

**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
FIRST INSTANCE CIRCUIT**

20 November 2016

CASE NO: 01/2016

HAMMAD SHAWABKEH

Claimant

v

DAMAN HEALTH INSURANCE QATAR LLC

Defendant

JUDGMENT

Members of the Court:

Justice Robertson

Justice Hamilton

Justice Arestis

ORDER

Having accepted jurisdiction in this matter, the Court determines:

1. The Claimant's claim is dismissed; and
2. The Claimant is to pay the Defendant's reasonable costs in the case, if not agreed such reasonable costs to be assessed by the Registrar.

JUDGMENT

1. The Claimant, Hammad Shawabkeh, is a resident in the State of Qatar.
2. The Defendant, Daman Health Insurance Qatar LLC, is a company established in the Qatar Financial Centre ("QFC") under the laws and regulations of the QFC.

Procedural History

3. In a Claim Form, issued by the Registry on behalf of the Court on the 20 March 2016, the Claimant sought the sum of QAR 617,400.95 from the Defendant under the terms of a medical insurance policy which covered the Claimant and his wife (hereafter referred to as "[Ms S]").
4. On the 17 April 2016, the Defendant filed and served a detailed Defence, settled by Counsel, denying liability.

5. The Registrar gave the Claimant 14 days in which to file and serve a Reply, which he did on the 1 May 2016.
6. On the 25 April 2016, the Claimant, who was at that time unrepresented, emailed the Registrar asking for the Defence to be summarily rejected by the Registrar, on the basis that there had been a procedural irregularity. That irregularity, it was said, arose because the Defence (drafted by Counsel) contained at the footer a statement of truth which had not been completed.
7. Article 16.1 of the Court's Regulations and Procedural Rules is in the following terms- "*All claim forms and other statements of a party's case shall contain a statement of truth.*" The requirement appears to be mandatory.
8. The Defendant took steps to remedy the perceived defect by filing and serving (even though out of time) an additional copy of the Defence which contained a signed and dated statement of truth, but was otherwise unaltered.
9. The Registrar rejected the Claimant's request. He gave reasons on the 3 May 2016, the relevant part of which said-

"Although the signed statement of truth at the end of the Defence was filed and served after the 28 day period in question, what cannot be overlooked is that the applicable Court form which accompanied the Defence (and which was filed and served within

the 28 day period) clearly did contain a signed statement of truth. That statement of truth sufficiently covered the requirement set out in Article 16 and there was, in fact, no need to file and serve a further one. Even if the accompanying form had not been signed, it is difficult to envisage any prejudice that may have been caused to you by permitting a signed version to be filed and served shortly after the deadline had elapsed, albeit that the appropriate course in such a situation would have been for the Defendant to formally request an extension of time. However, that issue did not arise because the accompanying form did contain a signed statement of truth and was served within the 28 day period.”

10. The Registrar, having noted that the Claimant had reiterated his complaint in this regard within his Reply, invited the Claimant to pursue the point with the Court should he so wish. The Claimant sensibly accepted the decision of the Registrar and did not pursue the point.

11. Thereafter, the Court gave the Parties the opportunity to comment upon draft directions which had been prepared by the Court. Having considered the Parties' responses to that draft, on the 19 June 2016 the Court issued directions as to the future management of the case in the following terms:

- (a) The Court notes that the parties have filed an agreed statement of facts and in respect of the factual matters covered therein no further evidence will be necessary;*
- (b) By no later than Sunday 24 July, the Claimant will file and serve witness statements including expert testimony. The Court is not currently minded to appoint any experts itself but will leave it to the parties to produce such evidence as they require;*
- (c) Within 14 days, i.e. by Sunday 7 August, the Defendant will do likewise;*
- (d) Anything strictly in reply from the Claimant will be filed and served in 14 days, i.e. by Sunday 21 August;*
- (e) By Sunday 4 September, the parties shall each file and serve a single page of all substantive issues they consider require adjudication. If it is necessary, the Court will issue further directions on the basis of those issues and the totality of the evidence which will be closed at that time;*
- (f) The Claimant's submissions are to be filed and served by Sunday 18 September;*

*(g) The Defendant's submissions are to be filed and served by
Sunday 2 October;*

*(h) An agreed bundle of essential documents (4 copies) is to be
filed by Sunday 16 October along with any critical authorities;
and*

*(i) The hearing will commence on Sunday 6 November with an
estimated duration of 2 days. The exact duration will be
determined nearer the time and could be influenced by whether
there is to be any cross examination of witnesses.*

12. Subsequently, the Court considered a number of requests by the Claimant seeking extensions of time in which to comply. Those extensions were, for the most part, granted, the Court being satisfied that no prejudice was caused to the Defendant in so doing and the date set for the trial was not put at risk. It can be observed that on both sides there was a rigorous approach to strict compliance with procedural requirements. In the event the issues ventilated pre-trial were of very peripheral relevance at the eventual hearing. All filed material was available and utilised by both parties in various ways. The chronology of events is to be found in the Schedule.

Background Facts

13. In an attempt to narrow the issues before the Court, the parties, in compliance with the Court's directions, filed a Statement of Agreed Facts. What follows (paragraphs 14 to 28), therefore, was not in dispute.

The Parties

14. The Claimant and his wife are both residents in the State of Qatar. They were provided with medical insurance as part of the Claimant's employment. The Claimant is the principal holder of the medical insurance policy ("the Policy") but the benefits of the Policy extend to his wife.

15. The Defendant is a health insurance company established in the QFC with its headquarters located in Doha. It is responsible for providing medical insurance cover to the Claimant and his wife pursuant to the terms of the Policy.

The Policy

16. The terms of the Policy are contained within a document entitled "Policy Wording, International Regional Qatar & Classic Plans".

17. The Policy contains a number of definitions. Definitions of particular relevance to this case are the following:

““Network” (services are 100% covered on direct billing).

When used to describe a Provider of Health Services, means that the Provider has a participation agreement in effect with Daman, to provide Health Services to Eligible Persons. Daman

may change the participation status of Providers from time to time.

“Network Benefits” – Benefits available for Covered Health Services when provided by a Network Provider. In order to avail the maximum Network Benefits, services provided by the Network has to be taken in full, otherwise Network Benefits will be considered as non-Network and Non-Network Rules will apply. In addition Health Services provided by a non-Network Provider are considered a Network Benefit when such Health Services are approved in advance by Daman or are Emergency Health Services.

“Non-Network Benefits” – Coverage available for Health Services obtained from the non-Network Providers. Coverage for the Non-Network Benefits is only provided if the services are assured in the Schedule of Benefits.”

