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J.B.BODA GROUP

MEDIAN

Issue 72 June 2013

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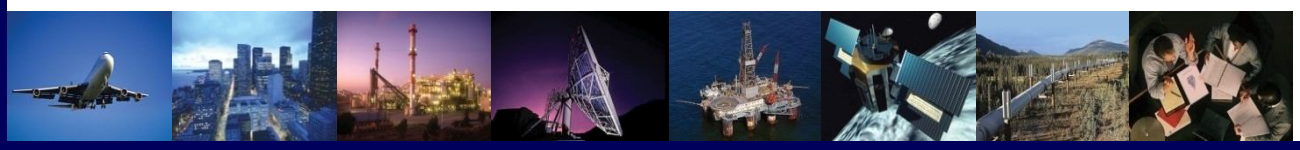

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PRIME STORY

Forensics – Investigative Investigation Investment

PRELUDE

Forensic Science (often known as Forensics) is the application of a broad spectrum of sciences and technologies to investigate and establish facts of interest in relation to criminal or civil law.

The word “forensic” comes from the Latin “forensis”, meaning “of or before the forum”. In Roman times, a criminal charge meant presenting the case before a group of public individuals in the forum. Both the person accused of the crime and the accuser would give speeches based on their sides of the story. The individual with the best argument and delivery would determine the outcome of the case. This origin is the source of the two modern usages of the word “forensic” – as a form of legal evidence and as a category of public presentation.

In modern use, the term “forensics” in the place of “forensic science” can be considered correct as the term “forensic” is effectively a synonym for “legal” or “related to courts”. However, the term is now so closely associated with the scientific field that many dictionaries include the meaning that equates the word “forensics” with “forensic science”.

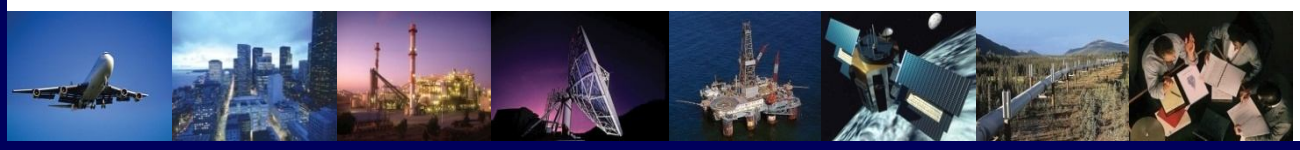
Its functional disciplines relate to Physics, Chemistry, Biology, Serology, Ballistics, Documents, Finger Prints, Forensic Psychology, Photo, Computer Forensic Science & Scientific Aids, Computer Forensics and DNA Profiling.

On governmental front, forensics activities mainly pertain to scientific analysis of crime exhibits referred by Investigation Bureaus, Police, Judiciary and Vigilance Departments.

The forensic experts examine the exhibits forwarded to them and render expert opinion and substantiate their opinions in the Court of Law / Judicial & Quasi – Judicial Forums through testimony and evidence. The forensic experts also undertake R&D work related to art and skill developments in forensic science.

The international Certifications / Standards are accredited to provide assured quality service of international standards to the customers with good professional practices in order to deduce effective remedial solution of intricacies related to Forensic Investigation of any type and assist in proper dispensation of expertise.

Forensic Science pertains to law, primarily in the interface of the law with other disciplines such as insurance, accident reconstruction, medical accident reconstruction, fraud



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investigation, interpretation analysis, bad faith, insurance claims, and computer insurance analysis. Forensic researches and studies are conducted in a context involving the relationship of Insurance and the Law. Forensic assessments in the insurance industry require more extensive data collection, thorough review and analysis of all records and symptom validity testing.

The domain processionals are trained in Policy Construction and Interpretation Analysis primarily to give the theory behind the making of the Insurance Policy intended to do in terms of profit / loss for the Insurance Company or Self-Insurer. The experts are also trained in liability claims, where they require more extensive data in evaluating claims and reconstruction of the accident and injury validity of the loss, injury reconstruction, medical review, case management and interface their findings.

MORAL HAZARD

Insurance provides substantial solace to the society at large and ultimate peace of mind. However, the benefits are at a cost. Premiums are charged in order to collect the necessary money to pay the losses of the Insureds. Undoubtedly, frauds cost Insurers, Businesses and Individuals to collect / pay, continually, higher insurance premiums. The fraud and abuse occur from Moral Hazards. To some extent, the existence of insurance coverage encourages losses. Even though Insurers have an economic incentive to encourage loss control, insurance sometimes provides an economic incentive for Insureds to have losses.

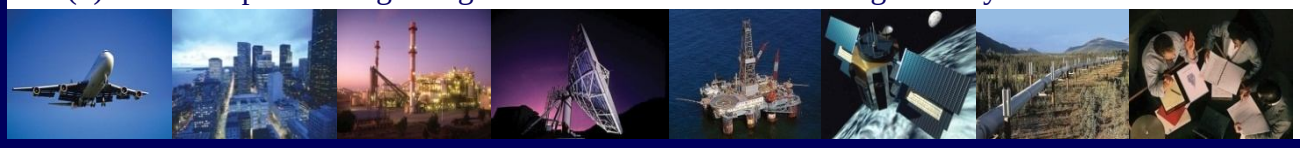
Moral Hazard is a condition that exists when a person may intentionally endeavour to cause a loss or may exaggerate or inflate a loss that has occurred. More common are exaggerated or inflated insurance claims. An Insured may claim for more than what is lost actually or may claim more than the actual value. In liability situations, third – party claimants often exaggerate their personal injuries and property damage, and sympathetic physicians, lawyers, auto body shops, and contractors may support these exaggerations and drive up the cost of claims.

