

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

In the Matter of the Arbitration between:

FILED UNDER SEAL

EMPLOYERS INSURANCE COMPANY OF
WAUSAU,
500 Third Street, 6th Floor
Wausau, WI 54403
f/k/a Employers Insurance of Wausau
A Mutual Company,

Case No. 2016-cv-00097

Petitioner,

v.

ACE PROPERTY & CASUALTY INSURANCE
COMPANY,
436 Walnut Street
Philadelphia, PA 19106
as successor in interest to CIGNA Property & Casualty
Company as successor in interest to Aetna Insurance
Company,

Respondent.

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 February 20, 2015 by a panel of three arbitrators in an arbitration proceeding between Wausau and Respondent ACE Property & Casualty Insurance Company (“ACE”). 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 corporation organized and existing under the laws of the State of Wisconsin, licensed to do business in Wisconsin, and with its principal place of business in Wisconsin.
2. ACE is an insurance corporation organized and existing under the laws of the State of Pennsylvania, licensed to do business in the Wisconsin, and with its principle place of business in Pennsylvania.

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. One of the subject agreements to arbitrate between Wausau and ACE provides, in pertinent part, that “[t]he decision of a majority of the arbitrators shall be final and binding upon both [ACE] and [Wausau].”
6. Two of the subject agreements to arbitrate between Wausau and ACE provide, in pertinent part, that “[t]he decision in writing of any two arbitrators, when filed with the parties hereto, shall be final and binding on both parties.”
7. Two of the subject agreements to arbitrate between Wausau and ACE provide, in pertinent part, that “[j]udgment may be entered upon the final decision arbitrators in any court having jurisdiction.”

8. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(a)(1) in that ACE resides in Wisconsin as defined in 28 U.S.C. § 1391(c) and none of the arbitration agreements specify the court in which an action to confirm shall be brought, 9 U.S.C. § 9.

Basis and Claim for Relief

9. Wausau and ACE are parties to three separate reinsurance agreements, with each titled Casualty Excess of Loss Reinsurance Agreement.
10. True and correct copies of the three separate reinsurance agreements are Exhibits 1, 2 and 3 to the accompanying Declaration of Mark C. Kareken (“Kareken Dec.”).
11. One of the subject reinsurance agreements contains a provision providing, in pertinent part, that “[i]f any dispute shall arise between [ACE] and [Wausau] with reference to the interpretation of this Agreement or their rights with respect to any transaction involved, the dispute shall be referred to three arbitrators, one chosen by each party and the third by the two so chosen.” *See* Kareken Dec. Ex. 1 at Article XIX, p. 11.
12. Two of the subject reinsurance agreements contain a provision providing, in pertinent part, that “[a]s a precedent to any right of action hereunder if any dispute shall arise between the [ACE] and [Wausau] with reference to the interpretation of this Agreement or their rights with respect to any transaction involved, whether such dispute arises before or after termination of this Agreement, such dispute, upon the written request of either party, shall be submitted to three arbitrators, one to be chosen by each party, and the third by the two so chosen.” *See* Kareken Dec. Exs. 2 and 3 at Article 19, p. 10 and Article 20, p. 12, respectively.
13. ACE demanded arbitration of Wausau under the three separate reinsurance agreements with respect to various issues on January 23, 2014.

14. A true and correct copy of ACE's arbitration demand is Exhibit 4 to the Kareken Dec.
15. ACE appointed Stephen McCarthy as its arbitrator.
16. Wausau appointed Spiro Bantis as its arbitrator.
17. ACE and Wausau were thereafter advised by Denis Loring that he had been selected by Messrs. McCarthy and Bantis to serve as the arbitration umpire.
18. At the direction of the arbitrators, ACE and Wausau each submitted Pre-Organizational Meeting Statements of Position.
19. True and correct copies of Wausau and ACE's Pre-Organizational Meeting Statements of Position are Exhibits 5 through 13 (Wausau) and 14 (ACE) to the Kareken Dec.
20. An Organizational Meeting (arbitration pretrial) was held in New York, New York on June 19, 2014.
21. A true and correct copy of the Organizational Meeting transcript is Exhibit 15 to the Kareken Dec.
22. At the direction of the arbitrators, ACE and Wausau each submitted opening and response briefs in support of their respective requests for summary adjudication of the issues.
23. True and correct copies of the Wausau and ACE's opening and response summary adjudication briefs are Exhibits 16 and 19 (Wausau) and 17 and 20 (ACE) to the Kareken Dec.
24. Among the forms of relief sought by ACE was a request that the arbitrators impose "ACE's Proposed Claims Protocol".
25. A true and correct copy of ACE's Proposed Claims Protocol is Exhibit 18 to the Kareken Dec.

26. Oral argument on the parties' cross-motions for summary adjudication was held before the Panel on February 18, 2015.
27. A true and correct copy of the transcript of the oral argument is Exhibit 21 to the Kareken Dec.
28. At the direction of the arbitrators, both parties submitted their proposed form of final award, which for ACE included another Proposed Claims Protocol.
29. True and correct copies of Wausau and ACE's proposed final awards are Exhibits 22 and 23, respectively, to the Kareken Dec.
30. By email of February 20, 2015, the arbitrators delivered its ORDER OF THE PANEL to the parties.
31. A true and correct copy of the ORDER OF THE PANEL is Exhibit 24 to Kareken Dec.
32. Pursuant to Paragraphs 3 and 5 of the ORDER OF THE PANEL, Wausau and ACE conferred and were able to resolve all remaining issues.
33. ACE and Wausau so advised the Arbitration Panel and it was confirmed that the arbitration was fully concluded.
34. A true and correct copy of May 26 – June 5, 2015 email chain is Exhibit 25 to Kareken Dec.
35. This Petition to Confirm has been brought within one year after the Award was rendered.
36. Wausau has not made a prior application to this Court, or any other court, for the relief requested in this Petition.

Dated: February 17, 2016
Wausau, Wisconsin

Respectfully submitted,

EMPLOYERS INSURANCE COMPANY OF WAUSAU

By s/ Mark C. Kareken
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CERTIFICATE OF SERVICE

I, Mark C. Kareken, hereby certify that, on this 17th day of February, 2016, I caused a true and correct copy of the **PETITION TO CONFIRM FINAL ARBITRATION AWARD** to be filed electronically with the Clerk of Court using the CM/ECF System. I also caused courtesy copies of the same to be transmitted electronically to ACE Property & Casualty Insurance Company's counsel of record in the arbitration:

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In addition, I am also having ACE Property & Casualty Insurance Company's registered agent for service of process in Wisconsin personally served with the same.