Published on e-First 23 June 2026

19. INSURANCE LAW

Simon **GOH**
LLB (Hons) (National University of Singapore);
Advocate and Solicitor (Singapore);
Partner, Head, Insurance & Reinsurance Practice,
Rajah & Tann Singapore LLP.

WANG Ying Shuang
LLB (Hons) (National University of Singapore);
Advocate and Solicitor (Singapore);
Partner, Deputy Head, Insurance & Reinsurance Practice,
Rajah & Tann Singapore LLP.

I. Introduction

19.1 2025 was an interesting year for Singapore insurance law; the two judgments on insurance disputes discussed herein pertained to claims made by financiers under policies taken out by their borrowers.

II. Claim under trade credit insurance arising from fictitious underlying trades

19.2 The case of *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd*[1] serves as a cautionary tale for trade financiers that take security over their borrowers' insurance policy to carefully scrutinise the terms of the policy used as collateral or as a precondition to the financing.

A. Factual background

19.3 The first claimant, Marketlend Pty Ltd ("Marketlend"), had extended financing to Novita Trading Ltd ("Novita"). The second claimant, Australian Executor Trustees Ltd ("AETL"), was a trustee of a securitised trust which funded Marketlend's financing facility to Novita. Novita procured a trade credit insurance policy for indemnity of certain losses arising out of its sale and shipment of goods on deferred terms with named buyers ("Policy") from the defendant, QBE Insurance (Singapore) Pte Ltd ("QBE"). In exchange for the grant of the finance facility by Marketlend to Novita, Novita had assigned its rights under the Policy to Marketlend, but the assignment was not consented to by

1 [2025] SGHC(I) 1.

QBE. AETL was included as a joint insured under the Policy by way of a banker's endorsement.

19.4 Novita's buyers under certain trades ("Trades") defaulted, and Marketlend and AETL brought a claim of US$9,035,365.38 against QBE. The issues which the Singapore International Commercial Court ("SICC") had to determine were:

(a) Whether Marketlend had standing to bring a claim under the Policy and/or whether the failure to obtain QBE's consent before assigning the Policy amounted to a breach of the policy terms.

(b) Whether there was a breach of condition precedent under the Policy by reason of the failure to provide certain documents and/or information requested by QBE. Notably, QBE alleged that there had been breaches of the following clauses in the Policy:

(i) cl 8, which concerned the insured's co-operation relating to the investigation and handling of claims; and

(ii) cll 10(b) and 10(c), which concerned the insured's obligation to provide certain documentation and information.

(c) Whether there was proof of an "Insured Debt" under the Policy. QBE argued that it could not be shown that Novita sold and shipped the goods to its alleged buyers, and that the underlying trades were not "genuine physical trades".[2]

B. Findings of Singapore International Commercial Court

19.5 The SICC found for QBE on all three issues above. With regard to the issue of whether Marketlend had standing to bring the claim against QBE, whilst the SICC found that Marketlend had the power to bring the claim against QBE by virtue of a power of attorney issued by Novita, the SICC found that the Policy was not properly or validly assigned to Marketlend as the Policy prohibited any assignment by Novita without the written consent of QBE. The SICC found that the prohibition against assignment included assignments made before and after the commencement of the Policy.[3] As the Policy contained a clause which allowed QBE to avoid liability under the Policy in the event of

2 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [94].
3 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [69].

an assignment without QBE's consent,[4] the SICC found that QBE was entitled to avoid liability under the Policy against not only Marketlend, but also AETL. Notably, as the claimants conceded that if QBE were entitled to avoid liability under the Policy against Marketlend, QBE would be able to do so against AETL as well.

19.6 As for whether Novita had breached a condition precedent under the Policy, the SICC found that despite the apparent wide wording of the condition requiring the insured to provide certain documentation and information, QBE would not be entitled to insist on the provision of documents or information which was not reasonably necessary for the purpose of enabling QBE to assess the validity of the claims.[5] That said, the SICC found that a significant part of the documentation or information requested by QBE was reasonably necessary, if not essential, to enable QBE to carry out that exercise.[6] Such documents or information, including the documents relating to Novita's inward purchases and the information relating to the Trades and the buyers under the Trades, was not provided to QBE. The SICC also found that there was an obligation to provide such material at the request of QBE as part of the duty to co-operate.