FRAUD INDICATORS

The following are some of the Indicators considered in Fraud Investigations of potential Insurance Claims:-

General

(1) Recent increase in coverage.
(2) Loss occurred shortly after inception date of Policy or shortly before expiration of Policy period.
(3) Insured ponders regarding existence and extent of coverage shortly before loss.



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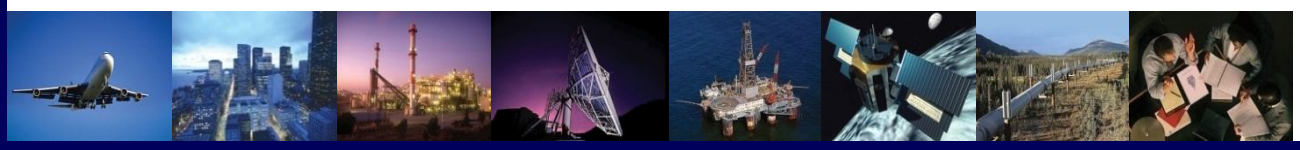
(4) Undisclosed multiple coverage (s).
(5) Insured willing to settle for substantially less than the purported value of the claim in order to speed claim settlement process or to avoid documentation of claim.
(6) Over-familiarity with claim process.
(7) Extensive history of similar claims, particularly claims not disclosed by the Insureds.
(8) Unwillingness by the Insured, to respond to questions concerning the loss or injury or to provide documentation of same.

Commercial Property Loss (fire, theft)

(1) Any indication that the business is having financial difficulties or has immediate need for funds.
(2) Deteriorated or outmoded facilities, business is in bad location or deteriorating neighborhood.
(3) Plant machinery equipments or inventories are obsolete or unmarketable.
(4) Property is over – insured.
(5) Unusual presence of combustible material on the premises.
(6) Unusual handling of combustible materials normally present on the premises.
(7) Presence of multiple fires, accelerants.
(8) Evidence that valuable property was recently removed from the premises or relocated to a safer place within the premises.
(9) Any deviation from long – standing routine (failure to activate alarm system, shut-down of sprinkler system, discontinuation of security guard (s)).
(10) No evidence of unlawful entry or evidence of unlawful entry appears to have been created.
(11) Real property is heavily mortgaged.
(12) Business personal property secures multiple and substantial debts.
(13) Recent history of late payments or defaults on loans.
(14) Principals in business have history of business failures.
(15) Recent expansion of business facilities which caused Insured to incur substantial debt, other over – extension.
(16) Radically differing explanations of accident or manner in which loss occurred, including inconsistent reports from the same person.
(17) Overlapping ownership of related businesses with inventory moving readily between businesses without adequate documentation.
(18) Poor economic climate for particular business.
(19) Damaged property discarded or not readily available for inspection.



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Personal Injury

(I) General

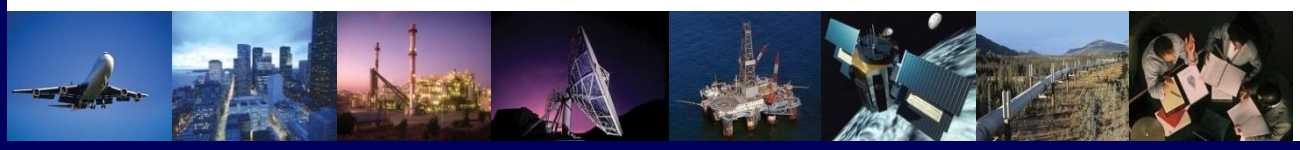
(1) Insured / Claimant has extensive history of claims / accidents.
(2) Descriptions of occurrence vary widely or are virtually identical suggesting rehearsal.
(3) Legal representation sought shortly after injury occurred.
(4) No treatment sought for injuries until a substantial period of time elapsed after the accident or until legal representation is obtained.
(5) Line and course of treatment are questionable (no apparent relationship between injuries claimed and treatment provided, minor injuries resulting into major medical costs, medical bills are out of balance with treatment obtained).
(6) Documentation of treatment suspicious (photocopies of bills supplied, no record of dates of treatment, no itemization of treatment provided).
(7) Complaints are subjective and incapable of corroboration.
(8) Claim for pain and suffering is inconsistent with severity of injuries.
(9) Long – standing relationship between Attorney and Treating Physician.
(10) In products cases, injury – producing product has been lost or destroyed.

(II) Automobile Accidents

(1) Damage to vehicle is inconsistent with injuries claimed.
(2) Absence of police report where logic dictates that a report should have been made.
(3) Existence of multiple claimants as a result of same accident whose injuries vary widely in degree.
(4) Multiple, unrelated occupants of same vehicle.
(5) Relationship among occupants creates possibility of collusion.
(6) Multiple claimants obtain representation from same Attorney.
(7) Multiple claimants obtain treatment from same physician and follow similar course of treatment.

(III) Workers' Compensation

(1) Unwitnessed Monday morning accident.
(2) Claimant cannot be reached by phone during the day.
(3) Claimant repeatedly misses or reschedules doctor's appointments.
(4) Nature and extent of purported injuries are inconsistent with how the accident occurred and/or doctor's diagnosis.



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(5) The claimant's co-worker has a prior history of workers' compensation or liability claims.

(6) The claimant is self-employed or has a job that would allow the claimant to work for cash while collecting temporary disablement compensation.

(7) The claimant's employer is experiencing financial or labour difficulties.

(8) Claimant's job performance is poor and / or claimant has taken significant sick time for unexplained illness.

UNFAIR CLAIM PRACTICE INDICATORS

(1) Misrepresenting pertinent facts of Insurance Policy Provisions relating to coverage at issue.

(2) Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising out of insurance policies.

(3) Failing to adopt and implement reasonable standards for prompt investigation of claims arising under insurance policies.

(4) Refusing to pay claims without conducting reasonable investigation based upon all available information.

