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Duty of Fair Presentation after the Enactment of the Insurance Act 2015: The Case of Korea and China

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Abstract

Purpose – The purpose of this paper is to analyze the reformed duty of fair presentation provisions and related caselaw of the Insurance Act 2015 to gain a clearer understanding of the differences between the Act and the preceding legislation.

Design/methodology – The authors analyzed caselaw from South Korea and China that involved breaches of the duty of disclosure. Cases highlighting differences between the duties of disclosure and fair presentation were selected.

Findings – Changes in the practice of marine insurance laws are expected from the application of the reformed duty of presentation provisions. In particular, the rights of the insured are expected to increase, resulting in the fairer conduct of insurance contracts. Due to the fact that the Insurance Act 2015 has only recently taken effect, the provisions of existing caselaw have not yet been applied. This has limited the authors' scope of analysis.

Originality/value – This paper describes the implications of the duty of fair presentation by analyzing caselaw from South Korea and China that involves the duty of disclosure. To the best of the authors' knowledge, this is the first paper that investigates the reformed duty of fair presentation provisions of the Insurance Act 2015 in the context of the legislation's implications for trade practices.

Keywords: Duty of Disclosure, Duty of Fair Presentation, Insurance Act 2015, Marine Cargo Insurance, Marine Insurance Act 1906
JEL Classifications: G22, K33, R41

1. Introduction

Significant changes are expected in marine insurance laws and customs procedures following the enactment of the Insurance Act 2015 (Act 2015), which reforms the Marine Insurance Act 1906 (MIA) that had been in effect for over 100 years. It introduces major changes not only to the practice of marine insurance laws, but also to insurance business practices that are governed by the laws and customs of the UK (Jaffe, 2013). Act 2015 came into effect on August 12, 2016, followed by the Enterprise Act 2016 on May 4, 2017. The enactment of such revisory acts is an unusual occurrence in the UK's legal system, which emphasizes tradition and customs (Rix, 2017). If the previous insurance laws could be perceived as favorable to the insurer, the revised legislation appears more favorable to the insured (Law Commissions, 2014). Act 2015 has reformed the laws on warranties, breaches

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of the duty of good faith, and the duty of fair presentation. In particular, the duty of fair presentation reforms the previous duty of disclosure, which involved the insurer's and insured's understanding of facts. The insured must now disclose matters they recognize or ought to recognize; however, they are no longer required to disclose matters of which the insurer is already aware. Such a reform to insurance law also affects the practice of marine insurance laws in South Korea, which effectively recognizes the laws and customs of the UK as its governing provisions (Han Chang-Hi, 2018). In addition, changes in the UK's maritime laws may directly and indirectly affect the maritime and insurance laws of countries with highly-developed maritime transport systems (Han Nak-Hyun and Jung Jun-Sik, 2015). Therefore, this study surveys reforms relating to the duty of fair presentation in insurance laws, and examines the differences following these changes by analyzing relevant caselaw from the Supreme Court of South Korea and Chinese maritime courts. This study may help trade practitioners avoid unnecessary losses and disputes in the future.

2. The Duty of Fair Presentation: General Considerations

2.1. The Law of the Duty of Disclosure

Previously, Sections 18 to 20 of the MIA stipulated that the insured had the duty to disclose all relevant matters concerning risks to the insurer prior to the conclusion of the insurance contract (Jeon Hae-Dong and Gun-Hoon Shin, 2016). These sections stated that the insured had to disclose every material circumstance that they knew of to the insurer (Nam Woong-Hyun, 2008). The insurer retained the right to avoid the contract if the insured failed to disclose the matters or misrepresented them.

The UK's Law Commission determined that the duty of disclosure under the MIA to disclose every material circumstance was too broad and vague in scope to be properly fulfilled by the insured (Law Commission, 2014). In particular, it was difficult to ascertain whether the duty to disclose had been fulfilled in its entirety in cases where information was held by multiple insured persons. In addition, the amount of information to be disclosed had increased significantly in modern times, necessitating the reform of the outdated marine insurance laws (Law Commission, 2014). Furthermore, because of the absence of a defined standard for the information that was to be disclosed, cases existed in which a vast amount of information was disclosed, yet the material information remained undisclosed (Law Commission, 2014). There were also cases in which the insurer had received insufficient information, and thereby withheld the insurance premium on the grounds of breaches of the duty of disclosure.

An insurance contract may be cancelled if a breach of the duty of disclosure is recognized. The Law Commission determined that such cancellations were too strict and gave the insurer too much protection (Law Commission, 2014). Yet such cancellation did not recognize differences in the seriousness of the breach or consider whether the breach was fraudulent or unintentional. As the MIA stipulated cancellation for cases involving a breach of the duty of disclosure without exception, its reform was therefore necessary (Rix, 2017).

