In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

APPELLATE DIVISION

15 February 2017

CASE No: 01/2017

HAMMAD SHAWABKEH

Applicant (Claimant)

v

DAMAN HEALTH INSURANCE QATAR LLC

Respondent (Defendant)

JUDGMENT ON APPLICATION FOR PERMISSION TO APPEAL

Members of the Court:

Lord Phillips, President
Justice Rajah
Justice Kirkham

ORDER

Having accepted jurisdiction in this matter, the Court determines:

1. **The application for permission to appeal is dismissed.**

JUDGMENT

Introduction

1. The Claimant was not legally represented at the hearing below or on this application. He was informed that such applications are generally dealt with on the papers but sought an oral hearing on the ground that as he was unrepresented written submissions were difficult and his appeal required an oral hearing. We have concluded that an oral hearing is not necessary. The Claimant's written submissions are perfectly clear and the issues raised on this application are not complex.

2. This Court's Rules and Regulations provide by Article 35(1) that a first instance judgment will usually be final but that, if there are substantial grounds for considering that a judgment is erroneous and there is a significant risk that this will result in serious injustice, permission to appeal may be given. The primary object of the requirement for permission to appeal is to prevent the incurring of further time and costs in cases where there is no reasonable prospect of success. In such circumstances it is not in the interests of the would-be appellant that an appeal should be permitted to proceed. We are satisfied that this is such a case.

The issue

3. The Claimant and his wife reside in Qatar. They had the benefit of medical insurance under a policy ("the Policy") issued by the Defendant. This provided cover for medical services on specified terms throughout the world with the exclusion of the USA and Canada. Notwithstanding this general exclusion, "emergency cover" extended to the USA and Canada. Thus the Policy covered medical services rendered in America and Canada in response to an emergency.

4. Section 1 of the Policy defined "Emergency" as:

> *"the acute onset of a medical or surgical condition manifested by acute systems of sufficient severity, including pain, that the absence of immediate treatment at a health facility could reasonably be expected to result in placing the patient's health or bodily functions in serious jeopardy."*

5. In the summer of 2015 the Claimant, with his wife and family, travelled to Austin, Texas for a holiday. Some considerable time before leaving Qatar for this holiday the Claimant's wife had become aware of a lump in her left breast. This had, however, been diagnosed as benign. However, once the family got to Texas the lump began to give rise to acute pain, shooting into the armpit. The Claimant's wife availed herself of medical treatment in Texas which included (i) the prescription of painkillers against the pain, (ii) an incisional biopsy by way of diagnosis of the nature of the lump and (iii) a mastectomy by way of remedy when the diagnosis identified that the lump was cancerous.

6. The issue is whether all or any part of this treatment could be said to be in response to an emergency, as defined in the Policy. If it was, the Claimant was entitled to claim under the Policy. If it was not, the Claimant had no right to make such a claim.

The role of the expert witnesses and the role of the Court

7. The role of the expert witnesses was to give evidence as to the degree of urgency of the treatment, having particular regard to the consequences had the treatment been delayed. The role of the Court was to resolve any relevant issues between the expert witnesses and to determine whether, in the light of the expert evidence, the treatment, or any part of it, was in response to an emergency, as defined in the Policy. As the Court put it in paragraph 48 of its judgment, the question of whether any part of the treatment arose by reason of an emergency as defined in the Policy was "ultimately a matter of interpretation by the Court of that term as so defined and the application of it to the facts as agreed or otherwise established on the evidence."

8. The Claimant falls into error in his Notice of Appeal paragraphs 2 and 6 when he submits that only the treating physician, and not the Court, was in a position to interpret whether or not the facts satisfied the definition of "Emergency" in the Policy. Significantly, Dr Meynig, the physician initially responsible for the treatment in Austin, whose statements were put in evidence by the Claimant, made no reference to the definition in the Policy. The same is true of the statement of Dr Calaud, who has been responsible for the treatment of the Claimant's wife after her return to Qatar.

