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

The High Court of Singapore has weighed in on the interpretation of the Insurance Act 2015

In *Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82 (see the judgment at this link), the High Court of Singapore has provided an important, if obiter, commentary on the interpretation of section 11 of the Insurance Act 2015 ("the 2015 Act"). While the judgment is not binding on English Courts, it will be of interest to practitioners and the London insurance market, particularly given the scarcity of case law on this provision.

Background

The case concerned an offshore rig/vessel, the TERAS LYZA ("the Vessel"), owned by Teras Lyza Pte Limited ("Teras") and insured under a hull and machinery marine insurance policy ("the Policy") governed by English law. Oversea-Chinese Banking Corporation Ltd ("OCBC"), as mortgagee of the Vessel and named co-assured under the Policy, pursued the claim.

In May–June 2018, the Vessel was to be towed from Vietnam to Taiwan. On 5 June 2018, it developed a list to port and trimmed by the stern. It capsized. Salvage attempts failed, and the Vessel was ultimately scuttled in deep waters on 20 August 2018.

The Claim

The Policy incorporated the Institute Time Clauses (Hulls) 1.10.83. Relying on Clause 6.1.1, OCBC argued that the Vessel's loss was caused by *"perils of the seas"*. The Defendants adopted what the Judge described as *"an evolving kitchen sink approach"*, raising a wide range of defences, abandoning some, and introducing new ones during the proceedings.

Among other issues, the Court considered whether the Vessel was a Constructive Total Loss ("CTL"), whether the loss fell within the scope of the Policy, and whether Teras had complied with its duty of fair presentation. These issues were resolved in OCBC's favour, applying settled principles of English law.

Breach of Warranties and Sections 10 and 11 of the 2015 Act

Of particular interest are the Court's comments on s.11(1) of the 2015 Act, which addresses the effect of certain warranties under English law. On the facts, the Defendants failed to prove any

breach of the warranties relied upon. Nevertheless, the Court proceeded, obiter, to consider the operation of s.11(1).

The warranties at issue were:

1. Compliance with all statutory or regulatory requirements insofar as they relate to the seaworthiness of the Vessel;

2. That all arrangements for *"moves"* shall follow standard operational procedures; and

3. That tug, tow, stowage, towage arrangements, crew competency, voyage, and weather routing shall be carried out by a specified marine warranty surveyor, with all recommendations followed prior to and during the sailing.

Both sides adduced expert evidence on English law. Mr Blackwood KC (for OCBC) and Mr Berry KC (for the Defendants) broadly agreed that:

- Section 10 provides that the effect of a breach of warranty is suspensory, suspending the insurer's liability between the date of breach and the date of remedy; and

- Section 11 operates as an exception, providing that a breach of certain warranties will **not** suspend liability if the term does not *"define the risk as a whole".*

The experts disagreed on the meaning of *"define the risk as a whole",* a question not yet tested in English case law.

In the view of Mr Berry KC, terms defining the risk as a whole are those affecting the insurer's overall assessment of the risk. Section 11, he suggested, was designed to address only breaches of terms that are *"totally and utterly irrelevant".* However, Mr Blackwood KC considered that a broader approach was required. A term defines the risk as a whole if it is fundamental and extensive enough to delimit the scope of the insurance coverage, such as geographical or usage restrictions. For example, a vessel insured solely for towing would not be covered for unrelated drilling operations.

Both experts agreed that Law Commission Report No 353 ("LCR 353") provides persuasive guidance on Parliament's intention behind the 2015 Act. The report includes an example of a commercial vehicle insured for pleasure use: although used commercially on occasion, damage occurring overnight in a garage could not be attributed to the commercial use. The Court interpreted this to illustrate that only terms which are fundamental and extensive delimit the risk as a whole, while incidental or minor breaches are captured by s.11(1).

The Court's Decision

The Singaporean Judge, Kwek Mean Luck, relying on the expert evidence and examples in LCR 353, expressed a preference for Mr Blackwood KC's interpretation. He concluded that only warranties which are fundamental and extensive—those which clearly define the scope of cover—fall outside the operation of s.11. On the facts, the warranties relied upon by the Defendants did not meet this threshold.

CPB Comment

While the judgment is obiter and not binding on English Courts, it provides a useful starting point for interpreting s.11(1) of the 2015 Act. In particular, it suggests that the *"blatantly irrelevant"* interpretation proposed by the Defendants is too narrow and that only warranties that are fundamental and extensive, effectively delimiting the risk underwritten, will fall outside s.11.

This may be of concern to underwriters who have continued to regard operational warranties as central to their underwriting bargain. Warranties dealing with matters such as regulatory compliance and operational procedures may be treated as risk-mitigation devices rather than as terms defining the scope of the risk itself, even where compliance with those warranties is plainly critical to loss prevention. If that approach were adopted in England, it would materially narrow the class of warranties that suspend cover automatically under section 10, and correspondingly expand the circumstances in which insurers are required to engage with the counterfactual enquiry mandated by section 11(3). That enquiry — whether non-compliance could have increased the risk of the loss which actually occurred — is inherently fact-sensitive and likely to turn on expert evidence.

However, the judgment should not be read as marginalising warranties altogether. The Court was careful to acknowledge the importance, recognised in the Law Commission materials, of allowing insurers to define the scope of the risks they are prepared to accept. What the judgment illustrates is that not every term regarded by an insurer as important to underwriting will necessarily meet that threshold. Until English authority squarely addresses the meaning of *"risk as a whole"*, section 11 will remain a live and potentially disruptive provision for the market. Where certainty is commercially essential, careful consideration should be given to contracting out of section 11, ensuring full compliance with the Act's transparency requirements.

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Any questions

If you have any questions regarding the insurance-related issues highlighted in this article, please get in touch with Dean or Lisbeth.

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