

FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

2009 FEB -6 PM 3:57
STEPHEN J. NEWIG, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

_____)
SWISS REINSURANCE COMPANY LTD.)
(As successor-in-interest to Swiss Re Life &)
Health (Ireland) Limited),)
)
Petitioner,)
)
v.)
)
LINCOLN NATIONAL REINSURANCE)
COMPANY (BARBADOS) LIMITED,)
)
Respondent.)
_____)

Cause No. **11 09CV 036**

**PETITIONER SWISS REINSURANCE COMPANY LTD.’S MOTION TO FILE
UNDER SEAL ITS PETITION TO CONFIRM AN ARBITRAL AWARD
UNDER THE NEW YORK CONVENTION AND SUPPORTING DOCUMENTS**

Pursuant to Local Rule 5.3 of the Local Rules for the United States District Court for the Northern District of Indiana, Petitioner Swiss Reinsurance Company Ltd. (“SRC”) respectfully moves the Court to file under seal its Petition to Confirm an Arbitral Award Under the New York Convention and Supporting Documents.

In support of this motion, SRC informs the Court that the parties to the instant proceeding – SRC (as successor-in-interest to Swiss Re Life & Health (Ireland) Limited) and Lincoln National Reinsurance Company (Barbados) Limited – previously entered into a Confidentiality Agreement, whereby they agreed that any Arbitration Information (as defined in the same) disclosed during a proceeding to confirm an arbitral award stemming from an arbitration proceeding between them would, subject to court approval, remain sealed. See Confidentiality

Agreement, §§ 2, 3(b) and 4. A copy of the parties' Confidentiality Agreement is attached to the instant motion as Exhibit A.¹

Pursuant to the Federal Rules of Civil Procedure, this Court may order, for good cause shown, that certain filings or other parts of the Court's record be sealed, including documents containing confidential commercial information. *See* Fed. R. Civ. P. 5.2(d), 26(c)(1)(G); *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999).

In light of the parties' Confidentiality Agreement and the inclusion in the instant pleadings of information that could be considered as Arbitration Information, Petitioner SRC respectfully requests that the Court file under seal the following documents:

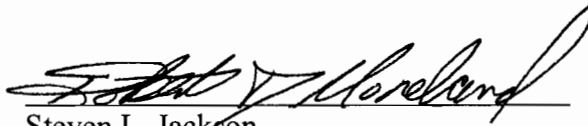
Petitioner SRC's:

- (1) Petition to Confirm an Arbitral Award Under the New York Convention;
- (2) Memorandum in Support of Its Petition to Confirm an Arbitral Award Under the New York Convention; and
- (3) Declaration of John L. Jacobus in Support of Petition to Confirm an Arbitral Award Under the New York Convention.

WHEREFORE, Petitioner SRC respectfully requests the Court to grant its Motion to Seal Its Petition to Confirm an Arbitral Award under the New York Convention and Supporting Documents as described herein.

¹ As previously noted, SRC is the successor-in-interest by way of novation to the rights and interests of Swiss Re Life & Health (Ireland) Limited, a former corporation (now in liquidation) that is a signatory to the above-mentioned confidentiality agreement.

Respectfully submitted,



Steven L. Jackson
Robert D. Moreland
David D. Storey
BAKER & DANIELS LLP
111 East Wayne Street
Suite 800
Fort Wayne, IN 46802
tel: (260) 424-8000
fax: (260) 460-1700

Dated: February 6, 2009

Counsel for Swiss Reinsurance Company Ltd.

