

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

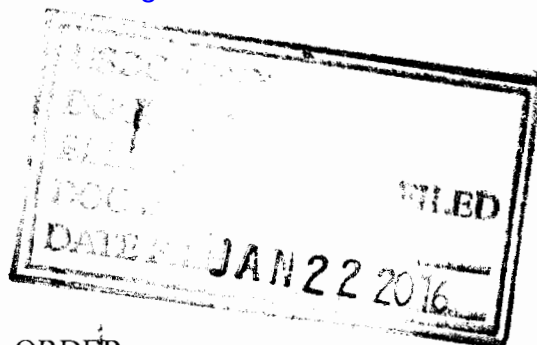
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INFRASSURE, LTD.,

Plaintiff,

v.

FIRST MUTUAL TRANSPORTATION  
ASSURANCE COMPANY,

Defendant.  
----- X



ORDER

15-cv-08230 (GBD)

GEORGE B. DANIELS, District Judge:

This action commenced on October 19, 2015, when Plaintiff Infrassure, Ltd. filed a Complaint seeking, pursuant to 28 U.S.C. §§ 2201 and 2202, a declaration from this Court that Infrassure is subject to an arbitration clause set forth in Section U of the Certificate of Facultative Reinsurance, Infrassure Policy No. 2012-1470-800-3437-7500 (“Certificate”). (See Complaint, (ECF No. 1), at 8-9.) On November 16, 2015, Defendant First Mutual Transportation Assurance Company (“FMTAC”) filed a Motion to Compel Arbitration requesting that this Court order Infrassure to arbitrate in London, England, under arbitration procedures set forth in Endorsement No. 2 to the Certificate. (ECF Nos. 14.) Additionally, in its Answer filed on November 30, 2015, FMTAC asserted counterclaims against Infrassure, requesting: (1) a declaration from this Court that Infrassure is bound to arbitrate in London, England pursuant to Endorsement No. 2; (2) an order compelling same; and, in the alternative, (3) a declaration that there is no valid arbitration agreement between the parties. (Answer and Counterclaims, (ECF No. 19), at 20-23.) Each party filed several briefs in support of its position and against that of its opponent. (See ECF Nos. 15, 20, 24, 31, 40, 43.) This Court heard oral argument regarding the relief sought in the Complaint and the related motions on January 21, 2016.

After carefully considering the arguments presented in the parties' briefs, and with the benefit of oral argument, this Court has concluded that Section U of the Certificate sets forth the arbitration procedures applicable to disputes between FMTAC and Infrassure. Endorsement No. 2 is inapplicable because, by its explicit language, it only governs disputes between FMTAC and "UK and Bermuda Insurers." Infrassure is a Swiss Insurer.

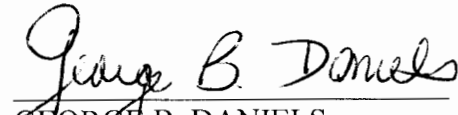
It is therefore ORDERED, ADJUDGED AND DECREED that Infrassure is subject to the arbitration clause set forth in Section U of the Certificate. Endorsement No. 2 to the Certificate does not apply to Infrassure, which is neither a United Kingdom nor a Bermuda Insurer. The Clerk of Court is hereby ORDERED to enter declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, in favor of Infrassure with regard to Count One in its Complaint, (*see* Complaint at 8-9), stating that: (1) all arbitrators will be disinterested active or former officers of insurance or reinsurance companies, pursuant to Section U.4 of the Certificate; and (2) arbitration will take place in the State of New York, unless the panel of arbitrators deem that the venue should be changed in the best interest of the arbitration proceeding, pursuant to Section U.6 of the Certificate.

Furthermore, FMTAC's Motion to Compel Arbitration is DENIED and its Counterclaims against Infrassure are DISMISSED. Accordingly, Infrassure's Motion to Strike, Or in the Alternative, to Dismiss Defendant's Counterclaims is DENIED as MOOT.

The Clerk of Court is hereby ORDERED to close the motions at ECF Nos. 14 and 30. Additionally, the Clerk of Court is hereby ORDERED to close the above-captioned action.

Dated: January 22, 2016  
New York, New York

SO ORDERED:

  
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GEORGE B. DANIELS  
United States District Judge