HOUSE OF LORDS SESSION 2007–08

[2008] UKHL 18

on appeal from: [2006] EWCA Civ 1661

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

Brit Syndicates Limited for and on behalf of Brit Syndicate 2987 at Lloyd's for the 2003 year of account and others (Respondents)v Italaudit SpA (in liquidation) (formerly Grant Thornton SpA) and others (Appellants)

Appellate Committee

Lord Hoffmann
Lord Scott of Foscote
Lord Walker of Gestingthorpe
Lord Mance
Lord Neuberger of Abbotsbury

Counsel

Appellants:
Guy Phillipps QC
(Instructed by Ashurst LLP)

Respondents:
Colin Edelman QC
Colin Wynter QC
(Instructed by Mills and Reeve)

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ON
WEDNESDAY 12 MARCH 2008

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LORD HOFFMANN

My Lords,

1. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Mance. For the reasons he gives, with which I agree, I too would allow this appeal.

LORD SCOTT OF FOSCOTE

My Lords,

2. I have had the advantage of reading in advance the opinion of my noble and learned friend Lord Mance. I agree with it and, for the reasons he gives, I too would allow this appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

3. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Mance. I agree with it, and for the reasons which Lord Mance gives I would allow this appeal.

LORD MANCE

Introduction

4. This appeal raises points of construction on a Lloyd's accountants' professional indemnity policy which are of some difficulty, though no general importance. They relate to the scope and existence of cover afforded to the appellant, a "not for profit" umbrella corporation based in Illinois called Grant Thornton International ("GTI"). GTI had responsibility for managing and maintaining the worldwide organisation of Grant Thornton firms. The policy was taken out for the period 15 December 2003 to 14 December 2004. It covered as the "Assured Firm" some 93 listed members of the Grant Thornton family, not including GTI itself. By an extension ("extension 3"), GTI was

> "included as an Assured Firm but solely in respect of claims made against Grant Thornton International arising from claims made against a member firm of G[r]ant Thornton International insured by the terms and conditions of this policy".

This meaning of extension 3 is central to this appeal.

5. The context of the proceedings is the collapse in December 2003 of the Italian company Parmalat Finanziaria SpA ("Parmalat"). This followed the revelation that its Cayman Island subsidiary, Bonlat Financing Corporation, did not have the credit balance with Bank of America, New York branch (of about Euro 3.95 billion) which had appeared in its and the Parmalat group's accounts. Those accounts had

been audited by Grant Thornton SpA ("GT Italy"), subsequently known as Italaudit SpA in liquidation.

6. The collapse of Parmalat led in January 2004 to class action lawsuits filed by investors in Parmalat in the United States District Court for the Southern District of New York against inter alia GT Italy and GTI. The claims against GTI asserted inter alia that GTI was liable as an entity "in control" of GT Italy. By letter dated 1st August 2005 Mills & Reeve, solicitors for the respondent insurers subscribing to the policy wrote to GT Italy avoiding the policy for alleged non-disclosure of matters known to GT Italy relating to Bonlat's supposed credit balance, and relying "alternatively, and without prejudice to insurers' claim to have validly avoided the Policy" upon such non-disclosure as a breach of a warranty constituted by the basis of contract provision in the proposal signed by GT Italy dated 16th October 2003. By a second letter of 1st August 2005 Mills & Reeve advised GTI that, since GT Italy's insurance had been avoided ab initio, there was no cover available to GTI.

7. Also on 1st August 2005, the respondent insurers issued the present proceedings against GT Italy and GTI, seeking primarily a declaration that insurers had validly avoided the policy, and "alternatively, and without prejudice to the first sought declaration, a declaration that they are discharged, as from the date of the making of the contract of insurance, alternatively as from the date of its inception (15th December 2005), …… by reason of ….. breach of warranty", and in either case that they were discharged from all obligations under the insurance. On 21st February 2006 insurers obtained judgment in default against GT Italy for the declarations sought. On 3rd March 2006 Langley J granted an application by GTI (made on 21st November 2005) for summary judgment in its favour on the ground that, even if insurers were to succeed as against GT Italy, GTI would be entitled to an indemnity, inasmuch as the claims made against it arose from claims made against GT Italy and were within extension 3. On 6th December 2006 the Court of Appeal (Waller LJ, Jonathan Parker LJ and Wilson LJ) allowed insurers' claim and gave summary judgment in insurers' favour, declaring that

> "if and so far as the [insurers] have validly avoided their insurance of [GT Italy], any claims made against [GTI] do not 'arise from claims made against a member firm of Grant Thornton International insured by the terms and conditions of [the] policy', since any claim against [GTI]

does not arise from a claim that is insured under the terms and conditions of the policy. [GTI] is thus not entitled to be indemnified under the terms of the policy."

