

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Petitioners,

- against -

ALLIANZ CORNHILL INTERNATIONAL,
~~A~~AMERICAN HOME ASSURANCE CO-NEW YORK,
ASSURANCES GENERALES DE FRANCE IART
(AGF), ~~C~~ONTINENTAL INSURANCE COMPANY,
~~D~~RAKE INSURANCE PLC, ~~E~~EAGLE STAR INSUR-
ANCE CO., LTD., ~~E~~UROPEAN REINS. CO. OF
ZURICH, ~~E~~XCESS INSURANCE COMPANY, LTD.,
~~F~~IELDMILL INSURANCE CO., LTD., ~~F~~M INSUR-
ANCE CO., LTD., ~~F~~UJI INTERNATIONAL INS. CO.,
LTD., ~~G~~AN ASSURANCES IARD, ~~G~~UILDHALL
INSURANCE COMPANY LIMITED, ~~H~~ARPER
INSURANCE COMPANY UK LTD., ~~H~~EDDINGTON
INS. CO. (UK) LIMITED, ~~H~~ILLCOT RE LTD., ~~H~~OME
& OVERSEAS INS. CO., LTD., ~~I~~NSSTITUTO DE
REASSEGUROS DO BRASIL (IRB), ~~I~~NSURANCE
CORP. OF SINGAPORE UK LTD., ~~K~~X REINSUR-
ANCE CO., LTD., ~~L~~IBERTY MUTUAL INS. CO.
(MASS) LTD., ~~L~~ONDON & EDINBURG INS. CO.,
LTD., ~~M~~ERCANTILE & GEN REINS. CO. (UK),
~~M~~INSTER INSURANCE COMPANY LIMITED,
~~M~~ITSUI MAR & FIRE INS. (UK) LTD., ~~N~~ATION-
WIDE MUTUAL INSURANCE CO., ~~N~~IPPON FIRE
& MARINE INS. CO. (UK) LTD., ~~N~~RG GENERAL
RE, ~~O~~SLA REINSURANCE CO. (UK) LTD., ~~Q~~BE
REINSURANCE (UK) LTD., ~~R~~IVER THAMES
INSURANCE COMPANY LIMITED, ~~R~~IVERSTONE
INS. CO. UK LTD., ~~S~~IRIUS INSURANCE COMPANY
LIMITED, ~~S~~PHERE DRAKE INSURANCE LIMITED,
~~S~~T. PAUL TRAVELERS INS. CO., LTD., ~~T~~ENECOM
LTD., ~~T~~OKIO MARINE EUROPE INSURANCE LTD.,
~~U~~IONAMERICA INSURANCE COMPANY LIMITED,
VICTORY REINSURANCE COMPANY LIMITED and
ZURICH AGRIPPINA VERSICHERUNGS AG,

Respondents.

-----X

08 CIV 8695

**PETITION TO CONFIRM
ARBITRATION AWARD**

FILED
U.S. DISTRICT COURT
2008 OCT 10 PM 2:50
S.D. OF N.Y.

4. LMR Assurances Generales de France IART is an insurance company domiciled in France, with its principal offices at 87 rue de Richelieu, Paris, France.
5. LMR Continental Insurance Company is an insurance company domiciled in the United Kingdom with its principal offices in the United Kingdom.
6. LMR Drake Insurance PLC is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.
7. LMR Eagle Star Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in Belfast, United Kingdom.
8. LMR European Reinsurance Company of Zurich is an insurance company domiciled in Switzerland with its principal offices in Hamilton, Bermuda.
9. LMR Excess Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in the United Kingdom.
10. LMR Fieldmill Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.
11. LMR FM Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in Berkshire, United Kingdom.
12. LMR Fuji International Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.
13. LMR Gan Assurances IARD is an insurance company domiciled in France with its principal offices in Paris, France.
14. LMR Guildhall Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

15. LMR Harper Insurance Company UK, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in the United Kingdom.

16. LMR Heddington Insurance Company (UK) Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

17. LMR Hillcot Re, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

18. LMR Home & Overseas Insurance Company Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

19. LMR Instituto de Reasseguros do Brasil is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

20. LMR Insurance Corporation of Singapore UK, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

21. LMR KX Reinsurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

22. LMR Liberty Mutual Insurance Company (Mass), Ltd. is an insurance company organized under the laws of Massachusetts with its principal offices at 175 Berkeley Street, Boston, MA 02116.

