

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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CENTURY INDEMNITY COMPANY,	:	
SUCCESSOR TO CALIFORNIA UNION	:	
INSURANCE COMPANY,	:	
	:	CIVIL ACTION NO.
Petitioner,	:	
	:	
v.	:	
	:	
ROYAL BELGE INCENDIE REASSURANCE	:	
S.A. (N/K/A AXA BELGIUM),	:	
	:	
Respondent.	:	
	:	
	:	
	:	

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**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2010, upon consideration of the Motion to Compel Arbitration and memorandum of law in support thereof of Century Indemnity Company, as successor to California Union Insurance Company, and any opposition thereto, it is hereby **ORDERED** and **DECREED** as follows:

(1) The arbitration between Century and AXA Belgium under Treaty 3083 shall proceed before an arbitration panel consisting of David Thirkill, as party-appointed arbitrator for Century, Ronald Gass, as party-appointed for AXA Belgium, and \_\_\_\_\_ whom this Court has selected from the slate of qualified candidates proposed by David Thirkill.

(2) AXA Belgium shall pay Century its reasonable attorneys' fees and costs incurred in connection with the filing of Century's Motion to Compel Arbitration.

**UNITED STATES DISTRICT COURT:**

\_\_\_\_\_  
J.

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

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	:	
Respondent.	:	
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**CENTURY INDEMNITY COMPANY’S  
MOTION TO COMPEL ARBITRATION**

Petitioner, Century Indemnity Company, as successor to California Union Insurance Company (“Century”), pursuant to Section 206 of the Federal Arbitration Act, 9 U.S.C. § 206, hereby petitions this Court for an order directing Royal Belge Incendie Reassurance, S.A. (n/k/a AXA Belgium) (“AXA Belgium”) to proceed to arbitration under a reinsurance contract – the Facultative Obligatory Surplus Reinsurance Agreement (“Treaty 3083” or the “Treaty”) – before an arbitration panel consisting of the two arbitrators selected by the parties and an umpire selected by this Court.

In support thereof, Century avers as follows (as more fully explained in the accompanying memorandum of law):

**THE PARTIES**

1. Century is a Pennsylvania company with its principal place of business at 436 Walnut Street, Philadelphia, Pennsylvania, 19106.

2. Upon information and belief, Respondent, AXA Belgium, is an alien corporation with its principal place of business in Brussels, Belgium.

**JURISDICTION AND VENUE**

3. This motion is submitted under Chapter 2 of the Federal Arbitration Act, 9 U.S.C. §§ 201-208, commonly referred to as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the “Convention”). This proceeding involves commercial arbitration agreements that are not entirely between citizens of the United States, and thus falls within the New York Convention. *See* 9 U.S.C. § 202.

4. This Court has subject matter jurisdiction in this case pursuant to Section 203 of the Federal Arbitration Act, which provides: “An action or proceeding falling under the [New York] Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States . . . shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.” 9 U.S.C. § 203; *accord* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

5. This Court has personal jurisdiction over AXA Belgium because the reinsurance contract at issue in the subject arbitration expressly provides that AXA Belgium “will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.” *See* Treaty 3083, attached as Exhibit 1 to the accompanying memorandum of law, at Article 21, Service of Suit Clause No. 20-03.2.

6. This Court also has personal jurisdiction over AXA Belgium because of AXA Belgium's regular and repeated contacts with the Commonwealth of Pennsylvania. For example, AXA Belgium participated on many of Century's reinsurance contracts, and has repeatedly and consistently conducted business with Century and related entities within Pennsylvania for many years, and presently continues to do so.

7. Venue is proper in this district because Section 204 of the Federal Arbitration Act provides that a petition to compel arbitration under the Convention "may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought . . . ." 9 U.S.C. § 204. In the absence of an agreement to arbitrate between the parties, Century could have sued AXA Belgium in this Court.

#### **BACKGROUND**

8. In a reinsurance treaty, a reinsurer typically agrees to indemnify the reinsured with respect to a specified portion of the reinsured's obligations under insurance policies issued by the reinsured, in exchange for a portion of the premium paid to the reinsured for the underlying insurance policies.

9. AXA Belgium participated as Century's reinsurer under Treaty 3083 in various combinations and percentages over time, for treaty years 1981 through 1986. *See* Exh. 1 to memo of law.

