

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ACE AMERICAN INSURANCE COMPANY	CIVIL ACTION NO.
Petitioner,	Petition to Confirm Arbitration Award (9 U.S.C. §9)
vs.	
CENTRAL FREIGHT LINES, INC.	
Respondent.	

Petitioner, ACE American Insurance Company, a Pennsylvania corporation, for its Petition to Confirm Arbitration Award against Respondent, Central Freight Lines, Inc., avers as follows:

**THE PARTIES**

1. ACE American Insurance Company (“ACE” or “Petitioner”) is a corporation organized under the laws of the state of Pennsylvania, with its principal place of business in Philadelphia, Pennsylvania.
2. Upon information and belief, Central Freight Lines, Inc. (“Central Freight” or “Respondent”) is corporation, organized under the laws of the State of Nevada, with its principal place of business in Waco, Texas.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C.A. § 1332 (a), as ACE is a citizen of the State of Pennsylvania.
4. ACE is informed and believes, and thereon alleges, that Central Freight is a citizen of the State of Texas, and the amount in controversy in this matter exceeds \$75,000.

5. Furthermore, this Court also has jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C.A. §9.

6. Venue is proper in this District pursuant to the Federal Arbitration Act, 9 U.S.C.A. §9, because it is the District in which the Award of Arbitrators (“the Award”) was made. See a true and correct copy of the Award, attached hereto as Exhibit “A.”

7. Respondent is subject to the personal jurisdiction of this Court under the Federal Rule of Civil Procedure Rule 4(e).

#### **ARBITRATION AWARD**

8. In 2006, Petitioner sold Respondent a high deductible, pre-funded workers’ compensation insurance program, consisting of two policy years, spanning from June 28, 2006, to June 28, 2007, and June 28, 2007, to June 28, 2008.

9. The insurance program was defined by several documents, the “Funded Collateral Agreement,” two “Notices of Election” and two workers’ compensation insurance policies, which functioned collectively as one integrated contract (“the Contract”).

10. The Funded Collateral Agreement, the primary contract document, provided:

Any controversy, dispute, claim or question arising out of or relating to this Agreement, including without limitation its interpretation, performance or non-performance by any party, or any breach thereof (hereinafter, collectively, Controversy) shall be referred to and resolved exclusively by three arbitrators through private, confidential arbitration conducted in Philadelphia, PA.... The majority decision of the Panel shall be final and binding upon the parties to this Agreement. Judgment may be entered upon the award of arbitrators in any court of competent jurisdiction.

See a true and correct copy of the Funded Collateral Agreement, attached hereto as Exhibit “B,” at Article VI, Section 5.

11. The Contract provides that at six months following the completion of a policy year, an audit is conducted, and the premium, which was estimated at the policy's outset, is recalculated. This audit and recalculation is then conducted annually thereafter.

12. Based on the results of the audits, either additional premium amounts are invoiced or a refund is returned to Respondent.

13. Based upon the results of certain of these scheduled audits, Petitioner sent Respondent invoices for additional funding. See invoices dated January 11, 2010, and January 31, 2011, attached hereto as Exhibits "C" and "D" respectively.

14. Respondent refused over a period of years to pay the invoices.

15. On or about July 15, 2010, Petitioner served Respondent with a Demand for Arbitration regarding the outstanding unpaid invoices.

16. Subsequently, on or about September 27, 2010, pursuant to the Contract, the Demand for Arbitration was submitted to the American Arbitration Association ("AAA").

17. Respondent filed a Response and Counter-Claim, claiming damages resulting from alleged improper handling of its workers' compensation claims.

18. Each party appointed one arbitrator, and agreed to a third.

19. On or about January 7, 2010, AAA formally appointed the three-member panel, consisting of Ms. Pat Bergmann, Mr. Joseph Prim and Umpire, Mr. Donald DeCarlo ("the Panel").