Evidence of fact

9. There was no material conflict in relation to the facts. They can be shortly summarised. The Claimant's wife consulted Dr Meynig on 23 July 2015. He prescribed analgesics for the pain and an incisional biopsy followed by a mammogram in order to diagnose the cause of this and the nature of the lump. The biopsy was carried out on 28 July and the results were received on 30 July. These showed that the Claimant's wife had a malignant breast cancer that had spread to the lymphatic system. In consequence of this

result, recommendations were made pursuant to which a mammogram was taken on 14 August and a mastectomy carried out on 10 September.

Expert evidence as to urgency

10. The critical issue in this case was the degree of urgency that existed in relation to carrying out the remedial treatment, namely the mastectomy. As to this the Claimant makes a number of submissions in his Notice of Appeal. He submits that his wife's health and bodily function were "in serious jeopardy" as demonstrated by the fact that her treatment robbed her of her left breast, the function of her left arm and the ability to give birth, and by the fact that "further delay would have resulted in death". The consequences of her treatment are accurately stated, as is the fact that untimely delay would have put her life at risk. But the critical issue is the degree of delay that, on the expert evidence, was medically acceptable without making a significant difference to the prognosis.

11. There was a degree of dispute between the experts as to the precise stage to which the cancer had developed, but as the Court observed at paragraph 47 this dispute was not critical. The critical questions were whether the Claimant's wife could safely have returned to Qatar before having her treatment and, more generally, the extent of the delay that was acceptable between the diagnosis of breast cancer requiring mastectomy and the carrying out of that operation. The experts addressed these matters in their Reports.

12. In his first Report Dr Meynig stated that "immediate surgery" was recommended because the Claimant's wife was facing a "life-threatening emergency that required immediate intervention". He said that "the surgery was immediately scheduled and performed on 10 September." He thus equated "immediate treatment" with that which the Claimant's wife actually received.

13. In his subsequent and more lengthy Report, Dr Meynig addressed a number of questions that had been considered by the Defendant's expert, Professor Waxman. To the question of what was the time frame for a typical course of treatment he stated that studies had shown that delays of up to six weeks did not adversely affect patients' outcome. He went on to commend the change from the approach in the early 90s of "a rush to move the patient to the operating room" to the current approach of reassuring the patient that several weeks to plan the surgery would involve no increased risk.

14. Asked whether there was any reason why the Claimant's wife could not have travelled back to Qatar for her treatment, he replied that "mentally and emotionally it was in the patient's best interests to receive her treatment here in the United States". His subsequent comments made it clear that his concern was that he could not speak to the speed and efficacy of the treatment that his patient would have received on return to Qatar, which might have resulted in a lengthy delay. He stated that "getting started as soon as possible was in this patient's best interest. This is why I deemed her case as urgent, even though the actual operation did not occur until six weeks later".

15. Dr Calaud in his Report stated that "Treatment for all cancer patients is immediate and urgent" and "a cancer patient is in a life threatening situation and if not treated immediately where the cancer was discovered the cancer would put their life at serious condition that could result in death". He considered that the Claimant's wife had received immediate treatment and that her "case was an emergency which differentiated her situation between life and death if treated or dealt with otherwise". To the question whether she could have travelled back to Qatar for her treatment he said no because "any delay in her treatment due to travel unexpected accidents, like a broken hand or any other illness could delay her cancer immediate treatment and subsequently put her life in more danger."

16. The general effect of this expert evidence is that a six weeks delay between diagnosis of the cancer and the operation to remove it was acceptable and constituted "immediate treatment". For various reasons it was considered preferable for the Claimant's wife to have her operation in Austin rather than return home to Qatar, but this was not because the time taken to return home would have been critical.

17. In his Notice of Appeal the Claimant criticizes the Court for the weight that it attached to the evidence of the Defendant's expert witness, Professor Waxman, who was called to give oral evidence, on the ground that he was an expert on prostate, rather than breast, cancer and had not got all the available medical reports. There is no validity in this criticism. The Court was well placed to evaluate Professor Waxman's experience and reliability. In any event, however, we do not believe that there is any material conflict between the evidence of Professor Waxman and that of the Claimant's experts. The decision of the Court could validly have been founded on the evidence of the Claimant's experts alone.