(5) Failing to confirm or deny coverage of claims within a reasonable time after proof of loss statement has been completed.

(6) Not endeavouring in utmost good faith to effectuate fair and equitable settlements of claims in which liability has become reasonably clear.

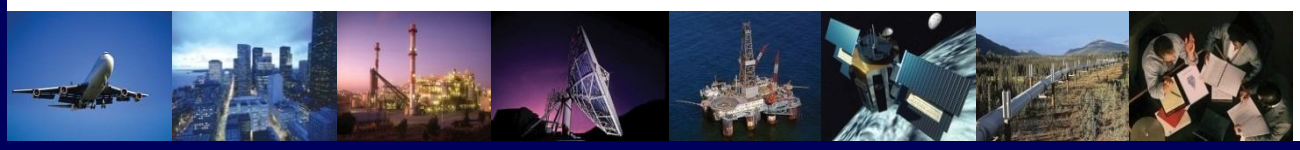
(7) Compelling Insured to institute litigation to recover amounts due under an Insurance Policy by offering substantially less than the amount ultimately recovered in actions brought by such Insureds.

(8) Failing to promptly settle claims where liability has become reasonably clear under one portion of the Insurance Policy Coverage in order to influence settlements under other portions of the Insurance Policy Coverage.

(9) Failing to promptly provide a reasonable explanation of the basis in the Insurance Policy in relation to the facts or applicable Law for denial of a claim or for the offer of a compromise settlement.

CONCLUSION

In today's challenging global scenario, competitive advantage can be built only by taking a strategic view of threat management by building operational resilience that enables sustainable growth. The threat of crisis management is ever embedded in the business environment today. Opportunity to be seized co-exists with threat.



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Insurance frauds cost heavily to the global insurance industry. Additional investigative techniques are needed for handling of insurance claims suspected of being fraudulent ones.

Insurers are now increasingly relying on forensic science to help detect fraudulent claims. The insurance frauds can be probed in a scientific manner so that the right entities can get the rightful claims for the right reasons. Forensics is of immense guidance and assistance in cases where the Insurers feel that there is an element of fraud involved. After exfoliation, be delicate with pickaxes and shovels to preserve evidence. This helps processing the scene later on.

Forensic investigations provide the following key benefits in general:-

(i) Improvement in customer satisfaction by detecting and containing fraudulent claims – helping to maintain low premiums.

(ii) Reduction in claims spending through professional forensic examination to repudiate claims and assist in prosecuting dishonest and fraudulent entities.

Before an insurance claim can be settled, Insurers should verify its basis in fact. They need to research and analyse the financial trail and business operation to determine whether the documentation presented in support of a claim agrees with the factual and financial evidence.

Forensic services include conduct of site visits to analyse point of entry damage & other spillage and accidental damage. Desktop services may be desirable – being cost effective method of forensic examination, particularly on the lower valued claims where site visits would be uneconomical.

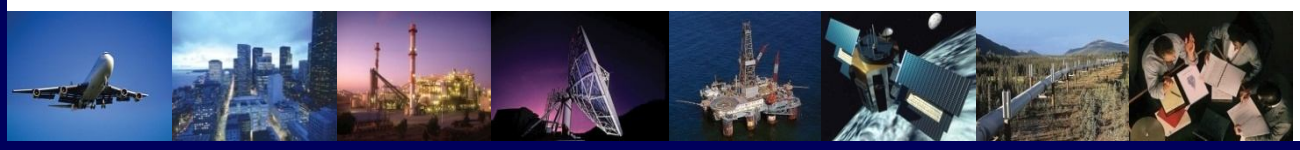
A forensic document and scene investigation service may be considered to be followed by the evaluation of the physical evidence critical to the claim. Desktop validation may be escalated to a desktop investigation, plus cognitive interaction or a site visit where necessary.

The fraudsters may be indulging in frauds by relying vehemently (!) on the following adage of Samuel Johnson – Rasselas 1759 :-

“Nothing will ever be attempted, if all possible objections must be first overcome”.

The contributor is Senior Executive Director, J.B.Boda & Company Pvt. Ltd., Mumbai, India.

sanjiv@jbbodamail.com



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REINSURANCE

Interpretation of Claims Control Clauses in Reinsurance Contracts

In *Beazley Underwriting Ltd & Ors v Al Ahleia Insurance Company & Ors* [2013] EWHC 677 (Comm), the Commercial Court was asked to determine the scope and effect of a Claims Control Clause in a Proportional Reinsurance Contract. Mr Justice Eder concluded that Clauses of this type are to be construed strictly and that the Clause in question only applied to settlements or admissions in respect of losses giving rise to a "matching" liability under the Reinsurance Contract. On the facts, the Judge concluded that the Defendant Reinsureds had not acted in breach of their obligations by settling or admitting a relevant liability.

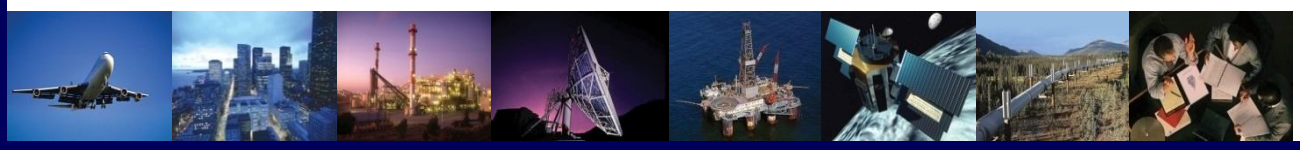
Background

In around January 2005, the Defendants entered into an Open Cover Construction All Risks and Third Party Liability Insurance Policy with the Kuwait Oil Company ("KOC") and its Contractors for a declaration period of 1 February 2005 to 1 February 2007 ("the Underlying Insurance"). The Underlying Insurance, which was subject to Kuwaiti Law, contained a Clause which excluded from cover the costs that *"would have been incurred if replacement or rectification of the Insured Property had been put in place immediately prior to the said damage"* (referred to as "the LEG2 Exclusion").

