# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ACE PROPERTY & CASUALTY INSURANCE COMPANY (f/k/a CIGNA PROPERTY & CASUALTY INSURANCE COMPANY), as Successor in Interest to CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA, as respects policies issued through CRAVENS, DARGAN & COMPANY, PACIFIC COAST,

CIVIL ACTION NO.

Petitioner,

v.

GLOBAL REINSURANCE CORPORATION OF AMERICA, U.S. BRANCH (F/K/A GERLING GLOBAL REINSURANCE CORPORATION),

Respondent.

# CENTRAL NATIONAL INSURANCE COMPANY'S PETITION TO CONFIRM ARBITRATION AWARD

Petitioner, ACE Property & Casualty Insurance Company, as successor in interest to Central National Insurance Company of Omaha ("CNIC"), by its counsel White and Williams LLP, hereby moves this Court to enter an order confirming the arbitral Final Award dated June 3, 2011, which was issued following an arbitration between CNIC and Global Reinsurance Corporation of America, U.S. Branch (f/k/a Gerling Global Reinsurance Corporation, U.S. Branch) ("Global").

1. This Petition to Confirm Arbitration Award pursuant to Section 9 of the Federal Arbitration Act ("FAA") is submitted to confirm the arbitral Final Award (the "Final Award"), dated June 3, 2011, which was issued following a three-day arbitration between Petitioner and Respondent, Global. (See Final Award, attached hereto as Exhibit A.)<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Pursuant to the agreement of the parties that certain Arbitration Information be confidential, CNIC has filed a motion to seal and has requested that the Court maintain the Final Award under seal for the reasons set forth therein.

### THE PARTIES

- 2. Petitioner CNIC is a Pennsylvania company with its principal place of business at 436 Walnut Street, Philadelphia, Pennsylvania 19106.
- 3. Upon information and belief, Global is a New York corporation with its principal place of business located at Times Square Tower, 7 Times Square, 37th Floor, New York, New York 10036.

#### JURISDICTION AND VENUE

- 4. This Petition is submitted under Chapter 1 of the FAA, 9 U.S.C. §§ 1-16. This proceeding involves commercial arbitration agreements that are between citizens of the United States, and thus falls within Chapter 1 of the FAA. See 9 U.S.C. § 1.
- 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 in that the petition involves citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
- 6. This Court has personal jurisdiction over Global as Global is incorporated by the State of New York and has its principal place of business in New York, New York.
- 7. Further, this Court has personal jurisdiction by virtue of Global's agreement, in the subject contracts of reinsurance, that "any arbitration shall take place in New York, N.Y." (See Global Facultative Certificate Nos. 73-30924 and 73-30925, attached hereto as Exhibits B and C respectively, at ¶ 17 (the "Arbitration Clause")). As the arbitration occurred in New York, New York, pursuant to the agreement of the parties, personal jurisdiction is proper in this Court. (See id.)
- 8. Venue is proper in this Court because Global is deemed to reside in this district, has its principal place of business is located in this district and a substantial part of the events giving rise to this action occurred in this district. 28 U.S.C. § 1391(a)(2).

- 9. Further, venue is proper here because Section 9 of the FAA provides that "[i]f no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made." 9 U.S.C. § 9. The Final Award was made in New York, New York; thus, venue in this district is proper.
- 10. Moreover, venue is appropriate in this Court as, pursuant to the contractual agreement of the parties, the arbitration hearing was conducted in this district.

#### **BACKGROUND**

- 11. The underlying arbitration concerned Global's responsibility under two facultative reinsurance certificates for asbestos claims paid by CNIC under an umbrella excess policy issued to Wylain, Inc., now known as Marley-Wylain, Inc. ("Marley").
- 12. In a reinsurance contract, a reinsurer agrees to indemnify the reinsured against all or part of the loss that the reinsured may sustain under an insurance policy or policies the company has issued, in exchange for a portion of the premium paid to the reinsured for the insurance policies.
- 13. A "facultative" reinsurance contract reinsures a specific insurance policy or risk, as opposed to "treaty" reinsurance, which reinsures multiple insurance policies or an entire book of business written by the reinsured.
- 14. CNIC (through Cravans Dargan & Company, Pacific Coast)<sup>2</sup> issued an umbrella commercial liability excess of loss policy to its insured, Marley, effective August 1, 1979 to August 1, 1980 (the "Policy"). (See CNIC Policy No. CNU 03-48-63, attached as Exhibit D hereto.)