10. Under the Treaty, Century was permitted to cede and AXA Belgium was obligated to accept as pro rata reinsurance Century's surplus under any and all casualty business, produced and underwritten by California Union Insurance Company. *See* Exh. 1 to memo of law, at Art. 1.

11. Century has settled and paid certain claims under its casualty business covered by the Treaty and has submitted reinsurance billings to AXA Belgium for its share of the losses.

12. AXA Belgium has refused to pay the amounts billed.

13. The Treaty contains an arbitration clause, which provides that “any irreconcilable dispute between the parties [Century] and [AXA Belgium] to this Agreement will be submitted for decision to a board of arbitration composed of two arbitrators and an umpire . . . . Each party shall appoint its arbitrator and the two arbitrators shall choose an umpire before instituting the hearing . . . . If the two arbitrators fail to agree upon the appointment of an umpire within four weeks after their nominations, each of them shall name three, of whom the other shall decline two, and the decision shall be made by drawing lots.” *See* Exh. 1 to memo of law at Art. 19, Arbitration Clause No. 22-01.

14. Treaty 3083’s arbitration clause calls for an expedited arbitration process as evidenced by its language requiring Century to “submit its initial brief within 45 days from appointment of the umpire . . . . [AXA Belgium to] submit its brief within 45 days thereafter and [Century to] submit a reply brief within 30 days after the filing of [AXA Belgium’s] brief.” *See* Exh. 1 to memo of law at Art. 19, Arbitration Clause No. 22-01.

15. On November 6, 2009, Century demanded arbitration against AXA Belgium pursuant to the arbitration clause in Treaty 3083 (“Century’s Arbitration Demand”). A copy of Century’s Arbitration Demand is attached to Century’s memorandum of law as Exhibit 2.

16. Acknowledging that the present dispute is ripe for arbitration, on November 18, 2009, AXA Belgium issued a counter-demand, seeking to have the arbitration panel determine a purported offset claim. A copy of AXA Belgium’s counter-demand is attached to Century’s memorandum of law as Exhibit 3.

17. On December 5, 2009, AXA Belgium, in keeping with the terms of the Treaty, and further acknowledging that there is a present arbitrable dispute between the parties, appointed Ronald Gass as its arbitrator. A copy of AXA Belgium's December 5, 2009 correspondence is attached to Century's memorandum of law as Exhibit 4.

18. On December 7, 2009, Century appointed David Thirkill as its arbitrator. A copy of Century's December 7, 2009 correspondence is attached to Century's memorandum of law as Exhibit 5.

19. Pursuant to the terms of the Treaty, the deadline for the party-appointed arbitrators to agree upon an umpire expired on January 4, 2010 – four weeks from the date Century appointed Mr. Thirkill.

20. Since Mr. Thirkill's appointment, he has been ready and willing to work with Mr. Gass to select an umpire, and has made several attempts to do so. Mr. Thirkill has been ready to provide a slate of three umpire candidates, as required by the terms of Treaty 3083.

21. Mr. Gass, on the other hand, has continually stonewalled Mr. Thirkill's efforts and has refused to move forward with the umpire selection process without further instruction from AXA Belgium.

22. On December 31, 2009, counsel for Century advised AXA Belgium's counsel that the Treaty's deadline for the appointment of an umpire was approaching and requested that AXA Belgium instruct Mr. Gass to put forth a slate of proposed umpires. A copy of Century's December 31, 2009 correspondence is attached to Century's memorandum of law as Exhibit 6.

23. AXA Belgium did not respond to Century's correspondence.

24. On or about January 4, 2010, Mr. Thirkill contacted Mr. Gass to move forward with the umpire selection process. Mr. Thirkill was prepared to nominate Paul Hawksworth,

Elizabeth Thompson and Clive Becker-Jones as candidates for umpire. All three of these individuals are highly regarded reinsurance arbitrators. Each of their CVs is attached to Century's memorandum of law as Exhibits 7-9 respectively.

25. Rather than put forth a slate of umpires, Mr. Gass again informed Mr. Thirkill that he would not move forward with the umpire selection process until he received instruction to do so from AXA Belgium's counsel.

26. On January 5, 2010, Century's counsel advised AXA Belgium's counsel that the time period in which an umpire was to be selected had expired and that Century would move to compel the selection of an umpire if Mr. Gass did not put forth an umpire slate by close of business on January 6, 2010. A copy of Century's January 5, 2010 correspondence is attached to Century's memorandum of law as Exhibit 10.

