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### Following English footsteps? An empirical study of Singapore's reported insurance judgments and disputes between 1965 and 2012

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#### Citation

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Legal Studies Research Paper

31 January 2013

**Following English Footsteps? An  
Empirical Study of Singapore's Reported  
Insurance Judgements and Disputes  
between 1965 and 2012**

**Christopher CHEN Chao-hung\***

Research Paper 19/2013

# **Following English Footsteps? An Empirical Study of Singapore's Reported Insurance Judgments and Disputes between 1965 and 2012**

Christopher CHEN Chao-hung\*

\* This is a working paper. Please do not cite or refer without prior approval from the author.

## **Abstract**

This article presents an empirical study of the development of Singapore's insurance contract law in relation to English law. The gene of Singapore's insurance law is very English. The empirical data show a lack of momentum in driving insurance law forward by case law. This may justify further legislative reform to address not only the known doctrinal issues inherited from English law but also the specific problems facing consumer insurance. Singapore's competitiveness in the global insurance market will be an instrumental factor to determine how far Singapore continues to follow English law in the future.

## **Keywords**

Insurance law, Singapore, empirical study, common law, legal transplant.

## **I. INTRODUCTION**

This article examines the development of common law in Singapore in the area of insurance contract law. It presents empirical evidence from reported judgments and limited data from other dispute resolution channels. It aims to understand the history of Singapore's insurance common law and to indicate directions for any future law reform at a time when English insurance law is changing.<sup>1</sup> This article further serves as a platform to compare the development of common law

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not only in England but also in other former British colonies, notably Hong Kong, which is one of Singapore's major competitors.

Insurance law offers an interesting area for such study. It is a huge industry that sees thousands of new policies issued each year in Singapore alone. Any change in law has deep implications, not only for a large number of consumers and businesses but also for Singapore's competitiveness as a financial hub and dispute-resolution forum. Further, because insurance law is rooted in case laws with statutory codification in some jurisdictions,<sup>2</sup> there is a combination of case law and statutory development available for observation. As the following indicates, Singapore's insurance contract law is very much modelled on that of the UK. This offers another angle from which to observe the relationship between the two jurisdictions' developments.

Against this backdrop, one may wonder whether Singapore has developed its own character in insurance law since its independence in 1965, especially after the abolition of appeals to the Privy Council in 1994. The question is even more interesting now that the UK has begun the reform of its insurance contract law, with the promulgation of the Consumer Insurance (Disclosure and Representations) Act 2012 marking the first success.<sup>3</sup> Indeed, Singapore is gradually approaching a crossroads. Should it continue to follow English insurance contract law or begin making its own way forward?

Instead of taking a black-letter approach to analysing doctrinal developments, this article empirically examines the development of insurance contract law in Singapore in relation to English law from three main perspectives: the demography of insurance disputes, citation of case laws in insurance judgments and consideration of insurance statutes and doctrines in the courts. Drawing on information collected from judgments and other alternative dispute resolution channels, this article explores (1) how much we can rely on courts to develop insurance law and (2) directions for future insurance contract law developments in the globalized economy and

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<sup>1</sup> For consumer insurance, the Consumer Insurance (Disclosure and Representations) Act 2012 was passed in 2012. For business insurance, the Law Commission of England and Wales plans to have a final report and a bill on December 2013. <[http://lawcommission.justice.gov.uk/docs/ICL\\_project\\_flowchart.pdf](http://lawcommission.justice.gov.uk/docs/ICL_project_flowchart.pdf)> accessed 23 January 2013.

<sup>2</sup> The preamble of the Marine Insurance Act also specifies that this is "[a]n Act to codify the law relating to marine insurance." For the history of English insurance law, see EJ MacGillivray and others, *MacGillivray on insurance law relating to all risks other than marine* 12-16 (11th Ed, Sweet & Maxwell: Thomson Reuters 2008). The Insurance Contract Act 1984 in Australia offers another example.

<sup>3</sup> John Lowry and Philip Rawlings, "'That wicked rule, that evil doctrine ...': Reforming the Law on Disclosure in Insurance Contracts" (2012) 75(6) MLR 1099,

maintaining Singapore as a major dispute resolution hub and financial centre in the twenty-first century.

Part II of this article explains the research methodology and data sources. Part III describes Singapore's insurance disputes and law developments from 1965-2012, offering guidance for further arguments in Part IV, which deals with the future directions of Singapore's insurance contract law. Part V concludes the article.

## II. METHODOLOGY

This article adopts an empirical approach in examining insurance disputes and reported judgments in Singapore. This approach can complement doctrinal analyses based on case law development. Statistics can also help to indicate how insurance law was developed in the past and offer guidance for the future.

The raw data used in this research are from three sources. The primary source comprises reported judgments indexed under 'insurance' in the Singapore Law Reports (Reissue) (SLR)<sup>4</sup> (83 judgments overall) and other reported judgments not indexed under 'insurance' but determined to be disputes about insurance policies at the author's discretion (4 judgments)<sup>5</sup> (together, 'reported insurance judgments'). Overall, there are 87 reported judgments in this category spanning 48 years.

These judgments are considered to be more important in the area of insurance law by the law reporter.<sup>6</sup> For this article, we assume that the information given in the SLR is accurate, consistent and reliable. The SLR is an objective source for certain information for further analysis, including a list of cases cited with annotations (e.g., whether a case is followed or distinguished) and statutes cited with annotations. The SLR provides five annotation categories:

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<sup>4</sup> Reported judgments before 2009 were reissued by the Singapore Academy of Law with rewritten headnotes and re-edited texts. The reissue version is cited as 'SLR(R)', and since 2010 the law report has been cited as 'SLR' only. <[http://www.sal.org.sg/content/LK\\_law\\_reporting.aspx](http://www.sal.org.sg/content/LK_law_reporting.aspx)> accessed 17 January 2013.

<sup>5</sup> *Stork Technology Services Asia Pte Ltd v First Capital Insurance Ltd* [2006] 3 SLR(R) 652 (High Court, Singapore); *Marina Offshore Pte Ltd v China Insurance Co (Singapore) Pte Ltd* [2006] 4 SLR(R) 689 (Court of Appeal, Singapore); *Marina Offshore Pte Ltd v China Insurance Co (Singapore) Pte Ltd* [2006] 1 SLR(R) 800 (High Court, Singapore); *Malayan Motor & General Underwriter (Pte) Ltd v MH Almojil* [1981-1982] SLR(R) 432 (Court of Appeal, Singapore).

<sup>6</sup> The Council of Law Reporting, consisting of judges, academic members and senior lawyers, determines the cases to be reported in the SLR. <[http://www.sal.org.sg/content/LK\\_law\\_reporting.aspx](http://www.sal.org.sg/content/LK_law_reporting.aspx)> accessed 17 January 2013.

distinguished,<sup>7</sup> followed,<sup>8</sup> not followed, overruled,<sup>9</sup> and referred.<sup>10</sup> ‘Not followed’ and ‘overruled’ generally share the same meaning and indicate the strong negative treatment of a prior judgment. In contrast, when a case is followed, it indicates that a prior precedent is affirmed to be part of the Singapore law.

The second source is unreported judgments (but with a neutral citation) related to insurance disputes. The selection of these cases is based on the author’s reading of the facts. Together with reported insurance judgments, this article analyses the trace of legal actions that have entered into Singapore courts to gain a clearer picture of Singapore’s past insurance disputes. For clarification, these judgments are not used for citation analysis to avoid too much of the author’s own discretion. Judgments that may be relevant to insurance policies but are decided purely on procedural issues are precluded from the dataset if the content of the dispute is not clear.

The judgments from the aforementioned two sources are coded and then analysed from citation and dispute perspectives. The first perspective focuses on the judicial precedents cited, statutes considered and books referred to in each reported insurance judgment. This part of the analysis constructs a picture of Singapore’s insurance law and how closely it follows English law. The second perspective uses disputes as a base, as some judgments, whether reported or unreported, represent different stages of the same lawsuit. This offers a better picture of the number of insurance disputes entering into Singapore’s judicial system. From other supporting information such as the types of policies and issues under dispute, we may delineate the driving force behind the development of insurance law and offer directions for future law reform, if necessary.

