**IN THE SUPREME COURT OF BERMUDA**
**CIVIL JURISDICTION**
**1995 No. 436**

**IN THE MATTER OF THE COMPANIES ACT 1981**

**AND IN THE MATTER OF SECTION 33 OF THE INSURANCE ACT 1978**

**AND IN THE MATTER OF ELECTRIC MUTUAL LIABILITY INSURANCE COMPANY, LTD.**

Mr. Robin Dicker QC and Mr. John Riihiluoma for the Joint Liquidators;
Mr. William Trower QC and Mr. Narinder Hargun for GE; and
Mr. Martin Pascoe QC and Mr. Timothy Marshall for CU.

**JUDGMENT**

**INTRODUCTION**

1. This matter comes before me on the application of the Joint Liquidators of Electric Mutual Liability Insurance Company Ltd. ("EMLICO") for directions that the underlying coverage dispute between General Electric Company ("GE") and EMLICO be determined by litigation in Massachusetts.

2. The background is set out in my previous rulings in this matter, and particularly that of 8th July 2005, but by way of brief overview, EMLICO was a Massachusetts registered company, incorporated in 1927 as a captive mutual insurer of GE. between the 1950s and 1995 EMLICO insured GE under a series of comprehensive general liability policies. There came a time when GE made substantial claims under the policies issued by EMLICO for various matters, but particularly in respect of its environmental clean up liabilities arising from a long history of industrial operations in the continental US and elsewhere. In 1995 EMLICO deregistered in Massachusetts and re-registered itself in Bermuda by a process referred to in the Companies Act 1981 as 'continuance', but which has from the outset been described in this case as 're-domestication'. Once in Bermuda, the company declared itself insolvent and petitioned to be wound up by the Supreme Court of Bermuda. This was a controversial move, giving rise to allegations of fraud, and it generated litigation at the time and since. However, on 26th July 1996

I made a winding up order in respect of EMLICO, and the liquidation has proceeded since then in the hands of joint liquidators ('the JLs') appointed by this Court. In the course of the liquidation GE has submitted proofs of its various claims to the JLs. There was a substantial claim concerning asbestos related liability, which is not the subject matter of this application, and a very substantial claim in respect of its environmental clean up costs. The environmental clean up claim has grown over the years, but the version, submitted on 16th June 2003, claimed $3.965 Billion in respect of 532 sites throughout the US, Puerto Rico and Canada.

3. EMLICO was reinsured by, among others, OneBeacon America Insurance Company, which was formerly Commercial Union Insurance Company (hereinafter 'CU'). Some, but I am told not all, of CU's contracts of reinsurance contain provisions which give it the right to interpose defences in the event of EMLICO's insolvency. There are minor differences between the various contracts, but the following, will suffice for the purposes of this judgment:

> "In the event of the insolvency of [EMLICO] the reinsurance afforded by this Agreement shall be payable by the Reinsurer on the basis of the liability of EMLICO under the policy or policies reinsured, without diminution because of such insolvency, directly to [EMLICO] or its liquidator, receiver or statutory successor. The Reinsurers shall be given written notice of the pendency of each claim or loss which may involve the reinsurance afforded by this Agreement within a reasonable time after such claim or loss is filed in the insolvency proceedings. The Reinsurers shall have the right to investigate each such claim or loss and interpose, at its own expense, in the proceeding where the claim or loss is to be adjudicated, any defense which it may deem available to [EMLICO] or [EMLICO's] liquidator, receiver or statutory successor.[1]"

4. There is an ongoing dispute between the JLs and CU on how to give effect to those rights, and indeed how best to deal with GE's environmental clean-up claim. The JLs retained the services of Margaret Warner, a partner in the US law firm of McDermott Will & Emery LLP, and a specialist in insurance coverage law and litigation, with an emphasis on 'long-tail' claims of the sort now faced by EMLICO, to assist in evaluating it. She established a team of attorneys to assist her in the task, and the team started work in earnest in September 1997, eventually producing a report at a cost to the estate in excess of $15M. However, CU has resisted the use of that report as a basis for settling the claim, and has throughout maintained the position that the only way to reach a just evaluation of the claim is by arms-length litigation, in which it is able to exercise its interposition rights.

[1] This version is from Article IX of Contract No. 76/837, and is that used by the Court of Appeal for the purposes of their 17th March judgment in Civ. App. 2005/20: see Ibid. para. 12.