27. On January 6, 2010 AXA Belgium's counsel responded and stated AXA Belgium would get back to Century within 24 hours. A copy of AXA Belgium's January 6, 2010 correspondence is attached to Century's memorandum of law as Exhibit 11.

28. AXA Belgium did not respond to Century within 24 hours and as of this filing, has failed to put forth a slate of proposed umpires.

29. As set forth above and as more fully discussed in Century's memorandum of law, AXA Belgium and its arbitrator, Ronald Gass, have consistently refused to move forward with the selection of the umpire and have stalled the arbitration proceedings without justification.

30. Section 206 of the Convention confers upon this Court the power to compel arbitration. In this regard, 9 U.S.C. § 206 provides, in pertinent part, that "[a] court having jurisdiction under this chapter may direct that arbitration be held in accordance with the

agreement at any place therein provided for, whether that place is within or without the United States.”

31. Section 206 of the Convention also confers upon this Court the power to “appoint arbitrators in accordance with the provisions of [Treaty 3083].”

32. Section 208 of the Convention provides that “Chapter 1 [of the FAA] applies to actions and proceedings brought under [the New York Convention] to the extent that chapter is not in conflict with [the New York Convention].”

33. Section 5 of the FAA provides “if a method [for the selection of arbitrators is] provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire . . . then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire.”

34. AXA Belgium’s refusal to avail itself of Treaty 3083’s method for the selection of the umpire has resulted in a lapse in the arbitration proceedings.

35. Section 206 of the Convention, 9 U.S.C. § 206, requires that this Court issue an order compelling AXA Belgium to proceed with the arbitration demanded by Century.

36. Section 206 of the Convention, 9 U.S.C. § 206, empowers the Court to select the umpire from the slate of umpires proposed by Mr. Thirkill.

37. Section 5 of the FAA, 9 U.S.C. § 5, also empowers the Court to select the umpire from the slate of umpires proposed by Mr. Thirkill.

WHEREFORE, for the reasons stated herein, and as more fully explained in the accompanying memorandum of law, Century requests that this Court enter an order:



(1) Ordering the arbitration between Century and AXA Belgium to proceed before an arbitration panel consisting of David Thirkill, Ronald Gass, and an umpire selected by the Court from the slate of candidates proposed by Mr. Thirkill; and

(2) Ordering AXA Belgium to pay Century its reasonable attorneys' fees and costs incurred in connection with the filing of this Motion.

Respectfully Submitted,

WHITE AND WILLIAMS LLP

BY:

CGR8194

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Dated: January 7, 2010

*Attorneys for Petitioner  
Century Indemnity Company*

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

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CENTURY INDEMNITY COMPANY,	:	
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ROYAL BELGE INCENDIE REASSURANCE	:	
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	:	
Respondent.	:	
	:	
	:	
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**CENTURY INDEMNITY COMPANY’S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION**

**I. INTRODUCTION**

Petitioner, Century Indemnity Company, as successor to California Union Insurance Company (“Century”), seeks an order compelling Royal Belge Incendie Reassurance S.A. (n/k/a AXA Belgium) (“AXA Belgium”) to arbitrate a dispute between the parties in accordance with the terms of a reinsurance contract between Century and AXA Belgium, commonly known as Treaty 3083. Century has submitted several billings to AXA Belgium pursuant to the terms of the contract, which have not been paid. AXA Belgium’s only defense to payment is a purported right of contractual offset. The contract could not be clearer that Century’s right to payment and AXA Belgium’s obligation to pay – which require interpretation of the parties contractual rights and obligations – are for an arbitration panel to decide: “any irreconcilable dispute between [Century] and [AXA Belgium] [under Treaty 3083] will be submitted for decision to a board of arbitration composed of two arbitrators and an umpire.” *See* Facultative Obligatory Surplus

Reinsurance Agreement (Treaty 3083) attached hereto as Exhibit 1 at Art. 19, Arbitration Clause No. 22-01. AXA Belgium does not disagree that the present dispute must be arbitrated, but for some reason, AXA Belgium is not willing to move forward consistent with the contractually-agreed procedure for forming the arbitration panel within the contractually agreed time period.