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<sup>7</sup> The law report defines ‘distinguished’ as follows: ‘This is used where the annotated case is not applied in the instant case due to some distinction in the facts or in the law.’

<sup>8</sup> The law report defines ‘followed’ as follows: ‘This is used to denote that the principle of law established in the case (or the *dictum* referred to) has been applied in the instant case.’

<sup>9</sup> The law report defines ‘not followed’ as follows: ‘This is used where the court has consciously refused to follow a case although potentially relevant. It implies that the annotated case is wrong. If a case is not followed because of some distinction in facts or law, the proper annotation would be distinguished (distd).’ ‘Overruled’ is defined as follows: ‘This is used only where a higher court has held the annotated case to be wrong. Where the court has no power to overrule (eg the Singapore Court of Appeal *vis-à-vis* a House of Lords decision), the proper annotation would be “not followed” (not follid).’

<sup>10</sup> ‘Referred’ is ‘used to describe all the residual cases whose annotation does not fall within any of the above categories’. While this annotation does not clearly indicate whether a case is followed or distinguished, it is argued that it still shows a certain degree of acceptance. Goh Yihan and Paul Tan, ‘An Empirical Study on the Development of Singapore Law’ (2011) 23 SAclJ 176, 219,

The third source comes from disputes handled by alternative dispute resolution (ADR) channels, mainly from the Singapore International Arbitration Centre (SIAC) and the Financial Industry Disputes Resolution Centre (FIDReC). The latter, while it has never published any complaint results, may shed light on retail insurance disputes. The data collected from these ADR channels may be used to complement the information we subtract from the judicial decisions.

### III. THE PAST: THE ENGLISHNESS OF SINGAPORE'S INSURANCE CONTRACT LAW

There is no doubt that Singapore's insurance contract law is very much English. This can be observed from three angles, including statutes relating to insurance contracts, cases in insurance judgments and books referred to by Singaporean judges.

#### *A. Statutes on Insurance Contract Law*

On the statutory side, Singapore literally inherited all of the major English insurance statutes before 2010.<sup>11</sup> The Marine Insurance Act 1906 was introduced into Singapore in its entirety.<sup>12</sup> The Life Assurance Act 1774 was incorporated into s 62 of Singapore's Insurance Act (Cap 142) with only a small modification.<sup>13</sup> S 63 of the Insurance Act copies s 86 of the UK Fire Prevention (Metropolis) Act 1774. The Third Parties (Rights against Insurers) Act 1930 was introduced into Singapore except those provisions amended by the Insolvency Acts in the UK,<sup>14</sup> and the Policies of Assurance Act 1867 was re-enacted with only small modifications.<sup>15</sup>

It is commonly recognized that Singapore legal system is based on English law.<sup>16</sup> Singapore's legal history explains why Singapore re-introduced many English insurance statutes after the abolition of appeals to the Privy Council in 1994. In 1878, s 5 of the Civil Law Ordinance (later the Civil Law Act, amended again in 1979) provided that mercantile law

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<sup>11</sup> Application of English Law Act First Schedule.

<sup>12</sup> Marine Insurance Act (Cap 387).

<sup>13</sup> Insurance Act s 62(4) reads as follows: 'Nothing in this section shall extend to insurance made by any person on ships or goods, or to contracts of indemnity against loss by fire or loss by other events whatsoever.' This differs from s 4 of the Life Assurance Act 1774. It was suggested that the Singapore version was a statutory attempt to incorporate the Privy Council decision of *Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199 (PC). Lee Kiat Seng, 'Insurable Interests in Singapore' [1997] Sing J Legal Stud 499, 519.

<sup>14</sup> Third Parties (Rights against Insurers) Act (Cap 395).

<sup>15</sup> Policies of Assurance Act (Cap 392).

<sup>16</sup> Andrew Phang, 'Reception of English Law in Singapore: Problems and Proposed Solutions' (1990) 2 SAcLJ 20, n 1; Goh and Tan (n 10) 181.

(including marine, average, life and fire insurance) would be administered as that in England at the corresponding period unless other provisions were made by any Singapore law.<sup>17</sup> Thus, Singapore's insurance law has been literally identical with English law since 1878. However, this also means that whenever English statutes have changed, Singapore law has changed accordingly.

This approach allows Singapore to piggyback on the success of English commercial law. However, the downside is that it may cause uncertainties. As the then Minister of Law argued in the Parliament of Singapore in 1993, '[s]o long as [s 5] remains no one can say with certainty at any point of time what our commercial law is unless he has access to the most up-to-date English legislation'.<sup>18</sup> In addition, the minister stated that 'the most unsatisfactory feature of section 5 is the great difficulty of interpreting its provision to determine whether a particular English statute is applicable in relation to a particular case'.<sup>19</sup>

In 1993, the Singapore government proposed the later Application of English Law Act to enact 'a number of very important English commercial statutes [in Singapore] so that the basis of our commercial law remains very much the same as English commercial law'.<sup>20</sup> Most importantly, this would ensure that 'future legislative changes in the United Kingdom will no longer have any effect on our commercial law'.<sup>21</sup>

The introduction of the Application of English Law Act undoubtedly unhooked the connections made between Singapore statutes and any revision in the UK since 1994. However, as a result, any English statutes amended after 1994 would not automatically become part of Singapore law. This raises the question of what Singapore should do in the future given that English insurance statutes have already changed to a certain extent and more reforms are planned. This is discussed in Part IV.

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<sup>17</sup> *Singapore Parliamentary Debates, Official Report* (12 October 1993) vol 61 at cols 610 (Professor S Jayakumar, Minister for Law).

<sup>18</sup> *ibid* 610.

<sup>19</sup> *ibid* 610-611.

<sup>20</sup> *ibid* 611.

<sup>21</sup> *ibid* 611.



## *B. Judicial Precedents*

English cases also dominate the number of precedents cited by Singapore courts in reported insurance judgments. Passed in 1993, the Application of English Law Act (Cap 7A) provides that '[t]he common law of England ..., so far as it was part of the law of Singapore immediately before 12th November 1993, shall continue to be part of the law of Singapore'.<sup>22</sup> Based on 87 reported insurance judgments, this article finds that a total of 560 cases have been cited 666 times. Among the 560 cited cases, only 92 cases (16.43 per cent) were decided by Singapore courts, while 371 cases (66.25 per cent) were decided by British courts (excluding the Privy Council but including five cases clearly decided by Scottish courts) and another 22 (3.93 per cent) by the Privy Council. Australian cases represent a distant third with 22 cases cited, and Malaysian (18 cases) and Canadian (11 cases) cases place fourth and fifth, respectively. Together, about 70 per cent of the cases cited in reported insurance judgments in Singapore were decided by UK courts (including the Privy Council). Therefore, on paper, English cases dominate the citation of Singapore's reported insurance judgments.

We may further examine whether Singapore courts show more willingness to cite local cases as authorities. For those cited cases decided in and after 1994 (a total of 109 cases out of 560), there were indeed more Singapore cases (56, 51.38 per cent) than British cases (40, 36.7 per cent). In contrast, for the 451 cited cases decided before 1993 (inclusive), 331 (73.39 per cent) were British and another 18 (3.99 per cent) were decided by the Privy Council, with only 36 cases (7.98 per cent) decided by Singapore courts.

This result seems to reflect the history of Singapore's insurance law and the position taken in the Application of English Law Act. However, it is also a reminder that few reported insurance judgments (only 34 out of 87) were reported during the 28 years between 1965 and 1993 (an average of 1.21 reported insurance judgments per year), with 53 judgments delivered between 1994 (inclusive) and 2012 (an average of 2.79 judgments per year).

To see the full picture, we must also consider how English or local cases are treated by Singapore courts in reported insurance judgments. Among the 560 cases cited in Singapore's reported insurance judgments, 147 (29.46 per cent) cases were 'followed' (as defined in the SLR)

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<sup>22</sup> Application of English Law Act s 3(1).

at least once, with 342 being referred to at least once and 69 being distinguished at least once. Only two cases have been ‘not followed’<sup>23</sup> and none have been overruled thus far.