<sup>&</sup>lt;sup>2</sup> Cravens Dargan was a managing general agent that wrote business on the paper of various companies. It was not a risk-bearing entity.

- 15. The Policy provides indemnity limits of \$25 million per occurrence and in the aggregate, excess of underlying insurance (\$500,000 each occurrence and in the aggregate for products claims). (*Id.* at 1.)
- 16. The Policy is an "ultimate net loss" policy which includes both indemnity and defense costs within the policy limits. (*Id.* at 3.)
- 17. Gerling Global Reinsurance Corporation, as predecessor to Global, issued two facultative reinsurance certificates to CNIC, Global Facultative Certificate Nos. 73-30924 and 73-30925 (the "Global Certificates"). (See Exhibits B and C hereto.)
- 18. After the Global Certificates were executed, Marley and its corporate successors were named as defendants in many asbestos-related products personal injury claims and lawsuits. These claims and lawsuits were tendered to Marley's insurers, including CNIC, for defense and indemnity.
- 19. Pursuant to a December 2003 Settlement and Funding Agreement, and subject to the CNIC Policy, CNIC agreed to pay for a portion of the indemnity and defense costs associated with Marley's asbestos-related bodily injury claims.
- 20. Following prior notice, in December 2004, Global was provided a report which contained an overview of the claims, an explanation that defense is paid within policy limits, an explanation of the funding agreement and a status update on payments, which included an explanation of the prior aggregate impairment of the policy. Along with the report, Global received a copy of the Policy, the settlement and funding agreement and coverage counsel analysis. Global issued no response or inquiry.
- 21. Reporting continued, and by Spring of 2009, CNIC's payments to Marley exceeded the attachment point of Global Certificate 73-30924 (the lower of the two layers reinsured by Global).

- 22. CNIC submitted its first bill to Global in April 2009. (See April 29, 2009 Reinsurance Billing and Proof of Loss from E. Barrett to D. Annecchino, Exh E, hereto.) The reinsurance billing (consistent with the terms and conditions of the underlying CNIC Policy) combined indemnity and defense cost payments to meet the reinsurance retention and to make up the reinsurance "loss" under the reinsurance certificates.
  - 23. In May 2009, Global refused to the pay the billing.
- 24. On March 19, 2010, CNIC initiated arbitration proceedings to recover the outstanding balance due from Global under Global Certificate 73-30924, as well as a declaration regarding Global's payment obligations for amounts which will become due under that certificate and Global Certificate 73-30925.
- 25. A panel of three arbitrators (the "Panel") was appointed and accepted by the parties at an Organizational Meeting on October 12, 2010, in New York, New York.
- 26. After a three-day hearing, the Panel issued is Final Award on June 3, 2011. (See Exhibit A.)
  - 27. CNIC now petitions this Court to confirm the Final Award.

## THE AWARD SHOULD BE CONFIRMED

- 28. Section 9 of the FAA provides that a party may seek an order confirming an arbitration award within one year of the date the award was made, and that a court "must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of [the FAA]." 9 U.S.C. § 9.
- 29. Second Circuit precedent is clear that, under this standard, "arbitration awards are subject to 'severely limited' review by the courts" and thus the courts shall confirm the award absent certain specific, enumerated grounds for refusal or deferral of recognition. *Bradley v. Merrill Lynch & Co., Inc.*, 344 Fed. Appx. 689, 690 (2d Cir. 2009).