19.7 To this end, the SICC found that the fact that the failure to properly respond to QBE lay with Novita and not the claimants was irrelevant.[7] Likewise, the fact that Marketlend had made reasonable efforts (without much success) to obtain and provide the documents and information requested was also no answer to QBE's case.[8] As such, the court found that there was a significant failure to comply with cll 8, 10(b) and 10(c) of the Policy, and as compliance with these provisions was a condition precedent to QBE's liability under the Policy, QBE was not liable in respect of the claimants' claim.

19.8 Lastly, on the issue of whether there was an "Insured Debt" under the Policy, the SICC held that an "Insured Debt" required an actual physical sale and shipment of goods by Novita to its insured buyers or the transfer of title to goods from a seller to a buyer.[9] On the evidence, the court found that the claimants failed to prove, on the balance of

4 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [47(c)].
5 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [82].
6 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [84]–[86].
7 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [88].
8 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [88].
9 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [100].

probabilities, that the Trades were genuine physical trades (indeed, the court found that two trades were fictitious).[10]

C. Remarks

19.9 This case is a cautionary tale for third party financiers, given the often passive role they play in procuring their borrower's trade credit insurance policy (which is usually provided as collateral for or as a precondition of financing) and the claims process under such policy. This is particularly so given that third party financiers typically lack visibility over the borrower's trading activity and how the borrower submits claims under the insurance policy. This is why a financier should consider what rights it can bring independently of its borrower, as a borrower's conduct (*eg*, breach of a condition precedent) may affect the recovery of the claim. In this regard, it may be prudent to ensure that there is a non-vitiation clause in any banker's endorsement so that any non-compliance with policy terms by the borrower would not affect the financier's right to recover under the policy. A non-vitiation clause (which typically preserves a financier's position under a policy in the event of non-compliance of any terms in the policy by the insured borrower) might have helped to preserve AETL's right to recover under the Policy, notwithstanding the non-compliance of the assignment clause.

19.10 Thought should also be given as to how financiers can enjoy the benefits of the policy, *eg*, should they be an assignee of the policy (*ie*, where they take the benefits of the assignor under the policy but are subject to the equities), or should they be a co-insured under the policy (*ie*, where they may be entitled to enforce their respective rights and interest under the policy)?

III. Development of UK's Insurance Act 2015 in Singapore courts

19.11 The case of *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd*[11] ("*Argoglobal Underwriting*") shed light on the interpretation of key provisions under the UK's Insurance Act 2015[12] ("UK IA").

10 *Marketlend Pty Ltd v QBE Insurance (Singapore) Pte Ltd* [2025] SGHC(I) 1 at [153]–[155].
11 [2025] SGHC 82.
12 (c 4) (UK).

A. Factual background

19.12 This case concerned a claim by Oversea-Chinese Banking Corp Ltd ("OCBC") against five insurers ("Insurers") for the loss of the vessel *TERAS LYZA* ("Vessel") which amounted to a sum of US$70m. OCBC was the mortgagee of the Vessel and was co-assured under a hull and machinery marine insurance policy ("MI Policy") alongside the vessel owner Teras Lyza Pte Ltd ("Vessel Owner") and the vessel manager Teras Offshore Pte Ltd ("Vessel Manager"). The MI Policy was governed by English law.

19.13 The MI Policy was divided into two sections:

(a) Under Section A, the Insurers undertook to insure up to a value of US$56m for the hull and machinery of the Vessel.

(b) Under Section B, the Insurers undertook to insure the Vessel for increased value and/or excess liabilities up to a value of US$14m.

19.14 The Vessel capsized while on a wet tow from Vũng Tàu, Vietnam to Taichung City, Taiwan ("Tow Voyage") in relatively calm weather, six days into the voyage. The Vessel Owner later tendered a notice of abandonment under the MI Policy, claiming that the Vessel was a constructive total loss. This was declined by the Insurers.

19.15 The Insurers raised a number of defences, *eg*, that:

(a) The loss of the Vessel is covered under the MI Policy: in particular, whether the loss was caused by perils of the seas.

(b) The Vessel Owner and the Vessel Manager breached their duties of fair presentation of risk under s 3 of the UK IA, which was attributable to OCBC to preclude a claim.

(c) OCBC had breached warranties under the MI Policy.

(d) Section B of the MI Policy was void as a gaming or wagering contract under s 4 of the UK's Marine Insurance Act 1906[13] ("UK MIA") as it contained the words "policy proof of interest".

13 (c 41) (UK).

