

INSURANCE UPDATE

"London Market Reinsurers need to consider carefully before seeking negative declaratory relief in the High Court"

The Court of Appeal has recently dismissed an appeal against the decision of Mr Justice Moore-Bick who set aside an order permitting London Market Reinsurers to serve out of jurisdiction upon Bermudan Reinsurers in relation to claims under an indemnity policy.

Facts

This case concerned two oil leaks in Venezuela from pipelines owned and operated by the Venezuelan National Oil Company, Petrolez des Venezuela S.A ("PDVSA"). Each leak caused substantial pollution. PDVSA incurred the cost of clean up and compensating local land owners. PDVSA was insured under a general third party liability policy in Venezuela. Venezuelan insurers obtained reinsurance with the Respondents, PDV Insurance Company ("PDVIC"). PDVIC then retroceded the risk into the London market led by the Appellants, Limit (No. 3) Ltd. There were two relevant retrocession slips, one incepting on 1 January 1997 for two years and the other incepting on 1 January 1999 for three years.

Before proceedings were started under either the insurance or the reinsurance, Limit brought a claim against PDVIC for declaration of non-liability and related relief under the retrocessions. These claims related to matters of fact and Venezuelan law which had not yet been determined, including whether there were delays in the notification of the losses; whether the losses were caused by sudden incidents; whether PDVSA could recover compensation paid to land owners; currency conversion issues; and timebar.

An order granting Limit permission to serve PDVIC out of jurisdiction was set aside by the Judgment of Moore-Bick J., on 11 November 2003. PDVIC appealed. Two issues arose on Appeal:-

1. Whether a Dispute Clause providing for English law and jurisdiction, attached to the 1997 Retrocession slip applied to both contracts as a whole, and
2. Whether the English Court or the Venezuelan Courts were the most appropriate forum.

Dispute Clause

First, the Court of Appeal upheld the decision of the trial judge that the Dispute Clause applied only to North American claims and not to the Retrocession contracts as a whole, for the following reasons:-

1. The only reference of the Dispute Clause in the slip was to the dispute clause in the USA / Canadian conditions. The positioning of the reference in the slip had the effect of confining it to a special regime for North American claims. If it had been intended to be of general application to all disputes arising under the slip, it would have been included under the general part of the "conditions" section in the slip.
2. The specific reference to the Dispute Clause in those conditions would have had no meaning if the attached clause had general application.
3. Confining the Dispute Clause to the North American claims made good commercial sense in that it produced consistency with the original insurance and reinsurance, both of which provide a special protection against claims that might emanate from USA / Canada.
4. In relation to the 1999 slip, the opening words in the slip "wording as expiring" had the effect of incorporating the terms of the 1997 slip, including the attached Disputes Clause properly construed so as to limit it to North American claims. The term in the 1999 slip "including all endorsement and addenda as expiring" could not have incorporated the 1997 Dispute Clause so as to give it a more general ambit.

Most Appropriate forum

Second, the Court of Appeal found that the Judge had not erred in concluding that Limit had failed to show that England was the appropriate forum. In summary it held:-

1. That this was not a clear case of English jurisdiction since none of the facts or possible disputes arising out of them had any close connection with England.

2. As the dispute turned largely on factual matters that had occurred in Venezuela, it would be more appropriate for those matters to be tried in Venezuela.
3. That the Judge had correctly approached his consideration of this issue by reference to the dicta of Lord Goff of Chieveley in *Spiliada Maritime Corp v Consulex Limited*¹; namely that it was for Limit to show that England was clearly the most suitable forum for trial in the interests of the parties and for the end of justice.
4. That many of the issues raised in these proceedings relate directly to the underlying contracts of insurance and reinsurance. The same issues are likely to be raised in proceedings in Venezuela between those parties. It will clearly be desirable for all the issues to be determined in one set of proceedings. The fact that many of the parties are located in Venezuela and that the underlying contracts are probably all governed by Venezuelan law is a good indication of where the centre of gravity of the litigation as a whole lies.

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The contents of this Bulletin are not intended to be a substitute for specific legal advice on individual matters. If you wish to discuss any issues raised in this bulletin, or for further information please contact:

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¹ [1987] AC 460, at 481D-E and 482 D.