18. There is a Schedule of Benefits relevant to the Policy. In the field “Territorial Limit” at the top of the first page of the Schedule, it is stated that the Policy is *“Worldwide excluding USA & Canada. Emergency cover worldwide”*. The Schedule of Benefits lists Inpatient and Outpatient treatment covered by the Policy. This includes chemotherapy, radiation therapy, diagnostics, laboratory, consultant’s, surgeon’s and anaesthetist’s fees, physician consultation and pharmaceuticals. Mastectomies are covered under the Schedule of Benefits although they are not explicitly stated within the Policy.

19. The procedure for claiming Network Benefits is set out in section 6 of the Policy. The procedure for claiming Non-Network Benefits is set out in section 7 of the Policy.

20. The word “*Emergency*” is defined in Section 1 of the Policy as follows:

““Emergency”: the acute onset of a medical or surgical condition manifested by acute symptoms 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.”

21. Under the heading “General Exclusions”, at section 11 (ss), the following appears:

“All cases requiring Emergency In-Hospital treatment/services, which have not been notified to Daman within 24 hours from admission”

22. In case of Emergency, prior authorisation of the costs is not required.

The Discovery of the Tumour

23. In the summer of 2015 the Claimant, his wife and their family travelled to Austin, Texas.

24. [Ms S] consulted a doctor (Dr Meynig) in Austin on 23 July 2015. Dr Meynig signed a Daman Health Insurance claim form, dated 23 July 2015, in which it was stated (i) in the Medical History/Chief Complaints section of the form that [Ms S] had “*a painful left nipple mass with growth*”; and (ii) in the Treatment Details section of the form that “*an incisional biopsy be taken*”.

25. The biopsy was undertaken on 28 July 2015. The results were available on 30 July 2015. They indicated that [Ms S] had malignant breast cancer that had spread to her lymphatic system. Her condition was described as progressive and life-threatening. She was referred to the Austin Cancer Center.
26. [Ms S] underwent a number of procedures in August and September 2015 including an MRI on 14 August 2015.
27. On 10 September 2015 [Ms S] had a mastectomy. Pathology on the left breast showed a 2.2cm invasive cancer with associated DCIS. 2 sentinel lymph nodes were removed, which were positive for adenocarcinoma up to 10mm in size with extracapsular extension, i.e. the tumour had spread to at least 2 axillary lymph nodes and was multifocal within the breast.
28. Diagnostic treatments are covered under the Policy. It was not disputed that [Ms S] required the breast cancer treatment that she obtained in Austin in 2015. What was disputed was whether or not there was any necessity to have the treatment undertaken in Austin (as opposed, for example, to returning to Qatar). In other words, whether or not, for the purposes of the Policy, the condition (and the associated treatment) could be classified as an "Emergency". The Claimant asserted that it was an Emergency; the Defendant refuted this.

The Hearing of the Case

29. On Saturday 5 November, late in the evening, the Claimant, by email to the Registrar, requested an adjournment for 2 days of the commencement of the hearing as he was unwell. A medical certificate was tendered. The Claimant was immediately advised that the application would be considered on the morning of 6 November in Court.
30. The adjournment application was strenuously opposed with particular emphasis being placed on a critical expert having travelled to Doha from London as well as Counsel and that a 2 day delay would preclude them from participating.
31. The Court was satisfied that the balance clearly required the matter to proceed as had been planned for over 4 months, but that the daily schedule be moderated and adjusted to ensure no injustice to the Claimant.
32. In fact Mr Shawabkeh managed extraordinary well with some additional breaks provided and sitting times reduced. The hearing was completed in 3 days.

The Evidence

33. The Claimant, who was not legally represented at the hearing, was the only witness who gave oral testimony in support of his case. He otherwise relied on documentary material, which was substantial. The Defendant, which was represented by Mr Patel of Counsel, led four witnesses orally, namely Professor Jonathan Waxman, Dr Aziz

Ustunel (“Dr Aziz”), Mr Herve Bourel and Dr Mohamed Osama Helal (“Dr Osama”), doctors from these parts being referred to as indicated. All the oral witnesses were cross-examined before the Court. Within the agreed bundle of documents were reports prepared by certain medical practitioners (Dr Meynig, Dr Yorio and Dr Calaud) which reports included expressions of opinion generally in favour of the Claimant’s case. None of these three practitioners gave oral testimony and, accordingly, none of them was cross-examined before the Court. Mr Patel expressly conceded that these expressions of opinions should be treated as evidence before the Court but contended that, in the absence of there being an opportunity to cross-examine the authors, their evidence should be given lesser weight where it differed from that of Professor Waxman, who had been made available for cross-examination. [Ms S] was not called as a witness. Although she was the patient whose medical experiences were critical to this case, no point was taken on this.

The state of knowledge prior to the family’s journey to Texas

34. The Defendant contends that, prior to their departure from Qatar in July 2015, the Claimant and [Ms S] both knew that [Ms S] was suffering from breast cancer. It contends that they deliberately, with that knowledge, went to Austin to obtain treatment for that condition (although there may have been additional reasons for that journey). If that is true, it has, or at least may have, a bearing on whether the Claimant is entitled to recover from the Defendant the medical expenses incurred by him there. The Claimant denies that either he or his wife had such prior knowledge or intention.
35. [Ms S] clearly had a problem with her left breast for some time prior to July 2015. In September 2013 she attended the Department of Cytopathology at Hamad General Hospital in Qatar. The relevant note records that clinically there was “left breast

lump” and that a procedure of fine needle aspiration was carried out. The microscopic examination of the aspirated material led to the view that a “biopsy should be conducted if there are atypical clinical or imaging findings”. The reported cytological diagnosis was: “Small numbers of atypical cells; significant (sic) uncertain”. A Patient Visit Sheet dated 18 September at the El Emadi Hospital contains a manuscript note which is difficult to decipher with confidence. However, it is not in dispute that the doctor recommended that an excision biopsy be carried out.

36. No such biopsy was carried out at that time. The Claimant was dissatisfied with the medical services which were at that time being provided for his wife at that hospital and decided that, before the invasive procedure of an excision biopsy be carried out, a second medical opinion be sought. Such an opinion was sought and obtained from Dr Fawzi Jadallah, Consultant General and Laparoscopic Surgeon at the Al Ahli Hospital in Doha. In a joint medical report by Dr Fawzi and a Dr Omar Farouq Arsalam dated 7 March 2016 (but recording earlier events) it is stated that [Ms S] presented at that hospital on 28 September 2013 “complaining of left breast mass for one month with associated pain”. She was examined and two small breast masses detected in the left breast. She was advised to have a follow up visit. She attended on 3 May 2014 when she was examined again. She was advised to have an ultrasound to the breast. This was carried out on 17 May 2014. The results of that ultrasound, together with the results of two earlier ultrasounds (carried out respectively on 20 October 2012 and 12 September 2013), were considered by Dr Fawzi, the conclusion being reached that the breast features “could be fibroadenoma or intraductal papilloma” (both non-cancerous conditions).

