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Introduction

1 My brief in preparing this paper was to consider the evolution of the role of courts in resolving insurance disputes, both domestic and transnational. It was logical to start with the position as it first developed in England. In what follows, I consider in some detail the development of specialist courts in that country – the Policies of Assurance Court (or tribunal) created in 1601; the practices which Lord Mansfield as Chief Justice of the Court of King’s Bench introduced in the mid-18th century for hearing and determining insurance and other mercantile cases in his court; and the formation of the Commercial Court (UK) in 1895. This may all seem far removed, both in time and space, from where we are today. However, what emerges, I suggest, is that the essential objectives of those who championed those courts continue to influence the establishment and evolution of equivalent courts today. A recent and local example is the creation of the Singapore International Commercial Court in early 2015, which was motivated by two key ideas:

first, the recognition that the exponential and unprecedented growth of commercial activity in Asia would be accompanied by a need for institutions to resolve transnational commercial disputes swiftly, efficiently and predictably, while providing a basis for developing a freestanding body of commercial law; and second, Singapore’s drive to provide an entire suite of dispute resolution services so as to bolster her status as a hub for resolving commercial disputes.¹

Origins of Insurance Law

2 Insurance was brought to England in the 13th century by the Lombards,² a Germanic tribe who had conquered parts of Italy and who, as Italians,

¹ Hwee Hwee Teh and Justin Yeo, “The Singapore International Commercial Court in Action” (2016) 28 SAclJ 692, 693.

² Sir James Allan Park, *A System of the Law of Marine Insurance*, (6th ed 1809, Strahan) at xxxvii.

established themselves around what became known as Lombard Street, the street on which Lloyd's stood between 1691 and 1986. The earliest contracts were of marine insurance, the risk being loss of or damage to the vessel or goods carried. Citing Bensa,³ Sir William Holdsworth records:

In the first half of the fourteenth century, Florentine and Genoese merchants treated the cost of insurance as a regular part of the cost of transport. Genoa seems to have been the centre of the insurance business. Societies of insurance brokers, employed solely in this business, were known there; and that their business flourished can be seen from the fact that, on a single day in 1393, a Genoese notary made more than eighty insurance contracts.⁴

- 3 In Elizabethan England, the Privy Council was responsible for advising the Queen, including on matters of foreign trade and insurance, which, according to a petition to the Council at that time, was “not grounded upon the laws of the realm, but rather a civil and maritime cause, to be determined and decided by civilians, or else in the high court of the Admiralty”.⁵ The essential elements of policies of assurance were described in pleadings of that time as being informed by the usages and practices of merchants “using and frequenting” Lombard Street, as well as in continental Europe.⁶

Policies of Assurance Court

- 4 Sir James Park, writing from 1787, recorded that prior to the reign of Elizabeth (1533-1603) “very few insurances had been effected; or, if effected, no question had ever arisen upon them in any of the superior courts”.⁷ However, during the latter part of the 16th century, the importance of insurance law became apparent with the growth of foreign trade. For that reason, no doubt, it occupied the considerations of the Privy Council, which in 1574 asked the Lord Mayor of London (representing the businesses of the City) to collect and certify the rules applied by merchants in matters of insurance.⁸ By the end of the 16th century, the Council resolved to adopt two measures to encourage

³ Enrico Bensa, *Il Contratto di assicurazione nel Medio Evo: studi e ricerche* (1884, Tipografia marittima editrice) at 21, 47–48.

⁴ Sir William Holdsworth, *A History of English Law*, (2nd ed 1937, Methuen), vol 8 at 278.

⁵ Holdsworth, vol 8 at 283, quoting *Select Pleas of the Court of Admiralty*, (1897, Selden Society), vol 2 at 76 [spelling modernised].

⁶ *Ridolphy v Nunez* (1562) in *Select Pleas*, vol 2 at 52–53.

⁷ Park at xxxviii.