2.2. Provisions of the Duty of Fair Presentation

Act 2015 replaced the MIA's duty of disclosure with the duty of fair presentation, though it applies only to non-consumer insurance contracts.[1] This change was the Law Commission's

[1] This provision corresponds to Section 3 of Act 2015.

attempt to resolve the issues that stemmed from the merging of consumer and non-consumer insurance contracts (Law Commission, 2009). The Consumer Insurance (Disclosure and Representations) Act 2012 defined "consumer insurance" as insurance wholly or largely irrelevant to sales, trade, or occupation.[2] The duty of fair presentation, in consideration of modern insurance practices, places the onus to question potential insured customers on the insurer, while also recognizing differences in the seriousness of customers' breaches of the duty of fair presentation (Eggers, 2017). The following is an analysis of the provisions of the duty of fair presentation.

2.2.1. Repeal of the Insurance Broker's Duty of Disclosure

Section 19 of the MIA stipulated that the duty of disclosure lay with insurance brokers and agents. The insurer was able to cancel the insurance contract due to the broker's and agent's breach of the duty of disclosure (Schoenbaum, 1998). Act 2015 repealed this duty[3] and instead stipulates that the insured has a duty to disclose information of which the insurer's agent is aware.[4] While the scope of the term "insurer's agent" may include insurance brokers and agents, it is reasonable to assume that the duty of disclosure of insurance brokers and agents that previously existed has been repealed (Kendall and Wright, 2017).

2.2.2. Every Material Circumstance

Act 2015 stipulates that "a circumstance or representation is material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms".[5] Such matters are not specified but explained through examples.[6] A "material circumstance" includes any communication made to, or information received by, the insured.[7] With respect to such matters, the insured must "disclose every material circumstance which the insured knows or ought to know" in a manner that is reasonably clear and accessible to a prudent insurer.[8] These provisions are deemed to have replaced Sections 18 and 20 of the MIA.

Information relating to such matters must be provided accurately. The requirement of Act 2015 is that "every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief, is made in good faith".[9] It further states that "a material representation is substantially correct if a prudent insurer would not consider the difference between what is represented and what is actually correct to be material".[10]

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[2] This provision corresponds to Section 1 of the Consumer Insurance (Disclosure and Representations) Act 2012.

[3] This provision corresponds to Section 21 of Act 2015.

[4] According to the phrase in Section 4(8) of Act 2015, which states that "an individual is responsible for the insured's insurance if the individual participates on behalf of the insured in the process of procuring the insured's insurance (whether the individual does so as the insured's employee or agent, as an employee of the insured's agent or in any other capacity)."

[5] This provision corresponds to Section 7(3) of Act 2015.

[6] Corresponding to Section 7(4) of Act 2015, which states: "Examples of things which may be material circumstances are (a) special or unusual facts relating to the risk, (b) any particular concerns which led the insured to seek insurance cover for the risk, (c) anything which those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question."

[7] This provision corresponds to Section 7(2) of Act 2015.

[8] This provision corresponds to Section 3(4) of Act 2015.

[9] This provision corresponds to Section 3(3) of Act 2015.

[10] This provision corresponds to Section 7(5) of Act 2015.

2.2.3. Duration and Process of the Duty of Fair Presentation

The insured must perform their duty of fair presentation until the insurance contract has been concluded.[11] These provisions are deemed to have replaced Section 18 of the MIA. While some marine insurance contracts take the form of voyage insurance contracts, most cargo insurance contracts are subsumed within comprehensive provisional insurance policies. In such cases, the duty of fair presentation is recognized for individual confirmations (Dunt, 2016). Act 2015 stipulates that there is no requirement for such processes to be conducted by a single document or verbally.[12] It also stipulates that they may be withdrawn or corrected prior to entering into the contract.[13] These provisions appear to allow incorrect disclosures to be amended prior to the insurance contract being concluded.

Act 2015 stipulates that the insured must disclose every material circumstance that the insured knows or ought to know in a manner that is reasonably clear and accessible to a prudent insurer.[14] Any disclosure that does not satisfy this requirement constitutes a breach of the duty of fair presentation. As the Law Commission was concerned with instances of ineffective practice, whereby the insured would provide an excessive amount of information to the insurer (Law Commission, 2014), the insurer thus seeks a summary of the relevant information. Accordingly, the insured must provide information in a manner that allows the insurer to determine its relevance effectively.