37. [Ms S] was, in effect, medically advised at that time that the condition of her left breast was not a cause for concern. This was particularly important to her as her sister had died from breast cancer at the age of 43. In May 2014, [Ms S] was 39 years of age.

38. According to the Claimant his wife had no further medical examination, investigation or treatment between then and her consultation with Dr Meynig in Austin on 23 July 2015. The Defendant challenges that statement, relying on two documents: first, a statement in a radiological report dated 17 August 2015 and prepared in Austin by a Dr Michael Pfeifer which, under Clinical History, states “The patient was recently diagnosed with left-sided cancer at an overseas location” and, secondly, a statement in a report by Dr Yorio dated 27 September 2016 that “[Ms S] initially presented with breast pain around December 2014”. Neither of the authors of those statements gave oral testimony and so could not be examined upon them. As to the first the Court concludes that Dr. Pfeifer was, in all probability, in error in stating that there had been a recent diagnosis of cancer “at an overseas location”. [Ms S] had indeed been recently diagnosed (on 30 July 2015) with left-sided cancer but that was at Austin. There is no support for the statement that she was so recently diagnosed in Qatar or at any other location overseas from the viewpoint of the United States. The Claimant denies that there was any such diagnosis. The Court accepts his testimony on that matter. As to the second statement, again the Court concludes that this was an error. There is no support for the proposition that [Ms S] “originally presented with breast pain in December 2014”. There is nothing in any material before the Court to the effect that [Ms S] presented herself for medical examination of her breast at any place

in December 2014. The Claimant denies that she did. Again, the Court accepts his testimony on that matter.

39. Certain other circumstances are relied on by the Defendant in support of the contention that the Claimant and his wife went to the United States with knowledge that she was suffering from breast cancer and with the intention of having her treated there at the (ultimate) expense of the Defendant. A background circumstance is that in February 2015 the Claimant, while in the United States, contracted influenza. At that time there was a wide-spread concern about “swine flu” (H1N1), a form of influenza which could be fatal. The Claimant presented himself to an emergency medical centre, where he was prescribed Tamiflu (a medication designed to counter H1N1 and possibly other forms of influenza). At the time he appears to have had with him a standard form designed by the Defendant for use where facilities other than Daman listed Healthcare facilities had been used. This form was completed in part by the Claimant and in part by his consulted doctor. The reason indicated for the use of non-Daman listed Healthcare facilities was “Emergency”. It seems that, notwithstanding the initial apprehension, the Claimant had not contracted H1N1 but a less virulent form of influenza. However, a claim having been made for reimbursement of the Claimant under the Policy, it was met in full by the Defendant. The amount paid was US \$174.98.

40. On 7 July 2015, in anticipation of his travelling to the United States with his wife and the four younger members of his family, the Claimant by email asked the Defendant for an update on his cover, including that for medical care. The Defendant’s response (on the same day) included the statement: “Please note that your plan does not cover

USA and Canada for elective treatment”. Accordingly, the Claimant before travelling to the United States was well aware that there was a territorial restriction to his health insurance cover.

41. According to the Claimant the purpose of the visit to the United States was initially for a family holiday, a number of visits to popular attractions there having been pre-arranged by him, and a decision was made to visit his son (apparently the eldest child) who was attending a USAF establishment in Austin and was to graduate there. The Claimant denied that there was any prior intention to seek there medical treatment for his wife. They arrived in Austin on 19 July. By the time they arrived [Ms S] had, according to the Claimant, developed a fever and felt a continuous shooting pain from her left breast going towards her shoulder; this caused her and her husband sleepless nights. Conventional painkillers not having stopped the pain, a decision was made to seek medical assistance. The Claimant testified that he “Googled” for an appropriate doctor. His first choice, having made that search, was of a doctor whose name suggested an Arabic origin, with whom the Claimant and his wife might have felt more comfortable; but that doctor, he discovered, was not available. Dr Meynig was suggested as an alternative and a consultation arranged with him. [Ms S] was first seen by him at Austin Surgeons on 23 July. His findings will be considered shortly.

42. First it is necessary to address a contention advanced by the Defendant in relation to the choice of Dr Meynig as the medical man to consult. Dr Meynig, according to the website of Austin Surgeons, is certified in General Surgery by the American Board of Surgery and is a fellow of the American College of Surgeons. His particular interests include laparoscopic surgery, breast surgery and surgical oncology. It is maintained

by the Defendant that it was extraordinary that, if [Ms S]'s symptoms had only become severe when she arrived in the United States, the medical man who was consulted was a breast surgeon with a particular interest in surgical oncology rather than a general physician. This circumstance, it was maintained, pointed to an intention, formulated before the family left Qatar, to have [Ms S]'s breast problem dealt with surgically in the United States. This contention has given the Court some pause but, in the end, is rejected by it. While the selection of a surgeon by way of self-referral is at first sight surprising, there was no reason for the Claimant to anticipate that any therapy to be provided for [Ms S] in the United States for her breast problem would be by way of surgery rather than some other form of therapy, such as chemotherapy or radiotherapy. Moreover, it would be astounding if the Claimant took his young family to the United States with the deliberate intention of their mother undergoing surgery there with all the consequences for the family of such an event. The Court accordingly is not satisfied that the Claimant and his wife went to the United States with the prior knowledge that she had cancer and with the intention of her being treated there. The fact that they happened to consult Dr Meynig, a medical man clearly of great competence in the relevant field, was, in the Court's view, a happy coincidence amidst the unhappiness and distress which arose when it was learned that [Ms S] had breast cancer. In reaching that conclusion the Court has taken into account the Claimant's knowledge and experience of the operation of the Policy, as mentioned in paragraphs 39 and 40 above.

43. When he saw Dr Meynig on 23 July the Claimant had with him a form of the kind completed by him in respect of his medical treatment in February 2015. Dr Meynig on that day completed and signed the medical section of that form. The medical history

listed was “Painful left nipple mass with growth” and the diagnosis “Left nipple mass”. At that stage no biopsy had been carried out. On this form the reason for not using Daman listed Healthcare facilities was not completed (whether by entering “emergency” or otherwise). The Court attaches no significance to that omission.

The medical history from July 2015

44. [Ms S] was examined by Dr Meynig at that first consultation. Dr Meynig recorded that she had had a nodular mass lesion in her nipple for a number of years. It had become suddenly enlarged during her pregnancy in 2013. The mass lesion had been stable since then; “however, in the last several weeks it has become increasingly more painful. The pain actually shoots into the breast and up to the right upper axillary region”. In a subsequent report Dr Meynig referred to [Ms S] complaining of “severe pain in her left breast and a shooting pain in her left under arm”. Her sister, Dr Meynig was advised, had died of breast cancer at the age of 43. [Ms S] was at the time of this consultation 40 years of age. Dr Meynig also made a physical examination upon which he reported. In his recommendations he reported that it was difficult to tell whether what was observed was a nodular mass lesion or a chronic infection process. His recommendation was for an incisional biopsy along the lower margin of the left nipple. He also advised that [Ms S] should have another mammogram “either prior to leaving the United States or on return to Qatar”. The procedure for taking the biopsy was arranged for the following week.