23. LMR London & Edinburgh Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

24. LMR Mercantile & Gen Reinsurance Company (UK) is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

25. LMR Minster Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

26. LMR Mitsui Marine & Fire Insurance (UK), Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

27. LMR Nationwide Mutual Insurance Company is an insurance company organized under the laws of Ohio with its principal offices at One Nationwide Plaza, Columbus, OH 43215-2220.

28. LMR Nipon Fire & Marine Insurance Company (UK), Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in the United Kingdom.

29. LMR NRG General Re is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

30. LMR Oslo Reinsurance Company (UK) Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in Essex, United Kingdom.

31. LMR QBE Reinsurance (UK) Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

32. LMR River Thames Insurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in Surrey, United Kingdom.

33. LMR Riverstone Insurance Company UK Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in Brighton, United Kingdom.

34. LMR Sirius Insurance Company Ltd. is an insurance company domiciled in Switzerland with its principal offices in Switzerland.

35. LMR Sphere Drake Insurance Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

36. LMR St. Paul Travelers Insurance Company Ltd. is an insurance company organized under the laws of Minnesota with its principal offices at 385 Washington St., St Paul, MN 55102.

37. LMR Tenecom Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

38. LMR Tokio Marine Europe Insurance Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

39. LMR UnionAmerica Insurance Company Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in London, United Kingdom.

40. LMR Victory Reinsurance Company, Ltd. is an insurance company domiciled in the United Kingdom with its principal offices in Kent, United Kingdom.

41. LMR Zurich Agrippina Versicherungs AG is an insurance company domiciled in Germany with its principal offices in Germany.

Jurisdiction and Venue

42. This Petition is brought under the diversity jurisdiction of this Court, 28 U.S.C. § 1332(a)(2), since there is complete diversity of citizenship between the parties and the amount at issue is greater than \$75,000 exclusive of interest and costs.

43. The LMRs have consented to submit to the jurisdiction of the New York courts through the Service of Suit clause in the Reinsurance Agreements. The Reinsurance Agreements that were at issue in the arbitration involve matters of interstate commerce.

44. Venue in this judicial district and in this Court is proper pursuant to 28 U.S.C. § 1391(a)(2) and 9 U.S.C. § 9, since the arbitration was conducted in New York City.

The Reinsurance Agreements and the Arbitration Clauses

45. The dispute between the parties arose in connection with various reinsurance contracts pursuant to which LMRs reinsured Clearwater (the “Retrocession Agreements”). Representative copies of the Retrocession Agreements are attached as Exhibits 1-6 to the Affidavit of Bruce M. Friedman which accompanies Clearwater’s motion to confirm.

46. Each of the Retrocession Agreements contains an arbitration clause that requires, among other things, that “any dispute” arising out of the Retrocession Agreements be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire, meeting in New York, “unless otherwise agreed” (the “Arbitration Clauses”). Additionally, the Arbitration Clauses state that the majority decision of the board shall be “final and binding” upon all parties to the proceeding.

47. Each of the Reinsurance Agreements, with the exception of Treaty 1342, contains a service of suit clause under which LMRs agree to “submit to the jurisdiction of any Court of competent jurisdiction within the United States.” Under the terms of the service of suit clause, service of process may be made upon the law firm of Mendes & Mount in New York.

The Arbitration

48. By reason of the non-payment of reinsurance proofs of loss (i.e., billings) presented to LMRs under the Retrocession Agreements, Clearwater issued a Demand for Arbitration against LMRs and others pursuant to the Arbitration Clauses in the Retrocession Agreements seeking, among other things, monetary relief.

