Korea National Insurance Co v Allianz Global Corporate & Specialty AG [2008] APP.L.R. 11/18

JUDGMENT : Mr Justice Field : Commercial Court. 18th November 2008

Introduction

1. This is the judgement of the court on a preliminary issue as to whether certain contentions pleaded by Defendants are beyond the jurisdiction of the court by reason of the doctrine of act of state or the doctrine of non-justiciability.

2. The necessary background is as follows. The Claimant ("KNIC") sues to enforce a judgement ("*the NK judgement*") in the sum of €43,454,383 given by the Court of Pyongyang ("*the NK Court*") in the Democratic People's Republic of Korea ("*N Korea*") on 11 December 2006. The defence to the claim is that: (i) the North Korean judgement was procured by a fraud instigated or approved by the State of N Korea and therefore implemented with the knowledge or participation of KNIC ("*the fraud defence*"); (ii) alternatively, the NK judgement is unenforceable on grounds of public policy in that the North Korean judiciary are part of, and not independent from, the entity (the state) which instigated or approved of the fraudulent procuration of the NK judgement ("*the public policy defence*").

3. KNIC is an insurance company incorporated in N Korea. Under a contract of insurance covering the period 1 November 2004 to 31 October 2005 KNIC insured Air Koryo, an airline incorporated in N Korea, in respect of third party liability claims up to €45 million (or 7.2 billion N Korean Won) each accident, with a nil deductible. The cover for crew and non-revenue passengers for bodily injury and death was €20,000 (NKW 3.2 million) each person.

4. By a contract of reinsurance covering the same period, KNIC was reinsured by the defendant ("Allianz") and other reinsurers represented by Allianz in this action ("the Reinsurers"). Under the reinsurance, the limit of liability for third party claims for bodily injury/property damage was €45 million each accident in respect of claims involving Mi-8 helicopters, and for other aircraft €75 million. The reinsurance contract was expressed to be subject to the laws and jurisdiction of N Korea and contained a Currency Conversion Clause which provided that claims in Euros were to be paid in Euros and claims in local currency were to be paid in Euros at an exchange rate of NKW 160 to €1.00.

5. On 9 December 2005, a Relief Centre which operated a warehouse at Chonam-Ri in Pyongyang, obtained judgement against Air Koryo in the sum of KPW 7, 634,006,244 in respect of a claim for damage to the warehouse and its contents caused by a crash by an Air Koryo Mi-8 helicopter, No 313, on 9 July 2005. It was Air Koryo's case that the helicopter had been engaged on a mercy mission carrying a lady pregnant with triplets from Jamae Island to a hospital in Pyongyang ("the pregnant woman story"). KNIC invited the reinsurers to exercise their right under the reinsurance contract to take control of the claim ("the underlying claim"), but they declined to do so.

6. On 23 January 2006, Air Koryo informed KNIC that it had paid the sum due to the Relief Centre and requested reimbursement under the insurance contract in the sum of NKW 7,353,600,000 (NKW 7,200,000,000 property damage; NKW 9,600,000 deceased crew; and NKW 144,000,000 costs).

7. On or about 6 March 2006 Air Koryo commenced arbitration proceedings against KNIC under the insurance contract and obtained an award in the sum of NKW 7,301,932,137, which sum KNIC paid on or about 20 July 2006. Relying on the Currency Conversion Clause, KNIC sought reimbursement from the Reinsurers in the sum of €45,657,076, but the reinsurers refused to indemnify KNIC. KNIC accordingly brought proceedings in the Pyongyang Court against the reinsurers which resulted in the judgement sought now to be enforced in these proceedings.

8. On the first day of the trial, Counsel for the Reinsurers, Mr Berry QC, submitted that it should be decided as a preliminary question whether the Reinsurers' defences to KNIC's claim raised issues that the court had no jurisdiction to decide pursuant to the principles enunciated in ***Buttes Gas & Oil Co v Hammer*** [1982] AC 888. Mr Berry was responding to a paragraph in KNIC's Skeleton Opening Submissions where it was suggested for the first time in these proceedings that "*there must be at least some concern as to whether the alleged criminality of a foreign state is a question that is even properly justiciable by the English courts -- see* ***Buttes Gas & Oil Co v Hammer*** *…*".