45. The subsequent medical history is not in dispute. The biopsy was carried out and the specimens submitted to the laboratory on 28 July. Although the laboratory report is dated 5 August, Dr Meynig was apparently able to advise the Claimant and his wife on 30 July that she had a malignant breast cancer which had spread to the lymphatic

system. They were, understandably, devastated. The medical advice was that [Ms S] should undergo a mastectomy of the left breast, with possible further surgery. In the meantime a mammogram would be taken. In the event that mammogram was taken on 14 August and surgery, including mastectomy, carried out on 10 September. She made a slow recovery but her prognosis is now good.

46. Following the mastectomy, pathology was carried out on the excised body part. The result of that analysis allows a view to be taken of the character of the cancer. There is possibly a difference of medical view as to that character, although at the end of the day it is unnecessary, for the purposes of this litigation, for the Court to resolve that difference. Professor Waxman testified that [Ms S] had “G1 breast cancer” which he described as representing the “most benign and slow growing” of the grades of breast cancer. He also described it as a “relatively indolent tumour with a slow growth rate, good response to hormonal therapy and good outlook”. He adhered to these views in oral testimony. In a written report dated 29 September 2016 Dr Meynig suggested that, although the pathology suggested that [Ms S] did indeed have a stage 2 breast cancer, it was possible that she had a stage 3 cancer, which carried a worse prognosis. He conceded that he had no pathology to support that conclusion but opined that pathological staging alone could be misleading. Clinical staging was equally important. He did not, however, suggest that his clinical examinations of the patient were such that, with the pathological findings, he was able to conclude positively that her breast cancer was stage 3.

47. Professor Waxman was a very impressive expert witness. He recognised, and manifestly gave effect to, his responsibility as an expert to the Court and the need to be independent of the client instructing him. Although he has particular distinction in the field of prostate cancer, he is also clearly expert and experienced in other forms of cancer, including breast cancer. He gave his evidence in a careful and measured way. Unfortunately, Dr Meynig did not give oral testimony. It was, accordingly, impossible to assess his evidence on this matter with the benefit of it being tested under cross-examination. In the circumstances the Court has no alternative but to prefer Professor Waxman's evidence to that of Dr Meynig in so far as their medical opinions on this matter may differ. Accordingly, the Court finds that [Ms S] had a grade "G1" breast cancer with a slow growing rate and a good outlook. It should be noted, however, that the resolution of this issue is not critical to the matters to be decided in this litigation. A confident view as to the precise character of the cancer from which [Ms S] was suffering was only possible once the mastectomy was carried out and the pathology results had become available. The question whether the medical costs claimed arose out of an "Emergency" within the meaning of the Policy turns, in the end, on other matters.

"Emergency"- interpretation and application

48. The principal issue for decision in this case is whether the medical treatment which [Ms S] received in Texas in July 2015 and in the following months, or any part of that treatment, arose by reason of an "Emergency" as defined in the Policy. That is 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 as otherwise established on the evidence. What medical dictionaries or medical men may say about the general meaning of a

medical “emergency” may be instructive or helpful in the exercise of interpretation of the Policy terms but cannot of themselves be definitive.

49. Mr Patel submitted that the definition of “Emergency” in the Policy involved three “thresholds” (his expression), namely:

- (a) “The acute onset of a medical or surgical condition”;
- (b) “manifested by acute symptoms of sufficient severity, including pain”; and
- (c) “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 or dysfunction of any body organ or part”.

Each threshold had to be crossed before there was an “Emergency”.

50. The Court recognises that there are a number of elements in this definition to which regard must be had in understanding and applying it, though it is necessary to appreciate that this is a composite definition; an analysis by breaking it down into discrete “thresholds” may not necessarily be helpful. Nonetheless, the Court is prepared to follow Mr Patel’s approach to interpretation (which the Claimant did not challenge), bearing always in mind that it is the definition, read as a whole, which must be applied.

51. Mr Patel submitted that in the circumstances of this case it might be helpful to read “thresholds” (or elements) (b) and (c) together. The symptoms had to be “of sufficient severity...that the absence of immediate treatment at a health facility” could

reasonably be expected to have certain consequences. The Court sees merit in this approach. It should, however, be borne in mind that the relevant consequences are “placing the patient’s health or bodily function in serious jeopardy or dysfunction of any body organ or part”. It is not necessary that the patient’s life is in immediate danger. At one point in his evidence Professor Waxman suggested that a medical emergency was where treatment was immediately required to allow the patient to survive. That may be what is understood by an “emergency” in certain medical quarters. But a risk of death in the absence of immediate medical intervention is not a necessary requirement for there to be an “Emergency” under the Policy.

52. On presentation to Dr Meynig on 23 July [Ms S] had, the Court accepts, severe pain. This had not been alleviated by taking conventional analgesics. The cause of this pain was at that point uncertain but the possibility that [Ms S]’s breast was cancerous could not be ruled out. A biopsy was recommended. On this occasion that recommendation was accepted, though there seems to have been no particular urgency for that investigation; it was organised for a week later. Investigation by way of mammogram was also recommended, though at that stage it appears to have been envisaged that that might be carried out either in the United States or on [Ms S]’s return to Qatar. On 30 July Dr Meynig was in a position to advise [Ms S] that she had breast cancer. A mammogram was arranged and was carried out on 14 August. Surgery by way of mastectomy was arranged and was carried out on 10 September.

53. There is no doubt that [Ms S] was suffering from a serious illness which, if not appropriately treated, would lead to her early death. But the question remains whether her symptoms were, as at July 2015, of sufficient severity that the absence of

immediate treatment at a health facility could reasonably be expected to result in the consequences referred to in the Policy definition. The claim before the Court is for medical costs covering [Ms S]’s treatment from her initial consultation with Dr Meynig through to her discharge from hospital in October 2015. The first question is whether all these costs are recoverable under the Policy as having arisen from an “Emergency”; the larger part of those costs is likely to have been incurred in respect of her hospitalisation. A second question is whether, if these costs as a whole are not recoverable, any part of them is.