2.2.4. Further Inquiries

The duty of fair presentation requires the insured to disclose all relevant matters of which they are aware. Furthermore, it requires the insured to provide sufficient information to allow a prudent insurer to confirm relevant matters.[15] These provisions in Act 2015 create a shared duty for both the insured and insurer. This differs from the MIA, which imposed a unilateral duty on the insured.

Even if the insured does not disclose all relevant matters, they are not in breach of the duty of fair presentation so long as the disclosure was sufficient to allow a prudent insurer to make further inquiries. Relevant matters that must be investigated by the insurer are those that the insured did not disclose. The insured would be in breach of the duty of fair presentation if the insured failed to respond properly to the insurer's inquiry. In contrast, the insured would be deemed to have given sufficient information if the insured responded properly to the insurer's inquiries, and the insurer entered into the insurance contract (Kendall and Wright, 2017).

2.2.5. Exemptions from Disclosure

Section 3(5) of Act 2015 replaces the exemption from the duty of disclosure stipulated in Section 18 of the MIA.[16] However, the exemption provided by the MIA, namely, matters that

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[11] This provision corresponds to Section 3(1) of Act 2015.

[12] According to Section 7(1) of Act 2015, "a fair presentation need not be contained in only one document or oral presentation."

[13] According to Section 7(6) of Act 2015, "a representation may be withdrawn or corrected before entering into the contract of insurance."

[14] This provision corresponds to Section 3(3)(b) of Act 2015.

[15] Corresponding to Section 3(4) of Act 2015, which states: "The disclosure required is as follows, except as provided in subsection (5)—(a) disclosure of every material circumstance which the insured knows or ought to know, or (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further inquiries for the purpose of revealing those material circumstances."

[16] This provision corresponds to Section 3(5) of Act 2015.

do not require disclosure due to a warranty in the insurance contract, was removed. The scope of the insurer's knowledge was also widened. A matter that diminishes risk is recognized even if such was omitted from the insured's disclosure. Additionally, a matter that the insurer knows or ought to know can also be omitted. Further, a matter that the insurer is presumed to know can also be exempted from disclosure (McGee, 2006). Finally, a matter regarding which the insurer waives information is exempted from the duty of fair presentation.

2.3. Knowledge of the Insurer and Insured

Act 2015 differentiates between matters the insured is required to disclose as part of the duty of fair presentation and matters the insurer is already aware of, which can be omitted. These were stipulated in Sections 18 and 19 of the MIA, but the newly enacted Act 2015 stipulates them in Sections 4 and 5 (Kendall and Wright, 2017). These sections redefine the scope of the knowledge of the insured and impose a stricter standard on them (Eggers, 2017).[17] The duty of fair presentation's requirement for the insured to disclose matters that they are and should be aware of has the effect of removing their personal liability and limiting the liability of their associates (Rix, 2017). If the insured is an organization rather than an individual, the scope of knowledge becomes wider, as each member of the organization may be aware of different relevant matters (Birds, 2016). Whether the insured is an individual or a corporation, the scope of the duty of fair presentation is determined by what they know and should know. As such, it imposes a stricter duty than the MIA (Eggers, 2017).

2.4. Remedies for Breaches of the Duty of Fair Presentation

In the MIA, the insurer's remedy in the event of a breach of the duty of disclosure was to cancel the insurance contract. In Act 2015, remedies for a breach of the duty of fair presentation are stipulated in Section 8 and Schedule 1 and depend on the seriousness of the breach.[18] A breach that allows the insurer to claim remedies against the insured is termed a "qualifying breach." If such breach was brought about intentionally or recklessly, the insurer may avoid the contract, refuse all claims, and need not return any premiums paid.[19] If the breach falls under "other breaches," the remedies will differ depending on the circumstances. First, if in the absence of the qualifying breach, the insurer would not have entered into the contract on any terms but for the breach, the insurer may avoid the contract and refuse all claims but must return paid premiums.[20] Second, "if the insurer would have entered into the contract, but on different terms (other than the terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires".[21] Finally, "if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different) but would have charged a higher premium, the insurer may proportionately reduce the amount to be paid on a claim".[22]

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[17] According to the phrase in Section 4(6) and 4(7) of Act 2015, which states that "Whether an individual or not, an insured ought to know what should reasonably have been revealed by a reasonable search of information available to the insured (whether the search is conducted by making enquiries or by any other means)" and "In subsection (6) "information" includes information held within the insured's organization or by any other person (such as the insured's agent or a person for whom cover is provided by the contract of insurance)."

[18] This provision corresponds to Section 8 of Act 2015.

