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It’s not cricket: Insurers change their mind about jurisdiction

29 July 2024

In this article we consider the latest of a number of decisions relating to jurisdiction clauses in insurance agreements.

Background

In July 2021, Tyson International and Partner Reinsurance entered into a Market Reform Contract (MRC). This reinsurance contract was valid and included an English law and exclusive jurisdiction clause.

However, eight days later the parties signed a further contract of reinsurance, a Market Uniform Reinsurance Agreement (MURA), which covered the same content, but this time provided for New York governing law and arbitration.

Issue

By 2023, a dispute arose in which Partner attempted to avoid the reinsurance. Tyson began a claim in the English Commercial Court while Partner Reinsurance commenced arbitration in New York. Partner applied for a stay of the English claim and Tyson applied for an anti-arbitration injunction.

In the court of first instance, the judge considered whether the MRC had been merely altered, or altogether superseded by the MURA.

The Commercial Court held that the MURA replaced the MRC, and so the New York jurisdiction and arbitration clause were both valid and binding. The judge refused the anti-arbitration injunction and granted the stay of English proceedings pursuant to Section 9 of the Arbitration Act 1996.

Tyson appealed to the Court of Appeal, which upheld the judge’s decision in the court of first instance.

Reasoning

The Court of Appeal undertook an objective assessment of what the parties had intended. The court cited several reasons for reaching its decision.

- Both parties were familiar with the terms of the MURA and knew that it was the correct document to use to record terms of a contract governed by New York law and arbitration.
- There had been no indication that the MURA was issued as merely part of an administrative process.
- The MURA had been signed and stamped on every page, indicating that its terms were accepted.
- The entire agreement clause in the MURA stated that all terms prior to this agreement were to be superseded, although this did not directly mention the MRC this would have been included.
- There had been no endorsement that the MURA was subject to the MRC.

In the words of the judge: “The parties began by playing cricket but then switched to baseball”.

What this means for insurers

This case reinforces a fundamental provision of contract law, namely that the parties to a contract can amend or replace it by agreement. In this case, the replacement of the MRC with the MURA was properly documented and was clearly enforceable.

When looking at their contractual arrangements, insurers should be careful to ensure that they understand, and are satisfied with all of its terms, and to expressly make provision where this is not the case.

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