



Client Alert
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Bound by exclusive jurisdiction

This July saw the Commercial Court in *Equitas Limited v Allstate Insurance Company* dismissing the Defendant's application for a stay pending the outcome of a Texas arbitration, where there was an exclusive English jurisdiction clause in the disputed commutation agreement.

Allstate Insurance Company Limited ("**Allstate**") entered into a commutation agreement with Equitas Limited ("**Equitas**") ("**Commutation Agreement**") which provided for the valuation, payment and complete discharge of all "Reinsurance Agreements" made between Equitas and Allstar.

The Reinsurance Agreements were defined as follows:

"Reinsurance agreements" shall, subject to the exclusion of reinsurances, reinsurance business and agreements referred to in paragraph C below mean all reinsurance and retrocession treaties and facultative acceptances (collectively "reinsurance") whereby Allstate reinsured the Syndicates under reinsurances responding to 1992 and Prior Business, the benefit of which have been assigned by the Names to ERL and subsequently assigned by ERL to Equitas under the Equitas Retrocession ..."

The Commutation Agreement was expressed to be subject to exclusive English jurisdiction, and was made in accordance with English Law.

In a separate transaction, Highlands Insurance Company ("**Highlands**") entered into a number of common account excess of loss reinsurance contracts ("**CAXOL Contracts**") with Allstate, pursuant to its obligations under a number of quota share reinsurance contracts ("**Quota Share Contracts**") made between 1977 and 1984. The Quota Share Contracts were with a number of reinsurers, including certain Lloyds syndicates reinsured by Equitas in respect of pre-1993 liabilities.

Highlands went into receivership, and its receivers entered into an agreement with those participating in the reinsurance of the Quota Share Contracts and in the CAXOL Contracts whereby balances collected by Highlands under the CAXOL Contracts on behalf of Highlands' Quota Share reinsurers would be held separately from its general receivership estates and distributed directly to the Quota Share reinsurers in the appropriate proportions.

On 4 January 2007, Highlands commenced arbitration in Texas under the CAXOL reinsurance agreements, following a refusal of Allstate to pay monies to Highlands due under the CAXOL Contracts. One of the issues put to the arbitrators was whether Highlands were able to make any recoveries against Allstate on behalf of Equitas (as one of the Quota Share reinsurers), in view of the commutation agreement.

On 10 March 2008, Equitas filed a claim form in the English courts seeking a declaration that the definition of "Reinsurance Agreements" in the Commutation Agreement did not extend to contracts of reinsurance and retrocession to which the Lloyds syndicates (through Equitas) were not a party.

On 14 April 2008, Allstate filed an application that Equitas' claim be stayed generally, or alternatively, pending the determination of the issues in the arbitration proceedings in Texas between Highlands and Allstate.

Although the Court had some sympathy with the arguments of Allstate that: the issues which Equitas sought to have determined in the English proceedings were common with the issues to be decided in the Texas arbitration; that Equitas was involved in the Texas arbitration, although it was not a party to it, by virtue of its nomination of an arbitrator; and, further, that had delayed Equitas in initiating English proceedings, it found Equitas' arguments more compelling.

Decision and reason

The Commercial Court found that the effect of Article 23 of EU Council regulation 44/2001, also known as the Brussels Regulation, was that the exclusive jurisdiction clause in the Commutation Agreement had mandatory effect. The Commercial Court considered previous case law on the granting of a stay in favour of a foreign jurisdiction in which there was no exclusive jurisdiction clause, and found that where there was an exclusive jurisdiction clause, a further burden would be placed on the Defendant seeking a stay to show "*rare and compelling circumstances*" for the stay, the test for which had been developed in previous cases.

Allstate's application for a stay was based on the Court's case management powers, rather than any residual power based on "*forum non conveniens*" principles. Looking to previous case law, the Court found that the exclusive jurisdiction clause was of relevance in the context of the exercise of case management powers.

In respect of Allstate's claim that there was significant overlap with the Texas arbitration, the Commercial Court found that the overlap was confined to Allstate's counterclaim for declaratory relief. In any event, Highlands had applied to the arbitrator to have the question regarding the Commutation Agreement removed from the issues in the arbitration, as irrelevant to Highlands' claims; especially as Highlands further retracted any claims in respect of Equitas' quota share. The Court also commented that, from the evidence before it, Equitas' involvement in the arbitration was not more than would normally be expected from a Quota Share reinsurer, especially in light of the receivership.

As the effect of a stay would effectively be that Equitas would be bound by the outcome of the arbitration, even though it was not a party to that arbitration, the Court found that the requested stay would not be appropriate. The Court therefore ordered that the proceedings in the English Court should continue so as to result in a final binding determination of the issues between the parties to the Commutation Agreement.

Ramifications of decision

It is clear that where the parties have chosen to bind themselves to the English Courts through use of an exclusive jurisdiction clause, any party seeking a stay in favour of another jurisdiction will have to provide strong evidence of rare and compelling circumstances as to why the stay should be granted.

When agreeing to an exclusive jurisdiction clause, parties should be aware that this may mean submitting to a jurisdiction different from that of main arbitration proceedings where issues in respect of a particular contract need to be resolved.

The findings of the Court on the substantive issues regarding the interpretation of the definition of "Reinsurance Agreements" in the Commutation Agreement are awaited with interest.

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