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“INSURANCE AND THE COURTS”

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Introduction

- 1 What follows has evolved from a paper I delivered in Singapore on the role of courts in insurance disputes, both domestic and transnational. It considers in some detail the early development of specialisation in English courts — the Court of Policies of Assurance created in 1601 and the Court of King’s Bench, particularly sitting at Guildhall, during Lord Mansfield’s tenure as Chief Justice between 1756 and 1788. 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 concerns of insurers and practitioners about the way insurance disputes are dealt with in the courts remain unchanged. More significantly, the modern responses to these concerns continue to involve the same basic elements: specialisation, informal procedure, and (to some extent) synthesis with arbitration — all directed to achieving just, speedy and efficient outcomes.

Origins of Insurance Law

- 2 Insurance was brought to England in the 13th century by the “Lombards”, northern Italians, especially from Genoa, who established themselves around what became known as Lombard Street, on which Lloyd’s would later stand between 1691 and 1986.¹ The earliest policies provided marine insurance, the risk being loss of or damage to the vessel or goods carried. Those which survive from before 1540 were written in Italian, although most underwriting occurred in English.² Such policies were governed by the law merchant, often

¹ Sir James Allan Park, *A System of the Law of Marine Insurance*, (6th ed 1809, Strahan) at xxxvii.

² Guido Rossi, “England 1523–1601: The Beginnings of Marine Insurance” in A.B. Leonard (ed), *Marine Insurance: Origins and Institutions, 1300–1850*, (2016, Palgrave Macmillan) 137.

described as “a branch of the Law of Nations”,³ but in reality bodies of local custom throughout Europe, which in England operated alongside the civil and common law.⁴ Thus, as the volume of trade with Dutch and Flemish centres increased, English policies incorporated customs from Antwerp, in particular a clause allowing insurance of merchandise without specifying its ownership.⁵ Pleadings from this period confirm that policies of assurance were being written and interpreted according to the practice of merchants “using and frequenting” Lombard Street, as well as those in continental Europe.⁶

- 3 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 more apparent with the growth of foreign trade. Courts of Admiralty, Chancery and King’s Bench all claimed jurisdiction over insurance matters.⁸ The rivalry was perhaps encouraged by the fact that English judges before the 19th century derived most of their income from fees payable at each stage of litigation.⁹ From an insurer’s perspective, a suit in Admiralty might be preferred because the lengthy process could force an insured to accept a settlement.¹⁰ Generally, however, merchants found the courts “slow, expensive, and inasmuch as they raised the spectre of countersuits, vexatious.”¹¹ Their preference was for the Mayoral court, affiliated with the merchant community, or informal arbitration *in camera* to conserve time, money and trade secrets. Indeed, arbitration could be agreed in advance by providing, for example, “yf godes will be that the said shippe shall not well

³ Richard Zouch, *The Jurisdiction of the Admiralty Asserted against Sir Edward Coke’s Articuli Admiralitatis, XXII Chapter of his Jurisdiction of Courts*, (F. Tyton and T. Dring, 1663) 79.

⁴ A.B. Leonard, “London 1426–1601: Marine Insurance and the Law Merchant” in A.B. Leonard (ed), *Marine Insurance: Origins and Institutions, 1300–1850*, (2016, Palgrave Macmillan) 151.

⁵ Rossi at 138.

⁶ *Ridolphy v Nunez* (1562) in Reginald G. Marsden (ed), *Select Pleas of the Court of Admiralty*, (1897, Selden Society), vol 2 at 52–53.

⁷ Park at xxxviii.

⁸ *Ibid* at 139.

⁹ See Daniel Klerman, “Jurisdictional Competition and the Evolution of the Common Law” (2007) 74 *University of Chicago Law Review* 1179, 1182.

¹⁰ Rossi at 140.

¹¹ Leonard at 161–2.

procede we promys to remyt yt to honist m'chaunts and not to go to the lawe".¹²

- 4 In Elizabethan England, the Privy Council was responsible for advising the Queen, including on matters of foreign trade. This state of affairs attracted its attention, and it advised reform in the 1570s and 1580s.¹³ First, it asked the Mayor of London (representing the businesses of the City) to collect and certify the rules applied by merchants in matters of insurance;¹⁴ this code of insurance probably received royal sanction, but was not conclusive evidence of practice in London. Secondly, insurance policies were to be centrally registered, which would curb fraud and promote uniformity in drafting and interpretation. Thirdly, a specialist insurance court (or rather tribunal) was established.

Policies of Assurance Court

- 5 Park described this body as the Court of Policies of Assurance. The preamble to the 1601 statute creating it emphasised the advantages of encouraging insurance 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 freely¹⁵

- 6 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.¹⁶ Its objectives were several. According to Sir 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

¹² *De Salizar v Blackman* (1555) in Marsden, vol 2 at 49–50.