9. Mr Berry's submission was heralded in his Outline Opening Submissions.

   Albeit now raised by KNIC on the eve of the trial, the issue of non-justiciability logically must be determined before the court progresses to hear the evidence and investigate the allegations made by Allianz. This must necessarily be the case, otherwise the court will engage in the very inquiry which, if there is non-justiciability, is prohibited.

10. Mr Eder QC for KNIC submitted that I should not decide the question of non-justiciability as a preliminary point but should hear the evidence concerning the Reinsurers' defences *de bene esse* and deal with non-justiciabilty when giving final judgement. For reasons given in a separate ruling, I decided that the non-justiciability question had to be decided as preliminary issue before any further steps were taken in the trial. I also directed that KNIC should send a letter to the Government of N Korea to the N Korean Embassy stating that allegations of state criminality are being made against the N Korean State in these proceedings and that the question as to whether these allegations were justiciable or not had arisen. The following day I was informed that such a letter had been sent in accordance with my direction and I heard argument on the preliminary issue the next day.

The fraud defence

11. It is necessary at this point to look at the Reinsurers' Re-Amended Defence and Counterclaim in some detail.

12. In paragraphs 6.1, 225A and 228, it is denied that the helicopter crashed into or at the Relief Centre's warehouse, whether as alleged or at all, or that the warehouse contained the volume and value of goods which the Relief Centre asserted in the underlying claim [para 228]. And in para 230, it is alleged that the pregnant woman story was untrue.

13. (The Reinsurers refer to KNIC's claim that helicopter 313 crashed into or at the Relief Centre whilst carrying the pregnant woman thereby causing the damage for which the Relief Centre claimed as "*The Underlying Fraud*".)

14. Next, the Reinsurers plead a series of alleged facts from which it is claimed it is to be inferred that KNIC knew that the underlying claim was fraudulent. In para 230A it is alleged that KNIC had a propensity to engage in insurance fraud in that it has routinely made fraudulent claims against foreign reinsurers. The only part of this section of the pleading that raises a question of non-justiciability is para 230A.3 where it is alleged that *"KNIC's objective in making [these] fraudulent claims was to generate profits in foreign currency, including for the North Korean Leader, Kim Jong-il (who is known in North Korea as* ***"the Dear Leader"***).

15. In paras 230B.1 – B5 it is alleged that it is to be inferred from a number of matters that neither the Relief Centre, nor Air Koryo would have embarked upon a fraud against KNIC without informing KNIC of the plans for the fraud and obtaining its approval. The matters relied on to support this inference include allegations that: (i) KNIC was at all material times controlled by the Korean Workers' Party ("*the Party*"); (ii) the Dear Leader regarded KNIC as being a very important organisation and source of foreign currency, this being something that is to be inferred from the facts that KNIC remitted approximately US $20 million to the Dear Leader each year and that until 2004 KNIC was under the direct control of the Dear Leader's brother-in-law; and (iii) any person in North Korea who in any way offends the Dear Leader or his regime risks being executed or sentenced to hard labour in a prison camp.

16. In paras 231 and 231.1 to 231.3 the Reinsurers plead that it is to be inferred that: (i) the underlying fraud was either instigated by senior officials of the N Korean State and the Party or at least approved by them; and (ii) the plans for the fraud were communicated to the Party, the Relief Centre, Air Koryo and KNIC. In support of this inference, the Reinsurers rely on three further allegations. First, the Relief Centre, like all other companies and entities in N Korea, is ultimately owned by the N Korean State and controlled by members of the Party who report to the Dear Leader. Second, it is to be inferred that since Air Koryo had no personal interest in doing so, it manufactured the pregnant woman story because it was ordered to do so. Third, N Korean State has been extensively involved in criminal activity ("*the N Korean State Criminality*") for the purpose of generating foreign currency, from which it is to be inferred both that the underlying fraud is another instance of such activity and that the N Korean State communicated to all N Korean entities involved, including KNIC, the plans for the underlying fraud.

17. The Reinsurers' case on N Korean State Criminality is pleaded out in paras 234-243. Here it is alleged that: (a) in the 1970s N Korean diplomats were involved in trafficking in narcotics, an activity of which the N Korean State apparently approved in that it declined to punish any of the diplomats concerned; (b) from the late 1980s, trafficking in narcotics was co-ordinated by Bureau 39, a body within the Central Party Committee which distributed drugs through trading companies owned and controlled by the N Korean State and through security and intelligence operatives; (c) from the 1990s, Bureau 39 directed and controlled the production of opium in N Korea and its processing into heroin by N Korean pharmaceutical companies, with the heroin being sold by security agents at the Chinese border or shipped to Japan, Taiwan and Hong Kong for sale to Asian organised crime syndicates; the resulting annual revenue of approximately US$500 million was used by Bureau 39 to procure luxury items for distribution by the Great Leader, Kim Il Sung, and the Dear Leader to party and military elites and to fund diplomatic missions and national security activity; (d) in the late 1990s there was shift from opium to methamphetamine and the quantity of drugs in cases involving N Korea increased to 1000kg in 1996, 1200 kg in 1998 and 1400kg in 2000.