B. Findings of General Division of the High Court

(1) Loss of Vessel

19.16 With regard to the Insurers' contention that the Vessel was not lost by perils of the seas, the court affirmed that the applicable test continues to be that set out in *Canada Rice Mills v Union Marine and General Insurance*,[14] *ie*, where there is an accidental unexpected ingress of seawater into a vessel causing loss or damage, *prima facie* there is a loss by perils of the seas.[15] Only if the loss were due to the uneventful decrepitude or debility of the vessel in the prevailing conditions or to its inherent characteristics not involving any fortuitous external accident or casualty would the defendants have any defence based on ordinary action of wind and waves.[16] It remains good law that to the extent a ship is shown to be seaworthy and sinks in unexplained circumstances, the rebuttable presumption is that the vessel has been lost by perils of the seas.[17] The court rejected the Insurers' submission that a shipowner would fail to prove that the loss of a vessel was due to perils of the seas if it could not explain how the vessel capsized.[18]

19.17 On the evidence in the present case, the court found that the Vessel was not inherently unstable or unseaworthy, but that there had been unexpected flooding or water ingress in the hull compartments, and that on a balance of probabilities, the capsize of the Vessel was caused by perils of the seas.[19]

(2) Breaches of duties of fair presentation

19.18 The duty of fair presentation can be found in s 3(1) of the UK IA, which is to be read with ss 3(2) and 3(4) of the UK IA. Section 3(4) of the UK IA obliges the insured to disclose:[20]

14 [1941] AC 55.
15 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [102].
16 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [104].
17 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [104].
18 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [97].
19 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [111].
20 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [171].

> … every material circumstance which the insured knows or ought to know, or failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquires for the purpose of revealing those material circumstances.

19.19 The parties agreed that in order to demonstrate that there was a breach of the duty of fair presentation, the Insurers must show that:[21]

> (a) The circumstances they complained of were material within the meaning prescribed by s 7(3) of the UK IA (*ie*, "if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms").[22]
>
> (b) The Vessel Owner and the Vessel Manager had knowledge of or ought to have known of those material circumstances.
>
> (c) The Vessel Owner and the Vessel Manager had not disclosed the material circumstances or had not provided sufficient information to place the Insurers on notice to ask further questions to uncover the material circumstances.
>
> (d) But for the non-disclosure, the Insurers would not have underwritten the risk or would only have done so on different terms.

19.20 A preliminary question was raised as to whether breaches of the duty of fair presentation by the Vessel Owner and the Vessel Manager could be attributed to OCBC. The Insurers' argument centred around the Vessel Owner and the Vessel Manager being agents of OCBC for the purpose of procuring the insurance. The court agreed and found that, given that the Vessel Owner and the Vessel Manager had covenanted under the deeds of assignment and charge with OCBC to maintain hull and machinery insurance in respect of the Vessel and there was no evidence of any communication relating to the MI Policy between OCBC and the brokers, the Vessel Owner and the Vessel Manager had express actual authority to procure the MI Policy on OCBC's behalf.[23]

19.21 The Insurers argued that there were four instances of breaches of the duty of fair presentation, namely that:

---

21 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [172].

22 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [171].

23 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [184].

(a) The Vessel Owner and the Vessel Manager failed to disclose that they had "abandoned" Braemar Technical Services (Offshore) Pte Ltd ("Braemar") as the marine warranty surveyor ("MWS") as they were concerned that Braemar:

(i) would not have approved of the proposed Tow Voyage as required under the MI Policy; and/or

(ii) would not have issued the warranty certificate that was necessary for the insurance cover for the proposed Tow Voyage without certain conditions which the Vessel Owner and the Vessel Manager were unwilling to comply with.[24]

(b) The Vessel Owner and the Vessel Manager failed to disclose that the Vessel and the proposed Tow Voyage did not comply with the operations manual.[25]

(c) The Vessel Owner and the Vessel Manager did not disclose the locking arrangement of the freeing ports bolted through the bulwarks which did not comply with the International Convention on Load Lines.[26]

(d) The Vessel Owner and the Vessel Manager falsely represented to the American Bureau of Shipping ("ABS") that the bulwarks fitted on the Vessel would either not be in position during the Tow Voyage or were part of the cargo fittings and not part of the Vessel.[27]

19.22 The General Division of the High Court ("General Division") found that there were no breaches of the duty of fair presentation:

(a) First, the court found that there was no evidence that Braemar would not have approved the proposed Tow Voyage or that they would only have done so by imposing conditions that the Vessel Manager and the Vessel Owner did not comply with.[28]

(b) Second, technical matters such as whether the Tow Voyage took place on a wet tow instead of a dry tow would neither

24 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [192].

25 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [215].

26 (5 April 1966), (entered into force 21 July 1968). *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [230].