The policy

8. It is appropriate to set out the policy wording in some detail. It read:

"IT WILL BE NOTED THAT THIS POLICY SUBJECT TO ITS TERMS, CONDITIONS, EXCLUSIONS AND LIMITATIONS IS DESIGNED FOR APPLICATION TO CLAIMS MADE DURING THE CURRENCY OF THE SAID POLICY AGAINST ASSUREDS AS DESCRIBED HEREIN.

…….

PROFESSIONAL INDEMNITY POLICY

I. WHEREAS the persons carrying on business under the name of the Assured Firm as stated in the Schedule attached to this policy have made to Us who have hereunto subscribed our names as Underwrites written proposals bearing the dates stated in the said Schedule and containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein and have paid to Underwriters the premium specified in the said Schedule:

THIS POLICY IS to indemnify an Assured Firm against any claim or claims solely in respect of International Work made against an Assured Firm during the period set forth in the said Schedule by reason of any negligent act, error, omission, breach of duty or libel or slander or any allegation thereof whenever or wherever the same was or may have been committed or alleged to have been committed on the part of the Assured Firm or their predecessors in business or any Partner of the Assured Firm or any person at any time employed by the Assured Firm or their predecessors in business or any other person or entity for whose negligent act, error, omission, breach of duty or libel or slander or any allegation thereof the Assured Firm is legally responsible in or about the conduct of any Professional Services solely in respect of International Work conducted by or on behalf of the Assured Firm or their predecessors in business or any other person or entity for whose negligent act, error, omission, breach of duty, or libel or slander or any allegation therefore the

Assured Firm is legally responsible whether assumed by contract or otherwise.

This policy is also to indemnify an Assured Firm should an Assured Firm by reason of its membership in Grant Thornton International be held legally liable for any negligent act, error, omission, breach of duty, or libel or slander or any allegation thereof whenever or wherever the same was or may have been committed or alleged to have been committed on the part of another member firm of Grant Thornton International, their predecessors in business or any Partner of such other firms or any person employed by such firms or their predecessors in business in or about the conduct of any Professional Services conducted by or on behalf of such other firms.

II. DEFINITIONS

1. The words 'International Work' are understood to mean: -
    a. Work referred by one Grant Thornton International member firm to another Grant Thornton International member firm where the client is a subsidiary or related company to the referring firm's client.
    b. Work performed by one Grant Thornton International member firm for a client subsequent to that client being taken over by the client of another Grant Thornton International member firm
    c. Work performed by one Grant Thornton International member firm for a subsidiary or related company of a client of an accounting firm subsequent to that accounting firm becoming a Grant Thornton International member firm.
    d. Work performed of a general nature, not necessarily relating to a specific client, by a Grant Thornton International member firm at the request of another Grant Thornton International member firm where the cost for such work is billed by the Grant Thornton International member firm to the referring member firm.
    e. Claims arising from cross border floatation work performed by one Grant Thornton International member firm for or on behalf of a client of another Grant Thornton International member firm …..

2. The words "Professional Services" are understood to apply to advice given or services performed of whatsoever nature undertaken by or on behalf of an Assured Firm or any other person or entity for whose negligent act, error, omission, breach of duty or libel or slander or any allegation thereof an Assured Firm is legally responsible, provided

always that the fee or a portion of the fee accruing from such work shall inure to the benefit of that Assured Firm.

……

III. EXTENSIONS

1. This policy shall indemnify:
   a. An Assured Firms Partners and Employees, but only in respect of any negligent act, error, omission, breach of duty or libel or slander or any allegation thereof committed or alleged to have been committed in the course of their being a Partner of or employed by an Assured Firm in the conduct of Professional Services undertaken on behalf of that Assured Firm.
   b. Partners and Employees no longer with an Assured Firm, the legal representatives of Partners and Employees in the event of their incompetency, insolvency or bankruptcy and the estates of legal representatives of Partners and Employees deceased at the time of discovery but with that Assured Firm at the time the negligent act, error, omission, breach of duty or libel or slander or any allegation thereof was committed or alleged to have been committed in the conduct of Professional Services undertaken on behalf of that Assured Firm;
   c. an Assured Firm's Partners and Employees and the estates or legal representatives of deceased Partners and Employees for Professional Services conducted subsequent to retirement provided that such Professional Services have been undertaken on behalf of, and with the approval of, that Assured Firm;
   d. (i) an Assured Firm's Partners and Employees against any claim or claims made by reason of Professional Services conducted in their own name, and
      (ii) an Assured Firm against any claim or claims made by reason of Professional Services conducted by that Assured Firm's Partners and Employees in their own name,

      provided always that the fee, or a portion thereof, accruing from such work shall inure to the benefit of that Assured Firm and such work is undertaken on behalf of, and with the approval of, that Assured Firm.