Because many more British cases were cited than Singapore cases, it is natural that more British cases (119 cases, including Privy Council decisions) have been followed than Singapore cases (24 cases). However, by statistical analysis, we find no significant relationship between a case being British (including Privy Council and Scottish courts) and followed ( $p=0.22$ ). The same also unfortunately holds true for local cases ( $p=0.78$ ). This means that the jurisdiction of a case is not a valid predictor of whether the case is more likely to be followed by Singapore courts. We also find no statistically significant relationship between the jurisdiction (UK or Singapore) and whether a case is referred or distinguished.

We do find a statistically significant relationship between cases decided by the highest UK court<sup>24</sup> (a total of 96 cases out of the 393 British cases cited) ( $\chi^2=6.24$ ,  $p=0.01$ ). However, no significant relationship is found for the other annotations (distinguished or referred) or for the decisions of the UK Court of Appeal or High Court. Among Singapore courts, we also find that precedents decided by the Singapore Court of Appeal do not have a significant relationship with being followed among those reported insurance judgments in Singapore. This indicates that decisions by the top UK court hold a certain degree of charm for Singapore judges in insurance decisions. This may offer a lesson for law practitioners in the future: cite UK Supreme Court decisions to convince Singapore courts.

It is interesting to note that 11 of the 96 cases made by the top UK court were decided in and after 1994, of which three were followed,<sup>25</sup> seven referred and one distinguished. For UK Court of Appeal decisions issued in and after 1994, 16 cases have been cited with 4 followed and 12 referred. However, no UK High Court decision issued in 14 cases since 1994 has been followed at all. This shows that Singapore courts continued to bring higher UK decisions into

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<sup>23</sup> These two cases were *Cheltenham & Gloucester plc v Sun Alliance & London Insurance plc* 2001 SC 965 and *Saskatchewan Government Insurance Office v Spot Pack* [1957] AMC 65.

<sup>24</sup> This includes the former House of Lords, current UK Supreme Court and Privy Council.

<sup>25</sup> *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469 (HL) (cited for fraudulent claim); *Hill v Mercantile and General Reinsurance Co plc* [1996] 3 All ER 865 (HL) (cited for ‘following settlement’); *Eagle Star Insurance Co Ltd v Provincial Insurance Plc* [1994] 1 AC 130 (HL) (cited for double insurance and contribution).

Singapore law even after the Application of English Law Act in late 1993. This may be a result of a lack of insurance judgments in Singapore, discussed as follows.

As time goes by, it seems that Singapore courts cite more and more cases in reported insurance judgments. This means that modern Singapore courts cite more judicial precedents than earlier ones. This is proven by using non-parametric correlation analysis (Spearman's  $\rho=0.41$ ,  $p<0.001$ ). This is true for both Singapore (Spearman's  $\rho=0.55$ ,  $p<0.001$ ) and British cases (Spearman's  $\rho=0.28$ ,  $p=0.01$ ). If we analyse only the 53 reported insurance judgments since 1994, the average number of Singapore cases cited is 2.02 cases per judgment, up from merely 0.24 case per reported insurance judgment in and before 1993. However, the figure for British cases is 5.64 cases per judgment (compared with 4.0 cases in reported insurance judgments in and before 1993). We note that Singapore courts have cited more local cases since 1994, probably also due to the increasing number of local authorities available for citation. However, British cases still seem to occupy a bigger share of the increase. Therefore, the English dominance of Singapore's insurance law has not waned since 1994.

### C. Books Referred

Even the reference materials cited by Singapore courts in reported insurance judgments show English dominance. A rough search of the 87 reported insurance judgments shows that *MacGillivray on Insurance Law* (all editions)<sup>26</sup> was referred to in 17 judgments. The runners-up include *Arnould's Law of Marine Insurance and Average* (all editions)<sup>27</sup> and books by Professor Malcolm Clarke,<sup>28</sup> each referred to in seven judgments. In contrast, the most prominent local author, Poh Chu Chai,<sup>29</sup> was cited in only eight judgments, and Tan Lee Meng<sup>30</sup> (who is currently a judge) was cited in five judgments. These results also reflect the strong English influence on Singapore's insurance law.

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<sup>26</sup> Latest edition: John Birds and others, *Macgillivray on Insurance Law* (12th Ed, Sweet & Maxwell, 2012).

<sup>27</sup> Latest edition: Jonathan Gilman and others, *Arnould's Law of Marine Insurance and Average* (17th Ed, Sweet & Maxwell, 2008).

<sup>28</sup> E.g., Malcolm A Clarke, *Law of Insurance Contracts* (3rd Ed, 1997) (cited in *International Testing Co Pte Ltd v Public Prosecutor* [1998] 2 SLR(R) 1026, [10] (High Court, Singapore)); Malcolm A Clarke, *The Law of Insurance Contracts* (2nd Ed, 2002) (cited in *Tan Thuan Seng v UMBC Insurans Sdn Bhd* [1997] 3 SLR(R) 725, [18] (High Court, Singapore)).

<sup>29</sup> E.g., Poh Chu Chai, *Principles of Insurance Law* (LexisNexis, 6th Ed, 2005) (cited in *Penguin Boat International Ltd v Royal & Sun Alliance Insurance (Singapore) Ltd* [2008] 4 SLR(R) 21, [10] (High Court, Singapore)).

<sup>30</sup> E.g., Tan Lee Meng, *Insurance Law in Singapore* (2nd Ed, 1997) (cited in *International Testing Co Pte Ltd v Public Prosecutor* [1998] 2 SLR(R) 1026, [22] (High Court, Singapore)).

## IV. THE FUTURE

How Singapore law should develop in the future in light of recent changes and proposals for reform in England is an intriguing question. The purpose of this article is not to provide a normative answer to how Singapore law should be amended or whether Singapore should a new insurance contract code similar to the Australian Insurance Contract Act 1984. Instead, it uses empirical evidence to identify certain future directions. In the following sections, we consider the possibility of developing local jurisprudence in insurance law by judiciary and whether legislative intervention is warranted if law reform is necessary. First, we must establish whether copying English insurance law presents a problem.

### *A. The Merit of Following English Law*

If Singapore's insurance contract law is very much English, a natural inference is that Singapore must also inherit known problems under English law on a doctrinal basis. Those problems are in the genes of Singapore's insurance law. However, this article argues that there are still merits in following English law. Singapore will face choices from overhauling insurance contract law to introducing new amendments in UK statutes into Singapore or simply maintaining current law. How Singapore may compete in the global insurance and law market<sup>31</sup> will be instrumental to the future of Singapore's insurance law.

Current English insurance contract law presents some issues that must be addressed. For example, the Law Commission identifies that a reform is required to address an insurer's failure to pay a valid claim within a reasonable time.<sup>32</sup> The Law Commission also argues that the 'law on remedies for fraudulent claims is convoluted'<sup>33</sup> and that 'the law on insurable interest is more complicated than it needs to be'.<sup>34</sup> On the duty of disclosure, the Law Commission recognizes that '[t]he Marine Insurance Act 1906 ... places an onerous duty on prospective policyholders to disclose information to an insurer'<sup>35</sup> and that '[t]here is a growing body of evidence ... that the

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<sup>31</sup> The term 'law market' comes from: Erin A O'Hara and Larry E Ribstein, *The Law Market* (OUP, 2009).

<sup>32</sup> Law Commission, *Insurance Contract Law: Post-Contract Duties and Other Issues* (Law Com CP No 201, 2011) Part 4.

<sup>33</sup> Law Commission (n 32) para 7.1.

<sup>34</sup> Law Commission (n 32) para 11.94.

<sup>35</sup> Law Commission, *Insurance Contract Law: The Business Insured's Duty of Disclosure and the Law of Warranties* (Law Com CP No 204, 2012) para 1.1.

duty of disclosure does not work well in practice'.<sup>36</sup> This is by no means a complete list of the potential problems under English insurance law. Nonetheless, we may assume that Singapore law suffers from the same problems because Singapore literally inherits English insurance law with only minimal statutory modification.

However, it is not inherently wrong to follow English law. As a small city state vying to be a global financial hub, any change in law would matter to not only local customers but also Singapore's global competitiveness in the world. From this perspective, having an insurance contract law that is similar to the English law may convince some market participants to place business in Singapore as an alternative to England or Hong Kong. In contrast, if Singapore law is exactly like English law, it may also help to persuade global market participants to choose Singapore law as the governing law or Singapore as a forum for dispute resolution. This may further help Singapore's legal profession to attract global business.

