Claim No. CFI 060/2019

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ORIENT INSURANCE PJSC

Claimant

and

HAZEL MIDDLE EAST FZE

Defendant

AGREED ORDER PURSUANT TO RDC 36.28 AND 36.29

UPON the Claimant and Defendant having agreed to the terms set forth in the schedule hereto (the **"Schedule"**)

IT IS ORDERED THAT:

1. All further proceedings in this claim be stayed, except for the purposes of executing the terms in the Schedule.

2. Liberty to apply in order to carry out such terms into effect.

3. The hearing listed from 5 to 13 December 2021 is vacated.

4. No order as to costs.

Issued by:
Nour Hineidi
Registrar
Date of issue: 24 November 2021
Time: 8am

THIS SETTLEMENT AGREEMENT is made on 18 November 2021

BETWEEN:

(1) **Orient Insurance PJSC**, a company resident in the United Arab Emirates, with its registered office address at PO Box 27966, Orient Building, Al Badia Business Park, Dubai Festival City, Dubai (**"Orient"**); and

(2) **Hazel Middle East FZE**, a company resident in the United Arab Emirates, with its registered office address at PO Box 49148, Hamriyah Free Zone, Sharjah (**"HME"**),

(together the **"Parties"** and individually a **"Party"**).

RECITALS

Whereas:

(A) Under Insurance Policy Number P/01/7000/2017/32-504521 covering the period 1 June 2017 to 31 May 2018 (subsequently extended to 31 August 2018) (the **"Policy"**), Orient agreed to provide trade credit insurance cover to HME, subject to the terms and conditions of the Policy.

(B) In January 2018, HME claimed under the Policy for losses allegedly suffered under a contract with a buyer named Vincom Commodities Ltd (**"Vincom"**) for the sale to Vincom of a bulk cargo of diesel (Vincom having been placed in insolvent liquidation) (the **"Policy Claim"**). HME claimed the credit limit of US$5 million under the Policy, which was later revised to USD 4,497,000 (the **"Loss"**).

(C) Orient commenced Dubai International Financial Centre (**"DIFC"**) Court proceedings against HME in October 2019 (Case No. CFI-060-2019), seeking a declaration that the Policy is void ab *initio* or alternatively that it has no liability under the Policy in respect of the Policy Claim on the grounds that HME breached the terms and conditions of the Policy and/or UAE law and/or suffered no loss from its trading relationship with Vincom (the **"Proceedings"**).

(D) HME denies that Orient is entitled to the declarations sought in the Proceedings, and has counterclaimed for the Loss, plus interest, on the basis that the relevant Policy conditions were satisfied or were not applicable and denies that it suffered no loss (**"the Counterclaim"**).

(E) Following a period of negotiations, the Parties have settled their differences and agreed terms for the full and final settlement of the Policy Claim, the Proceedings, the Counterclaim and any other claims that either Party could advance under the Policy (or otherwise) against the other, on the terms set out herein (the **"Settlement"**).

IT IS HEREBY AGREED as follows:

1 **Definitions and Interpretation**

1.1 In this Agreement, except where the context otherwise requires, the following meanings shall apply:

(a) A reference to a clause is a reference to a clause of this Agreement;

(b) The terms `herein', `hereof', `hereto', `hereunder' and words of similar purport refer to this Agreement as a whole;

(c) A reference to a document is a reference to that document as has from time to time been validly amended, supplemented, assigned, novated or varied;

(d) Any reference to the term `including' or any variation thereof shall include the words `without limitation' immediately after it;

(e) Any reference to the singular includes a reference to the plural and vice versa;

(f) Any reference to the masculine includes a reference to the feminine and vice versa;

(g) Any reference to the term `any' shall include all and vice versa; and

(h) The phrase `relating to' shall be understood to mean `relating to, arising from, in connection with, as a consequence of' and such other phrase that has the same or similar meaning to the intent that the phrase shall be as broad and inclusive as possible.

1.2 In this Agreement, except where the context otherwise requires, the following meanings shall apply:

(a) This **"Agreement"** means this Settlement Agreement, including the appendix referred to as Appendix A.

(b) **"Claim"** means any and all allegations, claims, counterclaims, disputes, causes or rights of action, remedies or proceedings, whether at law or in equity, of whatsoever nature and kind, and howsoever arising, in any jurisdiction whatsoever, or before any authority whether intimated, prospective or contingent whether known or unknown, whether suspected or unsuspected, whether secured, proprietary, by way of tracing, priority or otherwise, whether by way of contribution or subrogation or otherwise, which relate to the Policy Claim provided always that, notwithstanding the above, or the other provisions of this Agreement, the term `Claim' shall not include, or be deemed to refer to or include any claim to enforce the obligations under this Agreement.