27 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [242].

28 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [202].

be material nor influence a prudent insurer in determining to take the risk and, if so, on what terms. Rather, what was material would be receiving the certificate of approval from the MWS, which the Insurers did in this case.[29]

(c) Third, the court also found that the existence of the locking capability which increased the risk of entrapment of water on the deck was considered as a technical matter. Such a matter as noted above was not material to the insurers. Instead, what was material was that the underwriters would generally look towards the certificate of approval from the MWS.[30]

(d) Fourth, the court found that there was no evidence that the Vessel Owner and the Vessel Manager had falsely represented to ABS the condition of the bulwark.[31]

(3) Breaches of warranties under UK Marine Insurance Act 1906

19.23 The Insurers also argued that the Vessel Owner and the Vessel Manager had breached three warranties under s 39(5) of the UK MIA,[32] namely:

(a) to comply with all statutory or regulatory requirements;

(b) that all arrangements for moves shall be in accordance with standard operational procedures; and

(c) that Techwise Offshore Consultancy Pte Ltd (*ie*, the MWS) would carry out a survey of crew competency.

19.24 The court found that there were no breaches of warranties, but notwithstanding this, it went on to consider, in *obiter*, the effect of the breach of warranties.

19.25 Under English law, the effect of breaching warranties in insurance contracts is governed primarily by ss 10 and 11 of the UK IA. Section 11 operates as a qualification to s 10.

29 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [228].

30 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [228].

31 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [244].

32 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [245].

19.26 Under s 10, a breach of warranty has a suspensory effect, *ie*, the insurer's liability is suspended from the moment the warranty is breached until the breach is remedied.

19.27 Section 11, on the other hand, provides that a breach of a warranty will not suspend the insurer's liability if:

> (a) the warranty does not define risk as a whole;
>
> (b) the warranty is of such nature that compliance with it would tend to reduce the risk of loss of a particular kind, a particular location and/or at particular time; or
>
> (c) the insured is able to demonstrate that non-compliance could not have increased the risk of loss which actually occurred, in the circumstances in which it occurred.

19.28 The court accepted OCBC's expert evidence that terms "defining risk as a whole" were those which were so "fundamental and extensive" that they delimited the very risk that the insurer was underwriting (such as geographical and usage restrictions in this case).[33] This meant that only warranties that are fundamental and extensive define the risk as a whole, and the breach of such warranties would have the effect of suspending the insurer's liability under a policy. The court further found that the warranties in this case were not so fundamental or extensive as to define risk as a whole.

(4) Policy void for being a gaming or wagering contract

19.29 The Insurers argued that section B of the MI Policy (*ie*, the "increased value" section) was void as a gaming or wagering contract under s 4 of the UK MIA. In that part of the MI Policy, the underwriters undertook to insure the Vessel for increased value and/or excess liabilities, but it was subject to a "policy proof of interest" clause.[34] The court accepted the joint view of the English law experts that section B of the MI Policy should be viewed as a gaming or wagering contract since it dealt with the increased value and not the actual value of the insured

33 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [282] and [288].

34 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [301]–[302].

item.[35] OCBC's claim was therefore confined to their claim under section A of the MI Policy.[36]

C. Remarks

19.30 It is worth noting that there is no Singapore equivalent of the duty of fair presentation. Instead, there is a duty of disclosure under s 18 of Singapore's Marine Insurance Act 1906[37] ("Singapore MIA") which entitles an insurer to avoid the contract if the assured does not disclose to the insurer every material circumstance which is known to the assured. What is material is whether it would influence the judgment of a prudent insurer in fixing the premium in determining whether he will take the risk. This is coupled with the duty not to make a material misrepresentation under s 20 of the Singapore MIA.

19.31 The difference between the current state of Singapore law with regard to requiring an insured to disclose all material facts and the position under the UK IA with regard to the duty of fair presentation lies in the consequences of non-disclosure and the remedies available to insurers.

19.32 Under the UK IA, a breach of the duty of fair presentation triggers proportionate remedies based on whether the breach was deliberate/reckless or innocent/negligent. In Singapore, material non-disclosure entitles an insurer to avoid the policy *ab initio* which is a draconian remedy.[38] Notably, the current position in Singapore is the same as that in the UK prior to the enactment of the UK IA. On this note, an insurance law reform subcommittee ("Subcommittee") was formed by the Singapore Academy of Law's Law Reform Committee ("LRC") in March 2017 to review the key areas of Singapore insurance contract law that were likely in need of reform. The focus of the Subcommittee's work and review was on the duties of utmost good faith and disclosure, amongst other areas. The *Report on Reforming Insurance Law in Singapore*[39] was published by the LRC in February 2020, with the proposed changes including:

35 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [301].