At around the same time, the Defendants entered into a Reinsurance Contract with the Claimants and AIG UK Limited ("AIG") as Reinsurers ("the Reinsurance Contract") and written on a back-to-back basis. The Contract itself was a Lloyd's Slip Policy governed by English Law, covering Projects attaching during the same period as the Underlying Insurance. Between them, the Defendants retained 10.5% of the risk, ceding the balance to the Claimants and AIG.

The Reinsurance Contract contained the following Provisions:

A Claims Control Clause ("the CCC") which, as amended by a subsequent Reinsurance Declaration, provided as follows:



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"Notwithstanding anything contained in the Reinsurance Agreement and/or the Original Policy Wording to the contrary, it is a Condition precedent to any Liability under this Reinsurance that:

a) The Reinsured shall upon knowledge of any loss or losses which may give rise to a claim under this Policy, advise the Reinsurers thereof as soon as reasonably practicable;

b) The Reinsured shall furnish the Reinsurers with all information available respecting such loss or losses and the Reinsurers shall have the right to appoint adjusters, assessors, surveyors or other experts and to control all negotiations, adjustments, and settlements in connection with such loss or losses;

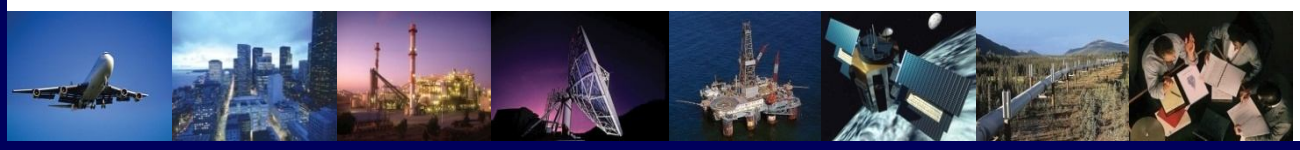
c) No settlement and/or compromise shall be made and no Liability admitted without the prior approval of Reinsurers.

In the event of a claim under the Original Policy Wording Reinsurers hereon agree that settlement shall take place at the same time as settlement or advance of funds under the said Original Policy Wording."

A so-called "Subscription Agreement", the accepted effect of which was that AIG and another of the Reinsurers, Beazley Underwriting Limited ("Beazley"), were appointed Joint Slip Leaders; and that the Agreement of each of AIG, Beazley and two further Reinsurers (together, "the Claims Agreement Parties") would be deemed to amount to the Agreement of all Reinsurers for the purposes of controlling and agreeing claims. As a result of this Agreement, it was also accepted that the prior approval of all of the Claims Agreement Parties was required to any settlement, and that AIG's approval alone was insufficient.

In October 2005, KOC executed an Agreement for the construction of a number of crude oil storage tanks. This Project was declared to the Underlying Insurance and then notified and agreed under the Reinsurance Contract. In March 2007, one of the tanks was found to be defective and KOC sought an indemnity from the Defendants for the costs of repair.

On being notified, the Defendants' Reinsurers initially denied Liability on the basis of the LEG2 Exclusion. This was in contrast to the position taken by Al Ahleia Insurance Company ("AIC") on behalf of the Defendants, who united with KOC in pressing its Reinsurers to pay the claim. In about June 2009, The Insurance Brokers came under pressure from KOC and formed a plan to split off AIG from the other Reinsurers. That approach resulted in an Agreement between KOC and AIG in October 2009 that AIG would pay its 20% share of an approximately US$19,000,000 loss amount. This sum was



considerably higher than the figure first notified to Reinsurers. AIG's Co-Reinsurers were not involved in the discussions leading up to the Agreement.

Subsequently, on 2 December 2009, a conversation took place between representatives of AIC and KOC in which the implementation of KOC's Agreement with AIG was discussed. Shortly thereafter, AIC produced a Memorandum which identified the *"partial payment"* to be made by AIC in light of the settlement with AIG and recorded (on 6 December 2009) that AIC had no objection to it. In the months which followed, further exchanges took place between all of the parties in which the implications of the Agreement with AIG were explored, with the Brokers encouraging the balance of the market to settle on the same basis as AIG. However, the Claimant Reinsurers did not move from their position as regards the application of the LEG2 Exclusion and maintained that AIC's conduct was in breach of the CCC. Eventually, KOC brought proceedings against AIC in Kuwait for the payment of a sum equivalent to AIG's proportion.

Issues

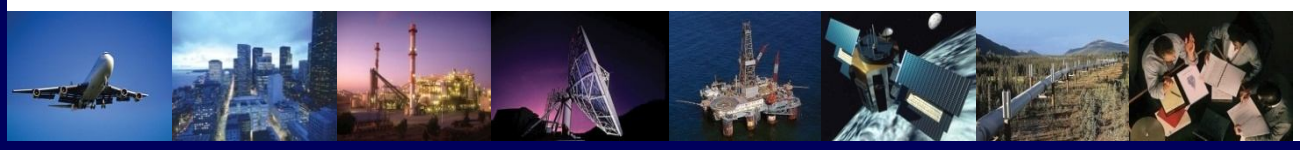
Against that background, the Claimant Reinsurers brought proceedings against their Reinsureds in England in order to establish their non-liability under the Reinsurance Contract. It being common ground that compliance with the CCC was a Condition precedent to the Claimants' Liability under the Reinsurance Contract, this question was ordered to be heard as a preliminary issue. The Claimants' case was that the Defendants had acted in breach of the CCC by:

Failing to allow Beazley or any of the Claimants to control the negotiations with KOC and instead in conducting those negotiations behind the backs of Reinsurers other than AIG; and

Admitting Liability for KOC's claim, and settling/compromising it, without the prior approval of all of the Claims Agreement Parties.