5. Running parallel with the winding-up process is a long-standing arbitration between EMLICO and CU: at the outset of the winding-up there was a consensual submission of all disputes between the company and CU to arbitration, and a three man Panel ('the Panel') convened in early 1997. When it did so, the Panel divided the arbitration into three phases, the first of which ('Phase I') was concerned with a claim by CU for rescission of the reinsurance contracts on the grounds of fraud in the re-domestication. Phase I lasted more than four years, during which there was a full evidential hearing on the question whether the re-domestication of EMLICO to Bermuda had been achieved by deceiving the regulators as to its solvency. The Panel ruled on that on 31st October 2001. It made a unanimous finding of deceit, but, by a majority decision it refused CU's request for rescission. In a subsequent clarification of 26th January 2002 it stated that it would "be in a position in later phases to adjust for any differences that may have resulted from the deceitfully obtained change of jurisdiction from Massachusetts to Bermuda." There was then litigation in the US District Court for the Southern District of New York to vacate the Phase I award. The first instance judge confirmed the award, but, by a ruling of 5th August 2004 the Second Circuit Court of Appeal set aside that confirmation and remitted the matter to the judge for reconsideration, and those proceedings are ongoing.

6. By a summons of 26th November 2004 ('the November Summons'), CU then sought orders to give effect to its interposition rights[2]. On 8th July 2005 I ruled that the issues raised by that application were within the arbitration clause contained in the contracts of reinsurance, and were thus properly matters for the Panel, not this Court, and I dismissed the summons on that basis. That ruling was then appealed[3], and on 17th March 2006 the Court of Appeal reversed it, holding that CU's application did not raise an issue as to the interpretation or effect of the insolvency clause which needed to be decided by the Panel before the Summons could proceed.

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[2] The November summons sought the following relief:

> "1. A declaration that CU has the contractual right to interpose defences to claims made by General Electric Company ("GE") against Electric Mutual Liability Insurance Company Limited ("EMLICO").
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> 2. All orders necessary or appropriate to give proper effect to CU's contractual right to interpose defences.
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> 3. Without prejudice to the generality of paragraph 2, orders providing for CU to have conduct (at its own expense) of EMLICO's defences to the claims made against EMLICO by GE's proof of debt dated June 16, 2003.
>
> 4. All necessary further directions to the Joint Liquidators of EMLICO consequent upon the relief sought in paragraphs 1 to 3."

[3] Civil Appeal 2005 No. 20.

7. Against that background the JLs say that they have come to the decision that the GE claim should now be resolved by litigation in Massachusetts, EMLICO's original domicile before its re-domestication to Bermuda. To facilitate that they now seek the following directions:

> "1. The Joint Liquidators ("JLs") of EMLICO do have liberty to commence or permit to be commenced, in the state court of the State of Massachusetts, USA (the "Massachusetts Court"), proceedings by or against EMLICO (the "Proceedings") and submit to the jurisdiction and venue of such Court for the purpose of ascertaining whether any, and if so what, sum is due to GE from EMLICO under the terms of insurance policies issued to GE by EMLICO.
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> 2. The statutory stay imposed by section 176(5) of the Companies Act 1981 be lifted if and to the extent necessary for the purpose of the Proceedings.
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> 3. The JLs shall rely upon any judgment obtained in the Proceedings for the purpose of determining the claim by GE against EMLICO under the terms of insurance policies issued to GE by EMLICO (the "GE Claim").
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> 4. In complying with paragraph 1 above, the JLs will recognise and give effect to the contractual rights of CU pursuant to the relevant reinsurance contracts including the right to interpose defences in the Proceedings.
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> 5. The JLs and GE will support any motion filed by CU for leave to intervene in the Proceedings so as to enable CU to raise on behalf of EMLICO and interpose such coverage defences as CU wishes and the Massachusetts Court may allow provided however, nothing herein requires or directs the JLs to:
>
> (a) waive any privileges which EMLICO or the JLs may have against any party including CU which would otherwise be extant; or
>
> (b) waive any defences which EMLICO or the JLs may have individually or collectively to any discovery or request for testimony directed to them or their agents within the Proceedings.
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> 6. Subject to any order that may be made by the Massachusetts Court, any costs, fees and disbursements incurred by CU in relation to the Proceedings shall by borne by CU.
>
> 7. Subject to any ruling by the Massachusetts Court, the JLs be at liberty to appear in the Proceedings for the purpose of addressing such issues as they in their discretion consider appropriate, including for the avoidance of doubt"
>
> (a) any accusations against the JLs of wrongdoing related to the re-domestication of EMLICO to Bermuda; and
>
> (b) the performance of the JLs functions, the history of the dispute between the parties and the role of the Bermuda Court.

