** Filing for habeas corpus on behalf of a client who is detained at the Rehabilitation Center for a drug related offence and for the matter to be heard before a High Court judge on points of law and if favourable to secure the release of the client.

**12.7** Representation to the Attorney-General's Chambers on behalf of the client for a reduction/amendment of a charge and thereby advising the client to plead guilty for a lesser charge.

**12.7** Mitigation after the client has pleaded guilty and convincing the High Court Judge to render a lesser form of punishment.

[Kindly take note that for both para 1.3 and 1.4 the task is only carried out based on client's instructions upon my advice which will be based on the facts of the case, the overall evidence beforehand such as the charge sheet, the caution statement and presence of independent witness who may be able to identify the client at the scene of the crime.]

**Advocacy Experience At The Courts and Frequency of Appearing for Hearing In The High Court and Conducting Appeal At The Court of Appeal**

**13.** For civil cases, the bulk of the work which commences at the High Court itself is generally for public liability and insurance fraud where a lot of time is needed to prepare due to the complexity of such cases, hence he had to appear at the High Court frequently for case management before conducting the hearing.



**14. In the case of Exxon Mobil Malaysia Sdn. Bhd. v Mohamad Fauzi Bin Ahmad, Shah Alam High Court, Civil Appeal No. 16-10-2003**

**14.1** The Appellant appealed from the decision of the Labour Court which found in favour of the Respondent since the Labour Court allowed for payment under the Collective Agreement (CA) although there was payment made under the Voluntary Separation Scheme (VSS).

**14.2** The Appellant agreed that since payment was made under the VSS therefore the Claimant should not be entitled for payment under the CA as he had already waived his right under the CA and thus is not stopped to make a second claim.

**14.3** The argument by us is that the Claimant did not exclude his rights under the CA, since the law of stopped does not apply to cases of industrial adjudication and attempted to distinguish between VSS and retrenchment.

**14.4** However the High Court ruled in favour of the Appellant and stated that since the Claimant had already received payment under the VSS therefore he is not entitled for the additional

payment under the CA, as this would be unjust enrichment on the part of the Claimant.

**15. In the case of Rajnikanth Pavalenthiraran v M Pol Precision Product Sdn Bhd, Penang High Court, Civil Appeal No. 12-204-2005**

**15.1** This is an appeal by the Appellant on quantum only against the decision of the lower court as a result of an industrial accident on the Appellant.

**15.2** The appeal is on the claim for the prosthetic arm which was included in the agreed bundle of documents and marked as an Exhibit, but the lower court Judge did not make an award for this prosthetic arm.

**15.3** He was acting for the Respondent Company and arguing that even though the document was emplaced in the agreed bundle of document where the authenticity and content of it is not disputed but they want of a prosthetic arm falls under Special Damages, therefore evidence must be lead from the Appellant and thus be specifically proved.

**15.4** For employment matters, especially for judicial review cases from the Industrial Court or against the decision of the

Minister for Human Resources, he normally appeared at the High Court for 2 to 3 cases in a month.

**15.5** Appearance at the lower court, such as Magistrates Court, Sessions Court and Industrial Court, will be for the most complex matters which require my attention. If the client insists on me handling the matter personally, then the numbers of appearances are not more than 8 to 10 matters in a month. For such cases there is no settlement in sight with the third party's counsel and almost all cases are litigated to the end.

**16.** In the case of **National Union of Restaurant, Bar & Hotel Workers v Island Bay Resort (formerly known as Ferringghi Beach Hotel Sdn Bhd), Kuala Lumpur Industrial Court, case No. 14/1-920/2007**

**16.1** Interpretation of the Collective agreement (CA) between the Union and the hotel which was taken into cognizance by the Industrial Court was in dispute. He was acting for the Hotel and relying on Article 31 of the CA which states that hotel and its business ceased to operate / closure of hotel, so no redundancy carried out against the employees. While the Union is relying on Article 30 of the CA which states that redundancy takes place if the principle of 'Last In, First Out'

was exercised by the Hotel. If redundancy is established, then service points is payable to all the employees who are terminated by the Hotel.