⁸ Holdsworth, vol 8 at 285.

insurance and provide for the speedy resolution of disputes. The first was to set up an office for the making and registering of insurances. The second was to create a specialist court, referred to by Park as the Court of Policies of Assurance. The preamble to the 1601 statute creating that court emphasised the advantages to be derived from the encouragement of insurance in a commercial nation in the following terms:

By means of which Policies of Assurance, it comes to pass upon the loss or perishing of any Ship, there follows not the undoing of any Man, but the loss lies rather easily upon many, than heavy upon few, and rather upon them that adventure not, than upon those who do adventure, whereby all Merchants, especially the younger sort, are allured to venture more willingly, and more freely⁹

- 5 The new court was to consist of the Judge of the Court of Admiralty, the Recorder of London (the senior circuit judge of the Old Bailey), two doctors of the civil law (familiar with Continental laws), two common lawyers and eight merchants.¹⁰ Its objectives were several. According to Francis Bacon (who sponsored the bill in the House of Commons), the court was thought more capable of dealing with contracts of insurance than the existing courts which have not the “knowledge of their terms, neither can they tell what to say upon their cases, which be secret in their science, proceeding out of their experience.”¹¹ A letter from the Privy Council to the Chief Justice of the Queen’s Bench and Judge of the Admiralty in 1601 also proposed that the specialist court would permit that merchants might “better follow their trades without encumbrance or molesting [one another] by suits at law, both to the hindrance of traffic and of her Majesty’s customs.”¹² And Holdsworth records that the court was to administer “mercantile custom without those formalities of procedure and pleading which delayed the hearing of cases in the regular courts of law”.¹³
- 6 However, the Policies of Assurance Court was not successful. One reason for its failure was, unsurprisingly, the rival jurisdiction of the courts of admiralty

⁹ *Assurances Act 1601*, 43 Eliz I, c 12 [spelling modernised].

¹⁰ Park at xxxix.

¹¹ Holdsworth, vol 5 at 150.

¹² Holdsworth, vol 8 at 285.

¹³ *Ibid* at 287.

and common law, including the Court of King's Bench, which in its supervisory capacity enforced the limits on the jurisdiction of its new competitor.¹⁴ One such limit was that the specialist court could only entertain actions on policies registered in the London Office of Assurances, thus excluding those made in other English sea port towns. The Court of King's Bench further held that the jurisdiction of the specialist court only extended to actions which were brought by an assured against an insurer (rather than vice versa)¹⁵ and which related to merchandise (it was not sufficient in relation to a life policy that the assured be a person going to sea "on merchants affairs").¹⁶ And, even then, an action in the specialist court or tribunal did not give rise to a *res judicata*, so as to bar an unsuccessful litigant from bringing a second proceeding in the Court of King's Bench.¹⁷

- 7 The outcome was that the specialist court formed in 1601 was no longer in use by the end of the 17th century. After recounting that sequence of events, Park wrote, almost a century later:

insurance cases are now decided, like all other questions of property, ... by that mode of trial most agreeable to the nature of our constitution, by a trial in a court of common law.

- 8 He was not an avid supporter of the specialist court, which did not include the decision of factual questions by a jury:

It has been much the fashion of late years to insist upon the advantages, which the trading part of the nation would derive, from the establishment of some equitable and amicable judicatory for the trial of all disputed points in matters of insurance. This is only another proof of the weakness and fallibility of the human mind ... Thus, a people who are possessed of a species of trial, the best calculated for the discovery of truth, and the advancement of justice, and which has excited the admiration of the world, are desirous of parting with such an advantage for a mode of trial, which is very unsatisfactory.¹⁸

- 9 As that court fell into disuse, insurance disputes were mainly dealt with in the common law courts and the Court of Chancery. The law reports in the century

¹⁴ *Ibid* at 288.

¹⁵ *Delbye v Proudfoot* (1693) 1 Show KB 396; 89 ER 662.

¹⁶ *Denoyr v Oyle* (1649) Sty 166; 82 ER 616.

¹⁷ *Came v Moye* (1658) 2 Sid 121; 82 ER 1290.

¹⁸ Park at xli.

or so before Lord Mansfield became Chief Justice of the Court of King's Bench in 1756 contain only 60 insurance cases, which consist mostly of loose notes from trials at *nisi prius* (usually a judge and jury).¹⁹ Yet this period saw the formation of the Lloyd's market. Under Oliver Cromwell (Lord Protector of England, Scotland and Ireland for the last five years of his life until 1658), coffee became a rare vice which escaped prohibition. Keen to attract custom to his coffee shop (opened in 1686), Mr Edward Lloyd made a concerted effort to attract a congregation of underwriters, alongside merchants, shipowners and captains.²⁰ In December 1691, his coffee shop (and Lloyd's) relocated to Lombard Street and, from 1697, he commenced publishing Lloyd's News, a paper reporting on shipping schedules and insurance.²¹

Lord Mansfield

- 10 Park credits the "venerable judge", Lord Mansfield, with "clearly developing the principles on which policies of insurance" were based.²² As Chief Justice of the King's Bench from 1756 to 1788, Mansfield was responsible for introducing practices directed to the speedy and efficient resolution of insurance disputes and for developing consistent principles of mercantile law in line with insurance and shipping practice.

