

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

MARKEL CORPORATION GROUP : CIVIL ACTION  
INSURANCE COMPANY, et al. :  
 :  
v. :  
 :  
PMA CAPITAL INSURANCE COMPANY : NO. 04-4445

MEMORANDUM AND ORDER

McLaughlin, J.

February 9, 2005

The plaintiffs have entered into a number of reinsurance contracts with PMA Capital Insurance Company ("PMA Capital") between 1993 through 2004. Each of the reinsurance contracts involves one or more of the plaintiffs as the cedent and PMA Capital as the reinsurer. The parties entered into a Trust Agreement on December 19, 2002, that provides for a single trust to hold assets as security for specified obligations of PMA Capital under the parties' various reinsurance agreements. In this case, the plaintiffs seek specific performance and a declaratory judgment concerning the funds PMA Capital must maintain in the trust under the Trust Agreement, to provide the required security for the reinsurance contracts.

PMA Capital has moved to dismiss for failure to plead subject matter jurisdiction properly, and alternatively to dismiss in favor of arbitration. In opposing the motion, the plaintiffs have provided specific information with respect to the

citizenship of the parties that demonstrates that the Court does have subject matter jurisdiction. The Court, therefore, will deny the motion on the ground of lack of subject matter jurisdiction. The Court, however, concludes that this dispute should be in arbitration. The Court will stay this matter so the parties can go to arbitration.

Each of the reinsurance contracts provides for the resolution of disputes through arbitration. The contracts provide as follows:

As a condition precedent to any right of action hereunder, any dispute that arises out of or in connection with this Agreement, including its formation or validity, will be submitted for decision of an arbitration panel composed of two arbitrators and an umpire.

See Declaration of Thomas A. Allen at ¶¶ 4, 6-20 and Exhibits A-P, thereto ("Allen Decl."). The arbitration clauses identify the location in which the arbitration is to take place; the designated forum varies from one reinsurance contract to another.

Each of the reinsurance contracts provides alternatives for the respective cedent in the event of a specified material decline in PMA Capital's financial position. In particular, the cedent could request that PMA Capital provide a letter of credit, trustee asset account, funds on deposit, or a combination thereof in specified amounts. Each of the reinsurance contracts specifies that the cedent and PMA Capital could enter into a Trust Agreement, establishing a trust account for the benefit of

the cedent in addition to or in lieu of a letter of credit or funds on deposit. See Allen Decl. at ¶ 21 and Article XII of Exhibit A, thereto.

After the necessary preconditions set forth in the reinsurance contracts were triggered, the parties entered into a Trust Agreement on December 19, 2002, with the Bank of New York as the trustee, PMA Capital as the grantor, and the plaintiffs as the beneficiaries. See Allen Decl. at ¶ 22 and Exhibit Q, thereto. The Trust Agreement cross-references the reinsurance contracts for terms not otherwise defined in the Trust Agreement. In particular, the Trust Agreement defines the "obligations" to be funded thereunder by reference to PMA Capital's obligations under the reinsurance contracts.

In January 2004, the plaintiffs initiated arbitration against PMA Capital under multiple reinsurance contracts to resolve a dispute concerning the amount of security provided by PMA Capital for the obligations under the various reinsurance agreements. PMA Capital objected to the plaintiffs' attempt to consolidate multiple cedents and reinsurance contracts in a single arbitration, but stated that PMA Capital was willing to discuss with the plaintiffs arrangements for a consolidated arbitration. See Allen Decl. at ¶¶ 23-24 and Exhibits R and S, thereto.

The plaintiffs commenced the instant litigation in September 2004, seeking specific performance and a declaratory judgment concerning the funds that PMA Capital must maintain in the Trust under the Trust Agreement, to provide the required security for the reinsurance contracts. The central issue to be resolved in this litigation is the calculation of PMA Capital's obligations under the reinsurance contracts and, thereby, the Trust Agreement. PMA Capital disputes the plaintiffs' calculation of those obligations.

The language in the arbitration clauses in the reinsurance contracts at issue here are very broad. They require arbitration of "any dispute that arises out of or in connection with this Agreement, including its formation or validity." The plaintiffs do not dispute that the arbitration agreements in the reinsurance contracts are valid and enforceable. They argue that the Court should not dismiss or stay this case in favor of arbitration because the Trust Agreement itself does not contain an arbitration clause.<sup>1</sup>

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<sup>1</sup> In their opposition to the motion, the plaintiffs also argue, without citation to any specific contract, that not all the reinsurance contracts that underlay this dispute have arbitration clauses. After a telephone conference among the Court and counsel for the parties in which the Court asked counsel for the plaintiffs to substantiate that statement with a declaration or reference to specific contracts, counsel for the plaintiffs sent the Court a letter dated January 26, 2005, stating that the plaintiffs will not challenge the affidavit submitted by PMA Capital on this issue.