- 30. Pursuant to 9 U.S.C. § 12, a party wishing to vacate, modify, or correct an arbitration award must do so within three months from the date that the award was filed or delivered. Where such party fails to do so, as is the case here, that party is estopped from later objecting to the award. See, e.g., Arch Dev. Corp. v. Biomet, 2003 WL 21697742 (N.D. Ill. 2003), quoting Piccolo v. Dain, Kalman & Quail, Inc., 641 F.2d 598, 600 (8th Cir. 1981) ("A party who failed to comply with the statutory precondition of timely service of notice forfeits the right to judicial review of the award.").
- 31. More than three (3) months have elapsed since the Panel delivered its Final Award and, within such time, Global did not move to vacate, modify, or correct the Panel's Final Award.
- 32. Further, none of the grounds for vacating an award, as set out in the FAA under section 10, are present.
- 33. CNIC now petitions this Court to confirm the Panel's Final Award pursuant to 9 U.S.C. § 9. As the Final Award has not been vacated, modified, or corrected as prescribed by sections 10 and 11 of the FAA, this Court must confirm the Panel's Final Award pursuant to 9 U.S.C. § 9.

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## Respectfully submitted,

WHITE AND WILLIAMS LLP

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(215) 864-6301/7028/7173

Dated: October 3, 2011

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New York, NY 10119
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(212) 244-9500

Attorneys for Petitioner, ACE Property & Casualty Insurance Company as Successor in Interest to Central National Insurance Company of Omaha

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ACE PROPERTY & CASUALTY INSURANCE COMPANY (f/k/a CIGNA PROPERTY & CASUALTY INSURANCE COMPANY), as Successor in Interest to CENTRAL NATIONAL INSURANCE COMPANY OF OMAHA, as respects policies issued through CRAVENS, DARGAN & COMPANY, PACIFIC COAST,

CIVIL ACTION NO.

**ORDER** 

Petitioner,

v.

GLOBAL REINSURANCE CORPORATION OF : AMERICA, U.S. BRANCH (F/K/A GERLING : GLOBAL REINSURANCE CORPORATION, U.S.: BRANCH),

Respondent.

#### ORDER

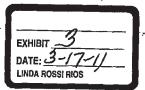
AND NOW, this 30 day of Leptonber, 2011, upon consideration of the Motion to Seal of Petitioner, ACE Property & Casualty Insurance Company, as successor in interest to Central National Insurance Company of Omaha ("CNIC"), it is hereby ORDERED that said Motion is GRANTED. The arbitral Final Award, dated June 3, 2011, issued following arbitration between Petitioner and Respondent Global Reinsurance Corporation of America, U.S. Branch (f/k/a Gerling Global Reinsurance Corporation, U.S. Branch) ("Global"), shall be filed under seal and shall remain confidential and under seal until further order of this Court. based on the Confidentiality agreement of the parties

UNITED STATES DISTRICT COURT:

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# EXHIBIT B

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	CERTIFICATE O	F FACULTATIVE REIN	SIDANCE 73-	30924	
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8. The Company warrants to retain for its offsecount, subject to other Relineurance, the amount of liability encellings Section 3, Item 5 of Declarations, and the Heldity of the Relineurance specified in Section 4, Item 5 of Declarations, and the Heldity of the Relineurance for on the second as otherwise specifically provided herdin, or designated as non-concurrent relineurance in the Declarations, while to subject in oil respects to all the terms and conditions of the Company's policy. In no event shall anyone other than the Company or in the event of the Company to Interiory, its Recharge, Its Recharge, Liquidator, or Statusory successor, have any right or allipriment of rights under this contract. The Company shall turnlish the Relineurer with a copy of its policy and all andorsoments thereto which is any amount affect this Cortificate, and shall make available for impaction and place at the disposal of the Relineurer, at reasonable driving, any of its recordirection to the relineurer of contraction therealth.

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agreed upon by the two pirtles in interest.