There are several other advantages to Singapore following English law. Singapore courts have no choice but to cite many UK precedents, as there are simply not enough judicial decisions to form local jurisprudence in insurance contract law. Following English law and any new development may also preserve a large body of case law without creating a gap with regard to judicial precedents that Singapore may not have many chances to fill.<sup>37</sup> In addition, following English law may also complement Singapore's shipping industry and practice, another area influenced heavily by English mercantile law.<sup>38</sup>

However, the Law Commission of England and Wales noted that 'we have been told that in recent years the London market in particular has lost a large amount of international business, and that this has been partly as a result of the state of insurance contract law'.<sup>39</sup> The same may also apply to Singapore. Thus, if English law does change over business insurance (as it has happened to consumer insurance), a more difficult question to answer is whether Singapore should simply copy any new amendment made in the UK or maintain old English law without incorporating any future English amendments.

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<sup>36</sup> Law Commission (n 35) para 4.2.

<sup>37</sup> Colin Croly, 'Doubts about Insurance Codes' (2001) JBL 587, 589.

<sup>38</sup> Eg The entire Carriage of Goods by Sea Act 1992 was also introduced into Singapore by the Application of English Law Act.

<sup>39</sup> Law Commission, *Insurance Contract Law: Issue Paper 1: Misrepresentation and Non-Disclosure* (Law Com, 2006) para 7.35.

Insurers may prefer keeping the current Marine Insurance Act, as it is generally more in their favour. For example, a breach of a ‘warranty’ discharges all futures liabilities of the insurer automatically.<sup>40</sup> This may give insurers the upper hand in imposing policy terms. In addition, a breach of duty of utmost good faith allows insurers to avoid the policy.<sup>41</sup> To determine whether a piece of information must be disclosed to an insurer before a policy is issued, its materiality is subjected to the so-called ‘prudent insurer test’, i.e., whether the information ‘would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk’.<sup>42</sup> There is little doubt that these rules benefit insurers.<sup>43</sup>

However, in a competitive business insurance market, the insured or potentially insured should have more bargaining power over policy terms. Market competition may also help insurers offer fewer one-sided terms to attract business rather than relying on rules in the Marine Insurance Act. This would explain why there are few disputes over rules in the Marine Insurance Act and indicate that the most considered provision concerns seaworthiness because it was implied by statute.<sup>44</sup> If we follow this argument, there seems to be a stronger case for reform for consumer insurance as consumers in general have little power over policy terms.

Another concern for Singapore is potential harmonisation of insurance law in Europe. Though it has been argued that insurance contract laws in common law and civil law are not too different to be harmonised,<sup>45</sup> Singapore might not wish to every movement in Europe in the future merely because of following English law. If this is indeed a concern, Singapore should be more cautious in introducing any new amendment to English insurance law in the future.

This article cannot speculate on how Singapore law should evolve in the future. However, the empirical data provide us with some guidance for further discussion. In the next two sections, we first argue that there is a lack of momentum in driving Singapore’s insurance law forward by case law. This may warrant legislative intervention if necessary. However, any future law reform should take note that most insurance disputes thus far have been about policy terms in addition to

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<sup>40</sup> Marine Insurance Act s 33 and 34.

<sup>41</sup> Marine Insurance Act s 17.

<sup>42</sup> Marine Insurance Act s 18(2) and 20(2).

<sup>43</sup> John Lowry, ‘Whither the Duty of Good Faith in UK Insurance Contracts’ (2009) Connecticut Insurance Law Journal 97, 115-8.

<sup>44</sup> Marine Insurance Act s 39.

<sup>45</sup> Giesela Ruhl, ‘Common Law, Civil Law, and the Single European Market for Insurance’ (2006) 55 ICLQ 879.

misselling problems for life policies, issues that may not be fully addressed by a revision of the major doctrines in insurance law.

## *B. The Lack of Momentum in Driving Insurance Contract Law Forward by Case Law*

### *1. The Lack of Reported Judgments in Relation to the Insurance Market*

The insurance market is certainly huge in Singapore for both businesses and individuals. However, compared with the size of Singapore's insurance market, the number of insurance disputes seems relatively small. This indicates that the chance of moving the law forward by case law is limited.

According to the Monetary Authority of Singapore (MAS), a total of over 1.12 million new policies were issued by life business in Singapore in 2011, with the total sum insured beyond S\$116 billion and annual premiums insured beyond S\$1.78 billion (about GBP 0.91 billion).<sup>46</sup> For general business, the gross premiums received in 2011 were over S\$3.42 billion (about GBP1.75 billion) for Singapore insurance funds and over S\$6.39 billion (about GBP3.28 billion) for offshore insurance funds.<sup>47</sup>

Compared with the market's size, the number of reported insurance judgments on insurance policies is tiny. As mentioned previously, only 87 insurance judgments were reported between 1965 and 2012, including several judgments representing the same disputes at different stages.<sup>48</sup> Even if we use the number of disputes as a base, we find only 110 insurance disputes resulting in reported or unreported judgments from Singapore courts (from the District Court and High Court to the Court of Appeal).

For comparison, we find at least 239 judgments<sup>49</sup> indexed under 'insurance' in the All England Law Report alone between 1965 and 2012. The Financial Ombudsman Services (FOS) received a total of 157,716 new complaints about payment protection insurance and another

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<sup>46</sup> MAS, Life Insurance Data in <[http://www.mas.gov.sg/Statistics/Insurance-Statistics/Annual-Statistics/~media/resource/data\\_room/insurance\\_stat/2011/Life\\_Key\\_Indicators\\_2011\\_PDF.ashx](http://www.mas.gov.sg/Statistics/Insurance-Statistics/Annual-Statistics/~media/resource/data_room/insurance_stat/2011/Life_Key_Indicators_2011_PDF.ashx)> accessed 21 December 2012.

<sup>47</sup> MAS, General Insurance Data in <[http://www.mas.gov.sg/Statistics/Insurance-Statistics/Annual-Statistics/~media/resource/data\\_room/insurance\\_stat/2011/Gen\\_Key\\_Indicators\\_2011\\_PDF.ashx](http://www.mas.gov.sg/Statistics/Insurance-Statistics/Annual-Statistics/~media/resource/data_room/insurance_stat/2011/Gen_Key_Indicators_2011_PDF.ashx)> accessed 21 December 2012. These figures include premiums for both direct insurers and reinsurers.

<sup>48</sup> E.g., *Marina Offshore Pte Ltd v China Insurance Co (Singapore) Pte Ltd* [2006] 1 SLR(R) 800 (Court of Appeal, Singapore), appeal from [2006] 4 SLR(R) 689 (High Court, Singapore).

<sup>49</sup> Judgments in different courts on the same disputes are treated as separate judgments.

27,563 complaints about other insurance in the year ending 31 March 2012.<sup>50</sup> It is granted that UK's insurance market must be far bigger than Singapore's. Thus it is only natural that UK must have more insurance disputes than Singapore. The Association of British Insurers estimates that of the 26.3 million households in Great Britain, 19.7 million have contents insurance and 16.6 million have building insurance, with approximately 8.5 million households benefitting from long-term insurance products.<sup>51</sup> These figures are selective and have to be compared with Singapore's with caution. However, the pure number of Singapore's pool of insurance disputes and insurance-related judgments seems to be quite small by any means. This apparently handicaps the ability of Singapore courts to develop insurance contract law.

There are several potential explanations for the lack of insurance disputes. First, litigation costs may play a part in thwarting lawsuits or helping parties reach settlements. Second, the lack of disputes in the judicial system may be a result of the success of alternative dispute resolutions. Many retail insurance policies in Singapore also contain an arbitration clause. According to the Singapore International Arbitration Centre (SIAC), 188 new cases were handled by the SIAC in 2011, 2 per cent (about two or three cases out of 188) of which concerned insurance.<sup>52</sup> As no longer-term data are available for comparison, we reserve an opinion on how far the availability of arbitration would affect the litigation of insurance disputes.

