



## “RUBYMAR. Asymmetric jurisdiction clauses, the Hague Convention and parallel proceedings.”

*Berytus Insurance & Reinsurance v. Golden Adventure Shipping* [2025] EWHC 664 (Comm), *The Rubymar*.

Guy Blackwood KC & Robert Ward

23 May 2025

Guy Blackwood KC and Robert Ward, instructed by Mike Roderick and Will Oakhill of Clyde & Co appeared on behalf of successful insurers in a jurisdiction challenge following missile attacks by Houthis in the Gulf of Aden on the mv “RUBYMAR”.

In what is believed to be the first case to come before the Commercial Court arising from the attacks by the Yemen’s Houthis on merchant shipping in the Gulf of Aden, the Commercial Court had to decide whether proceedings commenced by insurers in England for negative declaratory relief ought to be stayed in favour of subsequent proceedings commenced by the assured for a total loss in the Republic of Cyprus.

The claim for a total loss is advanced against marine risks underwriters on a policy incorporating the Institute Time Clauses Hulls (1.10.83), containing War/Strikes exclusions including by clause 25 the Strikes Exclusion (“*any terrorist or any person acting from a political motive*”) and by clause 26 the Malicious Acts Exclusion (“*the detonation of an explosive and weapon of war and caused by any person acting maliciously or from a political motive*”).

The policy contained a law and jurisdiction clause in the following terms:

*[1] This insurance is subject to English law and practice.*

*[2] Any proceedings by the assured against the underwriters shall only be brought in the courts of the Republic of Cyprus.*

*[3] The underwriters and/or All Marine Insurance Brokers Limited reserve to themselves the right to bring proceedings in respect of any matter which arises out of or in connection with this cover note in the courts of any country which has or claims jurisdiction in relation to that matter.*

*[4] The assured hereby submits to the non-exclusive jurisdiction of the courts of the Republic of Cyprus and waives any objection on the ground of inconvenient forum to any proceedings which arise out of or in connection with this cover note being brought in the courts of the Republic of Cyprus or any other courts by virtue of the above...”*

Insurers commenced proceedings under provision [3] of the law and jurisdiction clause, on the basis that the English Court has or claims jurisdiction and the policy was subject to English law and practice.

The Assured contended that either, by operation of the Hague Convention on Choice of Court Agreements, alternatively by operation of common law principles the only courts in which a claim could properly be brought by insurers against the assured were the courts of the Republic of Cyprus.

Article 3(a) of the Hague Convention provides that an exclusive choice of court agreement is one that: “*...designates for the purpose of deciding disputes ... the courts of one contracting State or one or more specific courts of one contracting State to the exclusion of the jurisdiction of any other courts...*”. Article 3(b) provides that if the agreement in question designates the courts of one contracting State or one or more specific courts of one contracting State that is deemed to be exclusive unless the parties have expressly provided otherwise. Where an agreement is, as a matter of construction, an exclusive choice of court agreement within the meaning of the convention, then its effect is provided for by Articles 5 and 6 of the Hague Convention. Article 5 provides that the designated court shall have jurisdiction and Article 6 provides that courts other than the chosen court shall suspend or dismiss proceedings to which an express choice of court agreement applies unless one or more of the various narrowly cast exceptions applies.

The Court held that the Hague Convention did not apply to the law and jurisdiction clause of the policy, paragraph [4] of which referred to the assured submitting to the “*non-exclusive jurisdiction of the courts of the Republic of Cyprus*” and did not require the assured to be sued in the courts of Cyprus to the exclusion of any other courts.

Had it been necessary to decide the issue, the Court would have found that an asymmetrical jurisdiction that was exclusive would not come within the scope of the Hague Convention and would have followed the reasoning of Henderson LJ in *Etihad Airways v. Flother* [2022] QB 303 at [82]-[87].

The assured's alternative case was that as a matter of English domestic law, the effect of a non-exclusive submission to the jurisdiction was that insurers were bound to commence proceedings before the courts of Cyprus unless there were very strong reasons not foreseeable at the time of contracting that merited the commencement of proceedings elsewhere.

The assured placed significant reliance on the decision of Gloster J in **Antec International v. Biosafety** [2006] EWHC 47 (Comm) but the Court decided that this reliance was misplaced. **Antec** was concerned with an agreement by both parties that they would each submit to the non-exclusive jurisdiction of the English Courts and the issue in that case was concerned with a FNC determination in that context. The law and jurisdiction clause in the policy was different because the non-exclusive jurisdiction was asymmetrical, there was an express provision permitting insurers to commence proceedings against the assured elsewhere and the FNC issue was the subject of an express FNC waiver. In the circumstances, there was no strong prima facie case that the courts of Cyprus was the correct jurisdiction.

Whilst parallel proceedings were not satisfactory as a general proposition, the risk of parallel proceedings was inherent where the parties agree a non-exclusive jurisdiction provision and the Court held that the possibility of parallel proceedings was foreseeable at the time of contracting and was no basis for granting a stay in favour of a party who has agreed a FNC waiver, relying on **Dexia Credit Local SA v. Patrimonio de Trentino SpA** [2024] EWHC 2717 (KB) at [153]-[155] and [164].

The Court also decided that the assured's argument that the English proceedings had been brought in order to pre-empt proceedings by the assured in Cyprus did not justify staying the proceedings in the circumstances of the case.

The assured's application to the Court of Appeal for permission to appeal was dismissed by Phillips LJ.



### Guy Blackwood KC

*"Andrew Guy Blackwood is the go-to silk for insurance and reinsurance counsel."* (Chambers UK, 2025)

Guy has a comprehensive commercial practice, which includes insurance & reinsurance, large contractual disputes, international and investment treaty arbitration, banking & finance, civil fraud, energy & utilities, commodities and shipping, shipbuilding and offshore construction. Guy particularly enjoys oral advocacy, in which Guy has a track record in the Commercial and Appellate Courts. Guy is listed as a leading silk in the leading directories in commercial litigation, insurance and reinsurance, commodities and international arbitration.

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### Robert Ward

Rob has developed a busy practice spanning the breadth of Chambers' practice areas including shipping, commercial disputes, international arbitration and aviation. He has appeared as sole counsel in the High Court and County Court and as a junior in several high value matters. Prior to joining Chambers, Rob was a judicial assistant to Lord Justice Longmore in the Court of Appeal and worked on a number of large commercial disputes such as **Banco Santander Totta SA v Companhia de Carris de Ferro de Lisboa SA** [2016] EWCA Civ 1267, in which the Court addressed the proper interpretation of Article 3 of the Rome Convention. Rob has also completed a 3-month secondment at the Financial Conduct Authority in the Insurance and Pensions team of its in-house legal department.

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