Of Counsel:

Richard H. Porter
John L. Jacobus
Jon T. Neumann
James L. Stuart
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
tel: (202) 429-3000
fax: (202) 429-3902

CERTIFICATE OF SERVICE

The undersigned does hereby certify that Petitioner Swiss Reinsurance Company Ltd.'s Motion to File Under Seal Its Petition to Confirm An Arbitral Award Under the New York Convention and Supporting Documents was duly filed and served upon the following counsel of record for Lincoln National Reinsurance Company (Barbados) Limited on this 6th day of February, 2009 by certified U.S. Mail, return receipt requested:

David M. Spector
Schiff Hardin LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

with further alternative service on the following on this 6th day of February, 2009 by International Federal Express delivery:

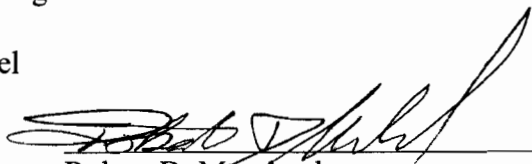
Lincoln National Reinsurance Company (Barbados) Limited
c/o The Registrar of the Supreme Court of Barbados
Law Courts, Coleridge Street, Bridgetown, Barbados

Who will then serve the following parties pursuant to The Hague Convention:

Board of Directors
Lincoln National Reinsurance Company (Barbados) Limited
1st Floor, Trident House
Lower Bridge Street Bridgetown, Barbados

Registered Office:
David King & Co.
Trident House
Bridgetown, Barbados

Insurance Management Office:
Amphora Captive Managers Inc.
2nd Floor
CGI Building
Warrens
St. Michael


Robert D. Moreland

IN THE MATTER OF AN ARBITRATION

BETWEEN: -

SWISS RE LIFE & HEALTH (IRELAND) LIMITED,

Claimant,

- and -

LINCOLN NATIONAL REINSURANCE COMPANY (BARBADOS) LIMITED,

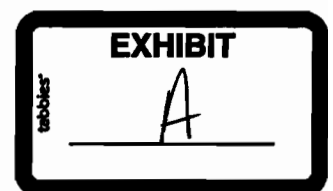
Respondent.

CONFIDENTIALITY AGREEMENT

1. The parties intending to be bound by this agreement are:
 - (a) Petitioner, Swiss Re Life & Health (Ireland) Limited, and its parent corporations, subsidiaries, affiliates, agents, employees, officers and directors ("Swiss Re Ireland").
 - (b) Respondent, Lincoln National Reinsurance Company (Barbados) Limited, and its parent corporations, subsidiaries, affiliates, agents, employees, officers and directors ("LnBar").

2. Except as provided in Paragraph 3 below, and absent written agreement between the parties to the contrary, Swiss Re Ireland and LnBar agree that all briefs and/or witness statements and/or depositions and/or hearing transcripts generated in the course of this arbitration, documents created for the arbitration or produced in the proceedings by the opposing party or third-parties, final award(s) and any interim decisions, correspondence, oral discussions and information exchanged in connection with the proceedings (hereinafter collectively referred to as "Arbitration Information") will be kept confidential. This Confidentiality Agreement will remain in effect even after conclusion of the arbitration proceedings.

3. Disclosure of Arbitration Information may be made:
 - (a) to the extent necessary to secure payment from retrocessionaires;



- (b) in connection with court proceedings relating to any aspect of the arbitration, including but not limited to motions to confirm, modify or vacate an arbitration award;
- (c) as is necessary in communications with auditors retained by either of the parties hereto, or federal, state, national or international regulators; and
- (d) as is necessary in order to comply with subpoenas, discovery requests or orders of any court.

4. Any disclosures pursuant to subparagraphs 3(a) and 3(c) shall be accompanied by a copy of this Confidentiality Agreement and an instruction to any recipient to maintain the confidentiality of all Arbitration Information. In connection with any disclosures pursuant to subparagraph 3(b), the parties agree, subject to court approval, to request that all submissions of Arbitration Information to a court shall be sealed. If either party is requested or required under subparagraph 3(d) to disclose Arbitration Information, subject to any applicable legal restrictions, that party will give written notice to the other as soon as possible after the subpoena, discovery request or court order is received. In all contexts, both parties will make good-faith efforts to limit the extent of the disclosures, if any, to be made, and will cooperate with each other in resisting or limiting disclosure of Arbitration Information.

