Browne Jacobson

Reinsurance

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Premia successfully argues for £1million cost cap to expenses liability in dispute with Amtrust Group

Premia Reinsurance Ltd and another company v Amtrust International Insurance Ltd [2024] EWHC 1078 (Comm)

Background

The parties are all Bermudian insurance and reinsurance companies. The case concerned the proper construction of clause 3.22 of a Reinsurance Framework Agreement (the "**RFA**") entered into by the parties on 31 December 2019.

According to Clause 3.2, the Claimant reinsurers were obliged to pay pro rata the expenses under section 13 of four Quota Share Reinsurance Agreements ("**QS Agreements**") which were effective from 1 January 2019. The Claimants became a party to the QS Agreements by novation on 31 December 2019. Clause 3.2 provided that:

"*From Completion, the Reinsurers [the Claimants] shall pay the expenses set out under section 13 of the QS Agreements and in the event that:*

(a) the actual expenses to be paid by the Reinsurers under section 13 of the QS Agreements are less than £1,000,000 per calendar year, the Reinsurers shall pay AmTrust the difference between the amount of the actual expenses and £1,000,000 and such payment shall be made on the commutation of the QS Agreements on the occurrence of the 2018 YOA RITC or termination of the QS Agreements in the event that the 2018 YOA RITC does not occur; or

(b) the actual expenses to be paid by the Reinsurers under the QS Agreements exceed £1,000,000 per calendar year AmTrust shall pay the Reinsurers the amount of expenses that exceed £1,000,000 (per calendar year) and, such payment(s) shall be made by AmTrust to the Reinsurers through the deductions set out in Clause 13.14(e)."

It was agreed that the Claimants were liable to pay expenses under s13 of the QS Agreements from 1 January 2019 and that the effect of sub-paragraphs (a) and (b) operated as a £1 million cap on the Claimants' liability.

The issues between the parties were:

1. to which expenses the £1 million cap applied; and
2. whether the £1 million cap was subject to a temporal restriction.

The Claimants argued that the cap applied to all expenses they were liable to pay under s13 of the QS Agreements and clause 3.22 of the RFA, regardless of whether they were incurred before or after the conclusion of the RFA.

The Defendant argued that the cap only applied to those expenses falling due or paid after the conclusion of the RFA on 31 December 2019.

Decision

The Court found in favour of the Claimants' interpretation of clause 3.22 referencing the natural meaning of the language of the clause and its inter-relationship with the other provisions of the RFA.

The Court found that the words “From Completion” applied equally to the Claimants’ unqualified obligation to pay the expenses set out under s13 of the QS Agreements in the first two lines of clause 3.22 as well as the forward-looking subparagraphs (a) and (b) which dealt with the consequences of the expenses either exceeding or falling short of £1 million.

“From Completion” determined when the Claimants’ obligations arose rather than limited the substance of the Claimants’ obligations to those expenses arising after 31 December 2019. The Court rejected the Defendant’s argument that the words “From Completion” were mere surplusage, citing the principle that arguments based on surplusage are of little value in the interpretation of commercial contracts.

The Defendant further argued that the Claimants’ interpretation lacked commercial common sense because its result was that (1) the defendant had agreed to pay the Claimants $12.7 million in accordance with subparagraph (b) in respect of the calendar year 2019 (where those expenses had been determined prior to the conclusion of the RFA) and (2) the Claimants would have the benefit of the premium for the QS years of account without having pay the substantial expenses save for those under £1 million. Nigel Cooper KC rejected this argument pointing out that the result of the Claimants’ construction was not “so unbusinesslike or imprudent” that it justified a preference for the Defendant’s interpretation.

Comment

The case once again highlights the difficulties posed by “commercial common sense” arguments, particularly in the context of contract construction. This is a reminder that “commercial common sense” is subjective and its relevance will depend on how uncommercial the outcome is perceived to be.

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