18. Dealing with the issue of urgency, Professor Waxman stated: "The current recommendation in the United Kingdom is that surgery should be carried out within two months of the patient's first attendance in Outpatients. This guideline has been produced as a result of careful review, and is widely accepted as reasonable, appropriate, and representative of little risk". This does not differ significantly from the evidence of the Claimant's experts.

The reasoning of the Court

19. In paragraph 20 of its Judgment the Court set out the Policy's definition of emergency. An important element of this definition is the requirement of "immediate treatment" in order to prevent placing the patient's health at serious risk. The Court considered what was meant by "immediate treatment" in a number of passages in its judgment. Thus at paragraph 28 it said that the issue was "whether or not there was any necessity to have the treatment undertaken in Austin (as opposed, for example, to returning

to Qatar)." At paragraph 55 the Court interpreted immediate treatment as being treatment within a few hours, or even within a day or two.

20. The Court treated the timescale of the treatment that was actually provided to the Claimant's wife as being a fair indication of what her condition required, and we do not understand that the Claimant, or his experts, ever suggested to the contrary. The Court's view was that, having regard to this timescale, the treatment could not be described as "immediate". It followed that the treatment was not "emergency treatment".

Our conclusion

21. In our judgment the approach of the Court to the meaning of the definition of "Emergency" in the Policy cannot be faulted. It is a fundamental principle of the construction of a contractual provision that one should have regard to its context and to its purpose. We understand that it was common ground in this case that the general exclusion in the Policy of cover in the case of treatment in the United States and Canada is because the cost of medical treatment in those countries is significantly higher than elsewhere. Apart from this exclusion the Policy permits the person covered to elect where his or her treatment should be carried out. The Policy precludes choosing the United States or Canada.

22. The Policy reasonably accommodates, however, the situation where the person covered has no choice but to have the treatment in the United States or Canada. This will be the case where the person covered is struck by an acute symptom of an acute medical or surgical condition that calls for treatment that is so urgent that time does not permit the policyholder to travel to some other country to have the necessary treatment. The treatment that the Claimant's wife required in this case, while essential to remove the threat that her illness posed to her life, did not require to be carried out with that degree of urgency. The only immediate treatment that the Claimant's wife had required was the prescription of analgesics to relieve her pain. That treatment did not, however, fall within the cover of

the Policy, because it was only to relieve the symptom, not the condition. As to the condition itself, neither its investigation by biopsy and mammogram, nor its subsequent treatment by mastectomy, needed or received "immediate" treatment within the meaning of the definition of "Emergency" in the Policy.

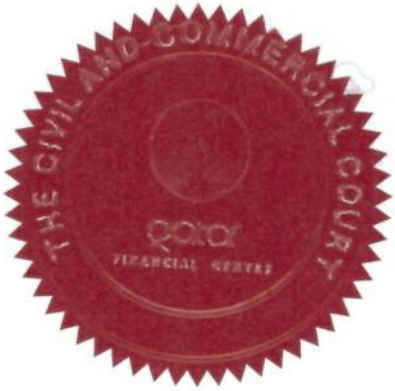
23. These are our reasons for concluding that the appeal that the Claimant wishes to bring has no reasonable prospect of success. We have set them out in some detail having particular regard to the fact that he is and has been a litigant in person and, we hope, to reassure him, that this has not prejudiced the result.

24. The Claimant seeks to pray in aid the fact that he was unwell at the time of the hearing. We do not consider that there is any basis for criticizing the Court's decision that the trial could fairly be conducted by allowing the Claimant a more relaxed timetable.

25. The Claimant further complains that the Defendant brought to bear to this case heavier and more expensive guns than the case merited. That submission may have some relevance to the assessment of costs; it cannot, however, affect the result of this application, which must, for the reasons that we have given, be dismissed.

By the Court,

Lord Phillips of Worth Matravers
President of the Court



Representation:

The Application for Permission to Appeal was considered on the papers without an oral hearing. The Applicant (acting in person) filed a written Application for Permission to Appeal. The Respondent (represented by Pinsent Masons- QFC Branch) was afforded the opportunity to make written representations in response but declined to do so.