Decision

On the proper approach to the construction of the CCC, Mr. Justice Eder accepted the Defendants' submission (citing *Royal & Sun Alliance v Dornoch* [2005] Lloyd's Rep IR 544 with approval) that the CCC was to be regarded as an Exemption Clause and therefore to be construed against the Claimants being the parties seeking to rely on it. In doing so, the Judge rejected an argument by the Claimants that the CCC was not in the nature of an Exemption Clause in that it simply required that the Reinsureds must engage with their Reinsurers in order to recover under the Reinsurance Contract.



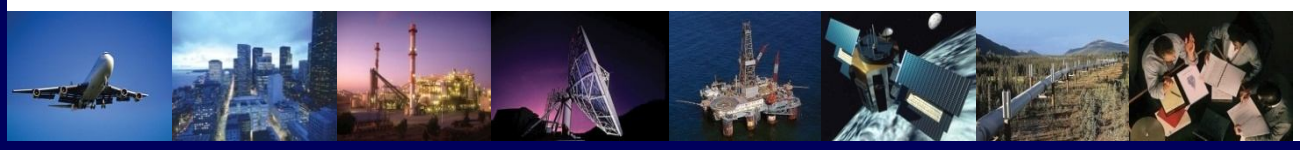
In relation to sub-paragraph (b) of the CCC, the Judge agreed with the Claimants that this Provision obliged the Defendants to give their Reinsurers a proper opportunity to control any negotiations as between Insurers and Insured (not Insured and AIG as Reinsurer). This obligation was said to have been breached by AIC in commencing negotiations with KOC on 2 December and in concluding a deal with KOC by 6 December without consulting the Claims Agreement Parties. However, in each case, the Judge held that there had been no breach of the CCC: first, because the discussions on 2 December 2009 could not be characterised as "negotiations" but as an update on KOC's position and, second, because the subsequent Memorandum was an internal document that simply confirmed the previous discussions.

The findings of the Judge made it unnecessary for him to decide the Reinsured's argument that any "negotiations" were in any event in relation to the AIG "slice" of the loss, rather than the balance of the reinsurance market, such that the CCC was not breached. The Judge did however indicate that he thought the Reinsurers would have a strong argument that the negotiations would be "*in connection with*" the loss as settling AIG's claim would involve negotiations as to the correct figure to use for the 100% loss.

In relation to sub-paragraph (c), it was the Claimants' primary case that AIC had acted in breach of this Provision by agreeing a settlement on behalf of all of the Defendants of the entirety of KOC's claim or by admitting Liability in relation to the same. Alternatively, the Claimants argued that there had been a breach in any event as a result of the partial settlement or compromise of KOC's claim, namely AIG's share and/or the Defendants' share, or an admission in relation to that Liability. These arguments gave rise to the following points of construction:

First, whether sub-paragraph (c) prohibited the Reinsured from settling/compromising or admitting Liability in respect of its own retained share, or in respect of that part of the claim covered just by another Reinsurer's share (as the Claimants contended on their alternative case). The Judge held it did not prohibit such settlements or admissions on the basis that the Clause only applied to settlements/compromises or admissions in respect of losses which might give rise to a "*matching*" Liability under the Reinsurance Contract. This was said to flow from the CCC as a whole and to be consistent with business common sense, in that absent clear words to the contrary a Reinsured should be able to deal as it so wishes with losses which will not give rise to a claim against a particular Reinsurer.

Second, whether in the context of sub-paragraph (c), the word "*settlement*" covered settlements agreed "*without prejudice to liability*". The Judge held that the word "*settlement*" imported a legally binding Agreement regardless of whether it was concluded on a without prejudice basis.



Third, whether for sub-paragraph (c) to be triggered, it was necessary for there to be a settlement or compromise and an admission of Liability, or whether one or the other of these sufficed. The Judge preferred the latter construction.

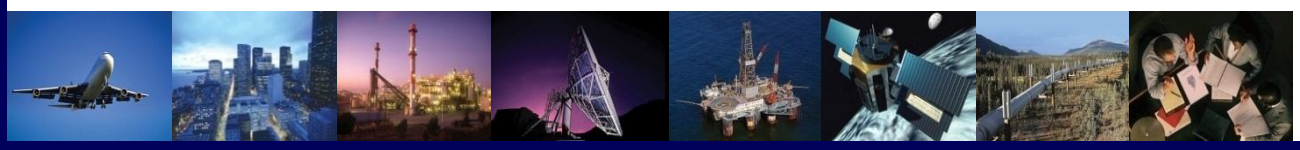
Fourth, what constituted an "*admission of liability*" in the context of this Clause. The Judge concluded that an effective admission of Liability must be communicated in clear and unequivocal terms. Accordingly, an offer to settle or agreement to pay a sum of money would not per se be sufficient unless it also incorporated an admission of Liability.

On the facts, Mr. Justice Eder concluded that there had been no relevant settlement, compromise or admission of Liability amounting to a breach of sub-paragraph (c), both in the period to 6 December 2009 and subsequently.

Comment

As is well known, Breach of a Condition precedent entitles an Insurer (or Reinsurer) to decline Liability regardless of whether it has suffered any prejudice as a result of a breach. This result, frequently referred to in the authorities (including this) as "*draconian*", does mean that Judges are from time to time inclined to search for bases to avoid a finding of Breach. This decision, with its surprising legal and factual findings, perhaps represents a good example of such approach. However, the result of this approach is that the outcome of such cases is not always predictable. Indeed, the Court of Appeal may form a different view (the Reinsurers are understood to be seeking Leave to Appeal).

