Centre for Maritime Law Case Commentary 3/2026

ArgoGlobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corporation Ltd[1]

Marine Insurance – Perils of the seas – Fortuity – Constructive total loss

1 Facts

The *Teras Lyza* was a jack-up rig owned by Teras Lyza Pte Ltd (TLPL) and managed by Teras Offshore Pte Ltd (TOPL) (the Teras Entities).[2] It was insured under a hull and machinery policy subscribed by five insurers: Section A provided US$56 million of cover, and Section B provided an additional US$14 million for increased value and/or excess liabilities. The Teras Entities assigned their interest to OCBC, the mortgagee, co-assured and sole loss payee. The policy incorporated the Institute Time Clauses (Hulls) 1.10.83 CL 280, was governed by English law, and by clause 6.1.1 insured against loss or damage caused by 'perils of the seas, rivers, lakes or other navigable waters.'[3]

In May 2018, while laid up at Vung Tau, the vessel was scheduled for wet-tow to Taichung for delivery to charterers. A feasibility study by TOPL's Captain Pedersen concluded the tow was feasible, subject to approvals. On 25 May 2018, ABS surveyed the vessel and issued a Certificate of Fitness to Proceed under Tow. The Teras Entities initially intended to engage Braemar Technical Services (Offshore) Pte Ltd as marine warranty surveyor (MWS), pre-approved by the insurers. However, for reasons that remained disputed, Techwise Offshore

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1 [2026] SGCA 14, [2026] 1 Lloyd's Rep 429, [2026] 1 SLR 289. Judgment of the Singapore Court of Appeal (Sundaresh Menon CJ, Steven Chong and Hri Kumar Nair JJCA) delivered by Steven Chong JCA on 19 March 2026, on appeal from *Oversea-Chinese Banking Corporation Ltd v ArgoGlobal Underwriting Asia Pacific Pte* Ltd [2025] SGHC 82, [2025] 1 Lloyd's Rep 558.

2 The Teras Entities were subsequently struck out as parties, having gone into liquidation, the liquidator declining to continue in the action: above (n 1) [22].

3 Above (n 1) [21].

Consultancy Pte Ltd was appointed instead and issued certificates and reports approving the tow.

The vessel departed under tow by the *Teras Eden* on 30 May 2018. On 5 June 2018, it developed a port list, trimmed by the stern, and capsized. It did not sink but remained inverted and afloat for approximately 76 days. Salvors, engaged on 15 June 2018, towed the capsized vessel to Batangas Bay, Philippines, where a dive inspection between 23 and 27 July 2018 produced a report dated 4 August 2018. On 25 July 2018, the owners served a Notice of Abandonment, claiming a constructive total loss (CTL), which the insurers rejected the next day. No purchaser could be found for the wreck, and the vessel was scuttled on 20 August 2018; throughout the 76 days, there was no investigation into the cause of the seawater ingress.

2 High Court

At first instance, Kwek Mean Luck J found for OCBC on Section A, holding that unexpected seawater ingress prima facie established loss by perils of the sea and that the vessel was a CTL; Section B was held void as a gaming or wagering contract, which was not challenged on appeal.[4] OCBC bore no burden of identifying the aperture through which the water entered, or what created it: once an accidental and unexpected ingress of seawater was shown, there was prima facie a loss by perils of the seas, and the insurers would have a defence based on the ordinary winds and waves only if they established that the vessel was decrepit.[5] Preferring the evidence of OCBC's naval architect, Ms Blazejczyk, he found unexpected flooding of the hull compartments and concluded that the capsize was caused by perils of the seas. On CTL, he admitted the CTL Documents as business records, cured OCBC's failure to give notice, and held that they made out a prima facie case which the insurers had failed to answer.[6]

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4 The judgment below (n 1) [104]; [152] (perils of the seas); [86] (CTL); [308] (Section B).
5 Ibid [89]– [90]; [92]; [104].
6 Ibid [55]– [59], [68]; [75].