**16.2** The KL Industrial Court finally after a long wait for the decision, dismissed the Union's claim. Our clients, a pioneer in the hotel industry were pleased that this this case did not lead to a precedent in the hotel industry especially for service charges.

**17.** In the case of **Goh Hong Lim v D'nonce Technology Sdn Bhd, Penang Industrial Court, Case No. 9/4-2896 of 2006.**

**17.1** Claimant (Goh Hong Lim) instituted an action under sec 20 of the Industrial Relation Act 1967 for breach of Contract and Termination, simpliciter against the company where he was holding the position of managing director. The Claimant was for a sum in excess of RM30m being damages for unlawful/wrongfull termination and other dues owing such as gratuity, EPF and other benefits. The matter was litigation to the end where witness from both sides gave evidence. The Chairman of the Industrial Court decided to accept our argument that the Claimant was not a 'workmen' under the definition of sec 2 of the Act as he was from the evidence

adduced is the 'brain and mind' of the company as he was very much involved in the running of the company.

**18. In the case of The Eastern Garment Manufacturing Co. Sdn Bhd v Thong Ah The @ Thong Nam Seng & 6 others, Court of Appeal, Appeal No. P-02-505-2004**

**18.1** The Respondent's Counsel appealed against the decision of the High Court which decided in favour of the Claimant. The Claimants were represented by our Siva Subramaniam at the High Court and the Court of Appeal. The respondent contended that since retirement benefit was paid from 1970 till the age of retirement of each of the Claimant, therefore no further payment is due since this payment itself is not provided in the Employment Act 1955 nor in each of the contract of employment but rather a gratitude payment by the Respondent. He argued that all Claimants were employed since 1960 with respondent Company and by virtue of a Company policy which was revised in 1988, an inference should be drawn that there was guideline enshrined in the Company policy which was not produced by the Respondent probably since it is adverse to them.

However the Court of Appeal ruled in favour of the Respondent

Stating that there is no evidence that such an earlier company policy beneficial to the Claimants existed.

## **19. Other Type of Work Involving Litigation**

**19.1** He also occasionally handle family matters such as divorce and distribution/division of property between both the spouses.

### **Other Decisions at the High Court/Court of Appeal which is of Importance**

**19.2** He has been involved in several appeals at the Court of Appeal in the areas of Employment Law and Winding-up matters.

**19.3** In the case of **International Footwear (PG) Sdn Bhd v Ong Slew Geik @ Cheh Slew Giek at the Court of Appeal, Appeal No. P-02-676-2004**, the issue is as regarding the claimant's claim for termination benefits, hence whether she (Claimant) falls within the definition of 'manual worker' as provided in **sec 2(1) of the Employment Act 1955**.

If the Complainant does not fall within the definition of 'manual worker' then the Labour Court does not have jurisdiction to hear the matter under **sec 69(1) of the Employment Act**. He relied extremely on the facts of the acts stating that although the Complainant is not a 'manual worker' but she did supervise other employees engaged in manual labour throughout the performance of their work.

The High Court Judge rule in the Complainant's favour and held that the latter did fall within the definition of supervising manual worker, however the Court of Appeal ruled otherwise and accepted the argument of the appellant's solicitors (company's appeal).

**19.4** In the case of **Lee Sien Voon v Diamond Heart Jewellery, Grand Art Jewellery Sdn Bhd & G A Germsart Jewellery Sdn Bhd, Court of Appeal, Appeal No. P-02-39-2007, P-02-40-2007 & P-02-41-2007** the Petitioner filed to wind up my client's company under **sec 218 of the Companies Act 1965**.