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# EXHIBIT C



### CERTIFICATE OF FACULTATIVE REINSURANCE

73-30925

## GERLING GLOBAL REINSURANCE CORPORATION

UNITED STATES BRANCH
717 Fifth Avenue, New York, N. Y. 10022

The Avenue, New York, No. 1. 10022 (herein called the "Reinsurer") Los Anyales Office 3600 Wilshire Blvd, Los Angeles, Calif, 90010

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	DECLARAT	DECLARATIONS (Items 1 through 8)		
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EXHIBIT 4

DATE: 3-/7-//
LINDA ROSSI RIOS

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; :		717 Fifth Avenue, New York	West John House	DATE 9/18/79	
	ENDORSEMENT NO. 1	CERTIFICATE N	0. 3-30927	DAIE	
	FUDOUSTRICAL				
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4	It is hereby understood and agreed that this Certificat	e is amended as follows:			
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5 . á	. Them we like of this	s Certificate is amo	ended to read:		
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	All other terms and conditions remain unchanged.				
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10." The Company shall hability-the Rainsuser promptly, in writing, of any occurrence which in the Company's estimate of the vokue of the Injuries or darkages sought, without report to liability, might result in a judgement in a smount sufficient to involve this Certificate, or whorsein the Company, has created a lost reserve equal to or greater than fifty 150) percent of the Company's retenulon as specified in Section 3, Item 5 of Deciarations; or if this relaturance application or contributory excess bats, when notice of cloth is received by the Company. The Company will further advise the Reinsurer of subsequent developments, in writing, in a complete and timoty manner, While the Reinsurer does not undertake to investigate or defand dains or tuits, it had neverthales have the Aght and shall be given the opportuality, with the full copparation of the Company, to essociate counted, at its own expense, and to join with the Company and its representatives in the defence and control of any claim, suit or proceeding involying this Certificate, if not excluded in other parks of the Certificate.

- 11. Relevants shill pay its proportion of expanses, other than Company splanies and office expenses incurred by the Company in the investigation and sattlement of claims or suite provided loss payment is made by the Company effecting this Certificate, in the ratio that the Reinsucer's loss payment boars to the Company's gross loss payment, and with the prior notice to and content of Reinsurer to trial court proceedings, its proportion of court costs and interest on any judgement or award.
- 12. Payment of its proportion of loss and expense pold by the Company will be made by the Reinsurar to the Company promotly following the receipt of proof of loss.
- 13. The Reinsurer will be paid or bredited by the Company with list proportion of salvage, i.e., reimbursement obtained or recovery made by the Company, less the actual roots (excluding Company salestes and office expenses) of obtaining such repoyety. If the roinsurance afforded by this certificate is on an excess of loss basis, salvage shell be epplied in the inverse order in which aliability attaches.

  14. The Company undertakes not, to clim any discluding in respect of the premium herein when making its fetures, other than income or Profits.

  Tax returns, to any State or Tarstory of the United States or the District of Columbia.
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- of Columbia.

  15. In the event of the insolvency of the Company, the reinsurence provided by this Certificate shall be payable by the Reinsurer on the basis of the Itability of the Company under the policyflest reinsurer on the basis of the Itability of the Company and a tile policyflest reinsurer on which the second provided the company of the Receiver, Liquidator, or Statutory successor pursuant to the Statute of any State of the United States having jurisdiction and so the extent that such reinsurance as its afforded hereunder may be credited to the Company as a similar decision of the state of the United States having jurisdiction and so the extent that such reinsurance as its afforded hereunder may be credited to the Company as the subject to such amendment, the Relaisurer may wall itable of any other provisions of any such Statute applicable. The Reinsurer shall be given written notice of the pandency of each claim gainst the Company on the policyfricy reinsured hereunder within a reasonable time after such claim is filled in the Insolvent company and the proposeding where such claim is to be objudicated, any defenses which it may deam yarilable to the Company or its Receiver, Liquidator, or Statutory successor. The exposes thus insurred by the Reinsurer shall be chargeable, tublect to court approval, syelint the insolvent Company as part of the exposus of figuldation to the extent of a proportionate share of the benefit which may accure to the Company solely as a result of the defense undertaken by the Reinsurer.
- 16. The Reinsurer may offset any belente(s) whether on account of premiums, commissions, elaims, losses, adjustment expense, railwage or any other amount(s) due from one party to the other under this Confiscate or under any other spraement horetofors or horester entered into between the Company and Reinsurer, whether acting as assuming Reinsurer or as Ceding Company.