3 Court of Appeal

3.1 Perils of the Seas

3.1.1 Proving fortuity: two conventional routes

Rule 7 of the Rules for Construction of Policy scheduled to the Marine Insurance Act 1906 (MIA 1906) provides that a 'peril of the seas' refers only to fortuitous accidents and casualties of the seas. The Court of Appeal reaffirmed that a claim requires proof of two elements: the loss resulted from a fortuity; and the peril was 'of the seas'.[7] While seawater ingress commonly establishes the second element, its fortuitous nature must be proved independently.[8]

Drawing on Bennett[9] and Arnould,[10] the court identified two methods by which an assured may establish fortuity.[11] The first is direct proof: identifying the cause of the seawater ingress, or one of several recognised maritime and fortuitous causes, and proving it and its fortuitous character on the balance of probabilities. The second is circumstantial proof through the rebuttable presumption that a seaworthy vessel later lost in wholly unexplained circumstances was lost by the perils of the sea, dispensing with the need to prove the precise cause.

The court emphasised that reasoning by elimination is not a third route to proving fortuity. Where the presumption is unavailable, eliminating competing explanations may assist a positively pleaded cause, but cannot substitute for proof of it; elimination merely 'constitutes direct proof of a peril of the seas on a balance of probabilities'.[12] Equally, the insurer bears no burden of proving its alternative explanation, and rejection of the insurer's theory neither triggers the presumption nor establishes fortuity.[13] The trial judge reversed this analysis,

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7 Above (n 1) [33], citing *Versloot Dredging BV v HDI-Gerling Industrie Versicherung AG (The DC Merwestone)* [2013] EWHC 1666 (Comm), [2013] 2 Lloyd's Rep 131, [31]; [34].
8 Howard Bennett, *Law of Marine Insurance* (2nd edn, OUP 2006) [10.26].
9 Ibid [10.26]–[10.32].
10 Jonathan Gilman and others, *Arnould: Law of Marine Insurance and Average* (21st edn, Sweet & Maxwell 2024) [20-35]; [23-11]; [23-15].
11 Above (n 1) [36].
12 Ibid [37].
13 Ibid [39], citing Arnould (n 10) [20-35]; *Rhesa Shipping Co SA v Edmunds (The Popi M)* [1985] 1 WLR 948 (HL), 951B-C.

treating his rejection of the insurers' 'decrepitude' case and preference for OCBC's expert evidence as affirmation of OCBC's primary case.[14]

The court accordingly rejected OCBC's submission that seawater ingress alone sufficed. *Canada Rice Mills*[15] was interpreted in this context: the Privy Council's statement that seawater ingress ordinarily constitutes a peril of the seas presupposed it was accidental, and that assumption still required proof. Likewise, *The DC Merwestone*[16] addressed proximate causation, not pleading requirements. Popplewell J had recognised that seawater ingress is not, in itself, a peril of the seas, since proximate cause requires identifying what caused the water to enter. Finally, *The Irene EM*[17] supported the narrower proposition that, where parties advance competing scenarios, the assured may rely on a fortuity embedded within the insurer's own account.

3.1.2 The presumption: 'wholly unexplained circumstances'

The principal issue concerned the presumption's second requirement. The court rejected as overly broad OCBC's argument that a seaworthy vessel lost following unexpected seawater ingress should automatically be presumed lost by perils of the seas. In the court's view, this would let the presumption operate whenever the assured simply failed to provide a plausible explanation. The authorities, however, require the assured to be realistically incapable of providing one.[18]

The court traced the presumption to *Green v Brown*,[19] where a vessel sailed and was never heard from again, and the jury were directed that direct evidence of the cause of loss could not reasonably be expected. As Bennett explains, the case allocates the risk of genuinely unascertainable losses to insurers.[20] The court described it as 'merely shorthand' for the

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[14] Ibid [42].