Treaty 3083 contemplates an expedited process for resolution by arbitration of disputes arising under the terms of that treaty, and provides a very specific process for and specific time periods in which the parties are to each name an arbitrator, select an “umpire,” and submit their respective cases to the arbitration panel. Although AXA Belgium acknowledged its obligation to arbitrate insofar as it appointed an arbitrator, AXA Belgium has refused to move forward with the timely selection of the umpire, stalling the process indefinitely. Under the terms of the Treaty as well as the FAA, AXA Belgium must be compelled to move forward immediately with arbitration under Treaty 3083. To facilitate this, this Court is empowered to and should select the umpire from the slate of candidates offered by Century’s arbitrator.

## **II. FACTUAL BACKGROUND**

AXA Belgium participated as Century’s reinsurer under Century’s Facultative Obligatory Surplus Reinsurance Agreement (“Treaty 3083” or the “Treaty”) in various combinations and percentages over time, for treaty years 1981 through 1986. *See* Exhibit 1. Under the Treaty, Century was permitted to cede and AXA Belgium was obligated to accept as pro rata reinsurance, Century’s surplus under any and all casualty business, produced and underwritten by California Union Insurance Company. *Id.* at Art. 1. The Treaty requires that disputes between Century and AXA Belgium be submitted to arbitration as follows:

[A]ny irreconcilable dispute between [Century] and [AXA Belgium] [under Treaty 3083] will be submitted for decision to a board of arbitration composed of two arbitrators and an umpire . . . . Each party shall appoint its arbitrator and the two arbitrators shall choose an umpire before instituting the hearing . . . . If the two arbitrators fail to agree upon the appointment of an umpire within four weeks after their nominations, each of them shall name three, of whom the other shall decline two, and the decision shall be made by drawing lots. [Century] shall submit its initial brief within 45 days from appointment of the umpire. [AXA Belgium] shall submit its brief within 45 days thereafter and [Century] may submit a reply brief within 30 days after the filing of [AXA Belgium's] brief.

*See* Exhibit 1 at Art. 19, Arbitration Clause No. 22-01.

Century has settled and paid certain claims that come within the coverage of Treaty 3083 and has submitted reinsurance billings to AXA Belgium for its share of the losses. AXA Belgium has refused to pay the amounts billed. The only reason AXA Belgium has offered for its non-payment is a purported right to offset certain balances allegedly owed to AXA Belgium from a Century affiliate – ACE INA – under a different and unrelated reinsurance program, known as the Montgomery & Collins program (the “M&C Treaty”).

On November 6, 2009, Century demanded arbitration against AXA Belgium pursuant to the Treaty 3083 arbitration clause. The arbitration demand sets forth the following affirmative relief sought by Century:

Century seeks to recover all unpaid amounts billed to AXA Belgium under [Treaty 3083]. Century will request the panel of arbitrators to order immediate payment of all outstanding amounts, a declaration of Century's rights and AXA Belgium's obligations with respect to payment of future billed amounts, interest, enforcement of the loss funding provision of the treaty, and other further relief that may be specific and appropriate.

*See* Century's November 6, 2009 Demand attached as Exhibit 2. Acknowledging that the present dispute is ripe for arbitration, on November 18, 2009, AXA Belgium issued a counter-demand, seeking to have the arbitration panel determine its offset claim. *See* AXA Belgium's

November 18, 2009 counter-demand attached as Exhibit 3. On December 5, 2009, AXA Belgium appointed Ronald Gass as its arbitrator. *See* AXA Belgium's email attached as Exhibit 4. On December 7, 2009, Century in turn appointed David Thirkill. *See* Century's December 7, 2009 email attached as Exhibit 5. Since the appointment of the parties' respective arbitrators, however, AXA Belgium has refused to move forward with the arbitration.

As contemplated by the arbitration provision in the contract, Mr. Thirkill contacted Mr. Gass to select an umpire shortly after his appointment. Mr. Thirkill was prepared to work with Mr. Gass to appoint an umpire or, if he and Mr. Gass were unable to agree on an umpire by the Treaty's deadline of January 4, 2010, to put forth a slate of three proposed umpires and have Mr. Gass do the same. Mr. Thirkill's initial efforts to move the arbitration forward were stalled by Mr. Gass. Mr. Gass said he could not move forward without further instruction from counsel for AXA Belgium. Following a telephone discussion, on December 31, 2009, counsel for Century advised AXA Belgium's counsel that the Treaty's deadline for the appointment of an umpire was approaching and requested that AXA Belgium instruct Mr. Gass to put forth a slate of proposed umpires as required by the terms of the Treaty. *See* Century's December 31, 2009 e-mail attached as Exhibit 6. AXA Belgium did not respond to the December 31, 2009 e-mail, nor did Mr. Gass provide Mr. Thirkill with a slate of proposed umpires. Accordingly, on or about January 4, 2010, after the four-week time period to agree upon an umpire had expired, Mr. Thirkill again contacted Mr. Gass in an attempt to finally move the umpire selection process forward. At this time, Mr. Thirkill was prepared to nominate Paul Hawksworth, Elizabeth Thompson and Clive Becker-Jones as candidates for umpire, all of whom are well-known,