20. Between that time and March 2010, substantial discovery was conducted between the parties.

21. Approximately 60,000 pages of documents were exchanged, and five depositions were taken.

22. Expert reports were prepared on behalf of each party, and pre-hearing briefs were submitted to the Panel.

23. From April 2, 2012, through April 5, 2012, a four-day hearing was conducted before the Panel at the Philadelphia office of the American Arbitration Association.

24. Petitioner presented four witnesses who provided testimony before the Panel.

25. Respondent presented three additional witnesses who provided testimony before the Panel.

26. Between the two parties, hundreds of documentary exhibits were submitted for the Panel's consideration.

27. On April 20, 2012, the parties submitted additional post-hearing briefs to the Panel, along with proposed findings of fact and conclusions of law.

28. On April 24, 2012, each party then submitted rebuttal briefs.

29. After deliberating and considering the testimony, documentary evidence, arguments of counsel and the applicable law, on May 24, 2012, the Panel issued a 12-page reasoned Award. See Exhibit "A."

30. The Award was unanimous, except for one arbitrator dissenting from the amount of interest awarded to Petitioner.

31. The Panel found that since January 26, 2010, Respondent had owed Petitioner \$2,140,015.63 pursuant to an invoice of the same date. See id. at p. 4, Finding of Fact 29.

32. The Panel also found that February 15, 2011, Respondent had owed Petitioner an additional \$593,132.28 pursuant to a second invoice. See id. at p. 5, Finding of Fact 42.

33. The Panel found that Respondent was contractually obligated to pay those two sums when due, and that Respondent breached its agreement with Petitioner by failing to pay the sums invoiced. See id. at p. 9, Conclusions of Law 13-14.

34. Finally, the Panel concluded that “[a]s a consequence of Central Freight’s refusal to pay the amounts invoiced, Central Freight is bound to pay 6% interest a year on the outstanding amounts from their respective due dates.” Id. at p. 9, Conclusion of Law 15.

35. The Panel did not perform a calculation of the amount of interest then due with respect to each invoice.

36. The Panel awarded \$215,000.00 to Respondent on its Counter-Claim, which is to be offset against Petitioner’s recovery. See id. at p. 11, Conclusion of Law 40.

#### **BAD FAITH**

37. On June 1, 2012, Petitioner’s counsel demanded payment of \$2,862,235.05, in accordance with the Award and then current accrued interest, within 15 days. See a true and correct copy of a letter to Respondent’s counsel, dated June 1, 2012, attached hereto as Exhibit “E.”

38. One June 18, 2012, having not received said payment, nor any response whatsoever from Respondent, Petitioner’s counsel inquired via e-mail as to Respondent’s intentions to satisfy the Award. See a true and correct copy of an e-mail to Respondent’s counsel, dated June 18, 2012, attached hereto as Exhibit “F.”

39. Respondent finally provided some communication via e-mail on July 2, 2012, indicating that it still had no intention to satisfy the Award.

40. At no time has Respondent ever asserted that the parties' disputes were not properly the subject of binding private arbitration; nor would any such assertion, if made, have any basis in law or fact.

41. Rather, Petitioner submits that Respondent's failure to satisfy the Award or even respond to communications from Petitioner's counsel does not arise out of any belief that Petitioner is not entitled to the relief afforded by Panel, but rather out of a bad faith blatant refusal to pay anything to Petitioner, regardless of its known legal obligations.

42. Prior to the commencement of the arbitration hearing, Respondent's counsel had stated in an e-mail that "[i]f ACE were to win - CFL still won't pay."

43. To date, Respondent has delivered on that promise.

44. Respondent's failure to comply with its legal obligation to satisfy the Award is a bad faith effort to frustrate the legal rights of Petitioner and force Petitioner to engage in additional expensive litigation.

45. "[I]t is unquestioned that a federal court may award counsel fees to a successful party when his opponent has acted 'in bad faith, vexatiously, wantonly, or for oppressive reasons....' In this class of cases, the underlying rationale of 'fee shifting' is, of course, punitive, and the essential element in triggering the award of fees is therefore the existence of 'bad faith' on the part of the unsuccessful litigant." Hall v. Cole, 412 U.S. 1, 5 (1973)

46. Respondent's bad faith conduct warrants an award of attorneys' fees associated with the filing of the instant Petition and any related hearings and/or additional filings required, as well as the fees associated with the execution of the Court's judgment entered on this Petition, including asset discovery and further proceedings in this or any other Court required to effectuate this Court's Order.