[19] This provision corresponds to Schedule 1.2. of Act 2015.

[20] This provision corresponds to Schedule 1.4. of Act 2015.

[21] This provision corresponds to Schedule 1.5. of Act 2015.

[22] This provision corresponds to Schedule 1.6(1) of Act 2015.

2.5. Application of the Insurance Act 2015 and Variations of Insurance Contracts

Act 2015's provisions relating to the duty of fair presentation apply only to insurance contracts and variations thereof entered into after August 12, 2016.[23] Therefore, in the case of domestic marine cargo insurance contracts in which the provisions of the UK's laws have been inserted, Act 2015's duty of fair presentation will apply only to those entered into after August 12, 2016, whereas the MIA's duty of disclosure will apply to those entered into before August 12, 2016.

While the application is clear with respect to newly concluded insurance contracts, an issue may emerge regarding the terms of insurance contracts upon their renewal. A renewed insurance contract becomes a new contract separate from the pre-renewal insurance contract. Therefore, if an insurance renewal is made after August 12, 2016, it is reasonable to assume that Act 2015 applies (*Stokell v. Heywood*, 1897).

3. Analysis of Caselaw Involving the Duty of Disclosure

The following is an analysis of caselaw from the Supreme Court of South Korea and Chinese maritime courts involving the duty of disclosure. The aim of the analysis is to examine possible changes in the application of the laws and the resulting legal issues stemming from the application of the duty of fair presentation. However, in the case of Chinese precedents, there is no caselaw involving trade disputes to which the MIA was applied. Therefore, the analysis will focus on caselaw that applied China's maritime and insurance laws in determining the duty of disclosure. China's maritime and insurance laws were reformed in 2015.

3.1. Analysis of Caselaw from the Supreme Court of South Korea

3.1.1. The Duty to Disclose Relevant Matters (Korean Supreme Court Decision, 2018)

The plaintiff, an exporter, signed an export contract with a buyer in Brazil for crane materials. The plaintiff had entered into a sea freight contract with the co-defendant, a freight forwarder, to transport cargo from the Port of Masan in South Korea to the Port of Vitoria in Brazil. The freight forwarder entered into a marine cargo insurance contract with the defendant, the insurance company, on behalf of the plaintiff.

When the vessel carrying the cargo arrived at the Port of Vitoria and attempted to unload, it was confirmed that the cargo had been damaged. According to the export contract, in such situations the plaintiff must supply the equipment and necessary personnel for the assembly and installation of the cargo at its own expense. The plaintiff proceeded to repair the cargo damaged by the accident and paid for it.

In a lawsuit involving a shipbuilding company as the plaintiff and a marine insurance company as the defendant, the Supreme Court of South Korea ruled on whether the UK's duty of utmost good faith is applicable at all stages of marine insurance contracts. In addition, it ruled on whether, under the UK's maritime laws, a party to an insurance contract's duty of disclosure is required to disclose only relevant matters pertaining to any addition or amendment following an addition or amendment to an existing insurance contract.

The Supreme Court of South Korea ruled that the UK's MIA's duty of utmost good faith

[23] This provision corresponds to Section 22 of Act 2015.

applied at all stages of insurance claims after the conclusion or implementation of marine insurance contracts or accidents that occurred while the policies were in effect. In particular, it ruled that the duty applied most strictly to the contracting stage (*Korean Supreme Court Decision*, 2005). Based on this duty, Section 18 of the MIA required the insured to disclose to the insurer all relevant matters known to the insured before the conclusion of the contract. Section 20 required that all the relevant matters disclosed by the insured to the insurer during the negotiation of the contract and prior to the signing of the insurance contract to be true. The term "relevant matter" refers to any matter that affects the judgment of the insurer in their calculation of the premium or their determination of whether to take on the risk.

The Supreme Court of South Korea considered that the UK's MIA's duty of utmost good faith was to be followed throughout the contract as part of the principle of fair dealing that existed even after the signing of the insurance contract. However, if the duty is recognized as a general duty that exists even during the implementation of the insurance contract, it is likely to cause an undue burden on the insured and undermine the equity of the contractual relationship. Therefore, once the contract has been entered into, it is necessary to allow for the convenience of the contracting parties. Rather than the insured having an active duty of utmost good faith following the conclusion of the contract, it is sufficient that they have a duty not to damage the other party or to impair the contractual relationship (*Manifest Shipping Co. Ltd v. Uni-Polaris Shipping Co. Ltd*, 2001). In light of this, the Supreme Court of South Korea ruled that, under the UK's maritime laws, a party to an insurance contract's duty of disclosure is required to disclose only relevant matters pertaining to any addition or amendment following an addition or amendment to an existing insurance contract. This does not suggest that the party must disclose all relevant matters as required by the duty of disclosure, as stipulated in Section 18 of the MIA.