2. This Policy covers the head office and all branch offices of an Assured Firm.

3. Grant Thornton International is included as an Assured Firm but solely in respect of claims made against Grant Thornton International arising from claims made against a member firm of G[r]ant Thornton International insured by the terms and conditions of this policy.

4. [*Deals with merger of a firm into or acquisition by an Assured Firm*]

5. It is understood and agreed that cover is automatically provided for any newly established member firm for a period of 30 days. Cover will apply to the new firm only for Professional Service provided from the date of establishment. During this period the Assured will provide such information as the Underwriters may require in order to provide cover beyond this period. Coverage agreed beyond the automatic 30-day period is at the discretion of the Underwriters.

6. [*Assured Firms to be indemnified against claims made against any Partner or Employee appointed as Trustee, Trustee in Bankruptcy, Receiver or Liquidator, or in similar capacity,* "but only to the extent that such sum would have been payable under this Policy if an Assured Firm had the legal responsibilities arising from such appointment"]

7. Notwithstanding Clause IV Exclusions 3 and 4 of this Policy, an Assured Firm shall be protected within the terms of this Policy for costs, charges and expenses incurred in defense of or in connection with any claim covered by this Policy (whether or not such claim also includes a demand for fines, penalties, punitive or exemplary damages) or any inquiry or investigation which may lead to or be connected with or arise from any covered claim or potential covered claim or circumstance which may lead to a covered claim.

8. ….No coverage shall apply in respect of any negligent act, error, omission, breach of contract or duty or libel or slander or allegation thereof prior to the effective date of an entity becoming a member firm of Grant Thornton International.

9. Coverage under this Policy shall apply to any member firm of Grant Thornton International, whether declared under this Policy or any predecessor policy to this policy, that ceases, for whatever reason, to be a member firm but only in respect of any negligent act, error, omission, breach of contract or duty or libel or slander or allegation thereof, committed by such

member firm prior to the effective date of cessation of such membership. No coverage shall apply in respect of any negligent act, error, omission, breach of contract or duty or libel or slander or allegation thereof, committed after the effective date of cessation of such membership.

IV. EXCLUSIONS"

This Policy excludes: -

1. …
2. any claim or claims which are insured by any other existing valid policy or under policies under which payment of the claim or claims is actually made, except in respect of the excess beyond the amount or amounts of such payments under such other policy or policies

.....

11. any claim or loss arising out of negligent acts or omissions committed by any Member Firm of Grant Thornton International that is based in the USA or the UK;

……"

9. The policy schedule identified the "Assured Firm" as "the member firms of Grant Thornton International – as detailed in the attached Schedule of Member Firms" and "Proposal Forms Dated: As per the attached Schedule of Member Firms". The reference to "member firms of Grant Thornton International" and the policy references to "membership in Grant Thornton International" and "Grant Thornton International member firm[s]" are more readily understood as references to the Grant Thornton family of firms as a whole rather than specifically to GTI, although GTI's role as an "umbrella" organisation blurs the distinction. The policy went on to state that the sum insured was US$ 20 million each and every claim and in the aggregate including costs and expenses, with a US$1 million retention each and every claim, giving a maximum amount recoverable under the insurance of US$19 million in the aggregate including costs and expenses. The attachment listed the 93 member firms insured (who did not include the United Kingdom and United States' firms), and the dates of their proposals. In the case of GT Italy, the proposal consisted of a completed and signed questionnaire dated 16th October 2003. The questionnaire, in a standard form evidently for use with this policy wording, requested and as completed gave information under the following heads: (A) information about staff generally and about income for "inbound International Referred Work", (B) "Client Information - Cross Border Floatations", (C) "Client Information – Inbound International Referred Work", (C)[bis] "Local Policy Information" and (D) "Claims Information", in respect of

International Referred Work only. In section (C) bis, GT Italy confirmed that it bought professional insurance locally and that this did not exclude work performed by GT Italy on behalf of another Grant Thornton member firm, but did exclude cover for work referred out by GT Italy and performed by another Grant Thornton member firm; GT Italy also answered negatively question 18:

> "Does the local policy specifically exclude cover to your firm for claims arising by virtue of your association with Grant Thornton International or any other member firm even though no work has been performed by your firm?"