It is trite Law that a Reinsurer is not bound by a settlement as between the Reinsured and Insured (absent a Follow the Settlements Clause). Accordingly, a Reinsurer is only prejudiced by a settlement to the extent it produces a loss for which the Reinsured then seeks an indemnity and (as in this case) to the extent the settlement sets "*the negotiating bar*" for subsequent discussions with the Insured on the balance of the loss. The Judge's construction of the CCC, in looking only at "*matching*" loss and claim, does not provide protection to the Reinsurer in relation to the latter. Further, the Judge's conclusion that the CCC operated as an Exemption Clause on the basis the settlement was prima facie binding must be open to serious doubt.



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UK : DIFC Court Accepts Jurisdiction In First Judgment On A Reinsurance Dispute

On 24 April 2013 the DIFC Court of First Instance issued an important judgment accepting jurisdiction over a dispute between a DIFC-based Reinsurer and an Abu Dhabi based Insurance Company. The ruling is significant as it involves the first time that the DIFC Court has been required to consider an asserted conflict of jurisdiction with the Courts of another Emirate and also its relationship with the jurisdiction of the Union Supreme Court (USC). The DIFC Court also considered the Application of the Common Law Doctrine of *forum non conveniens* in determining the appropriate forum between two different national Courts.

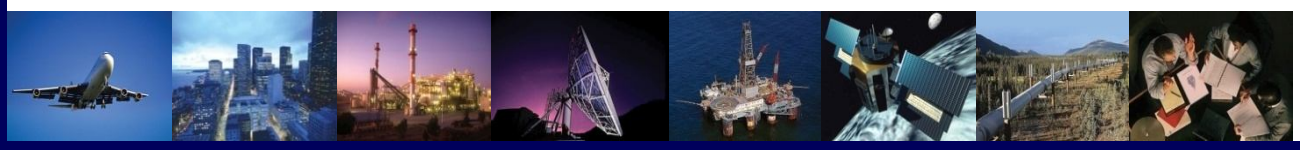
Background

The judgment of H.E.Justice Ali Al Madhani decided the issue of the DIFC Court's jurisdiction as a preliminary issue in Allianz Risk Transfer AG (Dubai Branch) v Al Ain Ahlia Insurance Co PSJC. In this case the Claimant Reinsurer sought declaratory relief under a Reinsurance Contract entered into in the DIFC relating to claims arising from property damage and business interruption events during Arab Spring in Egypt, which the reinsurer argued were excluded under the original Insurance Policy and the Reinsurance Policy. The Defendant challenged the jurisdiction of the DIFC Court to determine the claim on the primary grounds that the Abu Dhabi Courts had jurisdiction; this was on the basis that, in absence of an express Jurisdiction Clause in the Contract, as the defendant was an Abu Dhabi domiciled entity, the UAE Civil Procedure Code vested jurisdiction for the dispute with the Abu Dhabi Courts.

By the time of the jurisdiction hearing in the DIFC Court the Defendant had commenced parallel proceedings (seeking mirror relief) against the Claimant in the Abu Dhabi Courts and it had also filed a constitutional petition before the USC requesting that Court to intervene - pursuant to the USC's jurisdiction under Article 99(3) of the UAE Constitution - to decide which Court had jurisdiction to hear the substantive dispute where there is a conflict of jurisdiction between two Emirate-level Courts.

Jurisdiction

The DIFC Court held that it has jurisdiction to hear Allianz's claim on the basis that it is a DIFC Establishment and therefore jurisdiction is founded under the gateway provisions in Article 5(A)(1) (a) and (b) of Dubai Law No.12 (as amended by Law No.16 of 2011) conferring exclusive jurisdiction to the DIFC Courts in matters involving:



"(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract."

The DIFC Court reaffirmed that the jurisdiction of the DIFC Court is primarily determined by reference to Law No.12, as amended.

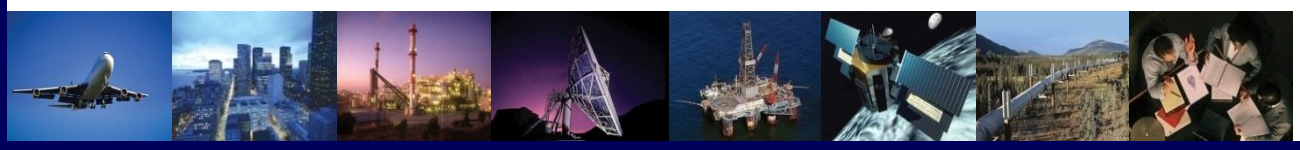
In determining jurisdiction in favour of the DIFC Courts, the Judge also took into consideration the fact that there had been no written agreement between the parties to opt-out of the DIFC Court's exclusive jurisdiction in relation to the gateway jurisdiction under (a) and (b) above.

In considering the application of *forum non conveniens (*as relied on by the Defendant to support its argument that the Abu Dhabi Courts were the more appropriate forum), while recognising generally the Application of the Doctrine under DIFC Law, the Court held that it is not relevant to determining matters of jurisdiction between two national / domestic Courts, and that it did not apply in this case. The DIFC Court held that forum non conveniens is a relevant consideration only where there is a dispute over the jurisdiction between the Court seized and one or more International Courts.

No stay of proceedings

The Defendant had pleaded as its secondary case that, if the DIFC Court found that it had jurisdiction over the dispute, the Court should nonetheless stay the proceedings pending the decision of the USC on the Defendant's constitutional petition. Acknowledging the DIFC Court's status as a UAE Court and the application of the UAE Constitution to the DIFC and those within it, the DIFC Court noted that the defendant's petition to the USC (asserting a conflict of jurisdiction) had been filed before either the DIFC Court or the Abu Dhabi Courts had ruled on their own jurisdiction, respectively (and that, in fact, the petition had been filed even before the defendant had commenced its claim in the Abu Dhabi Courts).

