

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIBERTY MUTUAL INSURANCE COMPANY,)
LIBERTY SURPLUS INSURANCE)
CORPORATION, LIBERTY INSURANCE)
UNDERWRITERS, INC., and LIBERTY)
MUTUAL INSURANCE EUROPE LIMITED,)

Petitioners,)

v.)

CONTINENTAL INSURANCE COMPANY)
successor to NIAGARA FIRE INSURANCE)
COMPANY,)

Respondents.)

Civil Action No. _____

**LIBERTY MUTUAL’S PETITION FOR AN ORDER
COMPELLING ARBITRATION AND APPOINTING AN UMPIRE**

Petitioners Liberty Mutual Insurance Company, Liberty Surplus Insurance Corporation, Liberty Insurance Underwriters, Inc., and Liberty Mutual Insurance Europe Limited (collectively, “Liberty Mutual”) respectfully petition this Court for an order compelling arbitration and appointing an arbitrator pursuant to the Federal Arbitration Act and Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”), 9 U.S.C. § 5 and 206, and Local Rule 7.1. A Memorandum of Law is filed herewith.

Nature Of The Petition

1. This action arises from a dispute between Liberty Mutual and Respondents, The Continental Insurance Company, as successor to Niagara Fire Insurance Company (collectively,

“CNA”), over Liberty Mutual’s claim for reimbursement under certain variable quota share and excess cessions reinsurance contracts issued by CNA to Liberty Mutual and effective from July 1, 1999 to June 30, 2000 (the “Treaties”), in respect of sums paid by Liberty Mutual to its policyholder, Nortel Networks Corporation (“Nortel”), a corporation headquartered in Canada.

2. Liberty Mutual and CNA are engaged in an arbitration proceeding initiated by Liberty Mutual with respect to this dispute. The parties have been unable to select a third arbitrator (commonly known, in U.S. arbitrations, as the “umpire”), as required by the governing arbitration clauses set forth in the Treaties. The contractually required arbitration cannot proceed until an umpire is selected. This Petition seeks an order appointing Elizabeth Thompson, Paul Hawksworth, Richard Marrs, Susan Claflin or Mark Gurevitz -- each of whom is an experienced, industry-certified reinsurance umpire or arbitrator, who is well-suited to serve as umpire in this matter. In the alternative, although Liberty Mutual would prefer that the Court select a disinterested industry arbitrator, this Petition seeks an order appointing a retired Massachusetts federal or state court judge.

3. Contemporaneous with the filing of this Petition, Liberty Mutual has filed its Memorandum Of Law In Support Of Liberty Mutual’s Petition For An Order Compelling Arbitration And Appointing An Umpire (referenced, *supra*, at p. 1). Liberty Mutual has also filed the Affidavit of Michael R. O’Malley herewith. The facts and arguments contained in these additional filings are incorporated into this Petition, as if they were fully set forth herein.

Jurisdiction And Venue

4. Petitioner Liberty Mutual Insurance Company is a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of business located in Boston, Massachusetts.

5. Petitioner Liberty Mutual Surplus Insurance Corporation is a corporation organized under the laws of the state of New Hampshire, with its principal place of business located in Boston, Massachusetts.

6. Petitioner Liberty Insurance Underwriters, Inc., is a corporation organized under the laws of the state of Illinois, with its principal place of business located in Boston, Massachusetts.

7. Petitioner Liberty Mutual Insurance Europe Limited is a corporation organized under the laws of the United Kingdom.

8. Upon information and belief, The Continental Insurance Company is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business located in Illinois.

9. This Court has original subject matter jurisdiction over this action pursuant to the Convention, 9 U.S.C. §§ 202 and 203, because the subject matter of this Petition is an arbitration clause contained in a commercial contract, which provides that any dispute shall be submitted to arbitration in Toronto, Canada, and that commercial contract has a reasonable relation with the foreign state of Canada.

10. Venue in this district is proper under 9 U.S.C. § 204 and 28 U.S.C. § 1391.

WHEREFORE, Liberty Mutual respectfully requests that the Court:

1. Assume jurisdiction of this matter pursuant to Title 9, United States Code;
2. Enter an order and judgment appointing Elizabeth Thompson, Paul Hawksworth, Richard Marrs, Susan Claflin or Mark Gurevitz, the disinterested and experienced candidates proposed by Liberty Mutual, as umpire of this arbitration, who shall act under the Treaties with

the same force and effect as if (s)he had been selected by agreement of the two party-appointed arbitrators pursuant to the Treaties;

3. In the alternative, if the Court rejects the relief requested in Paragraph 2 above, enter an order and judgment appointing a retired Massachusetts federal or state court judge, who shall act under the Treaties with the same force and effect as if (s)he had been selected by agreement of the two party-appointed arbitrators pursuant to the Treaties; and

4. Grant such other and further relief as the Court may deem just and proper.

Request For Oral Argument

Liberty Mutual hereby requests oral argument on its Petition pursuant to Local Rule 7.1(D).

Respectfully submitted,

LIBERTY MUTUAL INSURANCE
COMPANY, ET AL.,

By their attorneys,

/s/ David A. Attisani

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