For consumer policies, data from the Financial Industry Disputes Resolution Centre (FIDReC), an alternative dispute resolution body for financial consumers, show that the number of complaints against life insurers during the past 3 years (2011-12, 2010-11 and 2009-10<sup>53</sup>) was 207, 132 and 181, respectively, and that the figures for general insurers were 174, 124 and 162, respectively. These figures were certainly higher than those of lawsuits and arbitration,

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<sup>50</sup> FOS, Annual Review 2011/12 <<http://www.financial-ombudsman.org.uk/publications/ar12/about.html#a4>> accessed 4 January 2013.

<sup>51</sup> Association of British Insurers, Facts & Figures <[http://www.abi.org.uk/Facts\\_and\\_Figures/Facts\\_Figures.aspx](http://www.abi.org.uk/Facts_and_Figures/Facts_Figures.aspx)> accessed 4 January 2013.

<sup>52</sup> SIAC, *2011 CEO's Annual Report 5* <[http://www.siac.org.sg/images/stories/documents/SIAC\\_Annual\\_Report\\_2011.pdf?phpMyAdmin=OP8vu698vunu zJZYzoW2per cent2CoDB3yb](http://www.siac.org.sg/images/stories/documents/SIAC_Annual_Report_2011.pdf?phpMyAdmin=OP8vu698vunu zJZYzoW2per cent2CoDB3yb)> accessed 21 December 2012. No data were available for 2010 or earlier.

<sup>53</sup> The reporting year starts from 1 July of each year to 30 June of the following year.



indicating that litigation costs and/or the timeliness of dispute resolution may help to explain why few insurance policy lawsuits were brought forward by consumers.<sup>54</sup>

There is also a considerable lack of judgments about life or long-term health policies (together, ‘life policies’).<sup>55</sup> Among the 110 disputes, only seven were about life policies. In contrast, 99 (93.4 per cent) were about direct indemnity insurance and four were about reinsurance.<sup>56</sup> There were a number of disputes on motor policies (19 out of 110, 17.27 per cent), marine policies (19, 17.27 per cent), workmen compensation policies (13, 11.82 per cent) and other general property and liability insurance (44, 40 per cent).

The lack of disputes is not necessarily a bad thing for Singapore if it genuinely means fewer disputes on insurance policies or better insurer behaviour. However, the side effect is that the state of case law development is rather static. Singapore judges do not have many opportunities to express opinions on doctrines concerning insurance contract law. While some doctrines or issues can be applied to both indemnity and contingency insurance, the imbalance of policy types in litigation means that Singapore courts have had very few chances thus far to consider retail life and health policies specifically, which would have long-term effects on many insureds. This presents a potential concern in an ageing society.

## *2. Types of Disputes and Issues*

The lack of momentum in driving insurance contract law forward is exacerbated by the courts’ few chances to express opinions on doctrinal issues. This is indicated by the main types of issues in the 110 insurance disputes and the insurance statute doctrines (notably the Marine Insurance Act) considered in the reported insurance judgments.

Among the 110 insurance disputes, a super majority (82 disputes, 74.55 per cent) related to an insured or third party claiming insurance money from an insurer, with another five disputes about double insurance and contribution, eight disputes about subrogation and notably another

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<sup>54</sup> It is free to file a complaint to the FIDReC, but an adjudication case fee is applicable if the complaint is referred to adjudication. <<http://www.fidrec.com.sg/website/faq.html>> accessed 23 January 2013.

<sup>55</sup> Under Singapore law, life business consists of issuing life policies or long-term (i.e., more than 5 years) health and accident policies. Insurance Act (Cap 142) s 2 and First Schedule para 4D.

<sup>56</sup> The nature of reinsurance has to be determined by the nature of the policies that are reinsured (see the Insurance Act s 3(2)). This article leaves the nature of reinsurance open as there is not enough information in some judgments.

ten disputes (9.01 per cent) involving an insurer claiming reimbursement from an insured or third party.

Few insurance disputes were brought to court by retail customers. Among the 110 disputes, only 28 (25.45 per cent) were about personal insurance and the rest were about business insurance. Among the 28 disputes on personal insurance, 19 (67.9 per cent) were about motor insurance and seven were about life, health or accident insurance.

It is not surprising to find so many disputes over insurance money claims, as this is exactly what a contract of insurance is for. Disputes about reimbursement (e.g., insurers clawing back money paid to an insured or third party), subrogation (i.e., claiming compensation from a third party after an insurer makes a payment to the insured<sup>57</sup>) and double insurance (i.e., an insurer claiming contribution from another insurer after meeting the payment obligation under a policy) also result from an insurer making a payment to an insured.

Nonetheless, if we look closely at the exact issues involved in these disputes, we find that an overwhelming portion related highly to contractual construction and much less to the application of legal doctrines. Among the 110 disputes, 43 (39.09 per cent) were related to insurance coverage issues (e.g., whether an employee of a subcontract is covered under a workman compensation policy<sup>58</sup>), 20 (18.18 per cent) were related to an insured's obligation (e.g., failures to pay premiums<sup>59</sup> or timely send notice<sup>60</sup>), 14 (12.73 per cent) were clearly related to exclusion clauses (e.g., exclusion of coverage when a car is used for reward<sup>61</sup>) and 15 (13.64 per cent) were related indemnity and calculation of losses issues.<sup>62</sup> Many cases involve a mixture of these issues. These disputes clearly related to policy terms.

For disputes other than those over insurance money claims, legal issues often surround the interpretation of policy terms or clauses of another contract. Early on, the most litigated term

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<sup>57</sup> *Castellain v Preston* (1883) 11 QBD 380 (CA).

<sup>58</sup> E.g., *SHC Capital Ltd v NTUC Income Insurance Co-Operative Ltd* [2010] 4 SLR 965 (High Court, Singapore); *Awang bin Dolla v Shun Shing Construction & Engineering Co Ltd* [1997] 2 SLR(R) 746 (Court of Appeal, Singapore).

<sup>59</sup> *Lim Kitt Ping Lynnette v People's Insurance Co Ltd* [1997] 1 SLR(R) 914 (High Court, Singapore).

<sup>60</sup> *Stork Technology Services Asia Pte Ltd v First Capital Insurance Ltd* [2006] 3 SLR(R) 652 (High Court, Singapore).

<sup>61</sup> *NTUC Income Insurance Co-operative Ltd v Toh Kheng Boon* [2007] 3 SLR(R) 772 (High Court, Singapore).

<sup>62</sup> E.g., *Sumpiles Investments Pte Ltd v AXA Insurance Singapore Pte Ltd* [2006] 3 SLR(R) 12 (High Court, Singapore).

related to whether a car was used for reward or any excluded purposes.<sup>63</sup> Among cases involving subrogation, one common issue appearing in court was whether a third party was covered by a relevant policy as a co-insured (so as to prevent an insurer exercising the right of subrogation). This required courts to consider insurance clauses in another agreement (e.g., a lease) leading to the purchase of an insurance policy.<sup>64</sup> For cases about double insurance, the right to claim contribution often depends on the terms of two relevant policies to determine whether one or both insurers should be liable for the common loss.<sup>65</sup> Even cases about reimbursements of money paid are sometimes about a breach of policy terms.<sup>66</sup>

These figures indicate that a large portion of insurance disputes that make it to court are about interpretation and application of policy terms. Thus, in most insurance disputes, Singapore courts have to resort to exact policy terms and the factual background of a dispute to determine the result. This does not mean that determining the exact meaning of policy terms and their application is without merit. However, the implication is that Singapore courts have less of a chance to review doctrinal issues.

### 3. Doctrines and Statutes Considered

Doctrinal issues in insurance contract law are rarely litigated in Singapore courts. To be fair, Singapore judges did put in some effort to push insurance contract law forward. For example, in 1993, Goh Joon Seng J decided to introduce the category of terms delimiting risk into Singapore,

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<sup>63</sup> E.g., *People's Insurance Co of Malaya Ltd v Ho A Kum* [1965-1967] SLR(R) 621 (Federal Court, Singapore); *China Insurance Co Ltd v Ang Bay Kang* [1968-1970] SLR(R) 345 (Federal Court, Singapore); *Seri v Oriental Fire & General Insurance Co Ltd* [1968-1970] SLR(R) 397 (High Court, Singapore); *Tan Ah Leng v American Insurance Co* [1974-1976] SLR(R) 315 (High Court, Singapore); *NTUC v Toh Kheng Boon* [2007] 3 SLR(R) 772 (High Court, Singapore).