The rival cases

10. Insurers' case, accepted by the Court of Appeal, is that, for GTI to have cover under extension 3, the claim made against GTI would have to arise from a claim made against GT Italy, in respect of which claim GT Italy was itself insured by the terms and conditions of the policy. Accordingly, if either the claim is one in respect of which GT Italy is not insured by the policy, or, more fundamentally, GT Italy has no insurance at all under the policy, GTI can enjoy none. However, the Court distinguished non-compliance with policy conditions entitling insurers to reject a claim subsequent to its being made from avoidance ab initio on grounds existing at the time of the claim made. Non-compliance with policy conditions by a member firm such as GT Italy would not, the Court thought, disentitle GTI from recovering an indemnity. Although the declaration made by the Court of Appeal was expressed only to apply on the assumption that insurers had validly avoided GT Italy's insurance, the debate in the Court of Appeal thus ranged wider; indeed, on insurers' primary case, irrespective of any avoidance GTI would not benefit by any cover unless the claim against GT Italy fell within one of the two insuring clauses found in the second and third paragraphs of part I of the policy wording set out above.

11. GTI's case is that extension 3 includes GTI as an Assured within the insuring clauses - more particularly the second clause found in the third paragraph of part I - and that the wording of extension 3 is to be seen as a shorthand reference to that second insuring clause. "Solely" emphasises that GTI's cover is only in respect of that second clause. The words "arising from claims made against a member firm of Grant Thornton International" reflect the limitation of cover under the second clause to legal liability incurred by reason of membership in Grant

Thornton International for any negligent act, etc, on the part of another member firm of Grant Thornton International. The phrase "Insured by the terms and conditions of this policy" limits the member firms of Grant Thornton International whose negligent act, etc. is relevant for this purpose to those insured by the policy, in a manner which, although not express in the reference to "another member firm of Grant Thornton International" in the second clause, applies nonetheless under the second clause as a result of the definition of "Professional Services". The phrase is descriptive, rather than introductory of a positive requirement that either the claim or the member firm should be validly covered.

12. Both sides invoked commercial considerations. In the absence of any evidence at all about the background to the policy or other insurance arrangements within both parties' knowledge, they set about deriving these solely from the policy and proposal wording. Like Waller LJ in the Court of Appeal, I do not find this very satisfactory. We are asked to construe the policy in an almost complete vacuum. However, the House, like the Court of Appeal, is left with no choice.

13. The Court of Appeal was influenced in its approach by the limitation of the cover afforded under the first insuring clause to "International Work", and by the likelihood, as the Court perceived it, that any claim under the second insuring clause would be likely only to arise in the context of International Work: it thought that, in these circumstances, "to provide GTI with cover for wrongs committed by member firms in their domestic business would have been a vast extension of the cover, in relation to which no proposal form provided any details to enable an underwriter to assess the risk" (para. 35). It was also influenced by the consideration that extension 3 was just that, an *extension*, which read as though intended to be parasitic upon claims already covered by the policy.

Discussion and analysis

14. The rival arguments are finely balanced. This is a claims made policy, as its opening language in capitals emphasises; and the double use of the phrase in extension 3 may be said to point in favour of insurers' construction, particularly when followed by the final words "insured by the terms and conditions of this policy". The phrase "claims made against a member firm of Grant Thornton International" may be said to suggest a claim made under the policy; and to have no parallel in the second insuring clause, which does not (strictly) require a claim to

have been made against the other Grant Thornton member firm, for whose negligent act, etc, the Assured Firm claiming indemnity is said to be liable "by reason of its membership in Grant Thornton International". The phrase "claims made arising from" can also be read as going wider than the words "by reason of its membership in Grant Thornton International …. held liable" in the second insuring clause. The detail of the reference to being "insured by the terms and conditions of this policy" may be said to be surprising if the only intention was descriptive. Mr Colin Edelman QC in his thoughtful argument for insurers relied upon all these factors to differentiate the cover afforded by extension 3 and by the second main insuring clause. If the intention in extension 3 was in effect to add GTI as an additional Assured Firm under the second main insuring clause, this could, he points out, easily have been done by expanding the wording of that clause. All these are on their face points of some persuasive force.