PMA Capital argues that the claims in this lawsuit are subject to arbitration because the Trust Agreement and the reinsurance contracts are interrelated contracts between the same parties. The Court agrees. Courts generally have held that when two related agreements are entered into, and one agreement contains an arbitration clause and the other does not, the arbitration clause will apply to both agreements. See, e.g., Nat'l Am. Ins. Co. v. SCOR Reinsurance Co., 362 F.3d 1288, 1291-92 (10th Cir. 2004) ("when two agreements are at issue, one with an arbitration clause and one without, the fact that one agreement references the other supports arbitrating claims arising from either agreement"); ARW Exploration Corp. v. Aguirre, 45 F.3d 1455, 1462 (10th Cir. 1995); Neal v. Hardee's Food Sys., Inc., 918 F.2d 34, 37 (5th Cir. 1990); Pan Atl. Reinsurance Co. v. Republic Ins. Co., 1992 U.S. Dist. LEXIS 7619, at \*13 (S.D.N.Y. May 20, 1992).

The Trust Agreement at issue here references and bases its existence on the parties' various reinsurance contracts, each of which contains a broad arbitration clause. The Trust Agreement was created to address the funding obligations in each of the reinsurance contracts. The Trust Agreement defines the "obligations" to be funded thereunder by reference to PMA Capital's obligations under the reinsurance contracts. Given the integral relationship between the Trust Agreement and the

reinsurance contracts, the central issue in dispute in this litigation -- the amounts that need to be funded due to obligations that allegedly arise under the parties' reinsurance agreements -- is subject to arbitration under the arbitration clauses in the parties' reinsurance contracts.<sup>2</sup>

The plaintiffs implicitly recognized that this dispute belongs in arbitration when they initiated arbitration in January 2004. That arbitration demand attached a list of contracts for which the plaintiffs sought security. All of the contracts on that list contain arbitration clauses.

The plaintiffs argue that the Trust Agreement is not sufficiently interrelated to the reinsurance agreements because it appoints as trustee the Bank of New York who is not a party to the reinsurance agreements, and it was executed at a different time than the reinsurance agreements between the plaintiffs and PMA Capital. The Bank of New York, however, has no involvement

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<sup>2</sup> The plaintiffs appear to concede that the parties' dispute under the Trust Agreement depends on the underlying reinsurance contracts. In their memorandum, they state:

- The purpose of the Trust Agreement is to hold assets as security for performance by PMA of its obligations under all reinsurance contracts between PMA and Markel. Pl.'s Mem. Opp'n at 2.
- The calculation of PMA's obligations under the Trust Agreement requires consideration of all of the reinsurance agreements entered into between the PMA and Markel. Pl's Opp'n at ¶ 13.

in the instant dispute between the parties and any right it may have to litigate under the Trust Agreement does not negate the parties' obligation to arbitrate their dispute under the reinsurance agreements. Nor is it dispositive that the contracts were entered into at different times. See Pan Atl. Reinsurance Co., 1992 U.S. Dist. LEXIS 7619, at \*12-13.

The Court has decided to stay the case to allow the parties to arbitrate the dispute, rather than to dismiss the case, as requested by PMA Capital, because the situs of the arbitration differs in the reinsurance contracts.<sup>3</sup> The defendants have agreed to negotiate an arbitration structure for the resolution of the dispute. The parties will report back to the Court within sixty days of the date of this decision whether they have been able to agree on a structure for the arbitration.

An appropriate order follows.

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<sup>3</sup> The defendant has not requested the Court to order arbitration because, in the defendant's view, the Court can compel arbitration only in the district in which the Court sits. Because many of the reinsurance contracts at issue specify locations outside the district as the situs of the arbitration, the defendants have concluded that the Court cannot compel arbitration.

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ORDER

AND NOW, this 9th day of February, 2005, upon consideration of defendant's Motion to Dismiss for Failure to Properly Plead Subject Matter Jurisdiction, and Alternatively to Dismiss in Favor of Arbitration (Docket No. 10), plaintiffs' opposition thereto, the defendant's reply, and after a telephone conference among the Court and counsel on January 24, 2005, IT IS HEREBY ORDERED that said motion is granted in part and denied in part for the reasons stated in a memorandum of today's date. IT IS FURTHER ORDERED that the motion is denied to the extent it seeks dismissal because of a failure to plead subject matter jurisdiction properly. To the extent the defendant seeks dismissal in the form of an arbitration, the motion is granted in part and denied in part. The case will be stayed so that the parties can arbitrate the dispute. The parties will report back to the Court within sixty days of the date of this decision

whether they have been able to agree on a structure for the arbitration.

BY THE COURT:

/s/ Mary A. McLaughlin  
MARY A. McLAUGHLIN, J.