3.1.2. Cancellation of the Insurance Contract Due to Breaches of the Duty of Disclosure (Korean Supreme Court Decision, 2005)

In 2001, the Supreme Court of South Korea ruled that the insurer could cancel a ship insurance contract subject to association-period terms following the insured's breach of the UK's duty of disclosure and duty of utmost good faith.[24]

The duty of utmost good faith required by Section 17 of the MIA is broader than the duties required by Sections 18 and 20, and applies even after the insurance contract is concluded or after an accident.[25] Therefore, the insurer can cancel the insurance contract for a breach of

[24] The vessel was purchased and repaired by the defendant and transported to the Philippines for operation. On November 9, 2000, based on the defendant's statement of the defendant and the purchase price of the vessel in this case, the plaintiff set the insurance value and the insurance amount to US $600,000, which means that in accordance with the Institute Time Clauses Hulls, 1983, an insurance contract was signed. The agreement states at the beginning that "This insurance is subject to the United Kingdom's law and practice." Upon arrival in the Philippines, the inspection of some of the ships was missing, and a temporary inspection certificate valid until January 14, 2001, was issued. The ship then departed for inspection on April 26, 2001, without obtaining the necessary permits for the test operation of the ship. The voyage took to the sea near the Port of Pio V. Corpus, Philippines, after which a fire broke out in a pipe connected to the ship's engine room. The ship was left unattended near the site of the accident and sank on May 3, 2001. The defendant then falsely stated that the purchase price of the vessel had been 180 million won. Afterward, the official's testimony revealed that the actual purchase amount was 75 million won. In addition, in the case of the temporary inspection certificate, there a fact had been falsified.

[25] Corresponding to the provision of the Marine Insurance Act 1906, which states: As section 17 of the MIA states, "A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party."

the duty of utmost good faith where the insured makes a fraudulent claim following an accident.

Relevant matters known by the insured during the process of concluding the insurance contract and matters that the insured ought to be aware of in the normal course of their business are subject to the duty of disclosure. The insured in this case did not properly disclose the actual value of the ship, including its purchase price. In addition, in making the insurance claim after the accident, the insured falsified facts about the purchase price of the ship and presented a forged ship inspection certificate. This constituted a breach of the duties of disclosure and utmost good faith. Therefore, the Supreme Court of South Korea ruled that the insurer could cancel the insurance contract on these grounds.

3.1.3. Period of the Right of Cancellation (Korean Supreme Court Decision, 1996)

The Supreme Court of South Korea ruled on the period within which the right of cancellation due to a breach of the UK's duty of disclosure must be exercised.[26] Section 18 of the MIA, which provided for the cancellation of insurance contracts for a breach of the duty of disclosure, did not impose any restrictions on when the right of cancellation must be exercised. However, this does not suggest that an insurer who is aware of the insured's breach of the duty of disclosure has an unlimited amount of time to cancel the insurance contract. Therefore, the insurer must exercise the right of cancellation within a period deemed reasonably necessary from the date on which it became aware of the breach.

It is not possible to specify a fixed amount of time after which the insurer would be deemed to have expressed the intent not to exercise the right of cancellation or to have caused damage to the insured as a result of a late cancellation. Accordingly, the court ruled that the period could not simply be defined as the one-month period prescribed by Section 651 of the Commercial Code of Korea.

In addition, the Supreme Court of South Korea considered whether, under the UK's marine-insurance laws and customs, the existence of a causal relationship between the non-disclosure of a relevant matter and the signing of the insurance contract is a necessary factor for the matter to fall within the duty of disclosure (*Korean Supreme Court Decision*, 2001).

3.2. Analysis of Caselaw from the Chinese Maritime Courts

3.2.1. Ease Faith Ltd. vs. Ping An Insurance (Group) Company of China, Ltd. Beijing branch (An Appeal for a Dispute Involving a Ship Insurance Contract)

The above case is a dispute between A, a Chinese importer, and B, a Chinese insurance

Section 18 of the MIA states, in part, "If the assured fails to [fulfill their duty of disclosure], the insured may avoid the contract." Section 20 of the MIA states, in part, "If [a material representation made by the assured or by his agent to the insurer during the negotiations for the contract, and before the contract is concluded, is] untrue the insurer may avoid the contract."

