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English Court Enjoins Washington State Court Action in Favor of Arbitration in London

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In a dispute involving a complex, multilayered excess insurance policy, the Commercial Court of the Queen's Bench Division enjoined Weyerhaeuser, a Washington company, from suing Catlin Syndicate Limited, a London-based insurer, in Washington based on the parties' agreement to arbitrate in London.

The "Layer 4 Policy" at the heart of the lawsuit provided that the choice of law and jurisdiction governing disputes under the contract would be "as per Lead Underlying Policy." Endorsement 7 of the Lead Underlying Policy provided for "any dispute, controversy or claim arising out of or relating to the policy to be determined in London under the Arbitration Act 1996." However, Endorsement 8 of the Lead Underlying Policy stated that Washington state law governed the policy, and Endorsement 9 provided that Catlin would "submit to the jurisdiction of any court of competent jurisdiction within the United States." Significantly, however, Catlin's submission to jurisdiction in the United States was "solely for the purpose of effectuating arbitration." Therefore, the court held the result was dictated by Endorsement 7, which required the parties to arbitrate disputes in London.

The court gave great weight to the "commercial parties" involved in the dispute, finding that a conflict in drafting "could or should [not] lightly be attributed to commercial parties," and "struggl[ing]" to see why "commercial parties" would provide for the "unusual" limits on arbitration advanced by Weyerhaeuser.

The court's ruling was based on English law, but the court found the result would be the same under Washington law, as presented to the court via expert evidence. Although the court recognized that Washington's adopted policy is "adverse to arbitration," the court stated that an interpretation of the parties' contract that "does not work commercially ... weigh[s] strongly against" a finding that Washington state policy should alter the parties' agreement.

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