extremely experienced reinsurance arbitrators.<sup>1</sup> Rather than put forth a slate of umpires, Mr. Gass simply refused to proceed, again stating that he was unable to go forward with the umpire selection process without further instruction from counsel for AXA Belgium. In light of Mr. Gass' response, on January 5, 2010, Century's counsel advised AXA Belgium's counsel that the Treaty required Mr. Gass to put forth a slate of proposed umpires and that Century would have no choice but to move to compel the selection of an umpire if Mr. Gass did not put forth a slate of umpire candidates by close of business January 6, 2010. *See* Century's January 5, 2010 e-mail attached as Exhibit 10. On January 6, 2010, AXA Belgium's counsel responded and stated AXA Belgium would get back to Century within 24 hours. *See* AXA Belgium's January 6, 2010 e-mail attached as Exhibit 11. AXA Belgium did not respond within 24 hours, and, as of this filing, has failed to set forth a slate of proposed umpires. Based on the above, it appears that AXA Belgium has no present intention of proceeding to arbitration as directed by the terms of Treaty 3083.

### **III. ARGUMENT**

#### **A. This Court Should Compel AXA Belgium to Arbitrate Under Treaty 3083.**

The Federal Arbitration Act, 9 U.S.C. §§ 201-208 (Chapter 2), provides for enforcement of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "Convention"). *See* 9 U.S.C. § 201. The Convention confers upon this Court the power to compel arbitration. Section 206 of the Convention specifically provides that "[a] court having jurisdiction under this chapter may direct that arbitration be held in accordance with the

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<sup>1</sup> The CVs of Mr. Thirkill's proposed umpire candidates are attached as Exhibits 7-9, respectively.

agreement at any place therein provided for, whether that place is within or without the United States.” In fact, a federal district court must compel arbitration where: (1) there is an agreement to arbitrate; and (2) the dispute at issue falls within the scope of that agreement. *Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 560 F.3d 156, 160 (3d. Cir. 2009). *Accord Bautista v. Star Cruises*, 396 F.3d 1289, 1289, 1295 n.7 (11th Cir. 2005); *Technetronics, Inc. v. Leybold-Graeus GmbH*, No. Civ. A. 93-1254, 1993 WL 197028, \*4 (E.D. Pa. June 9, 1993).

In this case, there can be no argument that the above requirements are met. It is undisputed that the parties signed a valid arbitration agreement, and that the reinsurance dispute, a question of Century’s contractual right to payment, falls within the scope of that agreement. Moreover, Treaty 3083 requires that the arbitration take place in the United States, a signatory to the New York Convention. Nothing in the contract, the law, or the factual record provides AXA Belgium a basis to delay commencement of the arbitration. AXA Belgium must be directed to proceed to arbitration immediately.

**B. This Court Should Appoint An Umpire Selected From David Thirkill’s Slate of Qualified Candidates.**

Pursuant to Section 208 of the Convention, “Chapter 1 [of the FAA] applies to actions and proceedings brought under [the New York Convention] to the extent that chapter is not in conflict with [the New York Convention]. 9 U.S.C. § 208. Section 5 of the FAA authorizes courts to appoint an arbitrator or umpire where the parties have not availed themselves of the method provided for in the arbitration agreement or when there has been a lapse of time in the process. 9 U.S.C. § 5; *see also* 9 U.S.C. § 206.

Specifically, Section 5 of the FAA states:

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be

a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; . . . .