[26] The plaintiff was a charterer, and the defendant was an insurance company. Both parties signed a ship insurance contract on September 27, 1991, which included the Institute Time Clauses Hulls, 1983. These terms and conditions set out the UK's law and practice. The ship sank on December 23, 1991, due to seawater inflow while fishing at the Port of Afra, Guam, since December 8, 1991. When the ship had arrived in Guam on June 7, 1991, it was already damaged and difficult to navigate without repairs. The ship had then remained in the port, but the crew disembarked, leaving the ship empty, and the ship equipment was then stolen. These matters were subject to notification obligations as they affected the insurer's determination of the insurance value and premium in the ship insurance contract for the vessel in this case and the determination of risk taking. The trial judge concluded that the ship insurance contract in this case was lost due to the defendant's exercise of the right to cancel on October 13, 1992, due to the plaintiff's notice violation.

company. To summarize, A had purchased a vessel from a US company. The vessel was contracted to sail from Alaska, US, to the Port of Zhangjiagang in China using a tugboat (a different ship from that involved in the accident). A had contracted B on the conditions of complete warranty. An incident during the voyage caused the vessel to sink, and A made an insurance claim to B. However, B noted that A, the insured, had not disclosed that they had purchased the vessel with the intent to dismantle it. B claimed in the maritime court that A had breached their duty of disclosure.

The court ruled that A's failure to disclose to B that the vessel was a scrapped ship destined for dismantling was a breach of the duty of disclosure under Section 222(1) of the Law of the Sea of the People's Republic of China.[27] The degree of risk associated with the insured object was deemed a relevant factor in calculating the insurer's insurance premium rate and determining whether to take on the risk. A vessel purchased for the purpose of dismantling was considered to carry a significantly greater risk compared with that of a normal vessel. Therefore, the court concluded that the insurance company was not liable for the insurance claim. Following A's appeal, the Tianjin High People's Court ruled that the maritime court's decision was correct, dismissed the appeal, and upheld the decision.

3.2.2. Yongan Property Insurance and Shares Company Ningbo Branch vs. Zhoushan Haixing Ocean Fisheries Co., Ltd.

The above case ruled on whether an insurance company had an obligation to compensate for general damage incurred during transport. The insurance company claimed that the carriers had deliberately concealed a ship's year of construction. According to the information disclosed to the insurer at the time the insurance contract was entered into, the ship was constructed in 1993. However, the ship was in fact constructed in 1981, revealing that its age was over 31 years at the time of the incident. As a result, the insurer claimed that the insured had not only breached the duty of disclosure but that the ship could be forcibly destroyed by law due to its age. The company therefore claimed that it was not obliged to pay the insurance claim.

The court's judgment in this case was that it was difficult to rule that the insured had made a false representation because the insurance company had only asked the insured the ship's name, the port's opening date, and their cargo details; they did not request the year in which the ship had been built. In addition, the age at which a ship may be forcibly destroyed by law is 34 years, meaning the ship had not yet reached the threshold. The maritime court ruled that no breach of the duty of disclosure could be recognized.

In response, the insurer appealed to the court a second time on the basis that the age of the ship was in effect a product of the insured's failure to disclose information relating to the craft's seaworthiness. However, the Supreme People's Court ruled that because cargo was the object of the insurance, information about the seaworthiness of the ship was irrelevant to the question of the duty of disclosure. Therefore, in accordance with Section 6 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Insurance Law of the People's Republic of China (II), the appeal was dismissed on the basis that the insured's duty of disclosure was limited to the scope and content of the insurer's inquiries (*Supreme People's Court*, 2013).

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[27] Corresponding to Article 222(1) of the Law of the Sea of the People's Republic of China, which states: "Prior to the conclusion of the contract, the insured must disclose to the insurer truthfully of all matters affecting the insurer's calculation of the premium or their determination as to whether to take on the risk, which the insured is aware of or ought to be aware of in the normal course of their business."

3.2.3. China's Marine Insurance Law

The UK operates its Marine Insurance Act under British-American law, while South Korea and China have enacted laws under the influence of continental law, which has affected the interpretation of each case. Thus, although there is no direct correlation, most of the customs in maritime transportation in the UK are known, which inevitably affects the judgments of China and South Korea. Particularly in the case of China, the maritime system of the UK was incorporated into the "Maritime Law of the People's Republic of China," published in 1992; the "Insurance Law of the People's Republic of China," published in 1995; the "Insurance Law of the People's Republic of China," revised in 2009; and the "Insurance Law of the People's Republic of China," revised in 2015. It can be seen that the contents and principles of the Marine Insurance Act of the UK have been referenced extensively (Song Mei-Xian, 2012). Therefore, many argue that Chinese academics should refer to the reform method of British law in the reform problems faced by Chinese marine insurance law.

