

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

<b>JACK E. FEINBERG et al.</b>	:	<b>Civil Action</b>
	:	<b>No. 01-6966</b>
<b>v.</b>	:	
	:	
<b>ASSOCIATION OF TRIAL LAWYERS</b>	:	
<b>ASSURANCE (A MUTUAL RISK</b>	:	
<b>RETENTION GROUP)</b>	:	

**Rufe, J.**

**November 4, 2002**

**MEMORANDUM**

Before the Court is the Motion to Dismiss or, in the alternative, Stay This Action Pending Arbitration of Defendant Association of Trial Lawyers Assurance (A Mutual Risk Retention Group) (hereinafter "ATLA Mutual"). After considering ATLA Mutual's Motion to Dismiss and the response of Plaintiffs Jack E. Feinberg and Feinberg & Silva (hereinafter collectively referred to as "Feinberg" or "Plaintiffs"), it is ordered that the instant action will be stayed pending the conclusion of the arbitration proceedings.

**FACTUAL BACKGROUND**

On December 26, 2001, Plaintiffs filed the instant action in which they seek a declaration that ATLA Mutual must defend and indemnify Plaintiffs in a Schuylkill County legal malpractice action under the terms of a Lawyers Professional Liability Indemnity Policy. In the Complaint, Feinberg also advances claims for breach of contract, promissory estoppel, intentional misrepresentation, negligent misrepresentation, and reformation of contract.

On March 21, 2002, ATLA Mutual moved to dismiss or stay the federal court litigation

based upon an arbitration provision in the subject insurance policy.<sup>1</sup> The policy provides, in relevant part, as follows:

**16. Arbitration**

(a) As a condition precedent to an INSURED'S right to be indemnified under this Policy, *all disputes that may arise between one or more INSUREDS and the Company* (including its directors, officers, employees or agents) *out of or in relation to this Policy* shall be finally settled by arbitration conducted according to the Commercial Arbitration Rules of the American Arbitration Association, by which the Insured and the Company agree to be bound.

\* \* \* \* \*

(c) *The arbitration proceedings shall take place in Chicago, Illinois, provided that the arbitration panel may, for the convenience of the parties and without changing the site of the arbitration proceedings, permit the parties to take evidence at any place or places within or outside of the State of Illinois.*

\* \* \* \* \*

(e) For purposes of implementing this arbitration provision, including entering judgment upon any award by the arbitration panel, the Company and the insured hereby submit themselves to the jurisdiction of the state and federal courts located in the State of Illinois.

Lawyers Professional Liability Indemnity Policy at 12-13. (Emphasis added.)

The Policy also contains a choice of law provision:

**17. Law to Govern**

All disputes which may arise between one or more INSURED and the Company (including its directors, officers, employees or agents) out of or in relation to this Policy shall be governed by the law of the State of Illinois.

Id. at 13.

**DISCUSSION**

A court presented with an agreement containing an arbitration provision performs a narrow function: the court must decide whether there was a valid agreement to arbitrate, and if

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<sup>1</sup> On July 10, 2002, this case was reassigned to the undersigned. On August 20, 2002, the Court heard oral argument on the pending Motion to Dismiss at a conference after which the matter was taken under advisement.

so, the court then must decide whether the dispute falls within the substantive scope of that agreement. AT&T Tech., Inc. v. Communications Workers, 475 U.S. 643, 648 (1986); Painewebber Inc. v. Hartmann, 921 F.2d 507, 511 (3d Cir. 1990). To perform this task, the court must first determine whether the agreement falls under the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16. If the agreement contains a provision submitting disputes arising from the agreement to arbitrate and if the contract involves commerce, the FAA is applicable. See id. at § 2; see also Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 273-74 (1995) (holding the “commerce” required under the FAA must be as broadly construed as Congress’s power under the Commerce Clause).