5. For the purpose of conducting this arbitration, Arbitration Information may be disclosed on an as needed or as appropriate basis to the following persons only:

- (a) the arbitration Panel, who evidence by their execution hereof their undertaking to maintain Arbitration Information in confidence as set forth herein;
- (b) counsel for a party or employees of counsel's law firm who are assisting counsel;
- (c) employees and agents of the parties for purposes consistent with this agreement;
- (d) any party, deposition or hearing witness;
- (e) any person retained by counsel for a party to assist in this arbitration; provided, however, that such person shall be bound by the terms of this Confidentiality Agreement as if that person were a party, and shall so acknowledge by executing, prior to receipt of or access to material produced in this arbitration, an acknowledgement in the form attached hereto as Exhibit A; or
- (f) any potential non-party witness; provided, however, that such person to whom disclosure is made shall be informed by the disclosing party of the terms of this Confidentiality Agreement, and shall be advised that they are

bound by its terms. The party disclosing Arbitration Information to a potential non-party witness shall make a reasonable good faith effort to secure a signed acknowledgement in the form attached hereto as Exhibit A, and shall take all reasonable steps to see that documents shared with such potential non-party remain confidential. However, a refusal by any potential non-party formally to acknowledge the agreement shall not impair or impede the rights of any party to examine such witness with respect to such documents. It is understood, however, that any non-party witness who does not sign the acknowledgement shall not be entitled to retain any Arbitration Information.

6. Nothing in this Confidentiality Agreement shall prevent a party from using or disclosing its own documents produced in the arbitration or documents obtained other than through discovery in this arbitration.

7. The parties recognize that serious injury could result to any party and its business if the other party breaches its obligations under this agreement. Therefore, each party agrees that all parties will be entitled to seek a restraining order, injunction or equitable relief if another party breaches its obligations under this agreement, in addition to any other remedies and damages that would be available at law or equity. The court will make an independent judgment as to whether such relief is appropriate under the specific circumstances presented.

Members of the Panel:

Arbitrator: T. Richard Kennedy
T. Richard Kennedy

Arbitrator: Rodney D. Moore
Rodney D. Moore

Arbitrator: R. Stephen Radcliffe
R. Stephen Radcliffe

AGREED:

John L. Jacobus

Attorney For Claimant:
John L. Jacobus
Steptoe & Johnson, LLP

Dated: 11-02-07

David M. Spector

Attorney for Respondent:

David M. Spector

Schiff Hardin LLP

Dated: 11/2/2007

IN THE MATTER OF AN ARBITRATION

BETWEEN: -

SWISS RE LIFE & HEALTH (IRELAND) LIMITED,

Claimant,

- and -

LINCOLN NATIONAL REINSURANCE COMPANY (BARBADOS) LIMITED,

Respondent.

**ACKNOWLEDGMENT OF
CONFIDENTIALITY AGREEMENT**

1. I live at _____,
_____.
2. I am employed as (state position) _____ by (state name and
address of employer) _____,
_____.
3. I am aware that the parties to In the Matter of An Arbitration Between Swiss Re
Life & Health (Ireland) Limited and Lincoln National Reinsurance Company (Barbados) Limited
(the parties hereinafter referred to as "Swiss Re Ireland" and "LnBar") have entered into a
Confidentiality Agreement dated _____. I have received and read a copy of
that Confidentiality Agreement.
4. I agree to review or otherwise use the material produced in the instant arbitration
by Swiss Re Ireland and/or LnBar only under general supervision of a party's counsel and only in
connection with this particular arbitration.
5. I agree that I will be bound by the terms of the Confidentiality Agreement as
though I were a party to the arbitration, and I will not disclose or discuss material produced by
Swiss Re Ireland and/or LnBar to or with any person other than those permitted access to such
material under the Confidentiality Agreement.

_____ (Signature)

Acknowledged and Agreed to this ____ day of _____, 200__.