UAE INSURANCE CLAIMS; A JURISDICTIONAL CONUNDRUM

In *Union Insurance PJSC v International Precious Metals Refiners LLC* CFI 064/2022 (15 September 2023), the DIFC Court has re-affirmed its jurisdiction over insurance disputes subject to jurisdiction clauses which refer to the *"Courts of the UAE"*.

Background

A dispute arose between an insured (incorporated in Abu Dhabi with a production facility based in Sharjah) and its insurer (incorporated in Ajman). Following the process set out in Article 110 of Federal Law No.6 of 2007 (the **Insurance Law**), the insured filed a complaint with the UAE Central Bank, which was then escalated to an Insurance Dispute Resolution Committee (**IDRC**) on 6 July 2022.

The IDRC dismissed the insured's claim on the basis that it had failed to file an expert report within the deadline set by the IDRC (which fell on a non-working day). On 16 August 2022, the insured appealed by filing proceedings before the Sharjah Courts.

The insurer filed a power-of-attorney in the Sharjah proceedings, but then issued proceedings before the DIFC Courts seeking to avoid the policy. The insured contested the DIFC Court's jurisdiction on four grounds:

1. in the circumstances and context in which the Policy was written, on its proper construction the jurisdiction clause did not confer jurisdiction on the DIFC Courts;
2. that construction is supported by the fact that the Sharjah Courts are the *"competent court of first instance"* for the review of the IDRC decision pursuant to Article 110 of the Insurance Law;
3. the proceedings should be stayed on the basis of the doctrine of *lis alibi pendens*; and
4. the proceedings should be struck out as an abuse of process.

Decision

The DIFC Court dismissed the insured's jurisdiction challenge, finding that the DIFC Court did have jurisdiction to hear the insurer's claim.

Construction of the jurisdiction clause

In rejecting the insured's arguments on construction, the DIFC Court relied on the recent Court of Appeal judgment in DIFC Case No.CA 015 (4 May 2023), which affirmed the decision in Case No.CFI-098-2021 (27 April 2022). The Court reiterated Justice Giles' observations at first instance in CFI-098-2021 that it was not necessary for a party seeking to invoke the jurisdiction of the DIFC Courts under a jurisdiction clause conferring jurisdiction on the *"Courts of the UAE"* to point to a link or connection with the DIFC.

Moreover, the Court held that the insurer's participation in the IDRC complaint process was not sufficient to prevent the DIFC Courts from having jurisdiction, in light of the Court of Appeal's comments in DIFC CA 015 on the limited application of the Article 110 dispute resolution procedure. Justice Wayne Martin noted that this *"sheds no light on the intention of the parties with respect to proceedings of the kind which have been commenced by UIC seeking, inter alia, to avoid the Policy, as those proceedings could not have been initiated pursuant to Article 110"*.

Lis Alibi Pendens

In circumstances where the insured had accepted (in its skeleton argument) that *lis alibi pendens* was an aspect of the doctrine of *forum non conveniens*, the Court held that it was bound by the DIFC Court of Appeal decision in *IGPL v Standard Chartered Bank* [2015] DIFC CA 004 (19 November 2015) in which it was held that the *forum non conveniens* doctrine had no application to parallel proceedings in different courts within the UAE.

The Court however went further and held that even if it had jurisdiction to stay the proceedings on the grounds of *forum non conveniens* it would not have. The Court held that, having agreed to confer jurisdiction on all courts of the

UAE, the parties must have agreed to take the risk of proceedings in different courts in the UAE. Further, the Court held that it was not clear that the Sharjah proceedings would cover the same ground as those before the DIFC Courts (albeit the Court noted that expert evidence had not been adduced on the nature of those proceedings). Justice Martin noted:

> "It may be that the proceedings in the Sharjah Court are, in effect, proceedings by way of judicial review of the decision of the IDRC, and in particular, the decision of the IDRC to dismiss IPMR's complaint because of its failure to submit an expert report in time. It is however clear that the proceedings in this Court put in issue UIC's contention that the GR Policy was void ab initio or alternatively has been avoided by reason of fraudulent concealment and/or misrepresentation".

Abuse of Process

Finally, the Court held that there was nothing abusive in the insurer bringing proceedings before the DIFC Courts when proceedings were already pending before the Sharjah Court.

Conclusion – what next?

This is the latest in a number of decisions in which the DIFC Courts have expanded their jurisdiction into the heavily regulated area of insurance. Any insurance policy which contains a jurisdiction clause referring to *"Courts of the UAE"* will automatically be presumed to include the DIFC Courts, unless circumstances can be shown otherwise.

On the face of it, this presumption seems at odds with the Civil Procedure Law[1] (the **CPL**) which establishes a clear and certain regime for determining which court has jurisdiction over an insurance dispute by reference to a connecting link between the dispute and either the domicile of the insured or the place of the insured risk. Had the CPL been applied in *Precious Metals* and DIFC CA 015 the DIFC Court would not have had jurisdiction given the lack of any connection to the DIFC. However, the DIFC Court has previously held that the provisions of the CPL do not apply to the DIFC Courts by virtue of Article 3(2) of Federal Law No.11 of 1992 (see *Meydan Group LLC v Banyan Tree Corporate Pte Ltd* [2014] DIFC CA 005 and *IGPL*).

The line of recent decisions clearly places onshore-based insureds in a difficult position. Where the insurance policy contains a jurisdiction clause referring to the *"Courts of the UAE"* or *"Courts of Dubai"* then the insured will have no control over the forum in which its dispute will ultimately be heard. As it stands, where the Insurance Law applies, the insured is mandatorily required to have its complaint first determined by an IDRC (pursuant to Article 110). However, filing a complaint, or even subsequent proceedings in the onshore courts (in light of the *Precious Metals* decision), does not, of itself, seize the jurisdiction of the onshore courts, and would therefore not prevent the insurer from commencing parallel proceedings in the DIFC Courts. Theoretically, appeals from an IDRC decision could also be made to either the onshore or offshore Courts and, in theory, an insured and an insurer could file parallel appeals before both sets of courts if neither party is happy with an IRDC decision.

In the absence of legislative changes, the position will remain unclear, and will likely give rise to a number of insurance claims resulting in parallel proceedings in the onshore and DIFC Courts. This will ultimately lead to additional cost, for both the insured and the insurer. Insureds, insurers and indeed reinsurers will need to consider the jurisdiction clauses in their policies carefully. If the intention is to continue to use the onshore system exclusively then that will need to be explicitly stated in the relevant jurisdiction clause.

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[1] Federal Law No. 42 of 2022.

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