4. Implications of the Duty of Fair Presentation's Reform

4.1. Relevant Matters

Act 2015 stipulates that a circumstance or representation is material if it would influence the judgment of a prudent insurer in determining whether to take a risk and, if so, on what terms. It stipulates that the insured must disclose to the insurer all relevant matters that the insured recognizes or should recognize.

In a representative 2005 case, the Supreme Court of South Korea ruled that, in keeping with the provisions under the MIA, relevant matters, which the insured is aware of or ought to be aware of in the normal course of their business at the time the insurance contract is being entered into, fall within the scope of the duty of disclosure. The governing law of the above was changed from the duty of disclosure to the duty of fair presentation following the enactment of Act 2015. Therefore, the insured must disclose to the insurer matters that the insured recognizes as relevant. Such matters are explained through examples in Act 2015. The new definition of such matters can be deemed to have replaced the definition under the MIA.

In addition, the judgment issued by the Tianjin Maritime Court in China considered the information regarding the purpose of dismantling the vessel as relevant as it affected the calculation of the insurance premium prior to the signing of the contract because of the increased risk the ship posed. The court therefore found that failure to disclose such information was a breach of the duty of disclosure. This case also affirmed that the importance of the information to be disclosed by the insured is judged by how much it could cost the insurer.

However, the Ningbo Maritime Court in China ruled that the insured's provision of incorrect information regarding the ship's year of construction could not be considered false representation, because the insurer only requested information such as the ship's name, the port's opening date, and cargo details and neglected to ask about the year in which the ship was constructed. The court instead deemed that this matter was something the insurer, as an expert in the field, was able to verify and therefore ruled that there was no breach of the duty of disclosure. This case ruled that information falling outside the scope of the insurer's inquiry, but that is nevertheless provided by the insured, cannot form the basis of a breach of the duty of disclosure if that information is something that the insurer, as an expert in the relevant field, is able to verify.

Based on the provisions of Act 2015, the insured must disclose relevant matters accurately. Information must be expressed through clear language and be based on facts. While the duty

of fair presentation requires that all relevant matters are accurately disclosed, it does not require all information to be disclosed. In fact, during the enactment of Act 2015, the UK's Law Commission was cognizant of the issue of data dumping, whereby an excessive amount of irrelevant information would be provided in the process of the duty of disclosure under the MIA. Therefore, under Act 2015, only information that actually affects the insurance contract in question should be disclosed.

To prevent the practice of data dumping and allow relevant matters to be provided, Act 2015 provides an exemption whereby a lack of disclosure does not result in a breach of the duty. The difference between the MIA's and Act 2015's exemption is that the MIA removed an exemption for matters that do not need to be disclosed due to a warranty in the insurance contract. These changes appear to be related to the reform of the warranty provisions of Act 2015.

4.2. Insurer's Further Inquiries

The insured has fulfilled the duty of fair presentation if it has provided sufficient information that will allow a prudent insurer to make further inquiries to confirm relevant matters. A prudent insurer is expected to make further inquiries based on the information provided. If the insured has faithfully responded to such inquiries, the insurer is unable to cancel the insurance contract, even if a relevant matter relating to the insurance contract has not been disclosed. This is the most significant change introduced by Act 2015. It is also the reason the duty of disclosure was renamed the duty of fair presentation.

In a 2018 case involving a Korean oil tanker, the court ruled that the insured is required to disclose relevant matters to the insurer when adding or changing the existing insurance contract. If Act 2015 applies, the insured will not be in breach of the duty of disclosure as long as the insured discloses relevant matters to a sufficient extent to allow the insurer to make further inquiries. The purpose behind the Insurance Act's reform was to decrease the insured's burden and instead oblige the insurer to make further inquiries, thereby imposing a more balanced level of obligation on both the insurer and insured. This is a matter concerning which maritime insurance practitioners should have due regard.

The ruling of the second Chinese maritime court case was also based on whether the insurer had made appropriate further inquiries. In this regard, the court created three categories for the breach of the duty of disclosure: (1) The non-disclosed matter was relevant and affected the judgment of the insurer in their calculation of the premium or their determination of whether to take on the risk; (2) the non-disclosed matter was known to the insured, and the insured intentionally concealed it or was reckless in failing to disclose it; and (3) the insurer made inquiries about the non-disclosed matter.[28]

