

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EMPLOYERS INSURANCE COMPANY OF WAUSAU,)
))
Petitioner,)
))
vs.)
))
CONTINENTAL CASUALTY COMPANY,)
))
Respondent.)
-----X

PETITION TO CONFIRM FINAL ARBITRATION AWARD

Petitioner Employers Insurance Company of Wausau (“Wausau”) respectfully petitions this Court for an order, pursuant to Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9, confirming the final arbitration Award issued on October 1, 2014 by a panel in an arbitration proceeding between Wausau and Respondent Continental Casualty Company (“Continental”). Upon confirming the final arbitration Award, Wausau further requests that the Court, pursuant to Section 13 of the Federal Arbitration Act (9 U.S.C. § 13), enter judgment in accordance with the confirmed Award and retain jurisdiction for the purposes of any further proceedings to enforce such Award.

The Parties

1. Wausau is an insurance company organized and existing under the laws of the State of Wisconsin, licensed to do business in the State of New York, and with its principal place of business in Wisconsin.
2. Continental is an insurance corporation organized and existing under the laws of the State of Illinois, licensed to do business in the State of New York, and with its principle place of business in Illinois.

Jurisdiction and Venue

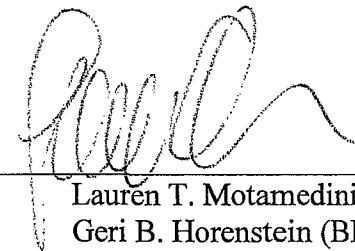
3. Jurisdiction is based on diversity of citizenship. 28 U.S.C. § 1332.
4. The amount in controversy exceeds \$75,000, exclusive of interest and costs.
5. The subject agreement to arbitrate between Wausau and Continental provides, in pertinent part, that “a decision in writing of any two of the three (two arbitrators and one umpire), when filed with the contracting parties, shall be final and binding upon both”.
6. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a)(1) in that Continental resides in New York as defined in 28 U.S.C. § 1391(c) and because the parties’ arbitration agreement does not specify the court in which an action to confirm shall be brought and there is no district in which the award was made, 9 U.S.C. § 9.

Basis and Claim for Relief

7. Wausau and Continental are parties to a Certificate of Casualty Facultative Reinsurance (“Certificate”), which contains a provision stating that any difference of opinion between Wausau and Continental with respect to interpretation of or performance under the Certificate shall be submitted to arbitration upon the request of one of the parties.
8. A true and correct copy of the Certificate is Exhibit A to the accompanying Declaration of Mark C. Kareken (“Kareken Dec.”).
9. An irreconcilable dispute arose between Wausau and Continental regarding Continental’s obligations under the Certificate with respect to Wausau’s Marley Wylain claim.
10. Wausau demanded arbitration of Continental under the Certificate with respect to the Marley Wylain claim on October 23, 2013.
11. A true and correct copy of Wausau’s arbitration demand is Exhibit B to Kareken Dec.

12. Continental appointed Robert Miller as its arbitration on November 25, 2013.
13. A true and correct copy of Continental's letter appointing Mr. Miller is Exhibit C to Kareken Dec.
14. Wausau thereafter appointed Spiro Bantis as it arbitrator.
15. Wausau and Continental were thereafter advised by Sylvia Kaminsky that she had been selected by Messrs. Miller and Bantis to serve as the arbitration umpire.
16. A true and correct copy of Ms. Kaminsky's March 3, 2014, e-mail notification to the parties is Exhibit D to Kareken Dec.
17. After submission of position statements by both parties, an Organizational Meeting (arbitration pretrial) was held telephonically between the arbitration panel, the parties and counsel on April 16, 2014.
18. A true and correct copy of the Organizational Meeting transcript is Exhibit E to Kareken Dec.
19. Among other things, the Organizational Meeting resulted in the issuance of an Arbitration Scheduling Order.
20. A true and correct copy of the Arbitration Scheduling Order is Exhibit F to Kareken Dec.
21. On September 6, 2014, Continental advised Wausau and the arbitration panel that, due to health issues, Mr. Miller would no longer be able to serve as Continental's arbitrator.
22. Continental appointed Clive Becker-Jones as Mr. Miller's replacement on September 15, 2014.
23. A true and correct copy of the email exchange between the counsel and the arbitrators from September 6-15, 2014 is Exhibit G to Kareken Dec.

24. Per the Arbitration Scheduling Order, the Panel advised the parties on September 23, 2014 that the scheduled conference call and oral argument on the parties' motions for summary adjudication would not be necessary.
25. A true and correct copy of the Arbitration Panel's September 23, 2014 email is Exhibit H to Kareken Dec.
26. By email of October 1, 2014, the Arbitration Panel delivered its Award to the parties.
27. A true and correct copy of the Award is Exhibit I to Kareken Dec.
28. Pursuant to the Award, Wausau provided Continental with Wausau's prejudgment interest calculation on October 7, 2014.
29. A true and correct copy of Wausau prejudgment interest calculation letter is Exhibit J to Kareken Dec.
30. Continental advised Wausau and the Arbitration Panel on October 16, 2014 that it had no objection to Wausau's prejudgment interest calculation.
31. A true and correct copy of Continental's email is Exhibit K to Kareken Dec.
32. Pursuant to the terms of the Award, Continental's acceptance of Wausau's prejudgment interest calculation made the Award final.
33. This Petition to Confirm has been brought within one year after the Award was rendered.
34. Wausau has not made a prior application to this Court, or any other court, for the relief requested in this Petition.



Lauren T. Motamedinia (LM9530)
Geri B. Horenstein (BH1750)