> 8. To the extent CU exercises the rights to set forth in paragraph 5 above, the JLs shall not be required to defend the GE Claim in the Proceedings, nor to interject any views or positions with respect to the substance of any potential defence thereto; and to the extent that CU does not undertake such rights, the JLs shall defend and/or resolve the GE Claim."

8. This statement of the relief sought is that advanced at the hearing. It is different in one significant respect from that in the summons, which originally sought, at paragraph 5, a direction that:

> "The JLs will tender and assign the conduct of the Proceedings to CU so as to enable CU to raise on behalf of Emlico, and interpose inter alia, such coverage defences as CU wishes and the Massachusetts Court may allows provided however, etc."

The JLs explain that the change is intended to track the wording of the panel ruling of 15th October 2001, which was in the following terms:

> "The Right to Interpose gives CU the right to conduct independent discovery and to intervene in a court of law as a third party to protect its own interests and, depending upon the circumstances, can even allow CU to take over the control of the case."

**THE ISSUES**

9. CU welcomes the proposal that the underlying coverage issues should be determined by litigation in the United States, but it strongly objects to Massachusetts as the forum. It contends that any litigation should take place in New York, and it claims that its interposition rights entitle it to decide in which forum the proceedings should be commenced. The JLs reject both propositions, and invite me either to give the directions sought be them, or to make no order at all. GE supports the JLs' position, and has indeed already issued proceedings against EMLICO in the Massachusetts state court, although it has not served them. As an added wrinkle, in those proceedings GE limits itself to 103 environmental clean-up sites, and states that it will not pursue the remaining 428 sites (with aggregate incurred costs of US $174M) provided that the litigation proceeds in Massachusetts. One effect of that is to roughly equalize the spread of sites and costs between the two contending fora[4].

[4] I am told that this would result in 17 sites in Massachusetts, representing 35% of the total costs incurred to date, as against 19 sites in New York, representing 37% of the costs. The remaining 67 sites are in 41 other US States, and represent 28% of the costs.

10. From CU's perspective the reason for the dispute comes down to choice of law. There are two contenders for which law governs the GE claim: New York state law and Massachusetts state law. The substantive law of the state of New York would be considerably more favourable than Massachusetts law to EMLICO[5], and hence ultimately to CU. The reverse is true for GE, which would, in general terms, be better off under Massachusetts law. The problem is that, at this stage, it is not possible to say definitively which law applies, as that will not be known until some competent court is seized of the matter and makes a decision on the point. Nor does the choice of forum necessarily determine choice of law. The evidence is that the courts of either state are equally capable of applying the law of the other, and all sides essentially recognize that. On the other hand it may be that any court has an inherent bias in favour of applying its own law, so that choice of forum may affect the probabilities on the eventual choice of law. As counsel for CU bluntly puts it:

> "Accordingly, to maximize the prospect of New York law being applied to GE's claim, the proceedings should [be] issued in New York.[6]"

11. As to whether the interposition rights give CU the contractual right to choose the forum, CU argues that they do because, to the extent that forum may influence the choice of law, it may thereby affect what defences can be advanced, and their chances of success. If necessary they seek to resurrect the November summons, and obtain relief under that by way of an appropriate order of this court as to venue.

12. The JLs take a different approach. They say that CU's interposition rights, whatever else they may mean, do not confer upon it the right to choose the forum, and they rely upon a strict construction of the Panel's Rulings, and the explanation of those rights by the Bermuda Court of Appeal. They recognize that they owe both parties a duty of good faith. They profess that their primary consideration is to duplicate as nearly as possible what would have happened if EMLICO had not re-domesticated to Bermuda, thus decreasing the likelihood of the New York District Court vacating the Phase I award, and removing the need for the Panel to make any adjustments in the later phases of the arbitration. They also assert that the matter can be dealt with more quickly and efficiently before the Business Section of the Massachusetts Superior Court. They

[5] The Warner report's estimate of the figure is privileged as against GE, and I can, therefore, only adopt the quantification of the amount from paragraph 11 of CU's open submissions: "the difference in outcome . . . is many hundreds of millions of dollars".
[6] CU's submissions, para. 15.

point out that, until recently, it has been CU's contention in the ongoing arbitration that the matter should be dealt with by litigation in Massachusetts, and contend that its current preference for New York amounts to "a remarkable volte face[7]".