Procedural reforms

- 11 Mansfield overcame numerous defects in the procedure for commercial actions, which were frequently held in the Guildhall, in the heart of the City of London.
- 12 First, under the existing practice and rules it was necessary to bring a separate action against each underwriter so that, if a claim was refused, it was usual to bring separate actions and to proceed to trial on all of the

¹⁹ *Ibid* at xlii–xliii.

²⁰ Antony Brown, *Hazard Unlimited: The Story of Lloyd's of London*, (1978, Peter Davies), vol 1 at 8; Edward Forbes Robinson, *The Early History of Coffee Houses in England*, (1893, Cambridge University Press) at 161.

²¹ Frederick Martin, *A History of Lloyd's and of Marine Insurance in Great Britain*, (1876, Macmillan) at 74–75.

²² *Ibid* at xliii, xlvii.

actions. This led to a multiplicity of trials, and insurers wishing to agitate a point of principle were put to enormous expense. In response, Mansfield introduced what became known as the “consolidation rule”, enabling parties to consent to the amalgamation of causes or issues to avoid a multiplicity of actions with the attendant unnecessary cost and delay.²³

- 13 Secondly, at common law, “the whole of the case was left ... to the Jury, without any minute statement from the bench of the principles of law on which insurances were established”.²⁴ The jury could elect whether to give a special verdict deciding the issues of fact or a general verdict in favour of one party (which would not be accompanied by any reasons of the jury and accordingly could not provide a basis for the development of binding principles). A general verdict would either be unqualified or subject to a question of law to be referred as a stated case to the Court of King’s Bench *in banc* (a sitting of all or most of the judges of the Court, rather than as constituted by a single judge. This was not equivalent to an appeal).²⁵ Lord Mansfield adopted a “different mode of proceeding” with juries, which Park describes as follows:

in his statement of the case to the jury, [Lord Mansfield] enlarged upon the rules and principles of law, as applicable to that case So that if a general verdict were given, the grounds, on which the jury proceeded, might be more easily ascertained. Besides, if any real difficulty occurred in point of law, his Lordship advised the counsel to consent to a special case [a question referred to the whole court] Thus nice and important questions are not now hastily and unadvisedly decided; but the parties have their case seriously considered and debated by the whole court²⁶

- 14 Thirdly, the formulation of stated cases had previously been left to the parties to draw up at their leisure (with little or no expeditious supervision by the judge), a practice which “introduced considerable delays; for every fact became again a subject of dispute; and frequently from the hurry of business and other [pastimes] of the counsel, the case was neglected for a considerable time, before it was ready for the inspection of the court”.²⁷

²³ Ibid at xlv.

²⁴ Ibid at xlii – xliii.

²⁵ Austin Wakeman Scott, “Trial by Jury and the Reform of Civil Procedure” (1918) 31 HarvLR 669, 684–685.

²⁶ Park at xlv.

²⁷ Ibid at xlvi.

Mansfield abandoned that custom and required that all cases reserved for the court *in banc* had to be set down for argument within the first four days of the term following the trial or else judgment was entered according to the jury's general verdict.²⁸ Also an earlier practice of affording counsel two opportunities for oral argument was not followed. In *Reynard v Chase*,²⁹ Mansfield observed that, where the court was confident about its decision, it should not "put the parties to the delay and expense of a further argument, nor leave other persons who may be interested in the determination of a point of a general nature, unnecessarily under the anxiety of suspense."³⁰