54. The Court accepts that the pain being suffered by [Ms S] when she first consulted Dr Meynig on 23 July was severe and that that pain was a consequence of the breast cancer which she was suffering, although [Ms S] did not know at that stage that she had that disease. In retrospect it now seems clear that the cancer had been present since at least September 2014 and probably for a long period prior to then. That was the opinion of Professor Waxman and there is nothing in the reports of the experts relied on by the Claimant which seriously challenges that proposition. While the pain had to be dealt with, and was dealt with by analgesics, the pain itself was not a condition which, in the absence of immediate treatment at a health facility, could reasonably be expected to result in placing [Ms S]’s health or bodily function in serious jeopardy or dysfunction of any body organ or part. What concerned Dr Meynig was the underlying cause of the pain. That required to be investigated by clinical examination and other tests, including an incisional biopsy and a mammogram. The clinical examination together with the taking of the patient’s history, including the fate of her sister, was undertaken at the initial consultation. Some arrangements were then made for other tests. In particular, an incisional biopsy

was arranged for the following week. As for a mammogram that, it was then thought, might be taken in the United States or following [Ms S]'s return to Qatar.

55. While, no doubt, it was desirable that these tests should be carried out with due promptness, there is nothing to suggest that they required to be carried out within a few hours or even within a day or two of the initial consultation- a timescale which might reasonably in the context of the definition as a whole and in the absence of special circumstances be regarded as "immediate". Once breast cancer had, on examination of the results of the biopsy, been identified, a decision required to be made as to how medically that should be treated. Undoubtedly, the situation was serious. Unless due steps were taken to deal with the disease, [Ms S] was at risk of suffering the same fate as her sister. But there is nothing in the evidence to suggest that surgery or any other medical regime was, on the basis of the information then available, required to be undertaken within hours or days to avoid the consequences referred to in the Policy. A mastectomy was in fact carried out on 10 September, nearly six weeks after the breast cancer had been identified. There is nothing to suggest that the passage of that period of time was, or was likely to have been, detrimental to the patient. Indeed, the surgical procedures were successful and, thanks to the skill of her American medical advisers, [Ms S]'s health prospects are now good. The mammogram, although taken in the event in Austin, was arranged for and taken some two weeks after the diagnosis. On no view could the required treatment by way of mastectomy, carried out six weeks after diagnosis, be regarded as "immediate".

56. The Court is wholly sympathetic to the distressing situation in which [Ms S] and her family, including her husband, found themselves in the summer of 2015. But the issue before it is the interpretation and application in the circumstances of a contractual document, namely, the Policy and, in particular, of the expression “Emergency” used in it. The Court has given careful consideration to the opinions expressed on the matters of “emergency” or “urgency” by the experts relied on by the Claimant. Regrettably, none of those experts was before the Court to be there examined on their opinions. It is not clear that any of them had before them when expressing their views the definition of “Emergency” in the Policy, which in any event is a matter for interpretation by the Court. Breast cancer is obviously a very serious disease and potentially fatal. It may be that there are some states of breast cancer which require the immediate commencement or execution of therapy (in the sense of such action within a matter of hours or a day or two) to save the patient’s life or to avoid the patient’s health or bodily function being placed in serious jeopardy or the dysfunction of a bodily organ or part. But on the established facts [Ms S]’s cancer was not, nor was it conceived to be, of that sort. In the circumstances the Court concludes that the situation in which [Ms S] found herself was not an “Emergency” such that the Claimant is entitled to recover from the Defendant the costs of her operation and other in-hospital care. The Court considers below whether any part of the costs incurred are recoverable.

57. In reaching the above conclusions the Court has taken into account that, when the crisis for the family arose, they were in a foreign land and that, if the necessary medical procedures were not carried out in Austin where the disease had been detected, there was a potential for some delay in their being carried through. But,

while there might be genuine concerns in that regard by [Ms S]'s medical advisers in Austin, there is no evidence before the Court on which it could draw the conclusion that if, upon the disease being detected, [Ms S] had travelled home to Doha she would have been unable to receive appropriate care within an appropriate timescale. Nor can the circumstance that the Claimant and his wife were being advised, no doubt for good reasons, to remain in Austin for surgery translate what was not an "Emergency" into an "Emergency". Dr Calaud suggests that an accident in the course of travel could have delayed [Ms S]'s operation; but in the absence of that proposition being tested by cross-examination, the Court is unable to give any weight to it. Likewise, it regards as unhelpful Dr Osama's reference at paragraph 21 of his Witness Statement to facilities being available in South American territories. It further regards as unhelpful Dr Osama's statement at paragraph 18 of that Statement that [Ms S] had a biopsy in Qatar in 2013 "that was positive for breast cancer" and his own gloss in the following sub-paragraph (b)(i)(1), "indicative of cancer" when all that was discovered at the time in question was a "small number of atypical cells", the significance of which was reported as "uncertain".

58. Although the claim as advanced by the Claimant encompasses medical costs which include those of surgery and other in-hospital costs, the Court has considered whether some more limited aspect of the costs incurred might be recoverable under the Policy. In particular, it has considered whether the initial costs of consultation, of the biopsy and of the mammogram, might be recoverable. By the time [Ms S] first saw Dr Meynig she was suffering pain to an intensity which the Court accepts was "severe". She clearly needed professional medical care. She consulted Dr Meynig who, after examination of her, concluded that an incisional biopsy was appropriate. Although he

may not have said so to the patient at the time, he clearly had an apprehension that the root cause might be a cancer. That apprehension was well-founded, as the results of the biopsy demonstrated. At a further consultation he advised the patient and her husband accordingly- to their obvious dismay. The mammogram followed. While these investigations could properly be regarded as “treatment” (see Plan Schedule of Benefits) and required to be carried out with some urgency, they did not, as events demonstrated, require to be carried out (and be reported on) within a matter of hours or even a day or two. It was only if they were required immediately in the sense of the definition that an “Emergency” arose for which reimbursement, as a matter of law, was payable. For the reasons already explained, there was no such “Emergency”. In these circumstances none of the costs incurred is, in the judgment of the Court, recoverable as a matter of law.

59. In the circumstances it is unnecessary to consider and apply Mr Patel’s “threshold (a)” and the Court declines to express any concluded view on it. The contention was that there was no “acute onset of a medical or surgical condition”. At one stage the contention appeared to be that the breast cancer having pre-existed for a year or more, what occurred in July 2015 could not, as a matter of law, be regarded as an “acute onset of a medical...condition”. But, in final submissions, Mr Patel conceded that there could be an “acute onset” even if there was an underlying medical condition which had existed for some time. Epileptic attacks were given as an illustration. The submission in the end was that what occurred in July 2015 was but an incident in a chronic condition which had given rise to symptomology of a similar kind in the past. Dr Meynig, on the other hand, expressed the view in a report dated 29 September 2016 that [Ms S] had both an acute condition (the pain in her breast, shooting towards

the left axilla) and a mass in the nipple/areola area which was chronic. The Court would have been minded to accept the latter view. But, in the circumstances, it is unnecessary, to come to a concluded view on this matter.

