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Oversea-Chinese Banking Corporation Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd and Others [2025] SGHC 82

The recent ruling from the Singapore High Court in *Oversea-Chinese Banking Corporation Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd and others* ([2025] SGHC 82) provides a significant insight into how the principles of English insurance law are used to inform marine insurance disputes heard internationally.

The case centred on the capsize of the jack-up rig vessel *TERAS LYZA* during a tow from Vietnam to Taiwan on 5 June 2018, which resulted in a US$70 million insurance claim under a marine insurance policy issued by a consortium of insurers: Argoglobal Underwriting Asia Pacific Pte Ltd., China Taiping Insurance (Singapore) Pte Ltd., Great American Insurance Company, MS First Capital Insurance Limited and QBE Insurance (Singapore) Pte Ltd.

Case Background

Oversea-Chinese Banking Corporation Ltd (OCBC), acting as the mortgagee and co-assured under the relevant policy, launched proceedings against the insurers following the capsize and eventual disposal of the vessel, which was insured for US$56 million under hull and machinery cover and an additional US$14 million under increased value cover. The policy was governed by English law and incorporated the application of sections of the Insurance Act 2015 (UK IA 2015).

OCBC asserted that the loss was a constructive total loss (CTL) caused by "perils of the seas" pursuant to cl 6.1.1 of the Institute Time Clauses (Hulls) 1.10.83 CL 280 (ITC) and sought indemnity for the full sum insured. The defendants raised a series of complex and evolving defences, among them that the vessel was not a CTL, that OCBC had breached its duty of fair presentation under s 3 of the UK IA 2015 and that part of the policy was void as a gaming or wagering contract under s 4 of the UK Marine Insurance Act 1906 (UK MIA 1906).

Key Legal Issues and Judgment

After hearing claims by the Plaintiff and the Defendants, the Singapore High Court found in favour of OCBC, although the case required the Court to determine several fundamental issues:

1. **Whether the vessel was a constructive total loss (CTL)**

The principal issue was whether the *TERAS LYZA* qualified as a CTL under section 60(2)(ii) of the UK MIA 1906 and cl 19 of the ITC. The legal test is whether the cost of recovering and/or repairing the vessel would exceed its insured value.

OCBC submitted evidence suggesting repair and salvage costs could range from US$76 million to over US$82 million, exceeding the insured value of US$70 million and *prima facie* the case had become a CTL. The vessel was completely submerged and severely damaged following its capsize; structural elements were cracked or sheared, vital machinery was broken, and no interested buyers could be found for the vessel. A Notice of Abandonment was tendered on 25 July and subsequently rejected by the insurers, although no specific reason was given.

Although the defendants disputed the reliability and admissibility of the cost estimates provided, the court found that, when viewed collectively, the evidence met the burden of proof for CTL. In particular, the Court accepted that market rejection, even as scrap, could support the conclusion that repair was uneconomical. The vessel was eventually scuttled on 20 August 2018.

2. **If the loss was covered as a “perils of the seas” under clause 6.1.1 of the ITC**

OCBC relied on clause 6.1.1 of the ITC, which covers “loss of or damage to the subject-matter insured caused by perils of the seas.”

The insurers contended that the capsize was due to inherent vice, unseaworthiness or poor voyage planning rather than an external maritime threat. However, the Court found on the evidence that the capsize resulted from a marine accident during an insured towage operation where weather conditions were “adverse but not exceptional”.

There was no conclusive finding that the vessel had pre-existing structural weaknesses amounting to unseaworthiness. As such, the loss was found to have arisen from a peril of the sea, and as such fell within the scope of the clause.

3. **If OCBC breached its duty of fair presentation under s 3 of the UK IA 2015?**

The insurers argued that OCBC breached the duty of fair presentation under s 3 of the UK IA 2015 by failing to disclose material facts before the insurance contract was entered into, including changes in the appointed Marine Warranty Surveyor (MWS) from Braemar Technical Services to Techwise Offshore Consultancy.

The Court analysed relevant submissions against the modern "duty of fair presentation" regime, which requires policyholders to disclose every material circumstance or provide sufficient information to prompt further enquiry.

The conclusion was that OCBC had not breached this duty; the insurers were aware of the change in MWS prior to the voyage, and there was insufficient evidence to prove that the non-disclosure would have induced a prudent insurer to act differently. The disclosure made was therefore found to be adequate and not misleading.

4. **Whether any warranties were breached under the policy, and if such breaches affected coverage**

The defendants alleged breach of multiple warranties, including those requiring that the vessel be surveyed and certified as fit for tow by a competent MWS, no personnel or cargo be onboard during towage, and the tow be conducted only in fair weather.

Additionally, they relied on s 39(5) of the UK MIA 1906, which bars recovery if the loss was caused by the vessel being sent to sea in an unseaworthy condition.

The Court carefully considered whether the warranties had been complied with. It found that the change from Braemar to Techwise as MWS was disclosed and approved, that all required certificates of fitness for towage were issued by the relevant parties and the insurers did not substantiate that the vessel was knowingly sent out in an unseaworthy state.

Furthermore, under the UK IA 2015, breach of warranty no longer automatically discharges liability unless causative of the loss. On the facts presented, no such causation was shown.

5. **If the increased value cover is void as a wagering contract under s 4 of the UK MIA 1906?**

The defendants attempted to void the section of the policy which provided US$14 million in increased value cover by invoking s 4 of the UK MIA 1906, arguing it was a wagering contract unsupported by an insurable interest.

The Court dismissed this argument, finding that OCBC, as the mortgagee and co-assured, clearly had an insurable interest in the vessel. It was also named as sole loss payee in respect of the vessel’s insurances. The increased value cover was common in marine insurance and

served a legitimate commercial function to protect additional exposures. In addition, there was no evidence of speculative intent.

6. **To determine if the evidence submitted to prove CTL is admissible under Singapore's Evidence Act 1893 (EA)**

The admissibility of OCBC's key evidence, including salvage reports, damage assessments and correspondence with brokers, was challenged by the Defendants as hearsay. However, the objection was made on appeal, some months after the close of trial.

Under the EA, such documents may be admissible under s 32(1)(b)(iv), the "business records exception", provided they were made in the ordinary course of business. While OCBC had not served formal notice under s 32(4)(b), the Court exercised its discretion under s 32(3) and Order 2 of the Rules of Court to admit the evidence in the interest of justice.

In its ruling, the Court reasoned that the documents were contemporaneously shared with the insurers and that there was no dispute over authenticity. Furthermore, the documents had probative value and were prepared by disinterested third parties such as surveyors and brokers. Finally, the Defendants had full access to the materials and ample time to challenge them but had previously decided against it.

Final Thoughts

The OCBC v Argoglobal case demonstrates a rigorous and nuanced application of English marine insurance law and its continued relevance and application in Singapore's commercial courts. Notably, the judgment restates that: the burden of proof in CTL cases lies with the assured, but the evidentiary burden may shift once a *prima facie* case is established; the duty of fair presentation under the UK IA 2015 is assessed regarding what a prudent insurer would have considered relevant; and breach of warranty no longer automatically discharges the insurer from liability unless causative or otherwise stated. Additionally, hearsay objections can be overridden where business records are found reliable and in the interests of justice under Singapore's EA.