

# General Motors Corp v Royal & Sun Alliance Insurance Group

*General Motors Corporation v Royal & Sun Alliance Insurance* (2007) EWHC 2206 (Comm) is a rather convoluted case on whether a consent order, in the circumstances of the case, amounted to an exclusive jurisdiction agreement in favour of the English courts, and whether an application for an anti-suit injunction could therefore be granted. Here's the Lawtel summary for the details:

The applicant insurers (R) applied for an anti-suit injunction to restrain the respondent Delaware corporation (G) from pursuing proceedings in Delaware. A large number of claims for alleged asbestos related injury and environmental liability had been made against G in the United States. G contended that its liability for claims and defence costs was covered by insurance policies issued by a US insurer (U), formerly a subsidiary of R, and that R were also liable as the alter ego of U or because R had tortiously interfered with the contracts between U and G. G commenced proceedings in Michigan, where its principal place of business was, against U and R. The Michigan proceedings were then split with the coverage issues to be decided first. G also commenced English proceedings against R. By a consent order the English proceedings were stayed pending the outcome of the coverage claims in Michigan. R then withdrew its motion to dismiss the Michigan proceedings on grounds of forum non conveniens and G's claim in those proceedings was voluntarily dismissed as against R in favour of the English action. U then obtained summary disposition in the Michigan proceedings on grounds that the claims were time-barred. In the meantime R had proposed withdrawing from US business and had sold U. G then commenced proceedings against R in Delaware. R submitted that the consent order properly construed reflected the parties' intention to confer exclusive jurisdiction on the English courts to determine the claims against R.

David Steel J. held, (1) In construing the consent order, the background was very important. The Michigan proceedings had been split with the claims against R being postponed and stayed and with R being given leave to renew its motion to dismiss on forum grounds if the stay was discharged. That had prompted G to commence the English proceedings. There were the added advantages from G's perspective that the claim would thereby proceed in the forum where execution

could be readily achieved and further that the issue of limitation would not be exacerbated by any further delay in the US. By the same token it was advantageous to R both to obtain its release from the Michigan proceedings and to obtain G's participation in proceedings in the English courts. In the circumstances the consent order reflected a package whereby the parties intended to settle on proceedings in England as regards the claims against R in due course but to await the outcome of the Michigan proceedings and to be bound thereby. There was no apparent purpose in agreeing to be bound by the outcome of the Michigan proceedings in respect of coverage, together with withdrawal of the claims against R, save on the basis that the English courts should have exclusive jurisdiction. In the circumstances the consent order had the effect of constituting an exclusive jurisdiction agreement. (2) On the basis that there was an exclusive jurisdiction agreement G failed to show any strong reason for not restraining its Delaware proceedings and R was entitled to an anti-suit injunction, *Trafigura Beheer BV v Kookmin Bank Co* (2006) EWHC 1921 (Comm) applied. Application granted.

The full judgment is available to Lawtel subscribers.