<sup>64</sup> *Wisma Development Pte Ltd v 2M Property Consultants Pte Ltd* [1992] 2 SLR(R) 60 (High Court, Singapore); *Wisma Development Pte Ltd v Sing - The Disc Shop Pte Ltd* [1994] 1 SLR(R) 749 (Court of Appeal, Singapore); *Walter Wright Mammoet (Singapore) Pte Ltd v Resources Development Corp Pte Ltd* [1994] 1 SLR(R) 1027 (High Court, Singapore), overturned by [1995] 1 SLR(R) 131 (Court of Appeal, Singapore).

<sup>65</sup> E.g., *SHC* (n 58); *Nanyang Insurance Co Ltd v Commercial Union Assurance Co plc* [1996] 1 SLR(R) 441 (High Court, Singapore).

<sup>66</sup> E.g., *Royal & Sun Alliance Insurance (Singapore) Ltd v Metico Marine Pte Ltd* [2006] 3 SLR(R) 333 (High Court, Singapore) (recovery of money paid for breach of warranty); *Cosmic Insurance Corp Ltd v Ong Kah Hoe* [1996] 1 SLR(R) 469 (High Court, Singapore), [1997] 3 SLR(R) 237 (High Court, Singapore) (recovery from insured money paid to a third party victim because the vehicle insured was not driven by a licensed driver as required under the policy).

in a case involving the interpretation of a term requiring goods insured to be accompanied by two persons on a policy insuring jewellery in transit.<sup>67</sup>

In 2008, then Chief Justice Chan Sek Keong made the following bold observation:

Just as the insured was under a legal obligation to disclose fully to the insurer, on an *uberrima fides* basis, all material facts relating to his personal conditions and circumstances, the insurer had to also inform the insured of any unusual clause(s) in an insurance policy that might deprive the latter of his right to make a claim.<sup>68</sup>

This observation, although *obiter*, may shed new light on the insurer's duty of utmost good faith in the pre-contractual stage if it is further developed by other courts.

In addition, Singapore courts have apparently adopted a more cautious approach to interpreting insurance clauses in a contract to determine whether a related party is co-insured.<sup>69</sup> In terms of double insurance, a Singapore court recently seemed to relax the voluntary payment rule when one insurer sought contribution from another.<sup>70</sup> The leading authority on the parol evidence rule and contractual construction in Singapore also happens to be an insurance case.<sup>71</sup> By way of statutory intervention, Singapore also widens the concept of presumed insurable interest by statute.<sup>72</sup>

However, these chances do not present themselves very often. Many doctrinal issues have not yet been considered by Singapore courts. For example, the rule of insurable interest was only raised three times among the 87 reported insurance judgments, with only one of them touching doctrinal discussion. In *Sui Brothers (Pte) Ltd v Norwich Winterhur Insurance (Far East) Pte Ltd*<sup>73</sup>, Goh Phai Cheng JC decided that a pledgee had an insurable interest to the full value of the

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<sup>67</sup> *L'Union des Assurances de Paris IARD v HBZ International Exchange Co (S) Pte Ltd* [1993] 2 SLR(R) 457 (Court of Appeal, Singapore), following *CTN Cash and Carry Ltd v General Accident Fire and Life Assurance Corp* [1989] 1 Lloyd's Rep 299 (QB).

<sup>68</sup> *Tay Eng Chuan v Ace Insurance Ltd* [2008] 4 SLR(R) 85, [30] (Court of Appeal, Singapore).

<sup>69</sup> See *Walter Wright Mammoet (Singapore) Pte Ltd v Resources Development Corp Pte Ltd* [1995] 1 SLR(R) 131 (Court of Appeal, Singapore), allowing appeal from [1994] 1 SLR(R) 1027 (High Court, Singapore) and following an early case of *Wisma Development Pte Ltd v Sing – The Disc Shop Pte Ltd* [1994] 1 SLR(R) 749 (Court of Appeal, Singapore).

<sup>70</sup> *SHC* (n 58), following *Drake Insurance plc v Provident Insurance plc* [2004] QB 601 (CA) but distinguishing the English Court of Appeal judgment on *Legal and General Assurance Society Ltd v Drake Insurance Co Ltd* [1992] QB 887 (CA).

<sup>71</sup> *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (Court of Appeal, Singapore).

<sup>72</sup> Insurance Act s 57(1).

<sup>73</sup> [1993] 1 SLR(R) 8 (High Court, Singapore).

goods pledged, following the House of Lords decision of *Thomlinson (Hauliers) Ltd v Hepburn*<sup>74</sup>. The other two cases, while occurring in the context of sale of goods, did not raise any challenge to doctrinal issues.<sup>75</sup>

Singapore courts have not had the chance to consider whether a broader test for insurance interest should be applicable instead of sticking to the traditional legal interest test in the UK. This particular point shows the difficulty in sorting out Singapore's common law position in the area of insurance law. Neither *Lucena v Craufurd*<sup>76</sup> nor *Macaura v Northern Assurance Co Ltd*,<sup>77</sup> which reaffirmed the stringent legal interest test, were cited at all in the 87 reported insurance judgments. However, since *Macaura* was decided in 1925, this rule has arguably become part of Singapore law due to s 5 of the former Civil Law Act. *Feasey v Sun Life Assurance Co of Canada*,<sup>78</sup> a modern English decision involving an interesting discussion on insurable interest, has not yet been cited or considered, as no reported insurance judgment has touched upon insurable interest since 2004. These shows that even after the Application of English Law Act, doctrinal positions under Singapore law have remained in a state of uncertainty.<sup>79</sup>

Singapore courts also have few opportunities to deal with other doctrinal issues. Among the 87 reported insurance judgments, four dealt with an insured's duty of disclosure. Only one seemed to clarify the application of the duty of disclosure by holding that a variation of a term of a standard form was material information that had to be disclosed.<sup>80</sup> Another simply clarified the non-application of the duty to performance bond.<sup>81</sup> The other two judgments, which concerned the same disputes, handled contribution of knowledge.<sup>82</sup> However, no reported insurance judgment after 1994 has considered the duty of disclosure again. As such, Singapore courts have not had a chance to consider whether an insurer must be induced by non-disclosure to issue a

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<sup>74</sup> [1966] AC 451 (HL).

<sup>75</sup> See *Hua Seng Sawmill Co Bhd v QBE Insurance (Malaysia) Bhd* [2003] 4 SLR(R) 449 (High Court, Singapore) and *Sitra Wood Products Pte Ltd v Royal and Sun Alliance Insurance (S) Pte Ltd* [2001] 2 SLR(R) 632 (High Court, Singapore).

<sup>76</sup> (1806) 2 Bos & PNR 269 (Lord Eldon).

<sup>77</sup> [1925] AC 619 (HL).

<sup>78</sup> [2003] 2 All ER (Comm) 587 (CA).

<sup>79</sup> See Lee (n 13) for a discussion of insurable interest in Singapore before the revision of Insurance Act in 2002.

<sup>80</sup> *Tat Hong Plant Leasing Pte Ltd v Asia Insurance Co Ltd* [1993] 1 SLR(R) 728 (Court of Appeal, Singapore).

<sup>81</sup> *American Home Assurance Co v Hong Lam Marine Pte Ltd* [1999] 2 SLR(R) 992 (Court of Appeal, Singapore).

<sup>82</sup> *Globe Trawlers Pte Ltd v National Employers' Mutual General Insurance Association Ltd* [1989] 1 SLR(R) 38 (High Court, Singapore); *National Employers' General Insurance Association Ltd v Global Trawlers Pte Ltd* [1991] 1 SLR(R) 550 (Court of Appeal, Singapore).

policy before avoiding a policy, a rule laid down by the House of Lords in 1995,<sup>83</sup> nor have they had a chance to consider remedies other than the avoidance of a policy for a breach of duty of disclosure.<sup>84</sup>

In addition, apart from clarifying that insurers bear the onus of proof for a fraudulent claim,<sup>85</sup> Singapore courts have not clearly expressed opinions on the relationship between common law remedy (forfeiture of a claim) and a breach of duty of utmost good faith (avoidance of a policy).<sup>86</sup> For warranty issues, Singapore courts have made it clear that these terms should be interpreted strictly.<sup>87</sup> However, apart from introducing the category of terms delimiting risk, no clear effort has been made to define the scope of what exactly constitutes a ‘warranty’ under the Marine Insurance Act or the effect of a basis of contract clause.

