

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON,)	
)	
)	
Petitioner,)	
v.)	Civil Action No. 13-CV-3731 AKH
)	
CENTURY INDEMNITY COMPANY, successor to INSURANCE COMPANY of NORTH AMERICA,)	ECF CASE
)	
)	
Respondent.)	
)	

PETITION TO STAY ARBITRATION AND COMPEL ARBITRATION

Petitioner Certain Underwriters at Lloyd’s, London (“Underwriters”), by their undersigned attorneys, as and for their Petition to stay the single arbitration of multiple reinsurance contracts demanded by Respondent Century Indemnity Company f/k/a Insurance Company of North America (“Century”) and to compel separate arbitrations of each reinsurance contract pursuant to the terms of those contracts allege as follows:

NATURE OF THE PROCEEDING

1. This action arises from Century’s demand that Underwriters arbitrate a dispute between the parties regarding coverage for certain asbestos losses under eleven different reinsurance contracts issued to Century by Underwriters (the “Reinsurance Dispute”) and that the arbitration be consolidated into a single proceeding.¹ See Arbitration Notice at Exhibit K to Affirmation of Sarah Courtman in Support of Petition (“Courtman Aff.”).

¹ Although Century demanded arbitration of eleven different contracts, Underwriters address only those contracts that have been billed and that either have a New York choice of forum clause (1968 Global Slip Contracts) or are silent on the choice of forum (Treaty 101 Contracts).

2. None of the contracts at issue permit or require the consolidation of arbitration proceedings within the layers of those contracts or across the different reinsurance programs represented by those contracts. (Exhibits A-J) Further, Underwriters have not consented to any such consolidation. (Courtman Aff. ¶14)

3. Underwriters' attempts to resolve this conflict informally have been unsuccessful to date. Arbitration cannot proceed until this conflict is resolved and Underwriters are not confident the conflict over the number of arbitration panels that must be constituted can be resolved without the court's assistance.

4. In this proceeding, Underwriters seek an Order a) staying Century's attempt to create a single arbitration of multiple contracts that do not provide for such consolidation and b) compelling separate arbitrations of those contracts over which this Court has jurisdiction pursuant to the terms of those contracts.

PARTIES, JURISDICTION AND VENUE

5. Petitioner Certain Underwriters at Lloyd's, London, consists of United Kingdom syndicates of individual Names who underwrite the reinsurance contracts in question. Underwriters are not citizens of the United States.

6. Upon information and belief, Respondent Century is a corporation organized under the laws of Pennsylvania, with its principal place of business located in Philadelphia, Pennsylvania.

7. This Court has subject matter jurisdiction over this action pursuant to 9 U.S.C. §203 because this proceeding concerns commercial arbitration agreements that are not entirely between citizens of the United States and therefore fall within the Convention of the Recognition and Enforcement of Foreign Arbitral Awards ("Convention") and pursuant to 9

U.S.C. §4 (Federal Arbitration Act) as this court would have jurisdiction of this matter 28 U.S.C. §1332(a) (2) save for the arbitration agreements.

8. In addition, this Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of a State and citizens of a foreign state.

9. This Court has personal jurisdiction over Century Indemnity Company as Century is licensed to do business in the State of New York.

10. Venue in this district is proper pursuant to the Federal Arbitration Act §4 and §204 because the commercial contracts in question contain arbitration agreements that provide that arbitration shall take place in New York State (1968 Global Slip Contracts) or they are silent as to the forum in which arbitration should take place (Treaty 101).