The Lawyers Professional Liability Indemnity Policy clearly contains an arbitration provision governed by the FAA since the insurance policy involves interstate commerce. Moreover, Feinberg has not established that the arbitration provision is invalid or unenforceable.<sup>2</sup> Arbitration agreements are strongly favored under the FAA. John Hancock Mut. Life Ins. Co. v. Olick, 151 F.3d 132, 137 (3d Cir. 1998). The Court must therefore determine whether the claims in the Complaint are subject to arbitration. Where any doubt exists over whether a particular dispute is covered by an arbitration agreement, the matter should be resolved in favor of

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<sup>2</sup> Feinberg has not argued that there are compelling reasons for not enforcing the arbitration agreement or that the agreement is unconscionable or unenforceable. Rather, Feinberg asserts that, even if Plaintiffs’ claims were initially subject to arbitration, ATLA Mutual has waived its right to arbitrate by waiting too long—approximately two years—to petition for arbitration. “The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of an arbitration clause should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). The record reflects that the instant litigation was commenced on December 26, 2001. On February 8, 2002, the parties filed a waiver of service which indicated that ATLA Mutual’s response to the Complaint was due on March 22, 2002. Because the instant Motion to Dismiss was filed on March 21, 2002, the Court finds that ATLA Mutual has not abandoned its arbitration rights.

arbitration. AT&T Tech., Inc., 475 U.S. at 650.

The language in the policy clearly encompasses claims raised in Plaintiffs' Complaint, including whether ATLA Mutual is obligated to indemnify Feinberg in the legal malpractice action.<sup>3</sup> "If a party to a binding arbitration agreement is sued in a federal court on a claim that the plaintiff has agreed to arbitrate, it is entitled under the FAA to a stay of the court proceeding pending arbitration. . . ." Seus v. John Nuveen & Co., 146 F.3d 175, 179 (3d Cir. 1998), cert. denied, 531 U.S. 927 (1999). Therefore, the Court concludes that the matter should be submitted to arbitration.

This matter, however, is complicated by the Court's lack of authority to compel arbitration outside of its district in the contractually chosen forum of Chicago, Illinois. Under the FAA, a district court has no power to order arbitration outside of its own district. See Econo-Car Int'l, Inc. v. Antilles Car Rentals, Inc., 499 F.2d 1391 (3d Cir. 1974) (holding that district court in the Virgin Islands could not compel arbitration in New York, despite the arbitration agreement). Because this Court cannot compel arbitration in Illinois, it merely rules that claims which are pleaded in the Complaint are subject to arbitration and stays this case pending the completion of arbitration.

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<sup>3</sup> In Plaintiffs' Memorandum of Law in Opposition to ATLA Mutual's Motion, Feinberg asserts that regardless of whether Pennsylvania or Illinois applies, Plaintiffs have pleaded causes of action which are not subject to the arbitration provision contained in the policy. See Plaintiffs' Memorandum of Law at 6. Feinberg concedes, however, that the arbitration provision "applies [] to ATLA Mutual's indemnification obligations." Id. at 12. The prayers for relief in Counts I and II of the Complaint seek a declaration that "ALTA Mutual must indemnify the insured for all defense costs and any settlement or judgment against it" and judgment "in the full amount of any judgment which [the plaintiff in the underlying legal malpractice action] may obtain against [Plaintiffs]." Id. at 13. Based upon the fact that Plaintiffs seek indemnification and that these claims are admittedly covered by the arbitration clause, the Court concludes that some of the claims pleaded in the Complaint, namely the claims for indemnity, are clearly subject to arbitration. The Court makes no determination as to which other claims, including those seeking defense costs, may be required to be arbitrated. Such a determination, in this Court's opinion, is more appropriately made by a court having authority to compel arbitration.

Although the Court will not compel arbitration in this case, it is nevertheless obligated to stay lawsuits involving claims that are subject to contractual arbitration agreements. The FAA provides, in part, as follows:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court. . . upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. . . .

9 U.S.C. § 3. Additionally, a court has the power to stay an action pursuant to its inherent power to conserve judicial resources by controlling its own docket. Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). The power to stay proceedings is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” Id. Notwithstanding that it appears that only some of Feinberg’s claims are covered by the arbitration agreement, the Court elects to stay the proceedings in their entirety pending completion of arbitration. See Collins Radio Co. v. Ex-Cell Corp., 467 F.2d 995, 1000 (8<sup>th</sup> Cir. 1972).

### CONCLUSION

For the foregoing reasons, the Court grants in part and denies in part ATLA Mutual’s Motion. The Court stays all proceedings in this matter until arbitration has been completed.

An appropriate Order follows.