Notification

60. Although not a matter in issue between the Parties when the claim was made initially and rejected, in the legal proceedings a question of notification was raised.

Paragraph 2(c) of the Statement of Defence is as follows:

“If, contrary to the Defendant’s primary case, the treatment received by Ms S was emergency treatment then the terms of the policy required the Claimant to notify the Defendant of the treatment within 24 hours treatment (sic). The Claimant did not comply with this requirement to notify the Defendant of emergency treatment, and delayed notification until November 2015.”

If the Court concluded that the treatment received by [Ms S] in the United States was an “Emergency” then it would be necessary to decide, in order for the claim to succeed, that the aforementioned term of the Policy was satisfied. The Defendant, at paragraph 22 C ii of its Statement of Defence, further argues that:

“On the Claimant’s own case neither he nor [Ms S] contacted the Defendant within 24 hours of treatment commencing in Austin to notify the Defendant that [Ms S] was receiving emergency treatment.”

In answer to the above the Claimant, at paragraph 2(c) of his Reply to the Defence, argued that he notified the Defendant within 24 hours and informed its AIC Qatar

Broker CEO, Mr Akram, and his (the Claimant's) Line Manager and HR Manager at Marafeq Qatar.

61. Section 6 of the Policy entitled "Procedures for obtaining network benefits" provides at paragraph 6.7 as follows:

"Emergency Health Services by Non Network Providers. Eligible Persons obtaining Emergency Health Services by non-Network Providers inside the "Territorial Cover" as described in the Letter of Acceptance, must notify Daman within 24 hours or as soon as reasonably possible. At Daman's request, they must provide full details of the Emergency Health Services received in order for such Health Services to be covered as Network Benefits."

Section 8 of the Policy entitled "Covered Health Services" provides at paragraph 8.17 as follows:

"All emergency cases do not require prior approval but should be notified to Daman within 24 hours."

Mr Patel did not rely upon this provision.

Section 11 of the Policy, under the title "General Exclusions", provides that:

"The following treatments including medical conditions, items, supplies, procedures and all their related or consequential expenses are excluded from this Policy."

The exclusion at paragraph (ss) refers to *“All cases requiring Emergency in-Hospital treatment/services which have not been notified to Daman within 24 hours from admission.”* The Court observes that the term in-Hospital treatment is not defined as such under Section I entitled “Definitions of the Policy”. It is noted, however, that other definitions contained in the aforementioned section may be helpful in interpreting the term “in-Hospital treatment”. The term Hospital is defined as follows:

“an institution, operated pursuant to State of Qatar federal law which: (1) is primarily engaged in providing Health Services on an inpatient basis for the care and treatment of injured or sick individuals through medical, diagnostic and surgical facilities by or under the supervision of a staff of Physicians; (2) has 24 hour skilled nursing services. A Hospital is not primarily a place for rest, custodial care or care of the aged and is not a nursing home, convalescent home or similar institution.”

The term “Inpatient” is defined as *“Hospital Confinement requiring an overnight stay”* (also referred to as “Hospitalization”).

The term “Inpatient Benefit” is defined as *“Hospitalization or Day Treatment or observation/treatment in an Emergency room/facility which cannot be carried out on an outpatient basis.”*

The term “Outpatient Benefits” is defined as follows:

“benefits offered under this cover are services such as Physician consultation, including Accident related Dental Treatment,

prescribed medicines, physiotherapy and diagnostic testing, including pre-operative investigations, which are conducted on an outpatient basis without jeopardizing the insured's health or which do not require Hospitalization/Day Treatment or necessitate specialized medication attention and care in a Hospital before, during or after the delivery of the service."

62. In his Witness Statement the Claimant contends that on the 30 July and 3 August 2015 he telephoned the Defendant several times, trying to reach them for help, from his pre-paid phones but the Defendant's answering machine system was not working. He further says that, at the end, he got through to a representative in Qatar and informed her of their situation and they were told to bring all their documentation and medical reports and submit a reimbursement claim as he had done a year ago, as the Defendant will not cover any expenses right away because the United States is out of network. In his effort to get some assistance, the Claimant finally contacted the insurance broker whereby a Mr Akram told him to do the same things as the Defendant had told him to do. The Claimant said that he could not get records of calls he had made from his pre-paid phones.

63. In cross-examination the Claimant repeated that he initially made some unsuccessful telephone calls to the Defendant on the 30 July and 3 August and that he finally spoke to somebody but when asked to say to whom he had spoken he said that he did not remember. He further added that his son had also unsuccessfully tried to contact the Defendant by phone. In his re-examination the Claimant said that the lady to whom he had spoken told them to bring to Qatar all their papers from the United States.

64. Relevant to the question of notification are two emails exchanged between the Parties in July 2015 before the visit of the Claimant's family to the United States- see paragraph 40. The Claimant agreed that on the 7 July 2015 he had sent to the Defendant an email to which they had responded (by email) on the same date. The Claimant, in this email, asks the Defendant to update him, as he is travelling with his family to Austin Texas USA, where to go should he need medical, optical, or dental care. The Defendant's reply was that the Claimant's plan does not cover elective medical treatment in the USA and Canada. The Claimant accepted in cross-examination that in July 2015 he knew how to contact the Defendant and that he knew their email address.

65. The Defendant relies mainly on the oral evidence of Mr Bourel who has been the Chief Executive Officer of the Defendant since the 1 July 2015. He confirmed that they had conducted a full review of the Defendant's telephone records between 20 July and 30 September 2015 and they did not have any records of a call received during that time from any numbers related to the Claimant or his wife or from a telephone number with a US prefix. Mr Bourel, in cross examination, explained that the Defendant has a 24 hour line but it is not a specific one for emergency calls. Asked by the Court why the Defendant has not made available their telephone records, he gave the explanation that the Defendant cannot do that for reasons of confidentiality and data protection. He further confirmed that a notification under the Policy has to be made personally to Daman in Qatar and not to the brokers.

66. Mr Patel, during his final address, conceded that as the 24 hour notification in an emergency situation falls within the exclusion clauses of the Policy, the burden of proof is not on the Claimant but on the Defendant.

67. The Court, having come to the conclusion that no emergency existed in the United States, is bound to reject the claim. The Court, however, assesses this issue which was raised before it.

68. The Court fully comprehends the importance of notification within the context of the terms of the Policy whenever medical expenses are incurred in emergency situations. The submissions of Mr Patel that a 24 hour notification requirement, after an emergency arises, is indispensable not only for the protection of the insurer's interests but also for those of the insured are accepted.