Information as to commercial usage and practice

15 Mansfield included non-legal professionals in the trial process, as special jurors to whom he delegated technical questions. In *Lewis v Rucker*,³¹ an insured claimed that had an insured cargo of sugar not been damaged by water, it would have been stored in a warehouse at the destination port until the price rose to £30/hogshead. Mansfield described the only question at trial as being "by what measure or rule the damage, (upon all the circumstances of this case,) ought to be estimated":³² in other words, should it be calculated by subtracting the value of the damaged sugar at the time of its delivery from the value of sound sugar at the same time or from its value at the later time, and after its storage. To decide this question, Mansfield assembled a "special jury", "amongst whom there were many knowing and considerable merchants".³³ He is reported to have observed that the jury "knew more of the subject ... than anybody else present; and formed their judgment from their own notions and experience, without much assistance from anything that passed."³⁴ A general verdict was entered in favour of the insurer, who had contended that the insured would be indemnified by receiving the difference between the damaged and undamaged value of the goods at the time for delivery at the destination port. There was then an application to set aside the

²⁸ *Ibid.*

²⁹ (1756) 1 Burr 2; 97 ER 155.

³⁰ (1756) 1 Burr 2 at 5–6; 97 ER 155 at 157.

³¹ (1761) 2 Burr 1167; 97 ER 769.

³² (1761) 2 Burr 1167 at 1168; 97 ER 769 at 770.

³³ *Ibid.*

³⁴ *Ibid.*

jury's verdict. In delivering the full court's reasons for rejecting that application, Mansfield is reported as having said:

The moment the jury brought in their verdict, I was satisfied that they did right, ...: and I wrote a memorandum, at Guild-Hall, in my notebook, 'that the verdict seemed to me to be right'. ..., I thought a good deal of the point, and endeavoured to get what assistance I could by conversing with some gentlemen of experience in adjustments... and the more I have thought, the more I have heard upon the subject, the more I am convinced that the jury did right to pay no regard to these circumstances.³⁵

- 16 There are other examples of Lord Mansfield having informally consulted merchants and others about practices and usages, it would seem, before delivering judgment. In *Glover v Black*,³⁶ a lender had taken a security interest in the cargo on board the "Denham" (being security for a respondentia loan). The lender arranged a voyage policy covering "the goods and merchandises loaden or to be loaden onboard" that vessel. The vessel was destroyed by fire during hostilities with the French at Fort Marlborough in the British East Indies – the same fort on the west coast of modern-day Sumatra that was the subject of the famous insurance dispute in *Carter v Boehm*.³⁷ The insurer rejected the lender's claim because he did not own the cargo and his insurable security interest in the cargo was not specifically mentioned in the policy. The jury found a verdict for the insured subject to the opinion of the court on whether the plaintiff was entitled to recover upon proving the fact of the security interest, and notwithstanding that it was not specified in the policy. The full bench held that the interest had to be specified in the policy. The report of its judgment, delivered by Lord Mansfield, includes:

His Lordship said, he had looked into the practice; and he found that bottomree [a security interest in the hull] and respondentia are a particular species of insurance in themselves, and have taken a particular denomination: and he could not find even a dictum, in any writer, foreign or domestic, 'that the respondentia-creditor may insure upon the goods as goods.' ...

... he found, by talking with intelligent persons very conversant in the knowledge and practice of insurances, 'that they always do mention respondentia interest whenever they mean to insure it.'

³⁵ (1761) 2 Burr 1167 at 1172; 97 ER 769 at 772.

³⁶ (1763) 3 Burr 1394; 97 ER 891.

³⁷ (1766) 3 Burr 1905; 97 ER 1162.

17 In *Lilly v Ewer*,³⁸ a common jury (being one not specially qualified) entered a general verdict for an insured shipowner, which the insurer applied to have set aside by the full court. The question was whether the insured was entitled to a return of part of the premium. That depended on whether a condition that required “the ship sailed with convoy from Gibraltar” was satisfied provided that the ship departed from Gibraltar with a convoy. The owner contended that it was, which accorded with what had happened. The insurer argued that the condition required a convoy for the whole voyage. During the trial at the Guildhall, Mr Gorman (an eminent merchant) gave evidence in the insured’s case that conditions requiring convoy for the whole voyage customarily said so explicitly. The insurer’s underwriting witnesses, and the broker, swore that they understood the words “with convoy” to mean convoy for the whole voyage. The full court set aside the jury’s verdict. Delivering the judgment of the court, Lord Mansfield is reported as saying that, notwithstanding Mr Gorman’s evidence, he “had heard since that people in the city are dissatisfied with the verdict and think the evidence of the plaintiff’s witnesses was founded on a mistake”. He concluded that “Certainly critical niceties ought not to be encouraged in commercial concerns; and whenever you render additional words necessary, and multiply them, you also multiply doubts and criticisms”.³⁹

The English Commercial Court

18 In 1865, Guildhall sittings were discontinued, eighty years or so after Mansfield ceased to be Chief Justice. Anthony Colman (later Justice Colman), in his work *The Practice and Procedure of the Commercial Court*, notes that as a result:

The City business houses were obliged to litigate their disputes in the common law courts. This was not an attractive forum. Judges tended to disappear on circuit. Dates for trial were uncertain and often not maintained

³⁸ (1779) 1 Doug 72; 99 ER 50.