**DISCUSSION**

13. I have to begin with the argument, strongly advanced by CU's counsel in his written submissions, that the interposition rights entitle CU to choose the forum. It logically comes first, because if determined in CU's favour it might dispose of the matter. While I recognize that the meaning of the interposition clause, as between the JLs and CU, is a matter for the Panel, the way it works out in practice will depend upon the practices and procedures of the Court in which the proceedings are taking place. I derive that from the judgment of the Court of Appeal on the November summons:

> "46. There remains for consideration the JLs' primary submission that the question whether the right to interpose defences entitles CU "to have conduct (at its own expense) of EMLICO's defences to the claims made . . . by GE's proof of debt" is a question of interpretation of the insolvency clause which only the Panel can resolve. This question can only arise in the context of liquidation proceedings, because of the reference to GE's proof of debt. If EMLICO were not in liquidation, GE would have commenced proceedings against EMLICO and the right to interpose defences would be exercised in the context of that litigation.
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> 47. It may also be noted at this stage that it is common ground that the reference to "the proceeding where the claim or loss is to be adjudicated" in the relevant part of the insolvency clause, and in relation to which the right to interpose defences exists, includes the liquidation proceedings following the insolvency of EMLICO which has brought the clause into operation.
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> 48. In such a context, it is inevitable that the winding up will be under the control or supervision of a Court. The practical effect, therefore, of enforcing the contractual right must depend upon the decision of the Court rather than upon the scope or interpretation of the right. Its scope as a matter of contract is unlimited. Its application must be limited by the rules, practices and procedures of the Court in which the relevant proceedings are taking place. On any sensible interpretation of the clause, it entitles the reinsurer to assert a contractual right to apply to the Court in which the proceedings are taking place for such orders or directions as the Court considers necessary or appropriate to ensure that the defences which CU considers are available to EMLICO are raised and adjudicated.
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> 49. The interpretation and effect of the clause, however, as between the JLs and CU are matters for the Panel, not for this Court. If such an issue arises for determination on this Summons, the Court must refer it to the Panel for decision.

[7] JLs' submissions, para. 13.

> 50. It is only if the Panel might interpret the clause in such a way as to give CU a lesser right than to apply for such relief as the Court considers appropriate that the present application could be affected in any way. Not only is there no indication that the Panel might do this, its Rulings demonstrate that in its view CU is entitled to exercise its right to apply to the Court, in the liquidation proceedings, without restriction until such time as the Courts reach a decision on GE's claims."

14. In the light of that ruling it is plain that the interposition rights give CU the right to apply to this court on the question of forum, and the right to be heard on the JLs' summons. Beyond that, it is for the court to decide what orders are necessary or appropriate to ensure that the defences which CU considers are available are raised and adjudicated. In my judgment it is not necessary for the matter to be heard in New York for CU to be able to raise any defences which might flow from the choice of New York law. The evidence is quite clear that a Massachusetts court is equally capable of understanding and applying New York law.

15. What is then left is a tactical scrabble between CU and GE based on the dubious premise that US state courts have an innate 'homing instinct' which would predispose them to choose their own law as the governing law over that of another state. The problem then is how the conflicting demands of CU and GE as to forum, and the competing duties of good faith which the JLs owe to each of them, should be resolved. Any resolution cannot be guided by a consideration of what the applicable law is or may be, because that is to beg the question: that will not get decided until a court is seized of the matter, and so cannot be used to decide which court should be seized of it. Instead, the JLs contend that the appropriate approach is to replicate what would have occurred if EMLICO had not re-domesticated to Bermuda, but had been wound-up in Massachusetts.

16. The primary reason why the JLs wish to replicate (or, as CU would have it, 'approximate') what would have occurred in a Massachusetts liquidation is because they say that is the best way to preclude further argument by CU in the New York confirmation proceedings and before the Panel. Their position is:

> "The overriding reason for and purpose of the present application is therefore to ensure that CU will no longer be able to contend that it has been prejudiced by the fact that EMLICO re-domesticated from Massachusetts to Bermuda."[8]

[8] JLs' submissions, para. 56

17. In the confirmation proceedings the Second Circuit Court of Appeals, in remitting the matter to the district court, said[9]:

> "In conducting its review, the district court may, as it finds appropriate after further proceedings, adopt or modify the now-vacated order currently before us on this appeal. But we caution the district court that it must address whether liquidation in Bermuda – which followed from re-domestication in Bermuda – could affect the results of the arbitration, and whether confirming the arbitral awards in Phases I and II would violate the court's equitable principles."