[15] *Canada Rice Mills Ltd v Union Marine and General Insurance Co Ltd* [1941] AC 55, 68–69; discussed above (n 1) [47]–[48].

[16] Above (n 7) [33]; [35]–[36]; [40]; [42]; discussed above (n 1) [49]–[50].

[17] *Venetico Marine SA v International General Insurance Co Ltd (The Irene EM)* [2013] EWHC 3644 (Comm), [2014] 1 Lloyd's Rep 349, [281]–[291]; discussed above (n 1) [51]–[52].

[18] Above (n 1) [55].

[19] (1743) 2 Str 1199; above (n 1) [56].

[20] Bennett (n 8) [10.28]. See also the Marine Insurance Act 1906, s 58.

ordinary inference where a vessel was seaworthy at the outset, but no information exists as to its subsequent loss.[21]

The court further observed that the modern authorities holding the presumption inapplicable, namely, *The Popi M*,[22] *The Marel*,[23] and *The Milasan*,[24] all shared a common feature, which was that sufficient evidence existed to explain the loss, whether through surviving crew members or clear findings as to how seawater entered the vessel.

The court's conclusion was that[25]

> the presumption, which dispenses with a need for the claimant to propound any reason at all for the loss of the vessel, should only be invoked where the vessel is lost in 'wholly unexplained circumstances'. This requires that the claimant must not be in a position to investigate or determine the cause of the loss.

The court provided two explanations. First, the presumption is unavailable where sufficient direct evidence exists from which the manner of loss may be inferred; secondly, it does not apply where the assured had the opportunity to investigate the casualty but failed to do so.[26]

The court drew a comparison with the doctrine of *res ipsa loquitur*.[27] Relying on *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd*,[28] the court held the doctrine available only where a genuine evidential difficulty exists, not as 'a means by which to overcome the shortcomings in the evidence arising only from the failure of the plaintiff to prove his case in the appropriate way'. The same rationale governs the marine insurance presumption.[29]

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21 Bennett (n 8) [10.31], adopted above (n 1) [57]–[58].

22 *The Popi M* (n 13), [1985] 2 Lloyd's Rep 1, 4; discussed above (n 1) [65].

23 *Lamb Head Shipping Co Ltd v Jennings (The Marel)* [1994] 1 Lloyd's Rep 624, 629; 632–633; discussed above (n 1) [66]; [80]; [82].

24 *Brownsville Holdings Ltd v Adamjee Insurance Co Ltd (The Milasan)* [2000] 2 Lloyd's Rep 458, [18]; discussed above (n 1) [67].

25 Above (n 1) [79].

26 Ibid.

27 Andrew Tettenborn et al, *Clerk & Lindsell on Torts* (24th edn, Sweet & Maxwell 2023) [7-208]; [7-211]; *Barkway v South Wales Transport Co Ltd* [1950] 1 All ER 392 (HL), 399 (Lord Normand).

28 *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2017] SGCA 65, [2018] 1 SLR 76, [39]; [73]–[84].

29 Above (n 1) [89].

The court also made two further observations. First, a finding of seaworthiness does not conclusively exclude loss by debility, since seaworthiness is established only on the balance of probabilities; there is accordingly no basis for preferring one improbable explanation over another.[30]

Secondly, its approach was consistent with reservations in *The Cendor Mopu,*[31] regarding the Australian High Court decision in *Skandia Insurance Co Ltd v Skoljarev*.[32] Since *Skandia* involved surviving crew and sufficient evidence to explain the casualty, the presumption ought not to have been available there.[33]

3.1.3 Seaworthiness

Although the trial judge made no express finding, the Court of Appeal held the vessel seaworthy on sailing.[34] The insurers' reliance on alleged breaches of the Operations Manual was rejected. Once Techwise had approved the wet tow considering the vessel's characteristics, the Manual, the route and the 48-hour weather forecast, the shipowners need not explore alternatives.[35] The insurers' attack on the Techwise certification also failed for evidential reasons: Braemar's representative filed an affidavit but did not testify, and no Techwise witness was called.[36]