49. Thereafter, two party-appointed arbitrators and a neutral umpire (collectively, the “Panel”) were duly selected.

50. An arbitration hearing was conducted in the City of New York, commencing on June 3 and concluding on June 6, 2008, during which the Panel heard live testimony from witnesses for both sides, considered voluminous documentary presentations from the parties, and heard the arguments of counsel.

51. On or about July 23, 2008, the Panel issued a Final Order and Award. A copy of that document is attached as Exhibit A hereto. The Final Order and Award, among other things, directed LMRs to pay to Clearwater \$629,685.00 in unpaid principal, \$987,103.00 in interest and \$370,804.50 in attorneys’ fees, for a total of \$1,987,592.50.

52. The Final Order and Award directed LMRs to pay these amounts on or before August 15, 2008. LMRs have failed to fully honor the terms and conditions of the Final Order and Award.

53. 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 hereto. 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 amount of attorneys’ fees awarded was unchanged.

54. Under the terms of the Retrocession Agreements, the decision of the arbitrators may be confirmed in a court of competent jurisdiction.

55. The Final Order and Award and the Amended Final Award in all respects conform to the requirements of 9 U.S.C. § 9 governing confirmation of arbitration awards.

56. No prior application for confirmation of the Final Order and Award or Amended Final Award has previously been made in this or any other Court.

57. No grounds exist to support vacatur, modification or correction of the Arbitration Awards under 9 U.S.C. § 10 or § 11, and no such application has been made.

WHEREFORE, Petitioner Clearwater Insurance Company respectfully requests Judgment confirming the Final Order and Award and the Amended Final Award, and that the Court grant Clearwater such other and further relief as may be just and equitable in the circumstances.

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

Exhibit A

In the Matter of Arbitration between)
)
 Clearwater Insurance Company, et al.,)
)
 Petitioners,)
)
 and)
)
 London Market Reinsurers,)
)
 Respondents.)
)
)
)
)
)

Before Members of the Panel:

 Frank J. Barrett, Umpire
 Klaus Kunze
 Robert Reinartz

FINAL ORDER AND AWARD

The Panel conducted a hearing on June 3, 4, 5, and 6, 2008 in this arbitration, it considered the evidence presented by the witnesses for the parties, considered the briefs, exhibits, and listened to the arguments of counsel. After an extensive review of all the facts submitted, the Panel has completed its deliberation and by at least a majority vote of its members orders the following:

1. Petitioners' request to be compensated for its attorney fees is granted in part. LMR is to pay attorney fees to Clearwater in the amount of \$370,804.50. This payment is to be made on or before close of business August 15, 2008.
2. Petitioners' request to be compensated for loss of interest is granted in part. LMR is to pay interest to Clearwater in the amount of \$987,103.00. This payment is to be made before close of business August 15, 2008.
3. Petitioners' request that payment be made to Clearwater of a balance due of \$629,685.00 is granted. Such payment is to be made on or before close of business August 15, 2008. However, if any claims which are a part of this unpaid balance have now been paid, that amount will be deducted from the \$629,685.00.
4. The Panel has responded to the parties' request for the adoption of a claims protocol. The following protocol is hereby ordered:

Both parties have requested the Panel include a Protocol governing the future handling of billings by Clearwater and payment by London Market Reinsurers ("LMR") on Category 2 claims. Utilizing the claims language found in the treaties which are the subject of this arbitration, and taking into account the factual situation which exists between the parties, the Panel has crafted a claims handling protocol which is fair and equitable to all parties as to Category 2 claims on a going forward basis and orders the following Protocol:

a. With the submission of any billing where LMR's share of the combined amount for loss and expense exceeds \$50,000, Odyssey, on behalf of Clearwater, ("Odyssey") shall submit a Retrocession Report which shall consist of supporting documentation from their cedents, including where available, copies of the policies, settlement analysis, litigation analysis and settlement agreement to enable LMR to understand the nature of the claim, the basis of the settlement, and how the billings to LMR were computed. Such submissions will be delivered to each subscribing LMR by Odyssey and/or its brokers, who will simultaneously provide a copy of the billing and supporting documentation to Mendes & Mount on those Category 2 claims where Mendes & Mount has been instructed by LMR, or to any other designated representative in connection with the Category 2 claims instructed by LMR. Within fifteen (15) days after Mendes has received the billing and documentation, Mendes is required to provide Odyssey with a statement as to what is missing or is incorrect as required by this Protocol.