18. The matter has now been back before District Judge Griesa, and at a status hearing on 1st June 2006 he expressed concerns about the difficulty of undoing the effects of re-domestication:

> "There had to be an objective of the fraud. Can you simply say that the objective can be all wiped out, can be eliminated? The proceedings involve human beings. They involve taking positions, making judgment. Can any court, myself or the Court of Appeals or anybody, really be so perceptive or can the arbitrators be so perceptive as to say we will eliminate, we will prevent, we will cleanse the situation so we know of no substantial effect of the fraud? I really wonder about that.
>
> This is what I will leave you with. As far as the remedy, I am certainly not saying that I won't rescind the policies. But that is a very drastic remedy. The policies were not obtained by fraud. You had fraud in this movement from Massachusetts to Bermuda. Is it impossible to move back to Massachusetts and start over?[10]"

It is that last suggestion to which the JLs say they are responding by the directions that they now seek.

19. While I can see the force in such a strategy, CU protests that it will not work, because it is opposed to litigation in Massachusetts, which will therefore, it argues, breach its interposition rights. I cannot predict the outcome of such an argument before either the Panel or Judge Griesa, nor is it appropriate for me to try. It does, however, mean that the JLs' strategy will not necessarily avoid future controversy.

20. There is, however, another simpler reason for attempting to replicate what would have occurred in a Massachusetts winding-up, which I understood Mr. Dicker for the JLs to advance in his closing argument, and that is that it ensures that no-one benefits from the re-domestication. He described it as the "principled approach". I find that compelling, although I would prefer to

[9] 378 F.3d 204 at 209, C1 Tab 5, p. 317/18
[10] Vol. C1, Tab 9, p. 356/7

express it more widely, and say that the fairest way to resolve the conflicting interests and competing duties, insofar as they relate to the choice of forum, is to put the parties as near as possible back in the position they would have been in in that regard had the re-domestication not occurred.

21. However, in order to do that I have to be able to say what that position would have been in an insolvent liquidation in Massachusetts. I do not need to consider what might have happened if EMLICO had remained in Massachusetts and been solvent, because such an hypothesis is not now open to CU: the insolvency of EMLICO at the time of its re-domestication lies at the heart of CU's case of fraud, and it simply may not adopt mutually inconsistent positions on that.

22. The evidence filed on behalf of the JLs is that a Massachusetts receiver would initially try to settle any claim, but if settlement became unlikely and there were significant legal issues, the receiver would seek to litigate those issues unless the claimant initiated legal action first. If that involved complex factual and legal issues, then the receiver, rather than taking the issues to the single judge overseeing the receivership, would litigate them in the local Superior Court.

23. Against that, CU files evidence to the effect that it would nevertheless have been *possible* for a Massachusetts receiver to initiate proceedings in New York, and that in the unusual circumstances of this case the probability of that happening would have been increased. It is not the tenor of the evidence that the receiver would have been obliged to do so by virtue of CU's interposition rights, and indeed CU's expert, Mr. Robert Craig, expressly disclaims such a view[11]. That is not surprising. Interposition clauses only come into play in the event of insolvency, and in the normal course the ultimate arbiter of a disputed claim will be the court supervising the liquidation. It is in that court that the reinsurer may intervene to interpose defences, and it would be strange indeed if such a clause entitled reinsurers to insist on claims being litigated elsewhere.

24. Not only does CU's evidence not support the proposition that, in a Massachusetts liquidation, the interposition rights would allow CU to dictate the forum, but there is also strong evidence from the JLs' experts to the contrary:

[11] "The affiants further claim that I have opined to the effect that a reinsurer may force the receiver to pursue third party litigation in a particular forum . . . I have not." Craig 2, para. 8 (Vol. B1, Tab A5)

> "I also disagree with Mr. Craig's view that the Commissioner should litigate in whatever forum reinsurers believe is most advantageous to their interests. First, neither reinsurers' interposition rights nor the duty of utmost good faith owed to reinsurers, give them the right to dictate the forum in which to resolve those issues. Although the receiver may consider the reinsurer's point of view, she or he would not be required to adopt that view. Moreover, to the extent the reinsurer's goal is to minimize the claim, that is not (as noted above) the goal of the receiver in resolving a claim.[12]"