(c) **"Liability"** means any demand, liability, obligation, complaint, claim, counterclaim, right of set-off and net-off, indemnity, right of contribution, cause of action (including in negligence or based on fraud), administrative, criminal or regulatory claim or infraction, petition, right or interest of any kind or nature whatsoever, whether in law or equity, direct or indirect, joint or several, foreseen or unforeseen, contingent or actual, accrued or unaccrued, liquidated or unliquidated, present or future, known or unknown, disclosed or undisclosed, suspected or unsuspected, however and whenever arising and in whatever capacity and jurisdiction.

(d) **"Related Party"** means a Party's parent, subsidiaries, assigns, transferees, representatives, principles, agents, officers, directors, employees, partners, consultants or members, past, present and future and each and all of them.

(e) The Recitals form part of and are deemed to be incorporated into this Agreement, save that where there is a reference to a description of a separate document, that document shall be referred to for its full meaning and effect in preference to the reference or description of that document in the Recitals.

(f) Headings and sub-headings in this Agreement shall not be deemed part thereof or be taken into consideration in the interpretation or construction of this Agreement.

2 **Effect of this Agreement**

2.1 This Agreement shall be binding on the Parties:

(a) on the date of signature; or

(b) if the Parties do not sign the Agreement on the same date, the date of the last signature shall be taken to be the effective date of this Agreement,

(the **"Effective Date"**).

3 **Settlement and Release**

3.1 In consideration of the mutual promises in this Agreement, HME:

(a) Irrevocably and unconditionally releases and discharges Orient and its Related Parties and Orient's reinsurers, Atradius Cr&#65533;dito Y Cauci&#65533;n S.A. De Seguros Y Reaseguros (**"Reinsurers"**) and its Related Parties from any Liability arising directly or indirectly out of and/or in relation to (i) the Loss; and/or (ii) the Policy Claim; and/or (iii) the Policy; and/or (iv) the Proceedings; and/or (v) the Counterclaim; and /or (vi) any rights and/or obligations that may otherwise exist under the Policy and/or at law (the **"Released Claims"**);

(b) Irrevocably and unconditionally waives all and any Claims that they may have against Orient and its Related Parties and Reinsurers and its Related Parties, arising directly or indirectly from the Released Claims;

(c) Warrants that no actions, suits or complaints have been commenced against Orient and its Related Parties and/or Reinsurers and its Related Parties before any court or tribunal of competent jurisdiction in relation to the Released Claims (except the Counterclaim);

(d) Agrees to fully and faithfully perform all their obligations pursuant to this Agreement.

3.2 In consideration of the mutual promises in this Agreement, Orient:

(a) Irrevocably and unconditionally releases and discharges HME and its Related Parties from any Liability arising directly or indirectly out of and/or in relation to the Released Claims;

(b) Irrevocably and unconditionally waives all and any Claims that they may have against HME and its Related Parties arising directly or indirectly from the Released Claims;

(c) Warrants that no actions, suits or complaints have been commenced against HME and its Related Parties before any court or tribunal of competent jurisdiction in relation to the Released Claims (except the Proceedings);

(d) Agrees to fully and faithfully perform all their obligations pursuant to this Agreement.

3.3 The Parties agree that if any Claim is brought in any jurisdiction or before any authority whatsoever, this Agreement is intended to be a complete defence thereto and that any Party the subject of such Claim will be entitled to summary judgment thereon (or equivalent thereto) and indemnity costs (or equivalent thereto).

3.4 The Parties enter into this Agreement without any admission of liability in respect of the Released Claims.

3.5 Nothing herein shall release any Party from liability for any failure to comply with its obligations pursuant to this Agreement.

4 **Stay of Proceedings**

4.1 Subject to the terms of this Agreement, the Parties agree that the Proceedings and the Counterclaim shall be stayed by:

(a) Each Party executing an Agreed Order in substantially the form set out in **Appendix A** of this Agreement, immediately following the execution of this Agreement; and

(b) Orient's legal representatives (Clyde & Co LLP) thereafter submitting to the DIFC Court, copied to Mr Jigar Gandhi of HME, a copy of the executed Agreed Order.