47. In addition, pursuant to 28 U.S.C. § 1920, Petitioner is also entitled to all costs associated with the filing and prosecution of the instant Petition and any subsequent litigation necessary to procure satisfaction of the Order confirming the Award.

48. This Petition is authorized by the terms of the Contract and by Section 9 of the Federal Arbitration Act.

49. This Petition is timely under Section 9 of the Federal Arbitration Act, as it is filed within one year from the date of the Award.

**WHEREFORE**, Petitioner prays for relief as follows:

1. That the Court issue an order confirming the Award, as authorized by Section 9 of the Federal Arbitration Act;
2. That the Court enter judgment in favor of Petitioner that conforms to the Award;
3. That ACE be awarded its attorneys fees and costs incurred in association with the prosecution of the instant Petition and the subsequent enforcement of the judgment entered by this Court; upon further submission to this Court of a bill of costs and fees; and
4. That the Court issue such other and further relief/orders as the Court deems just and proper under the circumstances.

Respectfully submitted,

**MARKS, O'NEILL, O'BRIEN  
& COURTNEY, P.C.**

By: 

Patrick C. Lamb, Esq. (Pa. Bar No. 70817)  
Zachary R. Magid, Esq. (Pa. Bar No. 205834)  
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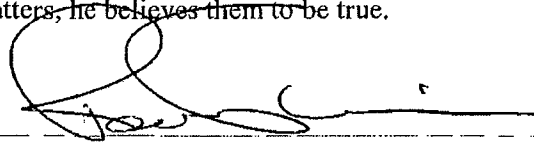
Dated this 2<sup>nd</sup> day of July, 2012.

**VERIFICATION**

STATE OF PENNSYLVANIA  
COUNTY OF PHILADELPHIA

Robert M. Turrin, Esquire, being first duly sworn, deposes and states:

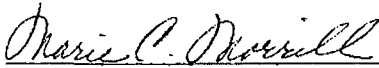
That he is the Assistant General Counsel of Petitioner ACE American Insurance Company, Petitioner in the above-captioned action; that he has read the foregoing Petition and knows that contents thereof, and the same are true and correct, except for those matters alleged upon information and belief, and as to those matters, he believes them to be true.



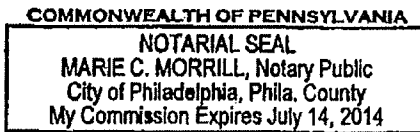
Robert M. Turrin, Esquire

SUBSCRIBED AND SWORN to before me

this 12<sup>th</sup> day of July, 2012.



Notary Public in and for said  
County and State





IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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ACE AMERICAN INSURANCE COMPANY

Petitioner,

vs.

CENTRAL FREIGHT LINES, INC.

Respondent.

CIVIL ACTION

NO.

**ORDER**

AND NOW, this            day of            , upon consideration of the Petition of ACE American Insurance Company to Confirm the May 24, 2012, Arbitration Award entered Central Freight Lines, Inc., and Respondent's failure to show cause why the Arbitration Award should not be confirmed and judgment entered, it is hereby **ORDERED** that:

1. The Award of Arbitrators, dated May 24, 2012, in the matter of ACE American Insurance Company v. Central Freight Lines, Inc., is confirmed and judgment is entered thereupon; that
2. Judgment is entered in favor of Petitioner, ACE American Insurance Company, and against Respondent, Central Freight Lines, Inc., in the amount of \$2,862,235.05;
3. Petitioner may submit a bill of costs and associated with the filing of its Petition and subsequent efforts required to enforce the judgment, which may also be awarded to Petitioner, payable by Respondent; and
4. Petitioner shall be awarded post-judgment interest on the Award until such time as it is satisfied.

**BY THE COURT:**

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J.