As seen previously, Singapore has promoted discussion on two main fronts, including subrogation and double insurance. However, subrogation and double insurance issues arise mostly after an insurer makes a payment and thus do not give Singapore courts much chance to review other doctrinal issues.

Moreover, the lack of doctrinal discussion is also accompanied by the lack of consideration of insurance statutes. The main legislation related to insurance contract law must be the Marine Insurance Act. However, only 18 of the 87 reported insurance judgments actually cited the Marine Insurance Act. The UK Marine Insurance Act 1906 has notably been cited more often (ten times) than the local version (eight times). Even after the Application of English Act, Singapore judges referred to the UK Marine Insurance Act 1906 five times (out of 13 judgments, the latest in 2006). Although the UK Act and the local version are literally identical, it is interesting to note that according to the SLR’s annotations, Singapore judges have not yet

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<sup>83</sup> *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1995] 1 AC 501 (HL). This case was not cited at all in the 87 reported insurance judgments in Singapore.

<sup>84</sup> *Banque Financiere de la Cite SA v Westgate Insurance Co Ltd* [1991] 2 AC 249 (HL). Because this decision was issued in 1991, it may form part of Singapore’s insurance law. However, Singapore courts have not officially expressed an opinion on the matter.

<sup>85</sup> *Sumpiles* (n 62); *Global Trawler* (n 82).

<sup>86</sup> Singapore courts recognized the co-existence of both remedies, but did not further consider the relationship between them. *Sumpiles* (n 62) [30]-[34].

<sup>87</sup> *Royal & Sun* (n 66) [39].

‘considered’<sup>88</sup> the Singaporean version of the Marine Insurance Act, while the UK version has been considered six times (including three times after 1994).

However, none of the provisions of the Marine Insurance Act that have been considered by Singapore courts in reported insurance judgments relate to major insurance doctrines. The most considered provision in the Marine Insurance Act is s 39 (implied warranty on seaworthiness) and the classification of a marine policy (voyage or time policies, which would determine the scope of the implied warranty of seaworthiness<sup>89</sup>) due to a few relevant disputes.<sup>90</sup> Otherwise, the Marine Insurance Act has been considered concerning loss and indemnity issues.<sup>91</sup> Provisions related to the proper test of insurable interest for indemnity insurance,<sup>92</sup> duty of utmost good faith and its remedy,<sup>93</sup> duty of disclosure and misrepresentation,<sup>94</sup> or the nature of warranty clauses<sup>95</sup> continue to lack substantial judicial consideration.

In terms of other statutes, the Insurance Act has been cited in two disputes, one involving a third party claim<sup>96</sup> and the other the regulatory scope of insurance business in a case concerning an illegal insurance brokerage.<sup>97</sup> Sections 57 and 62 of the Insurance Act, which deal with insurable interest of life policies, have not yet been considered by courts. Among others, the Third Party (Rights against Insurer) Act was cited only three times in the 87 reported insurance judgments.

Certain statutes have been cited more frequently on issues related to mandatory insurance. For example, the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) has been cited 10 times in cases concerning motor insurance and third party cover. The Work Injury Compensation Act (Cap 354, including the former Workmen’s Compensation Act) has been

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<sup>88</sup> A statute is considered when ‘a legislative provision has been interpreted and applied (or not applied), substantively considered or otherwise dealt with in a substantive manner’.

<sup>89</sup> Marine Insurance Act s 25.

<sup>90</sup> *Kin Yuen Co Pte Ltd v Lombard Insurance Co Ltd* [1994] 1 SLR(R) 964 (High Court, Singapore) and *Lombard Insurance Co Ltd v Kin Yuen Co Pte Ltd* [1995] 1 SLR(R) 219 (Court of Appeal, Singapore); *Marina Offshore Pte Ltd v China Insurance Co (Singapore) Pte Ltd* [2006] 4 SLR(R) 689 (Court of Appeal, Singapore); and *Marina Offshore Pte Ltd v China Insurance Co (Singapore) Pte Ltd* [2006] 1 SLR(R) 800 (High Court, Singapore).

<sup>91</sup> Marine Insurance Act s 55, 58, 63, 78, r7 of First Schedule.

<sup>92</sup> Marine Insurance Act s 5, cited only once.

<sup>93</sup> Marine Insurance Act s 17.

<sup>94</sup> Marine Insurance Act s 18, 19 and 20. S 18 (non-disclosure) was cited only once.

<sup>95</sup> Marine Insurance Act s 33, which has been referred to four times but not yet considered.

<sup>96</sup> Insurance Act s 61 and 63; *Vaswani Lalchand Challaram v Vaswani Roshni Anikumar* [2005] 3 SLR(R) 625 (High Court, Singapore), [2006] 2 SLR(R) 257 (Court of Appeal, Singapore).

<sup>97</sup> *International Testing Co Pte Ltd v Public Prosecutor* [1998] 2 SLR(R) 1026 (High Court, Singapore).

cited eight times for workmen compensation policies. These statutes are cited for specific situations (i.e., mandatory insurance and third party cover) but do not affect the main doctrines in insurance contract law.

#### *4. Summary*

In sum, this article finds that Singapore courts have few opportunities to move insurance contract law forward due to a lack of insurance disputes, evidenced by the few reported insurance judgments and lack of doctrinal consideration. Whether this causes a serious problem for Singapore law is a question that we will discuss in the next section.

#### *C. Directions for Future Reforms*

History may offer a guide on how Singapore will or should evolve in the future. There are pros and cons to insurance law codification that this article cannot discuss fully.<sup>98</sup> However, despite the lack of insurance disputes and reported insurance judgments, we must ask whether law reform is necessary as English law, the original and primary source of Singapore's insurance law, has undergone some changes. One question must be answered before the discussion continues: is there a real problem in Singapore?

One may argue that the lack of disputes means that insurance contract law is detached from market practice so that it has to be upgraded, not only to make the law meaningful for meeting the globalized insurance market and growing competition in the twenty-first century,<sup>99</sup> but also to ensure the law does not become obsolete. If we take this view, Singapore should revise its insurance contract law.

In contrast, the lack of disputes may indicate that the rules of the Marine Insurance Act, however problematic, do not cause a problem that demands immediate law reform. It may also indicate that the Singapore insurance market is working well and that the insurers are effective in resolving customer complaints. In addition, a problem identified by legal scholars might not be necessarily be perceived as a problem by ordinary consumers. For example, a study in New Zealand shows that 'the aspect of unfairness in warranties and temporal exclusions most offensive to those responsible for s 11 of the Insurance Law Reform Act 1977 does not loom

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<sup>98</sup> See, generally, Croly (n 37).

<sup>99</sup> Anthony A Tarr and Julie-Anne Tarr, 'Some Critical Legal Issues Affecting Insurance Transactions Globally' (2001) JBL 661, 664.



large in the minds of consumers.’<sup>100</sup> If the insurance market can operate on a different level, there is no particular need for reform beyond its own sake. If we agree with this view, then we may wonder whether insurance contract law still matters.

This article argues that the law still matters. First, insurance contract law still governs many insurance contracts. Although English insurance contract law does not quite intervene directly into policy terms, many doctrines may still affect the validity of a policy or the effect of a term. Second, there are still cases every now and then that raise doctrinal issues. One never knows when an old doctrine may strike again.<sup>101</sup> Third, insurance contract law still defines the rights and obligations of an insured and insurer. A sound insurance contract law may provide a cornerstone for consumer protection, which is one of the main narratives in financial law.<sup>102</sup> A lot of effort has been put into improving consumer protection since the global financial crisis. The UK’s retail distribution review is a good example.<sup>103</sup> However, insurance contract law can also play its part, for example, by giving insurers less of a chance to avoid payment simply by citing a breach of duty to disclose of material information that an ordinary consumer may not be familiar with.