³⁹ (1779) 1 Doug 72 at 74; 99 ER 50 at 52.

and more often than not the cases came before judges who knew little or nothing about mercantile law or commercial disputes.⁴⁰

- 19 During that same period, commercial arbitration became considerably more popular. In 1892, Justice Mathew (who was later the founding Queen's Bench judge engaged in setting up the new commercial court) reported to *The Times*:

The bulk of the disputes of the commercial world seldom, in these modern days, finds its way into the Courts. Merchants are shy of litigation. ... Two considerations are important to [them] ... 'How much is it likely at most to cost?' [and] ... 'How soon at latest will the thing be over?' ...

They prefer even the hazardous and mysterious chances of arbitration, in which some arbitrator, who knows about as much of law as he does of theology, by the application of a rough and ready moral consciousness ... decides intricate questions of law and fact with equal ease.⁴¹

- 20 A submission from the City of London to the Judicature Commission, which sat between 1869 and 1874, argued for dedicated tribunals of commerce or a system of judicial arbitration to be established to address these perceived shortcomings of the existing system. Those suggestions were rejected due to disagreement on a number of questions, including whether "the judges should be wholly commercial, or partly commercial and partly legal; whether the commercial members of the tribunal should be judges having an equal voice in the decision, or assessors or advisers only to a legal judge who would in that case be the president of the Court." The Commission concluded:

that merchants would be too apt to decide questions that might come before them (as some of the witnesses we examined have suggested they should do), according to their own views of what was just and proper in the particular case which, from the uncertainty attending their decisions, would inevitably multiply litigation.... Commercial questions, we think, ought not to be determined without law, or by men without special legal training.⁴²

- 21 No doubt at least partly in response to the City of London's renewed call for a specialised court or tribunal, a joint committee of the Bar and Law Society demanded a separate list for commercial actions in London, manned by

⁴⁰ (3rd ed 1990, Lloyd's of London Press) at 1.

⁴¹ Extracted in *Det Danske Hedeselskabet v KDM International Plc* [1994] 2 Lloyd's Rep 534 at 536 (Colman J).

⁴² Colman at 3.

judges with business experience. Although Lord Coleridge CJ balked at the (implicit) suggestion that judges were not equally fit to try all civil disputes, in 1895 (a year after his death), the Commercial Court was constituted as part of the Queen's Bench Division. The Court discouraged technical practice and pleading; had a single judge hear all interlocutory actions; encouraged settlement; and in general adapted its procedure to identifying the real issues between the parties.⁴³

- 22 However, its initial business-like practices were apparently lost by the time of the Second World War, after which Colman describes a loss of speed, informality and efficiency. The result was a decline "in popularity with the commercial community" which was exacerbated by new challenges⁴⁴, which were said to include the preference of foreign trading organisations for arbitration over decisions of an English court and the advantage of confidentiality in private dispute resolution, at least from the parties' perspective.

The Current Position

- 23 Today, the existence of specialised business and commercial courts is widespread. The subject matter jurisdiction of those courts has, in some places, been extended to include "financial market"⁴⁵ and "technology"⁴⁶ disputes.
- 24 One of the early specialised commercial courts in the United States was New York County's (Manhattan) Supreme Court, initiated in 1993.⁴⁷ The goals of that court, as described, included: "expediting cases, reducing expense, creating consistency in case management, and creating judicial expertise in business and commercial matters": all recognisable objectives of the practices and principles adopted or developed by Lord Mansfield. In the same year, in

⁴³ Colman at 5–9.

⁴⁴ Colman at 9.

⁴⁵ England and Wales, Judicial Office, *Lord Chief Justice's Report 2017*, (September 2017) at 20.