At the time of the hearing of the jurisdiction application in the DIFC Court the Abu Dhabi Courts had not ruled on their own jurisdiction over the Defendant's claim and the USC had not issued judgment on the Defendant's petition. Before the judgment of H.E. Justice Ali Al Madhani was issued the USC issued judgment dismissing the Defendant's petition on the basis that it had been brought prematurely as there was no actual conflict of jurisdiction; for



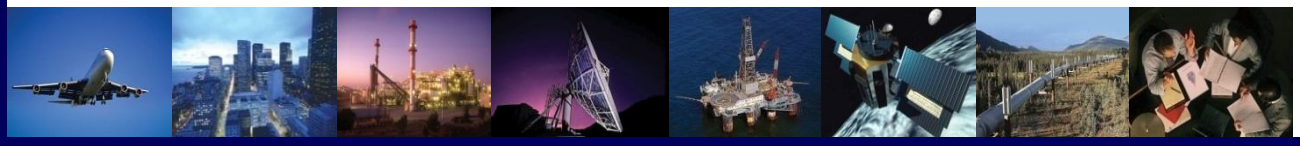
this to exist there would have to be two final conflicting judgments over jurisdiction in the DIFC Courts and the Abu Dhabi Courts. It was recognised that the two Courts said to be in conflict could in fact reach the same conclusion on jurisdiction, in which case there would be no conflict at all.

The DIFC Court refused to stay the proceedings brought before it by Allianz notwithstanding that the Abu Dhabi Court proceedings were continuing in parallel, whilst recognising that this would have consequences in terms of costs for the parties.

Comment

The Allianz judgment is welcomed as it affirms the grounds on which the gateway jurisdiction of the DIFC Court can be asserted. It also demonstrates the DIFC Court's approach to the area of potential conflict of jurisdiction between the DIFC Court and the Courts of other Emirates. The DIFC Court has asserted its standing as another court within the UAE legal system. The judgment is also interesting from a constitutional law perspective, insofar as there were arguments made before the Court in reliance on UAE Law and on related constitutional proceedings before the USC, and in terms of the Court's comments on the application of *forum non conveniens* to inter-Emirate jurisdictional considerations.

While the Allianz case arose in a Reinsurance context, and is the first judgment where a number of these issues have been considered in the DIFC Court, it is likely that other similar cases may arise where, on different facts, the DIFC Court may be required to consider further its constitutional obligations and its application of the *forum non conveniens* doctrine.



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INTERNATIONAL

Texas Fertilizer Plant Explosion

15 people were killed and another 200 were injured in the blast at Texas Fertilizer Plant that exploded on 17th April 2013. Thus far the final cause of the explosion is still under investigation, but it is known that a large amount of ammonium nitrate ignited as part of the explosion.

The West Fertilizer Company was the site of a massive explosion that damaged or destroyed more than 100 homes, two schools, and multiple businesses. The force and shock waves from the explosion registered as a 2.1 magnitude earthquake and left a crater in the ground.

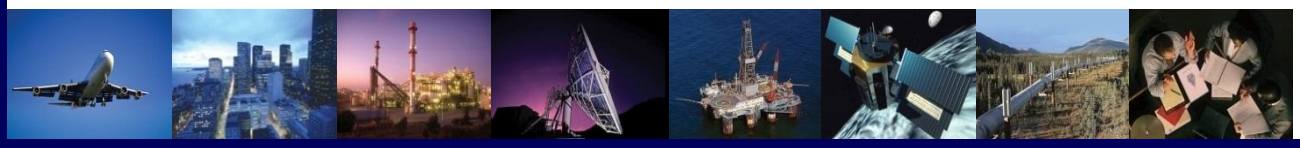
According to the plant authorities, 270 tons of ammonium nitrate was on site as of the end of last year. Investigators are still trying to determine what caused the fire that likely caused an explosion that left a crater with a radius of 90 feet through the small Texas town. An elementary school, a nursing home and dozens of houses were destroyed during the blaze.

Despite some estimates concluding that the fire at the West Fertilizer Company and the subsequent explosion caused more than USD 100 million in destruction, the factory had only USD 1 million in liability coverage with no excess or umbrella coverage. It is perceived that a million dollars is a pathetic amount for this type of dangerous activity. West Fertilizer Co. has yet to be formally held liable for the horrific blaze that claimed the lives of people, and leveled buildings for blocks in every direction.

The cause of the blast is still under investigation, but authorities say the highly volatile chemical compound ammonium nitrate was found at the site of the fertilizer retailer. Possibly hundreds of tons of the fertilizer were stored at the plant.

The Insurance Department says it cannot comment on the investigation but it did quash reports of anhydrous ammonium being involved in the explosion. The tanks were not involved in the explosion or fire.

About a week after the explosion, Grinke filed Suit in McLennon County District Court against Adair Grain on behalf of Berkley's Acadia Insurance Co., Continental Western Insurance Co., Union Standard Insurance Co. and Union Standard Lloyds. The insurers cover individuals, businesses, and churches in town. The Suit alleges negligence and claims shockwaves, debris and flammable material from the explosion "caused severe damage" to insureds' properties. Additional Suits against Adair have been brought by other members of the community.



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The Lawsuit was filed so soon in order to "have a judge to go to" for an order like an injunction if, for any reason, the insurers were not allowed on the site to conduct an investigation. Thankfully, that has not been needed. However, the insurers have not yet conducted a full investigation. State and federal authorities are on the site, but they may be wrapping things up soon.