The High Court disallowed our Summons in Chambers to strike out winding-up petition stating that the petitioner has

been 'oppressed'. He appealed to the Court of Appeal stating that the petitioner being a majority shareholder cannot be oppressed. Reliance is placed on the following authorities:-

Cases we relied upon is **Ebrahimi v Westbourne Galleries Ltd (1973) AC 360** and **Tay Bok Chan v Tahansan Sdn. Bhd. (1987) 1 MLJ 423 (Privy Council)**

**19.5** In the case of **Anthony Voon v World Fish Centre at Penang High Court, Judicial Review No. 25-85-2008** where our client was dismissed from employment as a Financial Controller with the Respondent Centre without just reason/grounds, the Judge decided in favour of the Centre stating that the latter has immunity from suit when the matter came for hearing at the Industrial Court. He applied for leave to be granted for the matter to be heard before the High Court Judge which is being objected by the Attorney-General's Chambers.

He argued before the High Court Judge that the Centre does not enjoy immunity from suit in matters pertaining to freedom of an individual since employment if given a wide meaning does entail 'right to livelihood' and this is enshrined in our Federal Constitution.



It is also for the High Court Judge to consider whether the Agreement between the Court of Malaysia and The International Centre for Living Aquatic Resources management ('ICLARM') or also known as World Fish Centre enjoys immunity in employment matters where it has unjustly terminated an employee.

The immunity, whether extends to the World Fish Centre and thus covered under the **Privileges and Immunities Act 1992**.

Also another question which arises here is the application of the 'ouster clause' and whether the Centre can apply this clause to oust judicial review and/or challenge the immunity from legal suit of the Centre.

**19.6** In the case of **Muniandy all K. Veerappen v SMPC Corporation Berhad (79082-V) Court of Appeal, Appeal No. P-04-145-2006**

**19.6.1** Also involved in an employment matter at the Court of Appeal where I am representing a claimant who constructively dismissed himself from employment with the respondent company due to being demoted in terms of duty and responsibility.

Hence he commenced a suit in the Industrial Court where an issue of Joinder of Party was argued and decision was in the claimant's favour. It was eventually overturned by the High Court and also upheld at the Court of Appeal.

The Joinder of Party was initiated to bring the parent company of the Respondent company as the Respondent to the suit.

The issue is whether the 1st Respondent company will be able to satisfy the judgment if awarded in favour of the Claimant and laws relating to the 'lifting of corporate veil' were also argued upon.

**19.7 In the case of Juru Auto City & 5 Ors v Graceful Frontier S/B & 17 Ors, Penang High Court, Civil Suit No. 22-52-2010, 22-121-2008 and 22-610-2008**

**19.7.1** This case involves a multitude of suits between a shareholder and the companies he is representing which is commencing suits for the shares which were allegedly sold to the another company, 'sham' sale of

the family companies assets to the same individual and also the companies. The assets involved in this case is currently valued at RM300million and the stakeholders contesting this matter are all related one way or another in the form of directors or individual persons, so obviously 'lifting' of the corporate veil is involved. The defendants have at the expense of the alleged 'sham' and sale of the shares of the plaintiff committed a series of fraudulent acts leading to a criminal breach of acts. Other elements of civil laws that arises here is restitution, unjust enrichment, conflict of interests, self-dealing, tracing of the assets and breach of constructive trusts, also there is a prayer for freezing order of the assets. Various provisions of the Contracts Act, Evidence Act and the Companies Acts were also cited by us.

We relied on the landmark cases such as **Prudential Assurances Co Ltd v Newman Industries (No.2)(1982) Ch. 204**, **Khaw Cheng Bok & Ors v Khaw Cheng Poon & Ors (1998) 3 MLJ 457**, **Howard Smith Ltd v Ampol Petroleum Ltd & Ors (1974) AC 821**, **Dream Property S/B v Atlas Housing S/B (2015) 2 CLJ 453** and **Takako Sakao v Ng Pek Yuen (2010) 1 CLJ 381**.