4.2 Each Party's agreement to stay the Proceedings is subject to the exception of reinstating the proceedings for the purpose of carrying the terms of this Agreement into effect, should this become necessary resulting from either Party's breach of this Agreement.

4.3 Each Party shall have liberty to apply to the DIFC Court to carry the terms of this Agreement into effect.

5 **Authority and Warranties**

5.1 Each Party represents and warrants that:

(a) This Agreement has been executed by it in a way which is binding upon it, by duly and validly authorised and approved signatories;

(b) No other acts or proceedings are necessary to authorise the execution or performance by it of this Agreement;

(c) It is duly authorised to enter into, and to perform all obligations under, this Agreement; and

(d) It has taken all advice and conducted all enquiries it considers necessary in relation to this Agreement.

6 **Continuing Obligations**

6.1 The Parties shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary and shall take any other action reasonably requested by another Party for the purposes of putting this Agreement into effect.

7 **Entire Agreement**

7.1 This Agreement constitutes the entire agreement between the Parties relating to the Loss, the Policy, the Policy Claim, the Proceedings and the Counterclaim and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

7.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

8 **General**

No admissions

8.1 This Agreement is entered into in full and final settlement and satisfaction of disputed matters relating to the Loss, the Policy, the Policy Claim, the Proceedings and the Counterclaim and in light of other considerations. It is not and shall not be represented or construed by the Parties as an admission of liability or wrongdoing on the part of either Party to this Agreement or any other person or entity.

Execution

8.2 This Agreement may be executed in any number of counterparts, each of which when executed and delivered by one or more of the Parties is an original, but all counterparts together constitute the same document, provided that this Agreement shall not be effective until each Party has signed and delivered at least one counterpart to the other Party.

Legal costs

8.3 The Parties agree that each Party shall be responsible for and shall bear and pay all or any of its own fees, expenses, costs and disbursements howsoever suffered and incurred in relation to the Loss, the Policy, the Policy Claim, the Proceedings and the Counterclaim.

8.4 For the avoidance of doubt, the Parties agree to waive and treat as discharged any entitlement to costs arising during the Proceedings and the Counterclaim.

8.5 The Parties shall bear their own legal and other costs to date (if applicable) incidental to the negotiation, preparation, execution and implementation of this Agreement. For the avoidance of doubt, costs incurred by a Party in the enforcement of this Agreement are excluded from the foregoing.

Legal advice

8.6 The Parties agree that they enter into this Agreement following receipt of advice that they have deemed necessary.

Severability

8.7 If any provision of this Agreement shall be held to be illegal or unenforceable, whether in whole or in part or in relation to the Parties to this Agreement, the validity and enforceability of the remainder of the Agreement, or its validity and enforceability as against the other Parties, shall not be affected.

Assignment

8.8 This Agreement shall not be assigned without written consent signed by both Parties (at their sole discretion).

Amendment, variation and waiver

8.9 Any amendments to this Agreement, or any waiver of a provision of this Agreement, must be in writing and signed by all Parties.

8.10 No failure to exercise and no delay in exercising, any right or remedy provided under this Agreement or by law shall constitute a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof. Any waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving or consenting Party and it applies only in the circumstances for which it is given and shall not prevent the Party who has given the waiver from subsequently relying on the provision it has waived.

9 **Confidentiality**

9.1 The terms of this Agreement, and the substance of all negotiations in connection with it, are confidential to the Parties and their advisers, who shall not disclose them to, or otherwise communicate them to, any third party without the written consent of the other Party other than:

(a) to the Parties' respective auditors, lawyers, reinsurers, retrocessionaires, reinsurance brokers and legal advisers on terms which preserve confidentiality;

(b) to the Parties' group companies (to include service companies);

(c) pursuant to an order of a court or tribunal of competent jurisdiction, or pursuant to any proper order or demand made by any competent authority or body where they are under a legal or regulatory obligation to make such a disclosure; and

(d) as far as is necessary to implement and enforce any of the terms of this Agreement.

10 **Governing law and jurisdiction**

10.1 This Agreement shall be governed by and construed in accordance with the laws of the DIFC.

10.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall:

(a) be subject to the exclusive jurisdiction of the Courts of the DIFC, and the Parties hereby submit to the exclusive jurisdiction of those courts for these purposes and agree that the Courts of the DIFC are the most appropriate and convenient courts to settle any dispute and they will not argue to the contrary; and

(b) be conducted in the English language.