⁴⁶ Mitchell L Bach and Lee Applebaum, "A History of the Creation and Jurisdiction of Business Courts in the Last Decade" (1994) 60 *BusL* 147, 151, 220.

⁴⁷ *Ibid* 152.

Delaware, the Commission on Major Commercial Litigation Reform was established.⁴⁸ That commission led to the introduction of new procedures, including in the highly esteemed Delaware Court of Chancery, which had been established by the Delaware Constitution of 1792. In relation to those procedures as they had evolved as at 2001, the Chief Justice of the Delaware Supreme Court proudly proclaimed:

the conventional wisdom around the nation is that the expertise, stable body of judicial decisions, prompt service and modern techniques of the Court of Chancery, Supreme Court and Superior Courts are largely credited with maintaining Delaware's preeminence as the corporate domicile of choice for over 300,000 corporations We cannot be smug, or take for granted this enormous economic benefit. ... Other states are taking aggressive steps to compete with Delaware by improving their business courts ...⁴⁹

25 In California, under current procedures, parties may select a member of the State Bar to be sworn and empowered as an ad hoc judge to resolve the dispute between them.⁵⁰ That procedure in effect integrates arbitration into the normal civil court system, with its benefits including appellate review. Conversely, and for a different reason, a Practice Direction of the Dubai International Financial Centre (DIFC) Courts enables parties to “convert” court judgments into arbitration awards, which are able to be enforced (more easily) through the New York Convention.⁵¹

26 I have already mentioned the establishment in this country of the Singapore International Commercial Court. One of the first commercial courts in Australia was the commercial list established in the common law division of the Supreme Court of New South Wales. One of its most influential and business-minded judges, Andrew Rogers CJ Comm Div, writing in 1980, described its object as being to:

provide a forum for the litigation and resolution of disputes between merchants and traders who desired *and were prepared to undertake*, an early opportunity of having their disputes decided. The rules of court are structured to enable the judge in charge of the list to exercise his wide powers to ensure

⁴⁸ Ibid 218.

⁴⁹ Ibid 219–220.

⁵⁰ Constitution of California, art VI, § 21; California Code of Civil Procedure, Pt 2 § 638–645.2.

⁵¹ See Michael Hwang, “Commercial Courts and International Arbitration—Competitors or Partners?” (2015) 31 Arbitration International 193.

that the matter comes on with the greatest possible dispatch, shorn of unnecessary side issues ..., but with all matters that are in issue clearly defined.⁵²

- 27 Mention also should be made of the March 2016 initiative of the Federal Court of Australia in establishing an “Insurance List for Short Matters”. The objective of that reform is to provide “for the expeditious dealing with discrete insurance issues for the benefit of insureds and insurers”,⁵³ especially issues concerning policy interpretation and the application applicable insurance legislation. Matters are allocated to the list at the court’s own motion or upon request by a party. Hearings on those discrete issues typically last under two hours.⁵⁴
- 28 Finally, I return to the United Kingdom, which, in response to the need for shorter and more flexible trial options for business litigation, has implemented what are described as the “Flexible Trials Scheme” and the “Shorter Trials Scheme”. Under the former, parties can select and agree on procedure to suit their case, enabling them to proceed in a similar way to arbitration if thought appropriate.⁵⁵ Under the latter, interim applications are by default dealt with on the papers; disclosure and oral evidence is restricted; trials are limited to four days; and judgments are delivered within 11½ months of the issue of process. In one of the first cases under that scheme, *National Bank of Abu Dhabi PJSC v BP Oil International Ltd*,⁵⁶ over US\$68 million was at stake. Judgment was delivered in November 2016, within two weeks of the completion of the trial, and at a combined cost to the parties of around US\$350,000.⁵⁷

⁵² *TSF Engineering Pty Ltd v Hill* [1980] 2 NSWLR 105 at 303 [emphasis added].

⁵³ *Guild Insurance Ltd v Pham* [2016] FCA 1105 at [8] (Allsop CJ).

⁵⁴ Federal Court of Australia, “Insurance List for Short Matters” <http://www.fedcourt.gov.au/about/national-court-framework/insurance-list>.

⁵⁵ England and Wales, Judicial Office, *Lord Chief Justice’s Report 2016*, (November 2016) at 22.

⁵⁶ [2016] EWHC 2892 (Comm).

⁵⁷ *Ibid* at [7] (Carr J).