

(Another) case on jurisdiction clauses!

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The English Commercial Court, in *Al Mana Lifestyle Trading LLC & Ors v United Fidelity Insurance Company PSC & Ors*, has confirmed that English courts have jurisdiction to hear claims for COVID-related business interruption losses in accordance with jurisdiction clauses within multi-risk insurance policies. The decision is a result of wording ambiguity, demonstrating the need for underwriters to draft cautiously particularly when preparing jurisdiction clauses.

Facts of case

The claimants, all forming part of the Al Mana Group, commenced proceedings in the English Courts seeking an indemnity in respect of losses amounting to \$40 million suffered as a result of the Covid-19 pandemic.

The claims were made under seventeen multi-risk insurance policies issued in the Middle East and Gulf region. Each of the policies contained the following wording:

"APPLICABLE LAW AND JURISDICTION:

In accordance with the jurisdiction, local laws and practices of the country in which the policy is issued. Otherwise England and Wales UK Jurisdiction shall be applied,

Under liability jurisdiction will be extended to worldwide excluding USA and Canada."

Whilst the claimants and defendants agreed that the clause was not a perfect example of drafting, each party argued differently regarding whether the clause permitted proceedings to be brought in the Courts of England and Wales. Insurers argued that the applicable law and jurisdiction clause should be interpreted as an exclusive jurisdiction clause, whereby English courts will only have jurisdiction if for some reason the local court does not accept jurisdiction. The claimants on the other hand, argued the opposite.

Judgment

The court held that the clause in the seventeen policies was not exclusive and that proceedings could therefore be brought either in the country where the policy was issued or in the Courts of England and Wales.

Striking a balance between the ‘wording and commercialities of the clause in the context of the wider factual matrix’, Mrs Justice Cockerill conducted a review of the language used in the clause. Consequently, she concluded the words "In accordance with" were less imperative than the words "subject to", and it was “wishful thinking” of United Fidelity Insurance Company to submit that the phrases were synonymous. Additionally, the word ‘otherwise’ was more synonymous to the words "or" or "alternatively", rather than "If notwithstanding the foregoing".

The judge considered this interpretation of the wording to make commercial sense as the policies were issued in conjunction with each other to provide comprehensive coverage for the claimants’ operations in multiple jurisdictions. Additionally, where claims arise across

multiple jurisdictions it is sensible for there to be an option for disputes to be determined in a single court. Indeed, the English system is often favoured for this purpose.

Considerations for underwriters and insurers

The decision serves as (yet another) reminder as to how courts will analyse and interpret jurisdiction clauses in insurance policies and of the importance of clear drafting.

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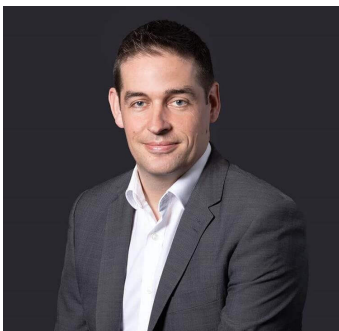
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