18. The Reinsurers also plead that in the late 1990s the N Korean State expanded into counterfeiting United States currency, cigarettes and pharmaceuticals (para 240) and that it is to be inferred that there has been a continued expansion of North Korean Criminality as N Korea's trade deficit has increased (para 242).

19. In para 243 it is pleaded that it is to be inferred that the Underlying Fraud is another instance of N Korean State Criminality because, as in other instances of N Korean State Criminality, multiple entities owned and controlled by the N Korean State, including the Relief Centre and Air Koryo, have been involved in perpetrating the Underlying Fraud and that involvement appears to have been coordinated by a central guiding mind.

20. In Schedule 1 to the Reinsurers' Outline Opening Submissions, particulars are given of some 62 alleged incidents where illicit goods, principally dangerous drugs, have been seized from N Korean diplomats or from N Korean ships or aircraft in the period 1976 to 2005. In order to prove these incidents, the Reinsurers rely on a wide range of hearsay material including, newspaper reports, academic articles and reports to the US Congress. The Reinsurers also propose to call an expert witness on politics, culture and society in N Korea, Dr Kongdan Oh Hassig, a member of the Strategy, Forces and Resources Division of the Institute for Defence Analyses, a "*think tank"* based in Washington DC. Dr Oh is also Non Resident Senior Fellow at the Brookings Institute. In her report, Dr Oh deals, inter alia, with the ownership and control of N Korean entities, the N Korean State and regime, Patronage and the Need for Foreign Currency and International criminal activity.

The public policy defence

21. The defence that the NK judgement is unenforceable on grounds of public policy in that the North Korean judiciary are part of, and not independent from, the very state which instigated or approved of the fraudulent procuration of the NK judgement is pleaded in paras 247 – 250. The Reinsurers allege that: (i) the law is a political implement to give effect to the wishes and desires of the N Korean regime, including the North Korean State Criminality (para 249); (ii) the judges are appointed on the basis of their adherence to the ideology of the State and their loyalty to the Party and the Dear Leader (para 250.2); (iii) the judiciary is not independent from the Party or the N Korean State but is accountable to the former and the Dear Leader, from which it is to be inferred that it will not make decisions which are, or are perceived to be, adverse to the interests of the Party and/or the Dear Leader (paras 250.4 and 250.5); (iv) an example of the alleged partiality of the judiciary is the attendance by the judge who handed down the North Korean judgement at a meeting with, inter alios, a representative of the Reinsurers (para 250.7); and (iv) given the amount of foreign currency claimed by KNIC against the Reinsurers it is to be inferred that the Party desired a judgement against the Reinsurers.

22. In addition to the evidence of Dr Oh, the Reinsurers propose to adduce in support of their Public Policy Defence an expert report on the N Korean judiciary and legal system by Mr Aidan George Foster-Carter, Honorary Senior Research Fellow in Sociology and Modern Korea at Leeds University.

Act of State and Non-Justiciability

23. The website of the Foreign & Commonwealth Office contains a country profile for the N Korea which states (inter alia):

DPRK's relations with the UK

Britain and the DPRK established diplomatic relations on 12 December 2000. The UK took this decision in the light of progress made in the DPRK-ROK dialogue. It was agreed to establish resident missions in each other's capital.

Diplomatic Representation

The British Embassy in Pyongyang opened in July 2001 … The Government of the DPRK opened an Embassy in London in November 2002. Ambassador Ja Song Nam took up his appointment in February 2007.

Since the establishment of diplomatic relations in December 2000, several high-level DPRK delegations have visited the UK, including one led by Vice Foreign Minister Choe Su Hon in December 2001. Mr Choe returned to the UK for further talks in late April 2003. Choe Thae Bok, Chairman of the Supreme Peoples Assembly came to London in March 2004, and the Vice Foreign Minister Kung Sok Ung visited London in May 2004.