The Supreme People's Court ruled that, in accordance with Section 6 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Insurance Law of the People's Republic of China (II), the insured's duty of disclosure is limited to the scope and content of the insurer's inquiries (Supreme People's Court, 2013). It was ruled that the insurer has the burden of proof if a dispute arises regarding the scope and content of questions asked by the insurer. Current Chinese law applies this insurer-inquiry system in ascertaining the insured's duty of disclosure. In other words, the insured's duty of disclosure is limited to the scope and content of inquires made by the insurer. The insured is under no duty of disclosure other than this. China's system bears some similarity to the newly in-

[28] This provision corresponds to Article 222 of the Law of the Sea of the People's Republic of China and Article 16 of the Insurance Law of the People's Republic of China.

troduced Act 2015's provisions on further inquiries from the insurer. If a case to which Act 2015 applies is brought before a country other than China, it may be difficult to prove a breach of the duty of disclosure for the non-disclosure of a matter regarding which the insurer has not inquired.

4.3. Remedies for Breaches of the Duty

A number of cases from the Supreme Court of South Korea, including Korean Supreme Court Decision (1996), have ruled for the cancellation of the contract for breaches of the duty of disclosure. This is because the MIA did not provide any remedies for a breach of the duty of disclosure other than cancellation. On the other hand, Act 2015 provides different remedies depending on the seriousness of the breach.

If a qualifying breach was caused intentionally or recklessly, the insurer may avoid the contract, refuse all claims, and need not return any premiums paid, as had been the case under the MIA. In the case of other breaches, whereby the insurer would not have entered into the contract but for the breach, the insurer may avoid the contract but must return the premiums paid. In other words, if the breach was neither intentional nor reckless, the insured can retrieve the premiums paid notwithstanding the avoidance of the contract. This appears to provide more protection of the insured's interests than the MIA. Thus, it appears to achieve the UK's Law Commission's aim of reforming the MIA by designing Act 2015 to provide an advantage to the insured.

The insurance contract is not cancelled in the case of other breaches, whereby the insurance contract would have still been entered into; however, the insurer would simply have charged a higher premium. Instead, the insurance claim amount paid will be reduced according to the ratio of the actual premium paid divided by the higher premium. These provisions will achieve not only the aim of protecting the interests of the insured, but also that of maintaining and realizing the insurance contract for as long as possible. If a breach of the duty of fair presentation occurs in an insurance contract to which Act 2015 applies, the remedy will be dependent on the seriousness of the breach. Therefore, it is anticipated that an important point of contention will be to determine under which category the breach in question will fall.

5. Conclusion

The UK's laws and customs have strong influence on marine insurance law. It is true that the MIA, which had applied to marine insurance laws for over 100 years, was more beneficial to the insurer than the insured. In response, a new insurance Act to promote the rights of the insured was enacted in 2015 and came into effect on August 12, 2016. It introduced significant changes to marine insurance industry practices, which are governed by the laws of the UK and had been previously regulated by the MIA. In Korea, Act 2015 applies as the governing law for insurance contracts due to the terms of the UK Law and Practice on Institute Cargo Clause and Institute Time Clause-Hulls. Major provisions have been made to promote the interests of the insured. The new provisions replace the duty of disclosure with the duty of fair presentation, and amend laws relating to warranties, the principle of good faith, and fraudulent insurance claims.

Sections 3 to 7 of Act 2015 provide for laws relating to the duty of fair presentation, including stipulating the parties to such duty, the contents of relevant matters to be disclosed, the timing and method of information provision, further inquiries by the insurer, and remedies for the breach of the duty of fair presentation. In particular, and distinct from the insured's duty of disclosure, the duty to make further inquiries is imposed on the insurer.

This ensures that the disclosure process prior to the conclusion of the insurance contract can be conducted more fairly. This represents a significant change to the insurance practice that had existed under the MIA in demanding that insurers in the industry examine the new Act and prepare for it adequately. Similarly, as the change establishes new rights for the insured, it demands that insurers also understand and prepare for the new Act in order to utilize it fully.

This study analyzed the content and enactment of the duty of fair presentation in Act 2015. It also analyzed the precedents and rulings from the Supreme Court of South Korea and China's Supreme People's Court involving the duty of disclosure, as they pertain to the duty of fair presentation, to provide a perspective on the legal changes introduced by Act 2015. New legal customs and practices will emerge once precedents and caselaw relating to the Act have been introduced. These developments will serve as a turning point in the customs and practices of marine insurance laws. Such changes are expected to have a positive impact on the international insurance industry as a whole, given that insured customers have had their likelihood of enhanced protection increased. Moreover, these changes are also expected to enhance the fairness of contracts, since insurers will have to make more careful determinations before signing agreements. However, future studies will be needed in the fields of commerce and law as awards are likely to differ between countries in the event of disputes.

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