17. Should an irrecory this difference of opinion error as to the interpretation of this Cerila, which is haveby mutually agreed that, as a condition precedent to any hart of action hursunder, such difference shell be submitted to arbitration, one arbitrator to be chosen by the Company, one arbitrator by the Reinsurer and an unpire to be mutually agreed upon and chosen by the two arbitrators before they enter upon arbitrator. The arbitrator are unpire so selected shell be officers or former officers of other incurance or reinsurance companies. In the seven that either party should fall to choose an arbitrator within sixty (600 days following receips of a written request by the other party or enter upon arbitration, the requesting party may then choose a ancord arbitrator and the are selected arbitrators shell in ture choose an unpire before altering upon arbitration. In the event, the two selected arbitrators fall to agree on the selection of an armorize, after meeting together and within ten (10) days of that appointment, these each software of this selection of the meets submitted by the other arbitrator and the unpire shall be selected by lot between the per names chosen.

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tween the two names chosen.

Each party shall thereupon present its case to the arbitrators within cixty (SO) days after date of their appointment. The decision of the arbitrators thall be final and binding upon both parties, but failing to agree they shall call upon the umpire and the decision of the majority shall be final and binding upon both parties. Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other the expense of its with the umpire and of the arbitration. The time expense of the arbitrators are chosen by one party, as above-provided, the expense of the arbitrators are chosen by one party, as above-provided, the expense of the arbitrators the umpire and the value of the provided between the two parties. The arbitrators shall adopt their own rules and procedures and may waite the requirements of the pulse of evidence. Any such arbitration shall take place in New York, N.Y., unless some other tocation is mutually agreed upon by the way parties in interest.

- agreed upon by the two parties in leserest.

  18. Cancelletion of the policy of the Company shall constitute automatic cancellation of this Certificate and it may also be cancelled on a pro rate basis by either party mailing or delivering to the other written notice notwarn, not tast than thirty [30] days thereafter, and nearchallorio shall be affective. If at any time during the continuance of this Certificate, the Company should lose the whole or any part of its paid any accided any of interesting the state of the continuance of the certificate, the company should lose the whole or any part of its paid any accided any of interesting the continuance of the certificate, the second control of the continuance of the certificate, the control of the c
- '19. The terms of this certificate shall not be waived or changed account by and order transcribed to form a part hereof, and executed by a duly authorous representative of the Reinsurer.
- pool representative of the Reinsurer.

  20. The Company shall notify the Reinsurer promptly, in writing, of any stuetion wherein the Company may become obligated to pay as damages either by ludgment or agreement, due to the adegree or south she feltin, froud, or negligence of the Company, lit employes or representatives, in the honding of, or failure to settle 6 claim on behalf of or by the named insured under list policy lies), or for the costs or expense incurred thereform. The Reinsurer shall have the right and shall be given the opportunity, with the full cooperation of the Company, to associate counts, at its own expense, and to Jolin with the Company and its representatives in the defense and control of any claim, suit or proceeding involving this item.

21. Dallnitions:
As used in this Certificate under Section 5, Item 5 of the Declarations, the following terms shall have the meaning set opposite each:

Excess of Loss: The limit(s) of stability of the Relaxirer, as stated in Section 4, Item 5 of the Declarations, applicitly only to that portion of loss within the polley limits. In excess of the applicable retention of the Company as stated in Section 3, Item 5 of the Declarations.

Contributing Excess: The Company's policy(lest appliesly) in axcess of other salid insurance, reinsurance or set-insured expension and the limits) of fishility of the Reinsurance popularity proportionately to all loss within the policy limits in the amounties) act forth in Section 4, item 5 of the Declaration.

Non-Concurrent: The reinsurance provided does not apply to any hazards or risks of loss or damage covered under the Company's policy, which are specifically actual of the Declarations. The respension of the Company and Bability of the Reinsurer shall be determined at though the Company's policyliest applied only to the hazards or risks of loss or damage which would not be eveluated in the Declarations.

in Witness Whereof, the Reinsurer has caused this Certificate to be signed by its authorized representative.

addered.

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