Several lawsuits have been filed against Adair Grain since the force of the blast leveled some surrounding homes. Multiple companies within the W.R. Berkley Corp. group of insurers are among those who have filed suit, claiming negligence on the part of the Adairs. The subrogation suit looks to recoup money paid by Berkley to insureds including individuals, a bank, a car dealership, a TV and appliance store, a bakery, an auto parts store, two churches and an inn.

The coverage was provided by United States Fire Insurance Co. United States Fire Insurance Co. is a member of Morristown, N.J.-based Crum & Forster, which is part of the Fairfax Group. Adair Grain Inc. is the parent company of the West Fertilizer Company.

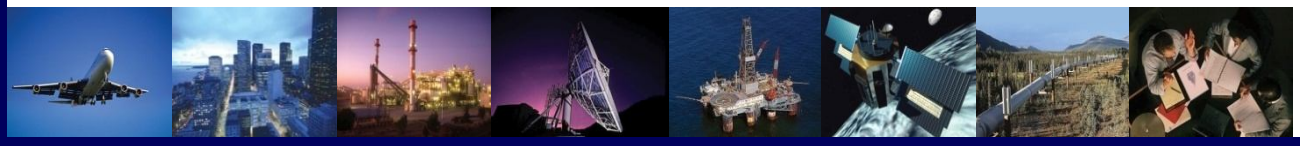
The attorney for a group of W.R. Berkley Corp. companies that have filed suit against West Fertilizer Co. calls the retailer's lack of adequate insurance "irresponsible."

West Fertilizer, or Adair Grain, have not been officially deemed negligent for the blast that wounded so much of the town. The facility apparently did not tell the proper authorities that it stored hundreds of tons of the highly volatile chemical compound ammonium nitrate on the site and, by all accounts, the facility appears to have lacked sufficient risk management measures to attempt to protect its neighbours from a worst-case-scenario situation.

There may be clues that other parties can be held negligent in some way--such as chemical manufacturers, transportation companies or makers of safety devices that might have been in place, but malfunctioned.

Reed, a West Texas paramedic, was arrested late last week. According to an affidavit, Reed admitted to possessing the components of a pipe bomb. He apparently handed over the ingredients—chemical powders, a fuse, a lighter, a digital scale and other items—to an acquaintance.

Several hours after the arrest was made public, authorities said a criminal investigation was launched into circumstances surrounding the massive explosion on 17th April 2013.



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Authorities have not linked Reed to the blast at the fertilizer retailer in the small rural community of about 2,800.

The Attorney representing Bryce Ashley Reed is saying his client this week will plead not guilty to a federal charge of possessing an explosive device.

His lawyer says Reed had “no involvement whatsoever in the explosion at the West, Texas fertilizer plant.”

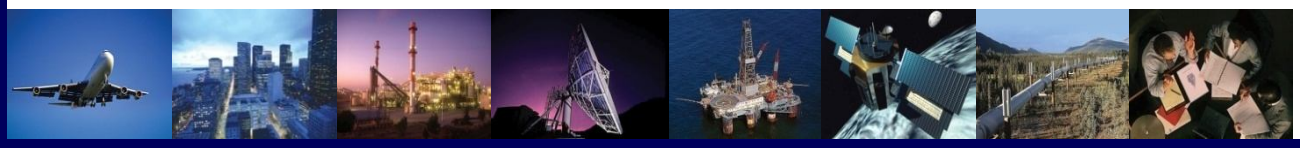
Say authorities find enough on Reed to connect him to the fire that eventually led to the explosion at the plant. All the points regarding holes in insurance requirements, workplace safety, risk management, oversight, and land-use planning remain as firm as the days prior to us learning of Reed. But do they persist against a backdrop of what could be a criminal act?

In the weeks following the blast, various news agencies have unveiled a patchwork regulation for facilities such as West Fertilizer, which stored hundreds of tons of the highly-volatile chemical compound ammonium nitrate at the site.

West Fertilizer, or its parent company Adair Grain, did not notify the Department of Homeland Security it possessed so much ammonium nitrate—as facilities dealing with this quantity of the substance are required. In fact, it seemed no one who outsiders might assume should have known, did know much about this facility site.

Meanwhile, federal and state lawmakers have called for intense debate regarding the oversight and regulation of facilities like West Fertilizer.

After a month-long scene investigation, investigators still do not know what caused the fire that led to a massive explosion at the West Fertilizer Co. in Texas. Authorities held a press conference on 16th May 2013 in West, Texas. They say they have narrowed the causes to several possibilities—crime among them—but they cannot be certain. The investigation remains open to conduct more interviews and follow leads. Over 200 leads were developed and 400 interviews were conducted thus far, say authorities. More than 100 investigators and experts have been on the scene since the fertilizer retailer exploded on 17th April 2013 shortly after a fire was reported at the site. Ammonium nitrate stored at the site was the trigger of the blast, authorities have concluded. Hundreds of tons of the highly-volatile chemical compound used to fertilize crops was stored at the site.



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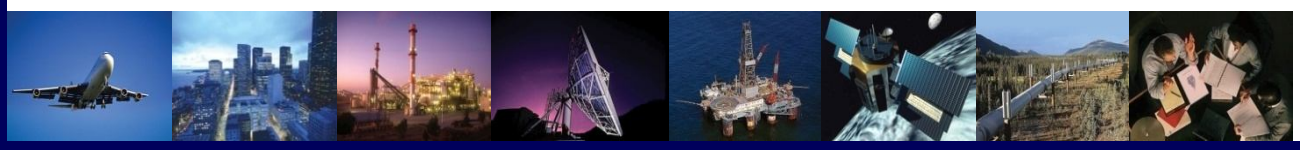

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Team Co-ordinator : **Sanjiv Shanbhag,**
Senior Executive Director,
J. B. Boda & Company Pvt. Ltd.,
Mumbai, India.
sanjiv@jbbodamail.com

We value feedback at : median@jbbodamail.com

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