FACTUAL BACKGROUND

11. Underwriters are party to eleven separate and distinct contracts that reinsured certain liabilities arising from writings of Century's predecessor INA, in the years 1961 to 1970 consisting of two "programs" of reinsurance known generally as "Treaty 101" and "the Global Slip." For the purposes of this action, those programs consist of the following contracts:

All Contracts Named in Century's Arbitration Demand					
Treaty 101 Contracts	1-Jul-61	31-Dec-64	\$5,000,000	xs	\$500,000
	1-Jan-65	31-Dec-67	\$4,500,000	xs	\$500,000
	1-Jan-65	31-Dec-67	\$5,000,000	xs	\$5,000,000
	1-Jan-65	31-Dec-67	\$10,500,000	xs	\$10,000,000
1968 Global Slip Contracts	1-Jan-68	31-Dec-68	\$6,000,000	xs	\$1,000,000
	1-Jan-68	31-Dec-68	\$5,000,000	xs	\$7,000,000
	1-Jan-68	31-Dec-68	\$8,000,000	xs	\$12,000,000
1969 – 1970 Global Slip Contracts	1-Jan-69	31-Dec-70	\$5,000,000	xs	\$2,000,000
	1-Jan-69	31-Dec-70	\$5,000,000	xs	\$7,000,000
	1-Jan-69	31-Dec-70	\$8,000,000	xs	\$12,000,000
	1-Jan-70	31-Dec-70	\$5,000,000	xs	\$20,000,000

12. The Treaty 101 Contracts and the Global Slip Contracts reinsured claims arising in certain contractually defined circumstances from Century's insurance writings including certain policies of primary and excess comprehensive general liability insurance that Century issued to its insureds, including Caterpillar Tractor Company ("Caterpillar"). Caterpillar is based in Peoria, Illinois and manufactures construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. www.caterpillar.com/company

13. On May 17, 2012, Century submitted billings to Underwriters under some of the contracts comprising the Global Slip and Treaty 101² with regard to asbestos products losses suffered by Caterpillar arising out of numerous lawsuits filed against Caterpillar by individuals claiming to have been exposed to asbestos as a result of Caterpillar's equipment.

14. Underwriters paid a portion of certain billings presented pursuant to a reservation of rights but declined to pay others on the ground that Century's allocation of Caterpillar's losses to the underlying policies and the reinsurance contracts at issue was incorrect.

15. Underwriters' attempts to resolve this allocation dispute through written correspondence, in person meetings, and audits of Century's files were unsuccessful.

16. On March 15, 2013, Century demanded arbitration against Underwriters under Treaty 101 for the periods 1961 through 1967, inclusive, all layers, ("Treaty 101 Contracts"), the Global Slip Treaty for the 1968 period inclusive, all layers ("1968 Global Slip Contracts")

² Upon information and belief, bills have not yet been submitted on the second and third layers of Treaty 101 from January 1, 1965 to December 31, 1967 or third layer Global Slip Contract from January 1, 1968 to December 31, 1968.

and the Global Slip Contracts for the periods 1969 through 1970, inclusive, all layers (“1969-1970 Global Slip Contracts”) (collectively, the “Global Slip Contracts”).

17. Each of the reinsurance contracts contains an arbitration agreement requiring the parties to submit any contractual dispute between them to arbitration and these arbitration agreements are binding on Underwriters and Century.

18. In this Petition, Underwriters address the billed contracts and only those billed contracts with arbitration clauses designating New York as the appropriate forum for arbitration (the 1968 Global Slip Contracts) and those that are silent on the required forum for arbitration (the Treaty 101 Contracts).

19. For jurisdictional reasons, Underwriters do not address 1969-1970 Global Slip Contracts as they are subject to arbitration agreements requiring arbitration to take place in the “City of the Company’s Head Office is located unless mutually agreed upon by the Company and the Reinsurers.”

20. Upon information and belief, Century’s “Head Office” is located in Philadelphia, Pennsylvania.

21. Copies of each contract addressed in this Petition are attached to the supporting Affidavit as Exhibits A-J and made a part of this Petition.

22. The Treaty 101 Contracts are subject to arbitration agreements that provide:

In the event of any dispute between the Company and the Reinsurers in connection with this Agreement, such dispute shall be submitted to arbitration.

As soon as one party demands arbitration and has named an arbitrator, the other party binds itself to name an arbitrator within one month and the two arbitrators shall then select an umpire. In case of their being unable to agree upon an umpire, each of them shall name three, of whom the other declines two, and the decision shall be made by drawing lots. The umpire shall act under the said Agreement or submission with the same force and effect as if he had been

specifically named therein, and the decision of the majority of the court of arbitration shall be final and binding upon the contracting parties.