15. Mr Edelman's further argument that the cover intended by extension 3 is essentially parasitic does not appear to me so persuasive. The cover under extension 1, in respect of partners and employees, etc, can be described as parasitic, and it must be limited to claims of a kind in respect of which the relevant Assured Firm would be insured under one of the main insuring clauses. Such partners and employees would have, or be expected to have, cover for other claims under the local policies taken out by member firms such as GT Italy. The effect of extensions 2, 4, 5 and 6 and indeed 8 and 9 is, on the other hand, to define who counts as an Assured Firm and who can therefore take advantage of the cover afforded by the insuring clauses in respect of claims made directly against them. That it seems to me is also the natural meaning of the opening phrase of extension 3, whereby "Grant Thornton International is included as an Assured Firm".

16. While it is true that GTI could have been specifically added into the second insuring clause, extension 3 does not seem to me a surprising place for a provision with similar effect, bearing in mind that GTI is, on any view, only intended to be covered for some and not all policy purposes. Further, on insurers' primary construction, extension 3 does not include GTI as an Assured Firm under the main insuring clauses, as the opening phrase of extension 3 would lead one to expect; rather it includes GTI at a higher level which requires GTI, before it has any cover, to show that some other Grant Thornton International member firm has received a claim and is covered under those insuring clauses. (The only alternative proffered by Mr Edelman involved the proposition that the purpose of extension 3 might be to insure GTI as an Assured Firm under the first main insuring clause, against claims made in respect

of International Work done by other member firms, who might for this purpose be regarded as persons or entities for whose negligent act, etc, GTI "is legally responsible". Not only is this approach to extension 3 quite inconsistent with insurers' primary approach, it also applies the phrase "is legally responsible" to the relationship between GTI and member firms in an artificial manner which they would certainly not accept as correct, however much a third party might try to allege that it was so.)

17. The most cogent consideration on this appeal is, in my opinion, the general nature of the cover that would result from insurers' construction. The Court of Appeal took the view that the second insuring clause was likely only to be relevant in relation to International Work as defined in the policy. I am not persuaded by this. Question 18 in the proposal addresses the risk of liability arising from mere association in or with the Grant Thornton International family. Allegations of vicarious or partnership liability of this nature, however tenuous they might appear to an English lawyer, are a foreseeable risk of such association. (Indeed, in the present New York litigation, GTI is said to be liable "as an entity …. in control of [GT Italy]", i.e. simply because of the association between them within the Grant Thornton family or organisation. There is also a claim against GTI for violating United States securities laws, but GTI does not suggest that that this can be covered by the second insuring clause, read with extension 3.)

18. The scheme of the policy appears to be to cover by the first insuring clause claims against an Assured Firm by reason of its own negligence in respect of International Work performed by it, and by the second insuring clause claims by virtue of association in the Grant Thornton family. For the purpose of the first insuring clause, International Work is defined quite narrowly, as work performed (a) after being referred by another member firm, or (b) for a client of another member firm, or (c) for a subsidiary or related company of an accounting firm after that firm becomes a member firm, or (d) at the request of another member firm, or, finally, (e) consisting in cross border floatation work for the client of another member firm. The second insuring clause provides indemnity only where an Assured Firm is held liable "by reasons of its membership in Grant Thornton International", in other words where some form of partnership or vicarious liability is held to exist as between the two firms, so that one can be held liable for the other without itself being negligent or indeed having had any involvement at all in the work alleged to have been negligently performed by the latter.

19. All that question 18 of the proposal form asks regarding the risk of claims "by virtue of …. association with Grant Thornton International or any other member firm" is whether the local policy excludes cover for such claims. On that very limited basis, the second insuring clause then gives, on its face, full cover for all and any such claims, whatever their nature or origin. I do not think that the risk can be said to be confined to international work, still less to International Work in the limited policy sense.

20. If individual member firms are as between themselves given full cover in respect of liability for such claims incurred by reason of their membership in Grant Thornton International, it would seem very odd that GTI itself should not enjoy similarly full cover in respect of claims holding it responsible on a vicarious or partnership for or with one of the insured member firms in its international family. The submission that this would not fit, because GTI is not, as the umbrella entity, itself a member of Grant Thornton International, and that it cannot therefore incur liability "by reason of its membership in Grant Thornton International", is formalistic in the extreme; and anyway ignores the different potential shades of meaning attaching to "Grant Thornton International".