3.1.4 No wholly unexplained loss

OCBC failed to satisfy this requirement: though the vessel remained available for inspection for 76 days, no investigator was instructed to determine the cause of the ingress. The Dive Inspection Report recorded the vessel's condition rather than investigating causation. Counsel accepted that OCBC did not know what an investigation might have revealed.[37] Nor was any expert evidence adduced that further investigation would have been futile. OCBC could not

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30 Ibid [84], citing Bennett (n 8) [10.31]; *Glowrange Ltd v CGU Insurance plc* [2001] EWHC 523 (Comm), [33].
31 *Global Process Systems Inc v Syarikat Takaful Malaysia Berhad (The Cendor Mopu)* [2011] UKSC 5, [2011] 1 Lloyd's Rep 560, [73].
32 (1979) 26 ALR 1, 17.
33 Above (n 1) [90].
34 Ibid [101].
35 Ibid [103]; [105].
36 Ibid [104].
37 Ibid [110].

rely on its mortgagee status, since ‘the mortgagee stands in the shoes of the shipowner’.[38] In any event, significant direct evidence was available, including the tug’s surviving crew, Captain Pedersen’s evidence, moderate weather conditions, and the Dive Inspection Report, which disclosed no observable structural damage to the hull.[39]

3.1.5 Direct proof

OCBC’s pleaded case relied on flooding and the effects of wind and waves. However, its own expert excluded wind and waves, leaving only flooding, the cause of which had not been pleaded.[40] Ms Blazejczyk identified three possible routes of ingress, but could not say which was more probable. OCBC’s expert likewise offered no definitive explanation. The court therefore remained in genuine doubt and declined to infer fortuity by elimination. On this ground alone, the appeal succeeded.[41]

3.2 Constructive total loss

The appeal also succeeded on the independent ground that OCBC failed to prove a CTL. Under s 60(2)(ii) of the MIA 1906 and cl 19 of the Institute Time Clauses, OCBC had to show the cost of recovery and/or repair exceeded the insured value. Although it pleaded that conclusion, it advanced no supporting facts and called no witnesses, instead relying, in closing submissions, on documents whose makers were not called.[42]

Only the SCRS Reports and the Dive Inspection Report qualified as business records under s 32(1)(b)(iv) of the Evidence Act 1893, as such documents would ordinarily follow a casualty regardless of litigation.[43] The correspondence between the owners and insurers, the NOA, cost estimates and the brokers’ replies were prepared to advance the insurance claim and were therefore inadmissible.[44] The cost estimates faced a further difficulty: as quotations resting on subjective assessments made on information supplied by the owners, they were

38 Ibid [111].
39 Ibid [112].
40 Ibid [40].
41 Ibid [115].
42 Ibid [117]–[119].
43 Ibid [130].
44 Ibid [128]–[129].

statements of opinion, admissible under s 32(1) only if, by s 32B(2), their makers could have given the opinion in direct oral evidence; no evidence identified the makers or their qualifications.[45]

The court further held that the trial judge should not have excused OCBC's failure to comply with the notice requirement in s 32(4)(b). Although the insurers possessed the documents and knew that CTL was in issue, their late reliance deprived the insurers of the opportunity to cross-examine the owners or their representatives on the documents, or to adduce evidence challenging their contents.[46] Nor did the documents establish the claim. The Offshore quotation covered only transport costs. The Triyards quotation was an indicative price for a new-build rig, with no explanation of why wholesale replacement rather than repair was necessary. The Marco Polo quotation predated the dive inspection and rested on unsupported assumptions. The survey reports addressed the vessel's condition, not repair costs. Finally, the absence of a scrap purchaser was irrelevant, as any scrap value would simply be deducted from the insured value.[47] The insurers' email of 11 July was not an admission; it was expressly qualified, and had not been pleaded as such.[48] Finally, following *The Renos*,[49] the court doubted that SCOPIC costs could be included in the CTL calculation.[50] The remaining issues were dealt with briefly and without disturbing the judge's findings.[51]

