

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

SLB INSURANCE INC.,	:	
CHARLENE LEETS BAKER,	:	
and KIRISTIE BERRY,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 06-4189
v.	:	
	:	
BROWN & BROWN INC. and,	:	
SUSAN HEATH,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S.J.

April 16, 2007

Presently before the Court is Defendants Brown & Brown, Inc. (“Brown & Brown”) and Susan Heath’s (collectively “Defendants”) Motion to Strike Jury Demand and Plaintiffs SLB Insurance, Inc. (“SLB Insurance”), Charlene Leets Baker and Kiristie Berry’s (collectively “Plaintiffs”) Memorandum Opposing Defendants’ Motion to Strike Jury Demand. Because the Court finds that Plaintiffs waived their right to a jury trial, Defendants’ Motion is granted.

In support of their motion, Defendants attach a copy of the State Administrator Agreement dated August 31, 2006¹ and signed by Baker, as President of SLB Insurance and Heath, as the Executive Vice-President of Brown & Brown. Article 12, § 12.05, entitled Waiver of Jury Trial provides:

1. Baker’s signature is dated August 31, 2006, and Heath’s signature is dated August 29, 2006. State Administrator Agreement at 9.

The parties hereby knowingly, voluntarily and intentionally waive any right either may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in conjunction with the duties and obligations of the State Administrator or any related course of conduct, course of dealing, statement (whether verbal or written) or actions of either party.

State Administrator Agreement at § 12.05. (“Waiver of Jury Trial Provision” or “§ 12.05”).

More generally, the State Administrator Agreement contains the terms and conditions under which SLB Insurance would market insurance policies developed by Brown & Brown to dental practitioners. See State Administrator Agreement.

The Seventh Amendment right to a jury trial can only be waived through a knowing and voluntary waiver. Phoenix Four Grantor Trust #1 v. 642 N. Broad Street Assocs. 2000 WL 1717261 (E.D. Pa. Nov. 15, 2000). A waiver is knowing, voluntary and intelligent when the facts show that (1) there was no gross disparity in bargaining power between the parties; (2) the parties are sophisticated business entities; (3) the parties had an opportunity to negotiate the contract terms; and (4) the waiver provision was conspicuous. First Union National Bank v. United States, 164 F.Supp.2d. 660, 663 (E.D. Pa. 2001).

From the facts of this case, the Court finds that Plaintiffs knowingly, voluntarily and intelligently waived their right to a jury trial in this matter. There does not appear to be a gross disparity in bargaining power between the parties, and the parties are sophisticated business entities. Plaintiffs note that SLB Insurance did not consult with an attorney prior to signing the agreement and that Baker did not “wholeheartedly” read the agreement. However, Baker concedes that she had an opportunity to review the agreement before signing it. (Baker Dep. at 120-21).

In addition, while this may have been Baker's first foray into entrepreneurship, she was not unfamiliar with the insurance field. She had been a licensed insurance producer for at least 15 years. Prior to forming SLB Insurance, Baker had worked for Brown & Brown's state administrator for Pennsylvania, Glen Center Insurance Associates ("Glen Center"), where she was primarily responsible for marketing Glen Center's products to dentists. (Pl. Memo. at 2). Under the State Administrator Agreement, one of the duties to be performed by SLB Insurance was to market and service Brown & Brown's insurance policies to dentists. State Administrator Agreement at Article III (a), (b). Thus, Baker would continue to serve a similar, albeit expanded, role at SLB Insurance to the one she held at Glen Center. All of the aforementioned facts, when viewed in combination with the relatively plain language of the Jury Trial Waiver Provision, support a finding that Baker had the ability to understand the import of what she signed.

Plaintiffs characterize the agreement, which was prepared by Brown & Brown, as boilerplate and note that there is no indication that Baker was ever offered an opportunity to propose changes to the agreement. While this may be true, there is also no evidence that SLB sought any changes to the agreement, nor that Brown & Brown prohibited the proposal of such changes.

Finally, the waiver provision is conspicuous. Section 12.05 is located on the page immediately preceding the signature page and is clearly identifiable by its title "Waiver of Jury Trial." Thus, based on the circumstances of this case, the Court concludes that Plaintiffs knowingly, voluntarily and intelligently waived their right to a jury trial.

Plaintiffs argue that Kiristie Berry's jury trial demand should not be stricken because she did not sign the State Administrator Agreement. Significantly, Plaintiffs do not

argue that the facts underlying this case fall outside the scope of the Jury Trial Waiver Provision. In failing to do so, Plaintiffs implicitly recognize the applicability of the jury waiver provision to the facts of this case. Thus, the only basis for not enforcing the waiver against Berry would be that she was a non-signatory to the agreement. However, as an employee of SLB Insurance, Berry is bound under the terms of the jury waiver provision to the same extent as SLB Insurance. See In Re Damlier Chrysler AG Securities Litigation, 2003 WL 22769051, at *3 (D. Del. Nov. 19, 2003) (enforcing jury waiver against non-signatory officers of defendant corporation where the complaint was based upon the actions of officers as agents of corporation). Because the jury waiver is enforceable against SLB Insurance, it is also enforceable against Berry. Therefore, Defendants' Motion to Strike Jury Demand shall be granted.

An appropriate Order follows.

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Defendants.	:	

ORDER

AND NOW, this 16th day of April, 2007, upon consideration of Defendants' Motion to Strike Jury Demand (Docket No. 4) and Plaintiffs' Memorandum in Opposition thereto (Docket No. 8), it is hereby **ORDERED** that Defendants' Motion is **GRANTED**, and Plaintiffs' Jury Demand is **STRICKEN**.

BY THE COURT:

/s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, S.J.