69. The Court notes that a distinction could be drawn between cases requiring Emergency in-Hospital treatment/services and cases where the "Emergency" is related to outpatient treatment/services. It could well be argued that according to the terms of the Policy a notification is not required where the "Emergency" is related to the latter category of cases. The Court, however, need not resolve this issue in view of its findings and conclusions, as regards notification, below.

70. The Court is not persuaded, on the evidence adduced by the Defendant, that the Claimant had not, within reasonable time, contacted the Defendant and notified it of what had taken place in Austin, Texas, between the 23 and 30 July in relation to the

treatment and, in general, of the medical services offered to his wife. This is for the following reasons:

(a) According to the terms of the Policy, no formal notification is required. It can very well be given either orally or in writing. The Claimant therefore was entitled to notify the Defendant by phone. The fact that he did not contact the Defendant by email, although he knew its email address, is not decisive. The Court notes the contention of Mr Patel that the fact that the Claimant could have contacted the Defendant by email, but did not, is an answer to the evidence that his initial telephone calls were unsuccessful. The Claimant, however, said that, at the end, he managed to speak with a representative of the Defendant who instructed him how to proceed with his claim, namely that he was to provide the Defendant with all relevant documentation in support of his claim in due course;

(b) It was the Claimant's evidence that he telephoned the Defendant on 30 July and on 3 August. The Defendant could have called, as witnesses, the person or persons who were in charge of the Defendant's telephone centre during these two days to give answers to the Claimant's allegations, but they did not do so;

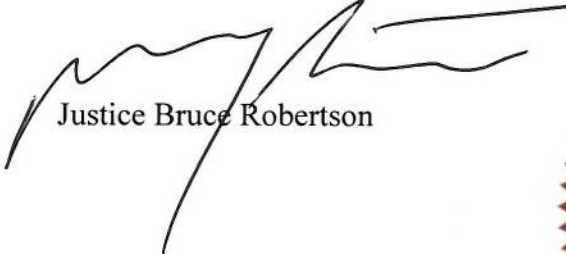
(c) The Defendant did not produce before the Court the relevant telephone records for the period 20 July – 30 September for which they had conducted a full review as Mr Bourel maintained. The Defendant’s argument that they had not done so for reasons of confidentiality and data protection is not convincing. These potentially crucial records could have been made available to the Court and that would have been conclusive evidence of the truth of their allegations; and

(d) As to that, the Court observes first that such an extensive investigation, as alluded to by Mr Bourel, was unnecessary, the Claimant having clearly identified (as early as the 20 March 2016- the date the Claim Form was issued) the two dates upon which he said he had telephoned the Defendant. Further, the Defendant’s decision not to present this evidence conflicts with its obligations under Article 26.2.1 of the Court’s Regulations and Procedural Rules which provides that *“In most cases, each Party shall be required to disclose to the other all documents or classes of documents on which it relies”*. The Defendant sought to rely on the fact that it had conducted a review of the telephone records for the relevant period. It was, therefore, obliged to disclose that evidence. Had there been any genuine concerns over confidentiality or data protection, this could have been raised with the Court long before the commencement of the hearing.

Conclusion

71. There is an aspect of the case which the Court raised at the hearing and upon which the Court provided an opportunity for the CEO of the Defendant to comment and in respect of which Mr Patel made comprehensive submissions.
72. It is common ground that the treatment the Claimant's wife received was included in the general coverage provided under the Policy. She was ill and her condition had to be addressed. The only issue presented to the Court was whether the North American exclusion, except for an emergency, applied. If this contractual term had not been breached the Defendant would have had an obligation to pay substantial amounts for required procedures and treatment costs. It was common ground this would have been for a lesser sum than the costs incurred by the Claimant in the USA, but still significant.
73. The Defendant and its advisers were adamant that a commercial judgment about any such response from it, whether by ex gratia payment or otherwise, was prudent and appropriate in all the circumstances was for them alone. There was a contractual deal. The consequences of a breach were prescribed. Treatment in North America, except for an "Emergency", was beyond the Policy. The Court accepts that response as a matter of law to be the position. No questions of apparent fairness, reasonableness or pragmatic utility could be within the Court's purview.
74. Accordingly, the claim is dismissed.

By the Court,


Justice Bruce Robertson



Representation:

For the Claimant:

Mr Imad Obeid (Legal Consultant), Gulf Legal Consultants, Doha, entered an appearance at an early stage but participated little in the proceedings and never in the hearing in November.

For the Defendant:

Mr Sanjay Patel (Counsel), 4 Pump Court, London and Mr Roger Phillips (Solicitor), Pinsent Masons, QFC Branch, Doha.

Schedule

1. On the 23 July 2016 the Claimant filed and served a witness statement, which was undated, from a Dr Jeffrey Meynig based at Austin Surgeons PLLC in the United States.
2. On the 1 August 2016, the Claimant filed and served what purported to be an “expert statement”, dated the 19 January 2016, from a Dr Francois Calaud who is a Consultant Oncologist with the Hamad Medical Corporation in Qatar. The Defendant objected to the admission of this on the grounds that the same document had already been filed along with the Claim Form and it could not be considered as either a witness statement or as an expert report because it did not comply with the procedural requirements set out in the Court’s Regulations and Procedural Rules. The Defendant submitted that the evidence should be disregarded “entirely”.
3. On the 3 August 2016 the Court, amongst other things, rejected the Defendant’s submission that the evidence should be disregarded but directed the Claimant, should he wish to rely on the evidence of Dr Calaud, to remedy the defects in it so that it complied with the requirements of the Regulations.
4. On the 14 August 2016 the Defendant complained to the Registrar that the Claimant had still not filed and served the evidence of Dr Calaud in a form which complied with the requirements of the Regulations.
5. On the 15 August 2016 the Court, amongst other things, directed the Claimant to remedy the procedural defects in the evidence “forthwith” and, if he was unable to do so, file and serve an explanation by no later than 17 August 2016.
6. On the 16 August 2016 the Claimant provided the Court with reasons as to why compliance with the Court’s directions was not possible citing that Dr Calaud had been on “extended sick leave”. The Claimant asked the Court to accept the evidence in its present form. The Court, in directions issued the same day, observed that “the Claimant must remedy the current defects in the expert report of Dr Calaud if it is to be adduced as evidence during the trial.” The Court was satisfied that no prejudice

was caused to the Defendant by allowing the Claimant the opportunity to remedy the defect prior to trial; the Defendant being well aware of the content of the report.