4 Comment

The presumption of loss by perils of the seas is a survival from an age of vanishing ships. Its logic, as *The Marel* explained, is that a seaworthy vessel, never seen again and with its crew never heard from, has, on the balance of probabilities, met a maritime accident: scuttlers do

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45 Ibid [131]–[132]. See Jeffrey Pinsler SC, *Evidence and the Litigation Process* (8th edn, LexisNexis 2024) [8.004]–[8.005]; [8.074].

46 Ibid [136]–[138]. Cf *Gimpex Ltd v Unity Holdings Business Ltd* [2015] SGCA 8, [2015] 2 SLR 686.

47 Ibid [140]–[142].

48 Ibid [143]–[144]; Rules of Court (2014 Rev Ed), O 18 r 8(1)(b).

49 *Sveriges Angfartygs Assurans Forening (The Swedish Club) v Connect Shipping Inc (The Renos)* [2019] UKSC 29, [2019] 2 Lloyd's Rep 78, [25]; [27].

50 Above (n 1) [145].

51 Ibid [147]–[151].

not intend to drown.[52] The rationale depends entirely on the absence of evidence, and this judgment reinforces that it must be genuine.

The reformulation by the Court of Appeal[53] adds a novel part: the presumption fails not only where evidence exists, but where the claimant could have obtained evidence and chose not to. This goes beyond *The Milasan,* where the concern was merely that the rescued crew had told their story. The focus is now on the claimant's failure to investigate. The analogy with *res ipsa loquitur* is useful, though the doctrines differ: in particular, the marine presumption applies where the facts may be unknown to both parties.

An assured whose vessel remains accessible must investigate the loss and demonstrate what enquiries were undertaken, or why further investigation would have been futile. Here, the absence of expert evidence that a causation-focused dive inspection would have been futile weighed heavily in the court's conclusion.[54]

The difficulty arises where a casualty can be investigated, but the investigation fails to establish the cause of the loss. Some casualties, such as a vessel lost in deep ocean, may be impossible to investigate; others, like a vessel afloat for 76 days, may permit extensive investigation. The judgment suggests that a claimant who conducts a reasonable investigation and still cannot identify a cause may retain the benefit of the presumption. Yet, this creates a difficulty in applying the court's reasoning: a thorough investigation may produce direct evidence that renders the loss no longer 'wholly unexplained'.

The judgment has two practical implications. First, it sharpens the distinction between salvage and causation investigations: salvors preserve the vessel and minimise the loss, but do not establish how the casualty occurred. In this case, the Dive Inspection Report addressed the vessel's condition rather than the source of the ingress. Where causation may later become contentious, owners and their P&I and hull insurers should consider appointing casualty investigators early and recording the scope of their instructions.

52 *The Marel* (n 23) 629.
53 Above (n 1) [79].
54 Ibid [110].

Secondly, the court's treatment of CTL may prove the more significant point in practice. A CTL claim must be properly pleaded and evidenced; it cannot rest on correspondence and repair quotations introduced in closing submissions. The court's distinction between documents created in the ordinary course of business, such as survey and dive reports, and those prepared specifically to support the insurance claim, including repair estimates, notices of abandonment and brokers' enquiries, provides a useful framework for the business records exception, and a warning to parties who have assumed that a casualty file is, of itself, sufficient proof.

More fundamentally, the decision reinforces a basic evidential principle: whether the issue is fortuity or CTL, the burden remains on the assured, and the insurer's inability to prove an alternative explanation does not relieve the assured of that burden. Orthodox as this is, the court's reasoning suggests it was not consistently applied at first instance.

[FO]