And

> "Based on my experience, a receiver would not yield to a reinsurer's demand to litigate a claim in another jurisdiction. In particular, I am not aware of any instance in which an interposition clause was construed to allow a reinsurer to demand that the receiver litigate a claim in another forum. Moreover, I am unaware of any reinsurer ever claiming that the duty of utmost good faith requires a receiver to litigate a claim in the forum the reinsurer believes to be best.[13]"

25. There is similar evidence from GE's experts. The effect of it all is overwhelming. Whatever the interposition rights may mean in the contractual context, in their practical application in US insurance receiverships they do not mean that the reinsurer is entitled to choose the forum. Moreover, on the evidence it seems to me that the overwhelming likelihood is that, if EMLICO had gone into insolvent liquidation in Massachusetts, then GE's claim, if not otherwise resolved, would have been dealt with in the normal way by litigation in the Massachusetts Superior Court. I think that that then answers the question, where should the dispute be litigated now? It does so because it provides a principled and non-partisan means of resolving the conflicting interests of CU and GE, and the competing duties owed by the JLs to each of them

26. I should also note that all the parties accept and agree that, if I now direct the JLs to litigate the GE claim in Massachusetts, that does not preclude CU from maintaining a *forum non conveniens* argument before the Massachusetts court. Indeed, this court would wish to respect the Massachusetts court in this regard and do or say nothing which might be thought to constrain the exercise of its independent discretion. It would, therefore, in theory be possible for the Massachusetts court, applying its own principles, to decline jurisdiction in favour of New York. Allowing the matter to go for trial in Massachusetts with that possibility remaining open to CU seems to me to approximate most closely the position that would have prevailed had the re-domestication not occurred. If the possibility of the Massachusetts court now declining jurisdiction is, as CU contends, unlikely, then it seems to me it would have been equally unlikely in a Massachusetts liquidation.

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[12] Robertson, para. 26, Vol. A, Tab B4 at p. 93
[13] Schacht para. 19, Vol. A, Tab B5 at p. 102.

27. Are there any factors which militate against Massachusetts? I do not think so. There is no suggestion that Massachusetts would be an unsuitable court in any practical sense. Indeed the evidence is all the other way, and is to the effect that its Business Section will provide an efficient forum in which to resolve a complex dispute of this nature. To the extent that it has been suggested that proceedings in New York would permit proceedings between GE and EMLICO to be joined into existing proceedings between GE and certain of its excess insurers, which have been underway in New York since 1996, I accept the submission that that is a recipe for confusion and delay. Indeed, the risk of CU attempting to compel that, and the satellite litigation to which that would give rise, is in itself a reason for avoiding New York. I do not, therefore, think that the proposal of litigation in Massachusetts is in any sense unreasonable in practical terms, and indeed consider it eminently reasonable.

28. As I have already noted, it may be that litigating in Massachusetts will allow CU to argue before Judge Griesa in the confirmation proceedings, and the Panel on Phase III of the arbitration, that it has been denied its interposition rights. Certainly CU threatens that in unequivocal terms.[14] However, that is a risk that both JLs and GE are aware of and willing to take. I am quite unable to second-guess the tactical considerations in all of this, particularly given CU's previous stance in favour of litigation in Massachusetts. Nor do I think it appropriate for me to try: that is a matter for the professional judgment of the JLs.

29. Finally, I have to resolve the ancillary dispute over the wording of paragraph 5 of the summons. CU objects to the new wording, largely on the grounds that it puts it at the mercy of the Massachusetts court, which, it argues, may be precluded by its own rules from permitting CU to intervene to the fullest extent. I prefer the new reading, as it most closely tracks the interposition clause itself and the various interpretations of it which are binding upon me. In any event it seems to me unlikely in the extreme that a Massachusetts court, which will be more familiar than this court with clauses of this sort and how to deal with them in practice, will give CU less than its proper entitlement in this respect.

[14] See e.g. para. 62 of Mr. Pascoe's written submissions.

**SUMMARY**

30. I consider that the directions sought by the JLs are fair and reasonable and that it is appropriate for me to give them. In particular, to the extent that allowing the matter to go for trial in Massachusetts most closely resembles the *status quo ante* to the re-domestication, I consider that it is a principled basis for resolving the competing wishes expressed by GE and CU on forum. As to the dispute over the form of paragraph 5 of the summons, I prefer the revised version as sought by the JLs. Otherwise, I make an order in terms of the summons. I will hear the parties as to costs when this ruling is formally delivered.

Dated this 15th day of January 2007

Richard Ground
Chief Justice