Each party to this Agreement shall submit its case to the arbitrators within one month after receipt of advices of the selection of an umpire. The arbitrators are empowered, however, to prolong the terms granted herein to either party in which to hand in their documents. Each party to this Agreement shall pay the fees and expenses of its arbitrator, unless otherwise agreed, and the remaining costs of the court of arbitration shall be borne as the court of arbitration shall direct. Arbitration shall take place in such place as agreed upon by the arbitrators, and the arbitration law of New York State shall govern such arbitration.

Exhibits A-D

23. The 1968 Global Slip Contracts contain arbitration agreements which provide as follows:

If any dispute shall arise between the GROUP and the REINSURERS with reference to the interpretation of this CONTRACT or their rights with respect to any transaction involved, the dispute shall be referred to three arbitrators, one to be chosen by each party and the third by the two so chosen. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after the receipt of written notice from the other party requesting it to do so, the requesting party may nominate two arbitrators, who shall choose the third. Each party shall submit its case to the arbitrators within thirty (30) days of the appointment of the arbitrators. The arbitrators shall consider this CONTRACT an honorable engagement rather than merely a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law. The decision of a majority of the arbitrators shall be final and binding on both the GROUP and the REINSURERS. The expense of the arbitrators and of the arbitration shall be equally divided between the GROUP and the REINSURERS. Any such arbitration shall take place in New York, New York, unless some other location is mutually agreed upon by the GROUP and the REINSURERS.

Exhibits E-G

24. Neither Treaty 101 nor Global Slip 1968 provide for, permit, or require consolidation of arbitration proceedings within the contracts of either program.

25. Neither Treaty 101 nor Global Slip 1968 provide for, permit, or require consolidation of arbitration proceedings across different reinsurance programs.

26. Underwriters have not agreed or consented to Century's proposed consolidation.

27. To the contrary, Underwriters have declined to arbitrate the Caterpillar dispute in one proceeding as demanded by Century and Underwriters have appointed an arbitrator to serve on their behalf with regard to each separate contract.

28. While disputing the need to do so, Century has also appointed an arbitrator to serve on its behalf with regard to each separate contract. (Exhibit S)

AS AND FOR UNDERWRITERS' FIRST CLAIM FOR RELIEF

29. Underwriters repeat and reallege the allegations contained in paragraphs 1-28 above as though fully set forth herein.

30. Underwriters are party to eleven separate and distinct contracts comprising two programs of reinsurance known as Treaty 101 and the Global Slip.

31. Century has demanded that Underwriters participate in a consolidated arbitration proceeding regarding a coverage dispute between them under those contracts.

32. None of those contracts permit, require, or provide for consolidation of arbitration.

33. Underwriters have not agreed to consolidate the Reinsurance Dispute into one arbitration.

34. Century refused to proceed with separate arbitrations of each contract pursuant to the terms of those contracts.

35. Underwriters attempted to reach a compromise with Century on this issue but have been unable to do so to date.

36. The arbitrations cannot proceed in accordance with the terms of the contracts unless the Court orders them to proceed.

37. No previous application has been made to this Court or any other Court for the relief requested herein.

WHEREFORE, Underwriters respectfully request that the Court:

38. Enter an Order as follows

- a. staying the single arbitration of the reinsurance Dispute that Century attempted to commence under the Treaty 101 Contracts and the Global Slip Contracts; and
- b. compelling arbitration of each of the Treaty 101 and 1968 Global Slip Contracts separately pursuant to 9. U.S.C. §4 and §203;
- c. directing the parties to proceed with umpire selection under each of the Treaty 101 Contracts and 1968 Global Slip Contracts pursuant to the express terms of those contracts within the next thirty days; and
- d. for such other and further relief as to the Court may deem just and proper.

Dated: May 31, 2013

Certain Underwriters at Lloyd's, London
By its attorneys,

/s/ Sarah C. Courtman
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