Claim No. CFI 003/2022

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) AMERICAN INTERNATIONAL GROUP UK LIMITED (AS TRANSFEREE OF AIG EUROPE LIMITED)
(2) MARKEL SYNDICATE MANAGEMENT LIMITED
(3) TALBOT UNDERWRITING LIMITED
(4) BERKSHIRE HATHAWAY INTERNATIONAL INSURANCE LTD

Claimants

and

QATAR INSURANCE CO. (BRANCH OF A FOREIGN COMPANY)

Defendant

CONSENT ORDER

UPON the Claimants' filing a claim by way of a Part 7 Claim Form issued on 14 January 2022 (the ``Claim'')

AND UPON the Claimants serving the Claim on the Defendants on 26 January 2022

AND UPON the Defendant filing an Acknowledgement of Service issued on 8 February 2022

AND UPON the Claimants filing the Amended Claim Form on 29 March 2022

AND UPON the Claimants filing the Re-amended Claim Form on 22 August 2022

AND UPON hearing the Defendant's Application No. CFI-003-2022/1 dated 22 February 2022 for a declaration that the DIFC Courts have no jurisdiction to hear the claim (the ``Application'') and the Defendant's Application No. CFI-003-2022/2 dated 14 July 2022 (the ``Expert Evidence Application'') at a hearing on 21 July 2022

AND UPON ordering, inter alia, that the Expert Evidence Application and the Application are refused by way of the Order of Justice Lord Angus Glennie dated 29 August 2022

AND UPON the Defendant filing a Further Acknowledgment of Service issued on 12 September 2022

AND UPON the parties settling the Claimants' costs of the Application and the Expert Evidence Application and the Parties settling the Claimants' Application No. CFI-003-2022/3 dated 6 September 2022 and the Defendant's Application No. CFI-003-2022/4 dated 14 September 2022

AND UPON a Consent Order extending the deadline for filing the Particulars of Claim to 24 October 2022 issued on 6 October 2022

AND UPON a Consent Order extending the deadline for filing the Particulars of Claim to 31 October 2022 issued on 28 October 2022

AND UPON a Consent Order extending the deadline for filing the Particulars of Claim to 1 November 2022 issued on 31 October 2022

AND UPON the Claimant filing the Particulars of Claim on 1 November 2022

AND UPON a Consent Order extending the deadline for filing the Defence to 13 December 2022 issued on 29 November 2022

AND UPON a Consent Order extending the deadline for filing the Defence to 3 January 2023 issued on 12 December 2022

AND UPON the Defendant filing a Defence and Counterclaim issued on 3 January 2023

AND UPON the Defendant serving the Defence and Counterclaim on the Claimants on 9 January 2023

AND UPON considering the Rules of the DIFC Courts

AND UPON the Parties having agreed to the terms of this Consent Order

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The deadline for the Claimants to file a Reply and Defence to the Counterclaim shall be extended to **4pm on 31 January 2023**.

2. The Defendant is permitted to amend the Defence and Counterclaim in the form exhibited to this Consent Order.

3. There shall be no order as to costs.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 18 January 2023
At: 10:30am

Claim No. CFI 003/2022

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

(1) AMERICAN INTERNATIONAL GROUP UK LIMITED (AS TRANSFEREE OF AIG EUROPE LIMITED)
(2) MARKEL SYNDICATE MANAGEMENT LIMITED
(3) TALBOT UNDERWRITING LIMITED
(4) BERKSHIRE HATHAWAY INTERNATIONAL INSURANCE LTD

Claimants

and

QATAR INSURANCE CO. (BRANCH OF A FOREIGN COMPANY)

(Defendant)

AMENDED defence and counterclaim

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3 January 2023

GHAFFARI

1. References to paragraph numbers in this Defence and Counterclaim are to the paragraphs of the Particulars of Claim unless otherwise stated. This Defence and Counterclaim also adopts the same definitions as the Particulars of Claim.

2. Save where expressly admitted below, QIC joins issue with the Claimants on their Particulars of Claim.

* * *

DEFENCE

* * *

3. Paragraph 1 is admitted.

4. Paragraph 2 is admitted. QIC is licensed by the Government of Dubai to operate within the UAE, subject to all applicable laws

5. Paragraphs 3 to 6 are admitted.

6. As to paragraph 7, it is not admitted that the parties agreed that the laws governing the Reinsurance Contracts would be exclusively those UAE laws applicable within the jurisdiction of the DIFC (DIFC Laws), **to the exclusion of other Federal civil and commercial laws. The Claimant has not identified the DIFC Laws which it says were chosen to apply.**

7. In any event, no issue appears to arise in relation to the choice of governing law, as the Claimants have not suggested that the interpretation of the Reinsurance Contracts would be any different even if they are governed by UAE laws other than DIFC Laws.