Bill Rammell, former FCO Minister responsible for relations with DPRK, visited Pyongyang from 11-14 September 2004. The visit was the first ever by a British Minister and included meetings with the Foreign Minister, three Vice Foreign Ministers and the Chairman of the People's Supreme Assembly…..

24. In its broadest terms the doctrine of act of state is that described by Clarke J in delivering the judgement of the US Supreme Court in ***Oetjen v Central Leather Co*** *268* US 297, 303: "*Every sovereign state is bound to respect the independence of every other sovereign state, and the Courts of one country will not sit in judgment on the acts of a Government of another done within its own territory.*"

25. As Justice Rehnquist said in ***First National City Bank v Banco Nacional de Cuba*** 406 US 759 at 767-8: "*The act of state doctrine is grounded on judicial concern that application of customary principles of law to judge the acts of a foreign sovereign might frustrate the conduct of foreign relations by the political branches of the government …*"

26. Clarke J's famous dictum was cited with approval by Warrington LJ in ***Luther v Sagor*** [1921] 3 KB 532 at 548, and by Scrutton and Sankey LJJ in ***Princess Paley Olga v Wiesz*** [1929] 1 KB 718 at 724,728. In the latter decision, the Court of Appeal was concerned with a seizure of property subsequently adopted by the Russian Government and a later confiscation decree. The court held that not only was the decree effective to vest the goods in the Russian authorities but also the adopted seizure was an act of state the validity of which could not be questioned. Since then, however, the doctrine as it is applied in the courts of England has been narrowed at the same time as the broader principle of non-justiciability was adopted by the House of Lords in *Buttes Gas*. There, Lord Wilberforce described "*acts of state*" [1] as "*those cases which are concerned with the applicability of foreign municipal legislation within its own territory, and the examinability of such legislation --- often, but not invariably, arising in cases of confiscation of property.*"

27. As is well known, Lord Wilberforce went on to find that there was a general principle for judicial restraint or abstention which was inherent in the very nature of the judicial process and was to be derived not only from English authority but also from American decisions, particularly those in which Buttes successfully moved to dismiss claims brought by Occidental which were based on allegations similar to those made in the English proceedings. Amongst the passages in these latter cases quoted by Lord Wilberforce were:

[Occidental] necessarily ask this court to ***"sit in judgment"*** *upon the sovereign acts pleaded, whether or not the countries involved are considered co-conspirators. That is, to establish their claim as pleaded plaintiffs must prove, inter alia, that Sharjah issued a fraudulent territorial waters decree, and that Iran laid claim to the island of Abu Musa at the behest of the defendants. Plaintiffs say they stand ready to prove the former allegation by use of* ***"internal documents".*** *But such inquiries by this court into the authenticity and motivation of the acts of foreign sovereigns would be the very sources of diplomatic friction and complication that the act of state doctrine aims to avert. (District Judge Pregerson, March 17,1971)*

[1] As distinct from acts of state concerning action by an officer of the Crown taken outside this country against foreigners otherwise under colour of right (930G-H)

The issue of sovereignty is political not only for its impact on the executive branch, but also because judicial or manageable standards are lacking for its determination. To decide the ownership of the concession area it would be necessary to decide (1) the sovereignty of Abu Musa, (2) the proper territorial water limit and (3) the proper allocation of the continental shelf. A judicial resolution of the dispute over Abu Musa between Iran and Sharjah is clearly impossible. (The Court of Appeals, August 9, 1978).

28. In ***Kuwait Airways Corporation v Iraqi Airways Company*** [2001] 3 WLR 1117, having reviewed many authorities touching on act of state, the public policy exception thereto and non-justiciability, Brooke LJ, giving the judgement of the Court of Appeal, said:

317. In our judgment, these authorities indicate that English law is seeking to balance (at least) three separate insights as to the appropriate role of national courts when faced with reliance on foreign legislative or executive acts by way of defence to what might otherwise be a wrong for which those courts are called upon to provide a remedy.