21. If insurers are right, then GTI, in respect of the acknowledged risk of claims (however tenuous) made against it, only achieved cover under this policy in two particular situations: one where a member firm received a claim relating to International Work as defined, the other where a member firm was itself the recipient of a claim that it was liable for another member firm on some vicarious or partnership basis by reason of its membership in Grant Thornton International. GTI would then have cover if, "arising from" the claim made against a member firm, GTI itself also received a claim. This limited patchwork cover would mean, on insurers' case, that GTI needed another policy insuring it for vicarious or partnership type claims arising in other circumstances, such as (it appears) the present. In the vacuum surrounding the present policy, all that can be said is that there is no indication of any relevant gap-filling insurance, and that insurers' construction appears on any view to postulate an unlikely allocation and splitting of insurance risks.

22. In these circumstances, I have come to a different conclusion to the Court of Appeal. I consider that GTI's construction of extension 3 is to be preferred. It gives to GTI as an Assured Firm the protection of the second insuring clause, without any need to show that the claim against GT Italy is itself one which is insured under either of the two insuring

clauses. This means that the phrase "insured by the terms and conditions of this policy" do not relate to the earlier words "claims made", but rather to the words "a member firm of Grant Thornton International".

Avoidance and breach of warranty

23. This does not however fully resolve the question, with which these proceedings started, whether the phrase "insured by the terms and conditions of this policy" indicates that the member firm must have valid insurance. Pursuing the theme that the phrase was descriptive, Mr Guy Phillipps QC for GTI went so far as to submit that, even if the policy had been validly avoided as against GT Italy *prior* to any claim made against GTI, GTI could still have claimed indemnity under extension 3 in respect of any claim made against it arising from its association with GT Italy in Grant Thornton International. That goes further than I would. The concepts of an "Assured Firm" or a "member firm insured by the terms and conditions of this policy" would have I think to reflect the reality that such an avoidance would in effect strike GT Italy from the policy. The description of GT Italy as an Assured Firm or an insured would no longer apply. But retrospective avoidance ab initio is a different matter. There is no obligation on insurers to avoid. Unless and until insurers avoid, the firm remains an Assured Firm or a "member firm insured by the terms and conditions of this policy".

24. As to breach of warranty, Mr Phillipps points out that this was not the primary case in respect of which insurers obtained summary judgment for a declaration against GT Italy. Strictly, breach of warranty does not call for any action by insurers. Compliance with the warranty operates as a pre-condition to any liability as insurers under the contract; and insurers can therefore simply rely on any breach of warranty as a defence: *Bank of Nova Scotia v. Hellenic Mutual War Risks Association (Bermuda) Limited (The Good Luck)* [1992] 1 AC 233. Where a basis of the contract clause makes the correctness or completeness of the insured's disclosure into a warranty, a breach of that warranty has the effect that the insurance cover never attaches under the contract: cf e.g. *Thomson v. Weems* (1884) IX App Cas 671.

25. Here, however, assuming that there was a breach of the warranty constituted by the basis of contract clause, the question is whether GT Italy ceased ipso facto to be "a member firm of Grant Thornton International insured by the terms and conditions of this policy" within extension 3, so as to deny GTI coverage under that extension in

circumstances where neither it nor insurers knew of this. This question falls, for the reasons already given, to be considered on the basis that GTI is under extension 3 itself an Assured Firm, able as such to invoke the cover afforded by of the second insuring clause. Similar questions might also be said to arise in the context of the main insuring clauses. On insurers' present case, it might be suggested that one Assured Firm had no insurance in circumstances where another Assured Firm (e.g. an Assured Firm for whom it was undertaking International Work or an Assured Firm for whom it was held liable "by reason of its membership in Grant Thornton International") was, because of some unknown breach of warranty, not in reality insured at all. In the context of the main insuring clauses, such a suggestion seems particularly implausible. The references to an Assured Firm must be understood as descriptive of those firms currently listed and appearing to be insured. I would reach a similar conclusion, despite the somewhat different wording, in relation to extension 3. The purpose in extension 3 of the phrase "insured by the terms and conditions of this policy" is to identify or describe the member firms, claims against whom may trigger cover in favour of GTI; and GTI should not be prejudiced or affected by defects in the insurance cover apparently afforded to such other member firms, of which defects it would not know.

Conclusion

26. I would therefore allow the appeal, set aside the order for summary judgment in insurers' favour made by the Court of Appeal and restore the order made by Langley J for summary judgment in GTI's favour on the claim against it. The parties should have 21 days in which to make submissions in writing on costs.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

27. I have had the advantage of reading in draft the opinion of my noble and learned Lord Mance and for the reasons he gives I too would allow this appeal.