

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CLEARWATER INSURANCE COMPANY, *et al.*,

Petitioners,

- against -

ALLIANZ CORNHILL INTERNATIONAL,
AMERICAN HOME ASSURANCE CO-NEW YORK,
ASSURANCES GENERALES DE FRANCE IART
(AGF), CONTINENTAL INSURANCE COMPANY,
DRAKE INSURANCE PLC, EAGLE STAR INSUR-
ANCE CO., LTD., EUROPEAN REINS. CO. OF
ZURICH, EXCESS INSURANCE COMPANY, LTD.,
FIELDMILL INSURANCE CO., LTD., FM INSUR-
ANCE CO., LTD., FUJI INTERNATIONAL INS. CO.,
LTD., GAN ASSURANCES IARD, GUILDHALL
INSURANCE COMPANY LIMITED, HARPER
INSURANCE COMPANY UK LTD., HEDDINGTON
INS. CO. (UK) LIMITED, HILLCOT RE LTD., HOME
& OVERSEAS INS. CO., LTD., INSTITUTO DE
REASSEGUROS DO BRASIL (IRB), INSURANCE
CORP. OF SINGAPORE UK LTD., KX REINSUR-
ANCE CO., LTD., LIBERTY MUTUAL INS. CO.
(MASS) LTD., LONDON & EDINBURG INS. CO.,
LTD., MERCANTILE & GEN REINS. CO. (UK),
MINSTER INSURANCE COMPANY LIMITED,
MITSUI MAR & FIRE INS. (UK) LTD., NATION-
WIDE MUTUAL INSURANCE CO., NIPPON FIRE
& MARINE INS. CO. (UK) LTD., NRG GENERAL
RE, OSLO REINSURANCE CO. (UK) LTD., QBE
REINSURANCE (UK) LTD., RIVER THAMES
INSURANCE COMPANY LIMITED, RIVERSTONE
INS. CO. UK LTD., SIRIUS INSURANCE COMPANY
LIMITED, SPHERE DRAKE INSURANCE LIMITED,
ST. PAUL TRAVELERS INS. CO., LTD., TENECOM
LTD., TOKIO MARINE EUROPE INSURANCE LTD.,
UNIONAMERICA INSURANCE COMPANY LIMITED,
VICTORY REINSURANCE COMPANY LIMITED and
ZURICH AGRIPPINA VERSICHERUNGS AG,

Respondents.

-----X

Civ.

**MEMORANDUM OF
LAW IN SUPPORT OF
MOTION TO CONFIRM
ARBITRATION AWARD**

Petitioners Clearwater Insurance Company (f/k/a Odyssey Reinsurance Corporation and Skandia America Reinsurance Corporation), Odyssey Reinsurance Corporation of Canada (successor-in-interest to Skandia Insurance Company, Ltd. (Canada) and Skandia Canada Reinsurance Company), and Hudson Insurance Company) (collectively “Clearwater”) hereby submits this Memorandum of Law in support of its Petition to Confirm as a Judgment pursuant to 9 U.S.C. §9 the Final Award and Amended Final Award in an underlying arbitration proceeding between the parties.

INTRODUCTION

On July 23, 2008 the arbitration Panel in the underlying arbitration issued a Final Order and Award directing Respondents -- various London Market insurance companies (hereinafter “LMRs”) -- to pay a total of \$1,987,592.50 to Clearwater before close of business on August 15, 2008. In an Amended Final Award issued on September 4, 2008, that amount was reduced to \$1,912,798.50. (Collectively, the Orders of July 28, 2008 and September 4, 2008 shall sometimes be referred to hereinafter as the “Arbitration Awards”).

Clearwater is seeking a Judgment confirming the Arbitration Awards because LMRs have failed to fully honor their terms and conditions, and consequently, a Judgment is necessary in order for Clearwater to pursue enforcement proceedings.

FACTUAL BACKGROUND

Clearwater entered into multiple reinsurance contracts with LMRs (the “Retrocession Agreements”), pursuant to which LMRs agreed to reinsure Clearwater on losses and expenses

incurred by Clearwater under reinsurance contracts that it issued. Copies of the Retrocession Agreements are attached as Exhibits 1-6 to the accompanying Affidavit of Bruce M. Friedman.

Each Retrocession Agreement contains an arbitration clause that requires the parties to submit “any dispute” arising out of the Retrocession Agreements to an arbitration panel composed of two party arbitrators and an umpire, meeting in New York. (the “Arbitration Clauses”). The Arbitration Clauses further state that the majority decision of the board shall be “final and binding” upon all parties to the proceeding, that their interpretation and application of shall be governed by the laws of the State of New York, and that the award of the arbitrators may be confirmed by a court of competent jurisdiction.