b. Within thirty (30) days of receipt of any proof of loss (hereinafter "Proof") by LMR's designated representative and Mendes, unless LMR advises Odyssey otherwise in writing, LMR's designated representative and Mendes shall make any inquiry and submit its request for additional information or documentation setting forth the reasons why such additional information or documentation is necessary to determine LMR's liability or lack thereof for the amounts stated in the Proof. Such information or documentation need not include the material to which the Panel has denied access to LMR in its Interim Order No. 1, specifically copies of underlying policies or contracts issued by Odyssey to its cedents. Further, Odyssey is not required to provide LMR with its contract with cedents. Odyssey should respond to such request for additional information from LMR within thirty (30) days after receiving such request.

c. Any audit that LMR seeks to perform with respect to any Proof must be performed and a written wrap-up report given to Odyssey within the ninety (90)-day period from the date of receipt of Proof.


d. Within thirty (30) days of receipt of a response by Odyssey to LMR's inquiry or the date of LMR's file review, the Leader(s) shall either (a) reimburse Odyssey for the billing, (b) instruct Odyssey to draw down on available LOC's, (c) pay the billing under a reservation of rights, or (d) deny all or any portion of the billing together with a detailed explanation.

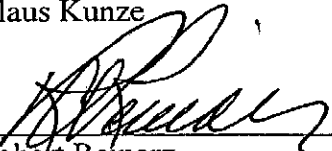
e. Interest at 9 percent per annum compounded annually shall accrue beginning with the 91st day following Odyssey's delivery of the billing and Retrocession Report to LMR's designated representative and Mendes, following any proof that any LMR did not pay in full and shall cease accruing when each LMR pays the billed amount together with the accrued interest thereon. Interest at 9 percent calculated in the same manner shall accrue on all amounts that each LMR pays under a reservation of rights from the time that LMR makes such payment until the time that Odyssey refunds any such payment as a result of any arbitral award compelling such refund.

5. The parties are to bear their own costs of the arbitration and each is responsible for 50 percent of the umpire's fees and expenses.

6. All other requests not specifically addressed in this Final Order and Award are denied.

So ordered this 23rd day of July, 2008.


Klaus Kunze


Robert Reimarz


Frank J. Barrett, Umpire

412367.7

Exhibit B

In the Matter of Arbitration between)	
)	
Clearwater Insurance Company, et al.,)	
)	Before Members of the Panel:
Petitioners,)	
)	
and)	Frank J. Barrett, Umpire
)	Klaus Kunze
London Market Reinsurers,)	Robert Reinartz
)	
Respondents.)	
)	
)	

AMENDED FINAL ORDER AND AWARD

Since the issuance of the Final Order and Award dated July 23, 2008, the Panel became aware of the inclusion by Clearwater Insurance Company in a balance due report to the Panel in which Highlands Insurance Company was erroneously included. Highlands Insurance Company was not a party in this arbitration. To correct this error, the Panel orders the following:

1. The amount of interest found in Paragraph 2 of the Final Order and Award is hereby changed from \$987,103.00 to \$962,012.00.
2. Further, the amount of balances due found in Paragraph 3 of the Final Order and Award is hereby changed from \$629,685.00 to \$579,982.00.

No other provisions of the Final Order and Award are to be amended.

So ordered this 4th day of September, 2008.

ON BEHALF OF THE PANEL



 Frank J. Barrett, Umpire