¹³ *Ibid* at 140–1.

¹⁴ Sir William Holdsworth, *A History of English Law*, (2nd ed 1937, Methuen), vol 8 at 285.

¹⁵ *Assurances Act 1601*, 43 Eliz I, c 12 [spelling modernised].

¹⁶ Park at xxxix.

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.”¹⁷ 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.”¹⁸ 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”.¹⁹

- 7 However, the Policies of Assurance Court was not successful. One reason for its failure was, unsurprisingly, the rival jurisdiction of the courts of admiralty 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.²⁰ 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)²¹ 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”).²² 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.²³

¹⁷ Holdsworth, vol 5 at 150.

¹⁸ Holdsworth, vol 8 at 285.

¹⁹ *Ibid* at 287.

²⁰ *Ibid* at 288.

²¹ *Delbye v Proudfoot* (1693) 1 Show KB 396; 89 ER 662.

²² *Denoyr v Oyle* (1649) Sty 166; 82 ER 616.

²³ *Came v Moye* (1658) 2 Sid 121; 82 ER 1290.

- 8 The outcome was that the specialist court formed in 1601 was no longer in use by 1692.²⁴ 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.

- 9 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.²⁵

- 10 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 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).²⁶ 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.²⁷ In December 1691, his coffee shop (and Lloyd's) relocated to

²⁴ Leonard at 171–2.

²⁵ Park at xli.

²⁶ *Ibid* at xlii–xliii.

²⁷ 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.

Lombard Street and, from 1697, he commenced publishing Lloyd's News, a paper reporting on shipping schedules and insurance.²⁸

Lord Mansfield

11 Park credits the “venerable judge”, Lord Mansfield, with “clearly developing the principles on which policies of insurance” were based.²⁹ 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

12 Mansfield overcame numerous defects in the procedures for commercial actions, which were frequently held in the court at Guildhall, in the heart of the City and long-associated with the Mayor of London.

13 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 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.³⁰

14 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”.³¹ 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

²⁸ Frederick Martin, *A History of Lloyd's and of Marine Insurance in Great Britain*, (1876, Macmillan) at 74–75.

²⁹ *Ibid* at xliii, xlvi.

³⁰ *Ibid* at xlv.

³¹ *Ibid* at xlii – xliii.

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).³² Lord Mansfield sitting at *nisi prius* 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 court³³

- 15 Thirdly, the formulation of stated cases (for consideration by the Court sitting *in banc*) 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”.³⁴ 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.³⁵

Information as to commercial usage and practice

- 16 Before Mansfield's tenure, expert merchants were occasionally involved in the trial process. The Privy Council, exercising jurisdiction over alien traders protected by foreign ambassadors, would refer matters to arbitration by the

³² Austin Wakeman Scott, “Trial by Jury and the Reform of Civil Procedure” (1918) 31 HarvLR 669, 684–685.

³³ Park at xlv.

³⁴ *Ibid* at xlvi.

³⁵ *Ibid*.

Lord Mayor and aldermen, or their appointees.³⁶ And Matthew Hale asserted that, wherever a “question touching the custom of merchants” arose in a common law court, “merchants are usually jurors at the request of either party”. That proposition would be made good by Mansfield in cases like *Lewis v Rucker*,³⁷ in which 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”.³⁸ should the value of the damaged sugar be subtracted from the value of sound sugar at the time and place of delivery or from the value after storage? To decide this question, Mansfield assembled a “special jury”, “amongst whom there were many knowing and considerable merchants”.³⁹ 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.”⁴⁰ 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 the court sitting *in banc*) to set aside or stay the jury’s verdict. In delivering the 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.⁴¹

- 17 There are other examples of Lord Mansfield having informally consulted merchants and others about practices and usages, it would seem, before

³⁶ Leonard at 165.

³⁷ (1761) 2 Burr 1167; 97 ER 769.

³⁸ (1761) 2 Burr 1167 at 1168; 97 ER 769 at 770.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ (1761) 2 Burr 1167 at 1172; 97 ER 769 at 772.

delivering judgment. In *Glover v Black*,⁴² a lender had taken a security interest in the cargo on board the “Denham” (by way of *respondentia* loan, which was secured over the cargo and only repayable if the cargo survived particular risks). 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*.⁴³ 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.’

- 18 In *Lilly v Ewer*,⁴⁴ 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

⁴² (1763) 3 Burr 1394; 97 ER 891.

⁴³ (1766) 3 Burr 1905; 97 ER 1162.