36 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [308].

37 2020 Rev Ed.

38 Pursuant to s 17 of the Singapore Marine Insurance Act 1906 (2020 Rev Ed) and under common law.

39 Law Reform Committee, Singapore Academy of Law, *Report on Reforming Insurance Law in Singapore* (February 2020).

(a) different remedies for non-disclosure depending on whether the non-disclosure was deliberate or reckless; and

(b) for the remedy of avoidance of policy to be available only if the insurer would not have underwritten the risk but for the non-disclosure.

19.33 In light of the Subcommittee's recommendations, there may be changes to the law on material non-disclosure in the near future.

19.34 In a similar vein, the findings of the General Division in *Argoglobal Underwriting* on the effect of breach of warranties may not be directly relevant to Singapore. This is because the position under Singapore law with respect to the effect of a breach of warranty is quite different from that under the UK IA. By virtue of s 11 of the UK IA, an insurer is prevented from relying on a breach of certain terms (including warranties) if an insured can show that the breach of that particular term could not have increased the risk of the loss which actually occurred in the circumstances. For breach of warranties (*eg*, "basis of contract" clauses) under Singapore law, the consequence of the breach would be to release the insurer from liability as of the date of such breach – even if the subject matter of the warranty was not material to the risk and/or the breach of warranty might not be connected to the loss in respect of which a claim is brought.[40]

19.35 Notably, the General Division in *Argoglobal Underwriting* considered the mischief that s 11(1) of the UK IA was aimed at – namely, the "reliance by insurers on breaches of irrelevant warranties"[41] [emphasis in original omitted]. The legislators had stated:[42]

> … We do not think it is fair that an insurer can refuse a claim on the basis of the policyholder's breach of warranty or other condition in circumstances where those terms are clearly irrelevant to the loss …

19.36 The seemingly unfair and draconian effect of a breach of warranty under Singapore law is an issue which the Subcommittee had also considered in its report. It remains to be seen if Singapore's legislation will be amended in the foreseeable future to adopt a similar position as that under the UK IA, given its perceived advantages and fairness.

40 Pursuant to s 33(3) of the Singapore MIA and under common law.

41 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [283].

42 *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 at [283].

19.37 *Argoglobal Underwriting* also serves as a warning to banks/financers to carefully review all marine insurance policies taken as security to identify any policy proof of interest clause or clauses with similar wording, given the risk that such insurance policies will likely be void as a gaming or wagering contract. The argument that a policy is void for being a gaming or wagering contract under s 5(1) of the Civil Law Act 1909[43] is not an argument commonly raised by insurers, but financiers would be prudent to ensure that there is an insurable interest in the risk in any event.

19.38 The Insurers appealed against the General Division decision in *Argoglobal Underwriting* and the appeal was heard in 2026.[44] Notably, the Court of Appeal reversed the General Division's findings in respect of whether the Vessel was lost by perils of the seas. In particular, the Court of Appeal found that the onus was on an insured to prove loss by a peril of the seas on a balance of probabilities by either:[45]

> (a) directly proving that the loss of the Vessel was caused by a peril of the seas by putting forward a cause for the loss of the Vessel which was attributable to perils of the seas; or
>
> (b) relying on a rebuttable presumption that the Vessel was lost by perils of the seas if it could prove that the Vessel was seaworthy and that it was lost in wholly unexplained circumstances.

19.39 The Court of Appeal found that OCBC had not advanced a positive cause of the seawater ingress.[46] Further, reversing the findings of the court below, the Court of Appeal found that OCBC was not entitled to rely on the presumption that the Vessel was lost by perils of the seas as OCBC had failed to show that the Vessel was lost in wholly unexplained circumstances.[47]

19.40 With regard to the General Division's findings on the issues of whether OCBC breached the warranties or its duty of fair presentation, the Court of Appeal observed that it saw no reason to disturb the General

43 2020 Rev Ed.

44 *Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289.

45 *Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289 at [36] and [53]–[55].

46 *Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289 at [94]–[98].

47 *Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289 at [107]–[110] and [113].

Division's findings with respect to these issues,[48] although the Court of Appeal clarified that it did not make any observation on the correctness of the General Division's findings on the interpretation of the phrase "define risk as a whole" under s 11 of the UK IA.[49]

48 *Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289 at [147]–[150].

49 *Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289 at [149].