*318. First, there is the prima facie rule that a foreign sovereign is to be accorded that absolute authority which is vested in him to act within his own territory as a sovereign acts. This rule reflects concepts of both private and public international law as to territorial sovereignty. As such, we think that the rule is founded primarily on a view as to the comity of nations, rather than on concern as to giving offence to the foreign sovereign or as to the absence of judicial standards (see **Buck v Attorney-General** [1965] Ch 745 per Diplock LJ at p 770). We say this because, if the sovereign purports to act outside his territory, or even if he acts within it in a penal or discriminatory way and a claimant then seeks to found his claim on that sovereign act, the English court vindicates to itself the right in the first case not to recognise and in the second case not to enforce it. This shows that embarrassment about sitting in judgment on the acts of a foreign sovereign is not per se the cause of judicial restraint in this context. Rather, each sovereign says to the other: **"We will respect your territorial sovereignty. But there can be no offence if we do not recognise your extra-territorial or exorbitant acts."***

*319. The second insight, however, is that, whether the sovereign acts within his own territory or outside it, there is a certain class of sovereign act which calls for judicial restraint on the part of our municipal courts. This is the principle of non-justiciability. It is or leads to a form of immunity **ratione materiae**. It may not be easy to generalise about such acts, and the application of the principle may be fact sensitive. Guidance, however, is to be found in such considerations as whether there are **"judicial or manageable standards"** by which to resolve the dispute, whether the court would be in **"a judicial no-man's land"**, or perhaps whether there would be embarrassment in our foreign relations, at any rate if that possibility was drawn to the court's attention by the executive. Sensitive issues involving diplomacy between states, or uncertain or controversial issues of international law, may be other examples of situations calling for judicial restraint. The distinction which has been developed in the analogous area of sovereign immunity between situations where the sovereign acts by way of sovereign authority (**acta iure imperii**) and where he acts in the commercial sphere (**acta iure gestionis**) may also be of some assistance, because with the development of the restrictive theory of sovereign immunity there has come the realisation that it is not every impleading of a sovereign that requires judicial restraint or gives rise to a legitimate fear of giving offence. In essence, the principle of non-justiciability seeks to distinguish disputes involving sovereign authority which can only be resolved on a state to state level from disputes which can be resolved by judicial means.*

320. The third insight is that the rule whereby there is a principle of judicial restraint in so far as a sovereign acts within his own territory, is only a prima facie rule. It is subject to certain exceptions. One exception we have already mentioned is that a penal or discriminatory act of a foreign sovereign cannot be made the basis of a claim in our courts. This is perhaps one aspect of a general exception to the effect that these courts will not recognise the act of a foreign sovereign which is contrary to English public policy. The existence of this exception is not in doubt. But how far does it extend, and what is meant by English public policy in this context? The width of the exception is uncertain both because the concept of public policy is itself not hard edged, and also because it has to take into account the abhorrence of outrageous acts on the one hand, and on the other hand the concerns which give rise to the first and second insights to which we have referred. This is the route by which it is possible to say that discriminatory breaches of fundamental human rights will not be recognised, even in a sphere which is as much a matter for individual sovereign choice as a person's nationality.

29. The acts of the N Korean State relied on by the Reinsurers to make good their defences of fraud and public policy are not the enactment of municipal legislation but governmental acts directed from within the territory of N Korea (ultimately by the Dear Leader) and which constitute crimes outside N Korea. The question therefore arises whether post *Buttes* the doctrine of act of state is to be restricted to the enactment of municipal law or whether the approach of the Court of Appeal in ***Princess Paley Olga*** to the adopted act of seizure continues to apply. Although Lord Wilberforce referred to counsel's "***valuable analysis***" of **Luther and Princess Paley Olga** to the effect that those cases were concerned with the choice of proper law to be applied under the conflict of laws rules, I regard it as plainly arguable that it was not his intention to take government acts such as the seizure of the goods in ***Princess Paley Olga*** out of the doctrine of act of state leaving them to be subject only to the new doctrine of non-justiciability. However, I do not consider it necessary to decide this question because I am of the view that in any event the doctrine of non-justiciability propounded by Lord Wilbeforce applies to this case.

30. As the Court of Appeal recognised in para 319 of its judgement in ***Kuwait Airways,*** judicial restraint may be called for where the court is asked to decide matters, the investigation into which and adjudication thereon, would embarrass this country's foreign relations. In saying this, the Court of Appeal was reflecting, inter alia, the dictum of Justice Rehnquist in ***First National City Bank*** cited in paragraph 25 above and the views of District Judge