⁴⁴ (1779) 1 Doug 72; 99 ER 50.

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. Sitting in the court *in banc* to which the record of proceedings at *nisi prius* had come, 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".⁴⁵

The English Commercial Court

- 19 The efficiency with which insurance litigation was disposed of in English courts after Mansfield was more cyclical than linear. In 1865, Guildhall sittings were discontinued, eighty years or so after his Lordship 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 and more often than not the cases came before judges who knew little or nothing about mercantile law or commercial disputes.⁴⁶

- 20 During that same period, commercial arbitration became considerably more popular. In 1892, Justice Mathew wrote in *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

⁴⁵ (1779) 1 Doug 72 at 74; 99 ER 50 at 52.

⁴⁶ (3rd ed 1990, Lloyd's of London Press) at 1.

theology, by the application of a rough and ready moral consciousness ... decides intricate questions of law and fact with equal ease.⁴⁷

21 A submission from the City of London to the Judicature Commission, which sat between 1869 and 1874, argued for dedicated tribunals of commerce, operated partly or wholly by merchants. Rejecting this proposal, 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.⁴⁸

22 Nevertheless, shortly thereafter, a joint committee of the Bar and Law Society demanded a separate list for commercial actions in London, manned by 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. Its members included Justice Mathew. It 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.⁴⁹

23 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 challenges⁵⁰, 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.

⁴⁷ Extracted in *Det Danske Hedeselskabet v KDM International Plc* [1994] 2 Lloyd's Rep 534 at 536 (Colman J).

⁴⁸ Colman at 3.

⁴⁹ *Ibid* at 5–9.

⁵⁰ *Ibid* at 9.

The Current Position

- 24 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”⁵¹ and “technology”⁵² disputes. In the United Kingdom, the need for shorter and more flexible trial options for business litigation has led to 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.⁵³ 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*,⁵⁴ 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\$350,000.⁵⁵ An appeal from that judgment was, however, allowed at the conclusion of the hearing, with reasons given in January of this year.⁵⁶
- 25 Across the Atlantic, a specialised commercial division was initiated in New York County’s (Manhattan) Supreme Court in 1993.⁵⁷ The goals of that division, 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. Other American courts have sought to integrate benefits from arbitration. 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.⁵⁸ That

⁵¹ England and Wales, Judicial Office, *Lord Chief Justice’s Report 2017*, (September 2017) at 20.

⁵² 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.

⁵³ England and Wales, Judicial Office, *Lord Chief Justice’s Report 2016*, (November 2016) at 22.

⁵⁴ [2016] EWHC 2892 (Comm).

⁵⁵ *Ibid* at [7] (Carr J).

⁵⁶ *First Abu Dhabi Bank PJSC (formerly National Bank of Abu Dhabi PJSC) v BP Oil International Limited* [2018] EWCA Civ 14 (Gloster LJ, Patten and Westbourne LJJ agreeing).

⁵⁷ Bach and Applebaum at 152.

⁵⁸ Constitution of California, art VI, § 21; California Code of Civil Procedure, Pt 2 § 638–645.2.

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.⁵⁹

26 In Australia, the Federal Court and Victorian Supreme Court have recently instituted specialised insurance lists. The Federal Court’s “Insurance List for Short Matters” is directed to “the expeditious dealing with discrete insurance issues for the benefit of insureds and insurers”,⁶⁰ especially separate questions of policy or statutory interpretation. 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.⁶¹ In Victoria, I understand, the judge assigned to the Insurance List (currently Hargrave J) will manage and usually hear and determine each proceeding in the list.⁶²

27 As for the Supreme Court of this State, we have the informal, but disciplined, Commercial List, initially established within the common law division. One of its most influential 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 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.⁶³

28 Two things are fairly apparent from this brief history. The first is that those involved in insurance litigation continue to require that their disputes be dealt

⁵⁹ See Michael Hwang, “Commercial Courts and International Arbitration—Competitors or Partners?” (2015) 31 *Arbitration International* 193.

⁶⁰ *Guild Insurance Ltd v Pham* [2016] FCA 1105 at [8] (Allsop CJ).

⁶¹ Federal Court of Australia, “Insurance List for Short Matters”, <http://www.fedcourt.gov.au/about/national-court-framework/insurance-list>.

⁶² Supreme Court of Victoria Commercial Court, Practice Note SC CC 1, 6.1.5

⁶³ *TSF Engineering Pty Ltd v Hill* [1980] 2 NSWLR 105 at 303 [emphasis added].

with swiftly, efficiently and predictably. The second is that the success or otherwise of the courts in responding to that need depends in large part on the quality of the judges and practitioners in the courts to which those disputes are referred.