On the bases of the assertions set forth in the Petition, Clearwater respectfully submits that this Court has both personal and subject matter jurisdiction to enter an Order confirming the Arbitration Awards so that a Judgment from this Court may be entered.

When a dispute arose regarding claims submitted under the Retrocession Agreements, Clearwater issued a demand for arbitration against various LMRs and others by letter dated December 30, 2004. From June 3 to 6, 2008, an arbitration hearing was conducted in the City of New York, during which the Panel heard live testimony from witnesses for both sides, reviewed documentary exhibits, and heard the arguments of counsel. On July 23, 2008, the Panel issued a Final Order and Award in which it directed LMRs to pay to Clearwater \$629,685.00 in unpaid principal, \$987,103.00 in interest, and \$370,804.50 in attorneys’ fees by close of business on August 15, 2008. A copy of the Final Award and Order is attached as Exhibit A to Clearwater’s Petition.

Subsequent to the issuance of the Final Order and Award, the Panel received requests from both sides to provide clarification and/or modification of the Final Order and Award. In response to those requests, the Panel issued an Amended Final Award on September 4, 2008. A copy of that document is attached as Exhibit B to Clearwater's Petition. In the Amended Final Award, the principal and interest amounts attributable to a particular LMR known as Highlands were eliminated from the Final Order and Award, thereby reducing the amount of principal due from LMRs to \$579,982.00 and the amount of interest due from LMRs to \$962,012.00. The award of attorneys' fees remained unchanged.

As of this date, LMRs have failed to make full payment pursuant to the Final Order and Award.

ARGUMENT

UNDER 9 U.S.C. §9 CLEARWATER IS ENTITLED TO AN ORDER CONFIRMING THE ARBITRATION AWARDS

The Federal Arbitration Act, 9 U.S.C. §9, provides that "within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected." Accordingly, this Court has an obligation to confirm the Arbitration Awards so that Judgment may be entered. See Ottley v. Schwartzberg, 819 F.2d 373, 377 (2nd Cir. 1987) (stating that a district court must grant a petition to confirm an arbitration award unless one of the grounds for vacating or modifying the award is established.); Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2nd Cir. 1984) (stating that confirmation of an arbitration award is "a summary proceeding that merely makes what is already a final arbitration award a judgment of

the court”). See also, Irving R. Boody & Co. v. Win Holdings Int’l, Inc., 213 F.Supp.2d 378, 380 (S.D.N.Y. 2002) (“[t]he confirmation of an arbitration award converts the final arbitration award into the judgment of the court”); Doctor’s Assocs., Inc. v. Cassarotto, 517 U.S. 681 (1996) (stating the purpose of the Federal Arbitration Act is to ensure that private agreements to arbitrate are enforced).

The standard of review of an arbitration panel’s decision by the court is very narrow. The scope of review is limited, and the court may not examine the merits of the decision except to the extent that the award exceeds the agreement of the parties. See Porzig v. Dresdner, Kleinwort, Benson, N.A. LLC, 497 F.3d 133, 139-40 (2nd Cir. 2007) (citing Halligan v. Jaffray, Inc., 148 F.3d 197, 200 (2nd Cir. 1998) (recognizing the “strong deference appropriately due arbitral awards and the arbitral process, and has limited its review of arbitration awards in obeisance to that process...”); D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 110 (2nd Cir. 2006) (quoting Florasynt, Inc. v. Pickholz, 750 F.2d 171, 176); In re Arbitration Between Westchester Fire Ins. Co. v. Massamont Ins., 420 F.Supp.2d 223 (S.D.N.Y. 2005).


In this case, the arbitrators, having considered the pleadings and other evidence presented at the hearing, determined that LMRs were liable to Clearwater, and thus ordered them to pay \$1,912,798.50. There are no grounds supporting vacatur, modification or correcting of the Arbitration Awards as enumerated in 9 U.S.C. §§10-11, and LMRs have not made any motion in court to vacate, modify, or correct the Arbitration Awards.

WHEREFORE, Petitioner Clearwater Insurance Company respectfully requests an Order confirming the Arbitration Awards and awarding Clearwater such other and further relief

as may be just and equitable.

Dated: New York, New York
September __, 2008

RUBIN, FIORELLA & FRIEDMAN LLP

By: 

Bruce M. Friedman
Attorneys for Petitioners
CLEARWATER INSURANCE
COMPANY et al.
292 Madison Avenue, 11th Floor
New York, New York 10017
(212) 953-2381