7. On the 21 August 2016 the Defendant filed and served witness statements of (i) Dr Mohamed Osama Helal (the “medical manager” of the Defendant), dated the 21 August 2016, (ii) Mr Herve Bourel (the “CEO” of the Defendant), dated the 4 August 2016, (iii) Dr Aziz Ustunel (the “Director of Claims” for Daman Health UAE), dated the 21 August 2016 and (iv) an expert report of Jonathan Waxman, a Professor of Oncology at the Hammersmith Hospital in London, dated the 24 June 2016. The report, which was said to be “prepared for the Court”, fully complied with the requirements of the Regulations pertaining to expert reports.
8. On the 6 September 2016 the Claimant filed and served an amended report of Dr Calaud, amended so as to include a statement of truth.
9. Following communications with the Registrar, on the 8 September 2016 the Defendant notified the Court that the evidence of Dr Calaud and Dr Meynig was disputed and that the witnesses would need to be made available for cross examination at the hearing.
10. On the 25 September 2016 the Claimant filed and served a further report of Dr Calaud in reply to the evidence filed and served by then by the Defendant.
11. Having granted the Claimant an extension of time until the 29 September 2016 to file (i) any remaining evidence in Reply, (ii) the Claimant’s list of issues and (iii) the Claimant’s submissions, the Defendant wrote to the Registrar on the 27 September 2016 expressing the view that if the Claimant failed to comply with this extended deadline, the Court should strike out the Claimant’s claim. On the same day, the Court, through the Registrar, notified the Parties that:

“...it would not, in the circumstances, be appropriate to give an advance indication of what would happen in the event of a failure, by the Claimant, to comply with the extended deadline. Should such an event occur, the Court would invite the parties to make

submissions on the issue which it would then consider prior to issuing a ruling."

12. Thereafter, the Claimant filed and served his witness statement in reply on the 28 September 2016. He also stated that he required all four of the Defendant's witnesses to be available for cross examination.
13. On the 29 September 2016 the Claimant filed and served what purported to be an expert report of Dr Jeffrey Yorio (a "board certified medical oncologist" in Austin, Texas), dated 25 September 2016. The same day, the Claimant and Defendant each filed and served their single page of issues. In addition, the Claimant filed and served his submissions.
14. On the 30 September 2016, the Claimant filed and served further evidence from Dr Meynig, dated 29 September 2016, in reply to the Defendant's evidence which had been filed and served. The evidence did not comply with the procedural requirements relating to expert reports contained within the Regulations.
15. On the 2 October 2016 the Claimant notified the Registrar that his witnesses would be unable to attend the hearing for various different reasons. Insofar as the American based experts were concerned, the Claimant cited the experts' clinical duties and responsibilities, the financial cost and stated that utilising the video link would be impractical owing to the time differences and the work schedules of the experts. Insofar as Dr Calaud was concerned, the Claimant stated that as a government employee it would be "complicated" to secure his attendance. In a response, dated 3 October 2016, the Defendant submitted that in the absence of being able to cross-examine the Defendant's witnesses, "it will be difficult, if not impossible, for the testimony of those witnesses to be preferred to those of the Defendant and for Mr Shawabkeh to prove his claims on the balance of probabilities."

16. On the 4 October 2016, the Court issued Directions in the following terms:

- (a) The Parties must follow the Court's Regulations and Procedural Rules when it comes to the form and content of witness statements and expert reports. In particular, the Parties must ensure that any witness statement or expert report which is to be relied upon at the hearing contains a statement of truth in the appropriate terms;*
- (b) Insofar as the Report of Dr Yorio, dated 25 September 2016, and the evidence of Dr Meynig, dated 29 September 2016, are concerned, the Claimant must ensure that these are filed and served in an amended form so as to comply with paragraph (1) above. The Claimant must ensure that the aforementioned evidence is filed and served by no later than 4pm on **Thursday 6 October 2016**;*
- (c) The Parties are reminded that where witness evidence (including expert testimony) is disputed, the Parties must ensure that their witnesses are available at the hearing for cross-examination, whether in person or via the video or audio links. The Court is prepared to sit at unconventional hours in order to accommodate evidence by video or audio link should the need arise. In this regard, the Parties are referred to the Registrar's direction dated 29 September 2016 requiring the Parties to file and serve matters relating to witness requirements by no later than 4pm on **Thursday 6 October 2016**; and*
- (d) As to the issue of the timely notification, by the Claimant to the Defendant, of the existence of what is purported to be a medical emergency covered by the insurance policy in question, the Court, having considered the pleadings so far, is*

unsure what evidence is being proffered by the Claimant in this regard. The Claimant should, by no later than 4pm on Thursday 6 October 2016, file and serve evidence and/or submissions on the issue of timely notification, namely with whom did he speak and what were the terms of the communications?

17. On the 6 October 2016 the Claimant filed and served an amended report of Dr Meynig which contained a statement of truth. The Claimant reiterated the difficulty in securing the attendance of his witnesses at the hearing and suggested that cross-examination take place through the medium of written questions submitted in advance of the hearing. Finally, he referred to matters which he said addressed the question posed by the Court at paragraph 28(d) above.

18. On the 10 October 2016 the Court issued further directions:

(a) *The Claimant needs to make every effort to ensure that his witnesses are available for cross-examination (whether in person or by video link). If expert witnesses are not so made available, there is a risk that their opinions may carry lesser weight. Cross-examination through the medium of written questions, submitted in advance of the hearing, is unlikely to be productive. The Court has already indicated that it would be prepared to sit at unconventional hours in order to accommodate the Claimant's witnesses; and*

(b) *The Court notes that the Claimant has filed and served an amended report of Dr Meynig which contains a statement of truth. The amended report of Dr Yorio is outstanding. The Claimant should ensure that this is filed and served by no later than 4pm on Thursday 13 October 2016.*

19. On the 12 October 2016 the Claimant filed and served an amended expert report of Dr Yorio which contained a statement of truth. The following day, he also filed and served a list of reasons (similar to those referred to at paragraph 27 above) as to why his witnesses would be unable to attend the hearing.
20. On the 16 October 2016 the Defendant filed and served its submissions along with an application that the Claimant's case be struck out.
21. On the 18 October 2016 the Court rejected the Defendant's application that the Claimant's case be struck out. The Court observed-

"The Court has considered the material and submissions filed by each of the parties to date. In particular, the Court has considered an application from the Defendant, dated 16 October 2016, requesting the Court to strike out the Claimant's claim.

Although a failure to have experts/witnesses available to be cross-examined may be a disadvantage to the Claimant, it is not a basis to strike out the claim or otherwise to interfere with the hearing scheduled to commence on Sunday 6 November in Doha. Material has been tendered which could cover each of the essential facts in issue in the case but the strength and ultimate probative value of it will be for the Court to assess. Article 15.2 of the Court's Regulations and Procedural Rules does not warrant denying a Claimant a hearing because of any pre-trial perception that his case is weak. The Court is not unmindful of costs implications but the Claimant will understand the normal consequences of unsuccessful court action. It is not for the Court to make that decision for him. At its core there is a dispute properly before the Court upon which the Claimant is entitled to have a full and independent assessment made."