Pregerson and the Court of Appeals cited with approval by Lord Wilberforce in *Buttes*. Indeed, it seems to me relatively plain that it was because of the potential embarrassment for this country's foreign relations with Singapore that in ***Jayaretnam v Mahood and Others*** (The Times, 21 May 1992) Brooke J (as he then was) set aside an order granting leave to serve libel proceedings outside the jurisdiction on the ground that the court was precluded by principles of judicial restraint from embarking on an enquiry into the plaintiff's grounds for fearing that he would not receive justice in Singapore. This too was one of the reasons given by Morland J in ***Skrine & Co v Euromoney Publications plc*** [2001] EMLR 434 (para 15) for striking out parts of a pleading in libel contribution proceedings that alleged that: (i) the Malaysian Prime Minister had acted in a manner intended and/or calculated to interfere with the independent judiciary; (ii) Malaysian judges applied the law of defamation to penalise dissent and stifle freedom of expression; and (iii) the claimants' insurers only paid the original plaintiffs *"exorbitant sums by way of ostensible damages and costs because they apprehended that the claimants would not have received a fair trial at the hands of Malaysia's internationally discredited legal system."*

31. In my opinion, the investigation into and adjudication on the Reinsurers' allegations that the N Korean State, under the guiding mind, inter alios, of the Dear Leader, fraudulently procured the N K judgement and that this was of a piece with and is to be inferred from many other criminal acts committed by the N Korean State has an obvious potential for embarrassing the foreign relations between Her Majesty's Government and the Government of N Korea. Indeed, so obvious is this potential embarrassment that the court does not need a letter from the Foreign and Commonwealth Office before coming to this view.

32. In ***Kuwait Airways Corporation*** in the House of Lords, their lordships held that Iraq's invasion of Kuwait and seizure of its assets were a plain and gross breach of international law and that accordingly, as a matter of public policy, the court should decline to recognise the effectiveness of an Iraqi resolution (Resolution 369) purporting to dissolve Kuwait Airways Corporation and to transfer all its property to the defendant Iraqi airline. It is to be noted that Iraq reversed Resolution 369 and accepted the need to return all Kuwaiti property seized and the need to acknowledge its liability under international law for any loss arising out of the invasion and illegal occupation of Kuwait. Thus, as the Court of Appeal observed, *"there was nothing precarious or delicate, and nothing subject to diplomacy, which judicial adjudication might threaten; there could be no embarrassment to diplomatic relations, no casus belli, and nothing to vex the peace of nations in judicial investigation."* (para 334). No comparable situation exists here. The allegations of state criminality are all vigorously denied by KNIC and remain to be proved by expert and hearsay evidence.

33. Neither KNIC nor the Reinsurers contend that any of the allegations made in the latter's Re-Amended Defence were acts or state or otherwise non-justiciable. Mr Eder QC explained that his clients wanted to confront the Reinsurers' allegations head on. Apart from anything else, they depended on their good reputation to do business in foreign insurance markets and for that reason wanted to be vindicated by the court. Mr Eder recognised the importance that the court might attach to the question of embarrassment in foreign relations but urged me to meet this problem by proceeding sensitively and cautiously and not by striking out the offending paragraphs.

34. Mr Berry QC helpfully drew my attention to a number of relevant authorities. His submission on the issue of non-justiciability was very short, however. He argued that none of the decided cases where judicial abstention was adopted was analogous to the instant case and for this reason and because the court was capable of investigating the control of entities under a totalitarian regime, I should hold that none of the issues raised by his client's defences was non-justiciable.

35. It is trite law that the doctrines of act of state and non-justiciability are not subject to agreement by the parties. If the parties do not take the point, the court should take it of its own motion.

36. For the reasons I have given, I am of the clear opinion that those parts of the Reinsurers' fraud defence that allege that the State of N Korea procured the N K judgement by fraud and that: (i) it is to be inferred that KNIC knew of the fraud because it is part of the State of N Korea and that state, through a directing mind or minds, directed or approved of the Underlying Fraud; and (b) the Underlying Fraud is to be inferred from other acts of state criminality committed by the State of N Korea, are non-justiciable and should be struck out.

37. I am also of the view, again for the reasons I have given, that that part of the public policy defence that alleges that the underlying claim was the product of a conspiracy to defraud the Reinsurers which was instigated or at least approved by the North Korean State is non-justiciable and should be struck out.

38. I shall hear submissions from counsel on the consequences that this ruling has for the future conduct of the trial.

Bernard Eder QC and Stephen Midwinter (instructed by Elborne Mitchell) for the Claimant
Steven Berry QC, David Scorey and Damien Walker (instructed by Clyde & Co) for the Defendant