TYSON INTERNATIONAL COMPANY LIMITED v GIC RE [2024] EWHC 236 (Comm): Anti-suit relief continued in reinsurance dispute

On Wednesday 7 February 2024, Christopher Hancock KC (sitting as Judge of the High Court) handed down judgment in *Tyson International Company Limited v GIC Re* [2024] EWHC 236 (Comm) in which he continued anti-suit relief sought by a captive insurer (the Claimant, "**TICL**") against a reinsurer ("**GIC**").

The underlying dispute between the parties concerns a large loss suffered by TICL's insured as a result of a fire at a poultry rendering plant in Alabama and in respect of which TICL seeks an indemnity from its reinsurers which *inter alia* include GIC.

GIC's reinsurance was on a facultative basis. The reinsurance was placed using the London market standard "Market Reform Contract" or "MRC", which contained an exclusive jurisdiction clause in favour of the courts of England and Wales. The MRC was then subsequently followed by the issue of a Facultative Certificate (in the form of the Market Uniform Reinsurance Agreement, or "MURA") which contained a New York Arbitration clause. The Facultative Certificate also contained a clause referred to in the judgment as a "Hierarchy Clause" which provided that the MRC was "*to take precedence over* [the] *reinsurance certificate in case of confusion*".

TICL had previously obtained interim anti-suit relief on an urgent *ex parte* basis before Foxton J after learning of GIC's intention to itself seek anti-suit relief (and anti-anti-suit relief) in New York in support of New York arbitration.

The application before Mr Hancock was made by GIC to set aside the relief granted by Foxton J on the basis that the reinsurance was subject to a New York Arbitration clause. GIC argued that the MRC had been "replaced" by the subsequent issue of the Facultative Certificate and that the Hierarchy Clause only permitted reference back to the MRC if there was internal inconsistency on the face of the Facultative Certificate. In the alternative, GIC argued that the English court jurisdiction clause and New York arbitration clause should be read together such as to provide for New York arbitration subject to the supervisory jurisdiction of the English Court.

The judge refused GIC's application, finding that both the MRC and Facultative Certificate were to be read together and that a proper interpretation of the Hierarchy Clause provided for the MRC (and its English jurisdiction clause) to take precedence over the Facultative Certificate (and its New York arbitration clause). The judge also found that it was not "*plausible, let alone likely or correct*" that the intention of the parties was for the two clauses to be read together in the manner contended for by GIC. In distinguishing the authorities relied on by GIC, the judge noted that in those cases the Court was striving to give effect to clauses in the same agreement, whereas in the present case they were in separate agreements. Further in the present case, the question was whether the jurisdiction clause, which was at the time it was agreed a dispute resolution clause, was "*changed in nature so as to become a supervisory jurisdiction clause*". The judge found that this was "*an extremely unlikely result even in the absence of the hierarchy clause, but in light of that clause…it is really not sensibly arguable*".

Also discussed in the judgment is the related case of *Tyson International Company v Partner Re* [2023] EWHC 3243 (Comm), handed down in December 2023 and in which Mr Stephen Houseman KC (sitting as the Judge of the High Court) on similar facts (also involving the issue of an MRC followed by a Facultative Certificate) granted a section 9 stay of proceedings to reinsurers and refused TICL anti-suit relief. In doing so, however, Mr Houseman noted that the issues were "*novel*" and "*not so obvious in terms of final resolution*" and granted permission to appeal to the Court of Appeal.

In any event, Mr Hancock distinguished the case before him from that in *Partner Re* on the basis that the Certificate in *Partner Re* did not contain a hierarchy clause.

A link to the judgment in *TICL v GIC* can be found here.

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Timothy Killen and Ben Phelps acted for TICL in both proceedings instructed by a team at Reed Smith LLP led by Mark Pring.