8. Paragraphs 10 to 18 are admitted. The Bank commenced proceedings before the Dubai Courts and QIC has paid the Bank's claim in full pursuant to the judgment of the Dubai Court of Cassation, dated 17 January 2022.

9. Paragraph 19 is denied.

10. Save as to the purported extract from ITSR 560.410, which is not admitted, the extracts from the ITSR set out in paragraph 20 are admitted. QIC reserves the right to refer to the full text of the ITSR.

11. As to paragraph 21:

(a) It is admitted that the Claimants are each owned and controlled by a United States Person within the meaning of ITSR 560.215.

(b) It is admitted that the Iranian Nationals are ordinarily resident in Iran and therefore subject to the jurisdiction of the Government of Iran.

(c) It is denied that the Claimants are prohibited under ITSR 560.204 from making payment of the Reinsurance Claimant.

12. Paragraph 21(c) is denied. Specifically (and without limiting the arguments which will be advanced by QIC at the hearing of its claim):

(a) The Reinsurance Contracts are independent contracts of reinsurance under which the Claimants agreed to indemnify QIC in respect of losses for which QIC was liable to its own insured, the Bank, under the Insurance Policy. There is no privity of contract between the Claimants and the Bank.

(b) The Reinsurance Contracts involve the provision of reinsurance services by the Claimants to QIC. They do not involve the provision of insurance services, directly or indirectly, to the Bank, let alone to Alpine or to the ultimate owners of Alpine. Performance of the Reinsurance Contracts therefore does not involve the provision of any services by the Claimants, directly or indirectly, to Iran.

(c) The payment by the Claimants of the sum due to QIC in respect of the Reinsurance Claim is a payment which is required to be made to QIC by way of indemnity in respect of its liability to the Bank under the Insurance Policy. The Bank has already indemnified Alpine in respect of the Incident from its own funds, and QIC has already indemnified the Bank in respect of the Loss from its own funds. The payment by the Claimants to QIC involves only payment to QIC itself and will not result in the direct or indirect transfer of funds to Iran.

(d) Any transfer of funds to Alpine by the Bank has already taken place independently of any payment by the Claimants to QIC.

13. In the premises, the Sanctions Exclusion does not apply, and paragraph 22 is denied.

14. Without prejudice to the foregoing, the Claimants are put to proof as to whether any of them has applied to OFAC for a licence permitting them to make payment to QIC in respect of its claim under the Reinsurance Contracts.

COUNTERCLAIM

* * *

15. The Defence above is repeated.

16. For the reasons set out in the Defence, the Sanctions Exclusion does not apply.

17. QIC is entitled to be indemnified by the Claimants pursuant to the Reinsurance Policies in the following amounts, as more particularly set out in Annex A:

First Claimant	***Primary Layer***	***Third Excess Layer***
	AED454,545.00	**AED4,500,000.00**
Second Claimant	***Second Excess Layer***	
	AED727,272.00	
Third Claimant	***Second Excess Layer***	***Fourth Excess Layer***
	AED2,181,816.00	**AED2,052,626.72**
Fourth Claimant	***Second Excess Layer***	
	AED545,456.00	

18. QIC is entitled to the payment of compound, alternatively simple interest on each of the above sums at common law, alternatively pursuant to Article 39 of the Court Law 2004 from the date on which payment fell due, until payment in full.

19. The law which governs the Counterclaim is the law of the United Arab Emirates, including the law of the DIFC. QIC notes that it is the Claimants' case that the applicable laws are only those UAE Laws which apply within the DIFC and not the Federal civil and commercial laws of the UAE, but puts the Claimants to proof on this point to the extent that it is relevant. It is QIC's case that its Counterclaim is entitled to succeed whether or not the applicable law is limited to the UAE Laws which apply within the DIFC.

20. The DIFC Court has jurisdiction over the Counterclaim under Article 5A(1)(b) and (c) of Law No. 12 of 2004 as amended.

AND QIC COUNTERCLAIMS

1. As against the First Claimant, payment of the sums of AED454,545.00 and AED4,500,000.00, together with interest thereon.

2. As against the Second Claimant, payment of the sum of AED727,272.00, together with interest thereon.

3. As against the Third Claimant, payment of the sums of AED2,181,816.00 and AED2,052,626.72, together with interest thereon.

4. As against the Fourth Claimant, payment of the sum of AED545,456.00, together with interest thereon.

Statement of Truth

The Defendant believes that the facts stated in this Defence and Counterclaim are true.

3 January 2023
Respectfully submitted

Zoe O'Sullivan KC
Serle Court

Amir Ghaffari
Ghaffari International Disputes Limited
Legal Representative for the Defendant