From this perspective, a revision of insurance contract law in Singapore may be necessary, especially in light of recent developments in the UK. The case is particularly relevant for consumer insurance compared with business insurance.<sup>104</sup> The latter deals with local customers whose ability to acquire insurance coverage from foreign suppliers is limited, while the former focuses on the commercial insurance market, where global competition may be fierce.

This article argues that Singapore should be more cautious in the area of business insurance. It has to compete with not only London as the biggest commercial insurance market in the world but also Hong Kong (as its main Asia Pacific rival) and perhaps some Caribbean Islands (for notably captive insurers). How Singapore should best position itself in the global business insurance market is a rather complex question that is beyond the scope of this article.

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<sup>100</sup> Chris Nicoll, ‘Insurance Policy Reform: What Do Consumers Think?’ (2011) 17 NZBLQ 503, 516.

<sup>101</sup> See Robert Merkin, ‘Uberrimae Fidei Strikes Again’ (1976) 39 MLR 478.

<sup>102</sup> Joanna Benjamin, ‘The Narratives of Financial Law’ (2010) 30 OJLS 787, 799.

<sup>103</sup> See <<http://www.fsa.gov.uk/rdr>> accessed 23 January 2013.

<sup>104</sup> The distinction between business and consumer insurance is largely based on the approaches taken by the Law Commission of England and Wales. See Law Commission (n 35) and Law Commission, *Consumer Insurance Law: Pre-contractual Disclosure and Misrepresentation* (Law Com No 319, 2009).

However, we recognize that competitiveness of Singapore and Singapore's insurance industry is a factor for the Singapore government to ponder in the future.

The landscape for consumer insurance differs significantly in several ways. First, consumer insurance mainly serves the interests of those living in Singapore. The market is inherently local. Thus, there is less concern for promoting Singapore's insurance business in the global arena. In this case, consumer protection and creating a fair insurance market for Singaporeans should be a priority. From this viewpoint, more room should be made available for tailoring insurance contract law to local demands.

Second, although Singapore courts sometimes take a more consumer-oriented approach in construing policy terms,<sup>105</sup> Singapore judges simply have few opportunities to interpret retail policies, let alone the application of doctrinal issues. Because many rules in the Marine Insurance Act are also applicable to non-marine consumer insurance and given that the Marine Insurance Act is more advantageous to insurers, a strong argument could be made for re-drafting insurance contract law for consumers rather than applying the rules designed originally for business insurance to retail products.<sup>106</sup> Having a more balanced insurance law in the consumer market may help to clarify the rights and obligations of insureds<sup>107</sup> and to prevent unfair practice. This may attract more local or even foreign insureds to buy insurance products in Singapore, whose locals are generally said to be under-insured.<sup>108</sup>

In addition, unlike the UK's code of practice,<sup>109</sup> the Singapore General Insurance Code of Practice<sup>110</sup> (last revised in 2012) has made no effort to limit insurers in exercising their right to avoid a policy under the Marine Insurance Act. Thus, self-regulation does not seem to be a valid solution for protecting consumers from the harshness of certain rules in the Marine Insurance Act. It has been observed that English courts have attempted to redress the balance between insurers and insureds with regard to the duty of utmost good faith and duty of disclosure in a series of

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<sup>105</sup> E.g., in *Tay Eng Chuan* (n 68) (dealing with the construction of three terms, including arbitration, legal action and condition precedent clauses, which rendered compliance with policy terms (including arbitration) a condition precedent of the insurer's liability).

<sup>106</sup> Lowry and Rawlings (n 3) 1121.

<sup>107</sup> Croly (n 37) 588.

<sup>108</sup> <<http://www.btinvest.com.sg/insurance/life-insurance/most-singaporeans-not-well-insured-aia-poll/>> accessed 18 January 2013.

<sup>109</sup> Lowry and Rawlings (n 3) 1107.

<sup>110</sup> <[http://www.gia.org.sg/pdfs/code\\_of\\_practice.pdf](http://www.gia.org.sg/pdfs/code_of_practice.pdf)> accessed 23 January 2013.

decisions in the past two decades.<sup>111</sup> Since Singapore courts do not have much chance to revisit these issues, legislative intervention may be the best solution.

Apart from doctrinal issues, the empirical data may also offer guidance for improving consumer insurance law in Singapore. First, one major issue learned from past disputes is to ensure that insurers are unable to deny a claim made by an insured unreasonably. According to the FIDReC, during a four-year span from 2008/09-2011/12, a whopping 88.8 per cent of complaints concerning general insurance were about insurer liability (501 out of a total 564 complaints), while another 4 per cent (24 complaints) were about claim amounts awarded. These figures indicate that most disputes regarding general insurance are insurer liability and payments. This is also a substantial problem for life business. Out of 701 complaints concerning life policies during the same four-year span, 129 (18.4 per cent) were about life insurer liability and another 20 (3 per cent) were about claim amounts. This may be where Singapore should direct its focus when dealing with consumer insurance policies.

Second, misselling is a major problem, especially for life business. A majority of complaints filed to the FIDReC concerned inappropriate advice, misrepresentation or disclosure. According to annual reports published by the FIDReC between 2008 and 2012, a total of 701 complaints related to life business, of which 426 (60.8 per cent) were about advice, three times more than liability disputes (129 complaints, 18.4 per cent). This was less of a problem for general insurance, which had only 22 complaints about advice out of a total of 564 cases during the same span.

It is not hard to speculate why misselling is a common problem for life business. Life policies normally have a longer tenure with higher monetary stakes. In addition, life insurance products can be more complicated than most general insurance consumer products (e.g., motor or household content policies). These features offer some room for misrepresentation or inadequate advice.

If misselling is the main issue in Singapore, especially for life business, a bigger question is whether it can be addressed by an improvement in private law or whether misselling problems are better dealt with by regulations. Misselling claims, which often occur before a policy is

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<sup>111</sup> Lowry (n 43) 99.

issued, frequently involve claims of misrepresentation and negligence. However, the Marine Insurance Act currently only deals with misrepresentation claims made by insured parties and thus cannot address claims made by the insurer or intermediary.<sup>112</sup>

The law of misrepresentation has moved on since 1906 (e.g., the recognition of negligent misrepresentation<sup>113</sup>), and the Misrepresentation Act 1967 was also introduced in Singapore.<sup>114</sup> Sorting out the application between the Marine Insurance Act and the Misrepresentation Act is beyond the scope of this article, but the difficulty in using insurance contract law alone to deal with misselling and misrepresentation within the existing legal framework is apparent. Introducing the new Consumer Insurance (Disclosure and Representations) Act 2012 in Singapore may reduce the harshness of application of some rules in the Marine Insurance Act to retail customers. However, so far there is no proposal by Singapore government yet.

Even if Singapore transplants the new 2012 Act from the UK, it cannot address misselling of insurance product by insurer as the 2012 Act does not deal with misrepresentation made by insurers or insurance intermediaries. As mentioned previously, Singapore courts have shown a small amount of leeway to apply the duty of utmost good faith more in favour of insureds during the pre-contractual stage.<sup>115</sup> However, the possibility remains open. It is also arguable whether it is better left for future courts (if a proper case exists) to test the issue with more developed reasoning. Nonetheless, the lack of insurance disputes in the judicial system may deprive courts of such an opportunity.

## V. CONCLUSION

This article argues that Singapore lacks a sufficient amount of insurance disputes to form local jurisprudence in the area of insurance contract law. This justifies continued efforts to cite many English cases and introduce English insurance statutes. New developments in the UK are pushing Singapore towards a junction at which it should start to rethink its approach to insurance contract law. This article does not identify how Singapore should or will develop in the future specifically. However, the lack of momentum in driving insurance law forward in Singapore by

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<sup>112</sup> Marine Insurance Act s 20.

<sup>113</sup> *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL).

<sup>114</sup> Misrepresentation Act (Cap 390). The Singapore version is the same with UK's Misrepresentation Act 1967.

<sup>115</sup> *Tay Eng Chuan* (n 68) [30].

case law might justify further legislative reform, which may be necessary to address not only the known doctrinal issues but also the specific problems facing consumer insurance.