9 U.S.C. § 5.

The Court of Appeals for the Ninth Circuit recognized this right in *Pacific Reins. Mgt. Corp. v. Ohio Reins. Corp.*, 814 F.2d 1324 (9th Cir. 1987) affirming the district court's appointment of a neutral umpire in a reinsurance arbitration. The court found that Section 5 of the FAA evidences Congress' intention of facilitating arbitration when an impasse occurs in the selection of an umpire, and found that the statute allows courts to appoint umpires "when the parties fail to utilize the given contractual procedure, or if there is a lapse of time, for whatever reason, in the naming of an umpire." *Pacific Reins.*, 814 F.2d at 1328-9. See also *Plastic & Cosmetic Surgical Group, P.C. v. Medi-Bill Associates, Inc.*, Civ. No. 06-3269, 2007 WL 4233485, \*1 (E.D. Pa. Nov. 30, 2007) (holding there is no dispute that district courts have authority to appoint an arbitrator under Section 5 of the Federal Arbitration Act); *Astra Footwear Industry v. Harwyn International*, 442 F. Supp. 907, 910 (S.D.N.Y. 1978) (holding 9 U.S.C. § 5 was drafted to provide a solution to the problem caused when an arbitrator selected by the parties cannot or will not perform).

Treaty 3083 provides what was intended to be a simple and quick method of selection for the umpire – "Each party shall appoint its arbitrator and the two arbitrators shall choose an umpire before instituting the hearing . . . . If the two arbitrators fail to agree upon the appointment of an umpire within four weeks after their nominations, each of them shall name three, of whom the other shall decline two, and the decision shall be made by drawing lots." See Exhibit 1 at Art. 19, Arbitration Clause No. 22-01. The four-week time period for the arbitrators to agree on an umpire expired on January 4, 2010, thereby requiring the arbitrators to each put



forth a slate of proposed umpire candidates. Century and Mr. Thirkill have made every effort to comply with the Treaty, and have repeatedly requested that AXA Belgium and Mr. Gass put forth a slate of umpires. *See* Exhibits 6 and 10. Despite these repeated requests, however, AXA Belgium and Mr. Gass have continually refused to offer a slate of umpire candidates, thereby preventing Century from proceeding with arbitration.

AXA Belgium has had ample opportunity to respond to Century's and Mr. Thirkill's requests that an umpire be appointed. AXA Belgium's failure to avail itself of the umpire selection process provided for in Treaty 3083 has resulted in an unnecessary lapse of time in the arbitration process and delay in the resolution of Century's right to payment. This Court should not allow AXA Belgium to benefit from such delay tactics. To facilitate immediate arbitration as contemplated by the contract, it would be most efficient, and consistent with Section 5 of the FAA, and Section 206 of the Convention, for this Court to select the umpire from Mr. Thirkill's slate of qualified candidates.

#### **IV. CONCLUSION**

Century has properly demanded arbitration under Treaty 3083, and AXA Belgium does not contest that the dispute is arbitrable. Rather, AXA Belgium seeks to deny Century its contractual right to an expedited arbitration proceeding by patently refusing to move forward with the selection of an umpire, with no legitimate basis to do so. AXA Belgium's behavior has effectively precluded Century from proceeding with the contractually-agreed method of dispute resolution and has forced Century to resort to this Court for assistance. The Court should not countenance AXA Belgium's behavior and should enforce the clear terms of Treaty 3083.

Accordingly, Century requests an order compelling AXA Belgium to proceed to arbitration immediately before an arbitration panel consisting of: David Thirkill, Ronald Gass, and an umpire selected by the Court from the slate of qualified candidates presented by Mr.

Thirkill. Century further requests that this Court order AXA Belgium to pay Century's attorneys' fees and expenses incurred in connection with its filing of this motion.

Respectfully submitted,

WHITE AND WILLIAMS LLP

BY: CGR8194

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Phone: 215.864.6301/6823

Dated: January 7, 2010

*Attorneys for Petitioner  
Century Indemnity Company*

**CERTIFICATE OF SERVICE**

I, Justin K. Fortescue, hereby certify that I caused to be served a true and correct copy of Petitioner Century Indemnity Company's Motion to Compel Arbitration, memorandum of law in support thereof, proposed order and Federal Rule of Civil Procedure 7.1 Disclosure Statement this 7<sup>th</sup> day of January, 2010, by Federal Express and electronic mail upon the following:

Elliot M. Kroll, Esquire  
Alan R. Lyons, Esquire  
Herrick, Feinstein, LLP  
2 Park Avenue  
New York, NY 10016

Respectfully submitted,

**WHITE AND WILLIAMS LLP**

JKF8256

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Dated: January 7, 2010