

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

IN THE MATTER OF THE : CIVIL ACTION
ARBITRATIONS BETWEEN :
CENTURY INDEMNITY COMPANY :
(AS SUCCESSOR TO INSURANCE :
COMPANY OF NORTH AMERICA) :
 :
 :
v. :
 :
 :
NEW ENGLAND REINSURANCE :
CORPORATION : NO. 04-MC-00089

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 2004

Petitioner Century Indemnity Company and respondent New England Reinsurance Corporation are, by virtue of successorship, the current parties to a series of reinsurance contracts referred to as "Treaty 101." The contract provides for the arbitration of "any dispute ... in connection with this agreement." While both parties agree that arbitration is required, they are in marked disagreement concerning the proper way to comply with the arbitration clause in "Treaty 101."

Under the terms of Treaty 101, petitioner is responsible for payment of the first \$500,000 of liability on a claim, and respondent is expected to pay the excess. Initial responsibility for processing claims, determining coverages, and achieving a resolution of the amount of the claim, either through litigation or settlement, rests with petitioner, but respondent

has the right to audit petitioner's claims files to verify the validity of claims and propriety of settlements.

Petitioner submitted bills to respondent concerning a claim by an insured named Courter, and, when respondent did not pay the amount claimed, petitioner sought arbitration. The respondent then made a "counter-demand" for arbitration, asserting that petitioner "has mismanaged the operation of Treaty 101 and has engaged in a pattern of inconsistent reinsurance loss cessions to [respondent]"; and asserting that the dispute is not limited to settlement payment to any one insured, but rather involves a systemic breach of petitioner's duties and obligations under Treaty 101. Thereafter, petitioner filed four additional demands for arbitration, with respect to the claims of insureds designated as Dial/Viad, Georgia Pacific, Hughes Aircraft, and Asarco.

In the Courter arbitration, both sides have designated their respective arbitrators, but the umpire has not been selected because petitioner objects to the proposed expanded scope of that arbitration in light of respondent's counter-demand.

In view of this impasse, petitioner filed in this court a petition to compel arbitration. Respondent filed a counter-petition to compel arbitration, seeking to require petitioner to proceed with the Courter arbitration, and requesting this court

to stay the remaining proceedings until completion of the Courter arbitration - this on the theory that resolution of its defenses in the Courter arbitration would likely resolve the remaining arbitrations.

I find it puzzling that leading law firms representing sophisticated clients have found it necessary to pursue this litigation. Treaty 101 plainly provides that "the arbitration law of New York State shall govern such arbitration." That statute, C.P.L.R. § 75, like its federal counterpart, 9 U.S.C. § 1, limits judicial intervention to the determination of whether there is a valid arbitration agreement which covers the dispute; the scope and timing of arbitration are for the arbitrators to determine.

Thus, the Courter arbitration panel will be required to decide whether respondent should pay the Courter claim, whether respondent's counter-assertions provide a defense to that claim, and whether respondent may be entitled to affirmative relief which could conceivably affect other claims. And, unless the parties can agree upon a more reasonable solution, the other four arbitrations will also proceed, and each arbitration panel will be free to determine the impact of the Courter arbitration decision. Presumably, the arbitrators themselves will arrive at a sensible arrangement, if the parties are unable to do so. This court lacks the authority to stay any of the arbitrations.

An Order in conformity with the views expressed above will now be entered.

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ORDER

AND NOW, this day of July, 2004, upon
consideration of petitioner's motion, and the respondent's
counter-motion, to compel arbitration, IT IS ORDERED:

1. Both parties are directed to proceed promptly with the
Courter arbitration. The precise scope of that arbitration will
be determined by the arbitrators.

2. Respondent's application for a stay of the other
pending arbitrations is DENIED.

John P. Fullam, Sr. J.