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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SUN LIFE ASSURANCE COMPANY OF
CANADA,

Petitioner,

vs.

LIBERTY MUTUAL INSURANCE
COMPANY as successor in interest to
GOLDEN EAGLE INSURANCE
CORPORATION, as claims administrator for
Golden Eagle Insurance Company and SAN
DIEGO INSURANCE COMPANY,

Respondents.

CASE NO. 09 CV 2133 JM (CAB)

**ORDER GRANTING MOTION TO
COMPEL ARBITRATION AND
STAY LITIGATION**

Doc. No. 9

In this action, Petitioner Sun Life Assurance Company of Canada (“Sun Life”) seeks the confirmation of an arbitration award. (Doc. No. 1). Respondents Liberty Mutual Insurance Company (“Liberty Mutual”), Golden Eagle Insurance Corporation (“Golden Eagle”), and San Diego Insurance Company (“SDIC”) contend that, in seeking confirmation of the award, Sun Life also seeks substantive rulings regarding the rights and liabilities of the parties that the arbitration panel did not address. Arguing that these substantive rulings are subject to the parties’ arbitration agreements, Respondents have filed a motion to compel arbitration and stay litigation. (Doc. No. 9). For the following reasons, the court GRANTS Respondents’ motion to compel arbitration and stay the case.

1 **I. BACKGROUND**

2 Sun Life and Golden Eagle’s predecessor entered two reinsurance contracts in 1995. (Doc.
3 No. 1, Petition for Confirmation of Arbitration Panel’s Award, hereinafter “Pet.,” ¶ 16). Golden
4 Eagle’s predecessor later assigned the contracts to SDIC. (Pet. ¶ 16). Golden Eagle became the
5 claims administrator for the contracts. (Pet. ¶ 16). Liberty Mutual is the parent company of both
6 SDIC and Golden Eagle. (Doc. No. 9, Motion to Compel Arbitration and Stay Litigation, hereinafter
7 “Mot.,” at 3).

8 The parties disputed their obligations under the reinsurance contracts. Both contracts
9 contained identical arbitration clauses that provide, “[a]s a condition precedent to any right of action
10 hereunder, in the event of any dispute or difference of opinion hereinafter arising with respect to this
11 Contract, it is hereby mutually agreed that such dispute or difference of opinion shall be submitted to
12 arbitration.” (Pet. Ex. B, Ex. C). Therefore, the parties submitted to arbitration in 2001. (Pet. ¶ 2).

13 The arbitrators issued their ruling in 2004, but left the parties to follow the commutation
14 process established by the contracts to fully wind up the relationship. (Pet. ¶ 5). The parties, however,
15 could not agree on a commutation amount. (Pet. ¶ 8). Therefore, per the commutation process, the
16 parties participated in a second arbitration before a panel of three actuaries to determine the
17 commutation amount. (Pet. ¶ 8). The actuarial arbitration panel issued its ruling on March 16, 2009.
18 (Pet. ¶ 8).

19 Sun Life seeks to affirm the actuarial arbitration ruling. (Pet. ¶ 9). Respondents contend that
20 the affirmation of the second arbitration award—which, in Sun Life’s terms, would “resolve all issues
21 between the parties and terminate their relationship” (Pet. ¶ 9)— would require substantive rulings
22 that must be arbitrated pursuant to the two reinsurance contracts. (Mot. at 2). In particular, just prior
23 to the filing of this action, Respondents sought to arbitrate whether Sun Life owed any interest on the
24 award ordered by the actuarial arbitration panel. (Mot. at 5). With this active dispute regarding
25 interest, Respondents argue, any court action that would “resolve all issues” would conflict with the
26 parties’ arbitration agreements. Therefore, Respondents have filed a motion to compel arbitration and
27 stay the litigation.

28

1 **II. LEGAL STANDARD**

2 The Federal Arbitration Act (“FAA”) provides that courts shall direct “parties to proceed to
3 arbitration in accordance with the terms of [an arbitration] agreement.” 9 U.S.C. § 4. “The FAA
4 embodies a clear federal policy in favor of arbitration.” *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716,
5 719 (9th Cir. 1999). Therefore, arbitration agreements should be rigorously enforced. *Id.*
6 Furthermore, “any doubts concerning the scope of arbitrable issues should be resolved in favor of
7 arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24-25 (1983).

8 **III. DISCUSSION**

9 The arbitration agreements between the parties is undoubtedly broad. It covers any dispute
10 “arising with respect” to the reinsurance contracts. The Ninth Circuit interpreted similar language
11 broadly in *Simula, Inc. v. Autoliv, Inc.* 174 F.3d at 720 (“[a]ll disputes arising in connection with this
12 Agreement”). The court sees no difference between “arising with respect to” and “arising in
13 connection with.” Therefore, the court will apply this broad language to the dispute between the
14 parties.

15 The parties disagree about whether Sun Life owes interest on the commutation award. Sun
16 Life seeks to avoid this dispute by confirming the arbitration award and “terminating the relationship
17 between the parties.” (Pet. ¶ 9). In these circumstances, however, it is not proper for the court to
18 terminate the relationship of the parties. The relationship of the parties is defined by the reinsurance
19 contracts that contain the arbitration agreements. The court cannot terminate the relationship without
20 interpreting those contracts. Because the court would have to interpret the contracts to decide whether
21 Sun Life owes interest on the commutation amount and whether the relationship should be terminated,
22 this dispute arises with respect to the reinsurance contracts. Therefore, it must be determined by
23 arbitration.

24 Sun Life argues that the reinsurance contracts were affirmatively terminated when Sun Life
25 paid the commutation amount, therefore there are no operative contracts containing arbitration clauses
26 that compel arbitration. The Ninth Circuit, however, has made clear that even whether a contract has
27 terminated, and whether its arbitration clause therefore still applies, is a question for the arbitrator.
28 *See Bhd. of Teamsters and Auto Truck Divers Local # 70 v. Interstate Distrib. Co.*, 832 F.2d 507, 510

1 (9th Cir. 1987). This conclusion flows naturally from the fact that to determine whether a contract
2 has terminated, one must interpret the contract. *Id.* In contracts, such as those at issue here, that
3 contain broad arbitration clauses, the arbitrator must do this contract interpretation. *Id.*


4 To grant the relief Sun Life seeks, the court would have to do more than merely review the
5 regularity of the arbitration proceedings. *Cf.* 9 U.S.C. §§ 10-11 (determining the limited review of
6 arbitration awards). Rather, the court would necessarily review the contracts and determine
7 substantive rights and liabilities of the parties. As the parties have agreed that this review should be
8 done in arbitration, Sun Life is not currently entitled to confirmation of the arbitrator's ruling.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the court hereby GRANTS Respondents' motion to compel
11 arbitration. The action is hereby STAYED pending arbitration of the matters at issue.

12 **IT IS SO ORDERED.**

13 DATED: December 9, 2009

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16 Hon. Jeffrey T. Miller
17 United States District Judge
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