

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman,	:	
Insurance Commissioner of the	:	
Commonwealth of Pennsylvania,	:	
as Statutory Liquidator of	:	
Westmoreland Casualty Company	:	
Plaintiff	:	
	:	No. 2645 C.D. 1987
v.	:	
	:	
Westmoreland Casualty Company	:	
(in Liquidation),	:	
Defendant	:	

Re: Liquidator's Petition to Confirm Arbitration Award (captioned, In the Matter of the Arbitration between Westmoreland Insurance Company, Petitioner and General Reinsurance Corporation, Respondent)

MEMORANDUM AND ORDER

Before the Court is the Liquidator's petition to confirm arbitration award (petition), General Reinsurance Corporation's (Gen Re) motion to seal arbitration award (motion to seal) and the response in opposition thereto.¹ While Gen Re does not oppose confirmation of the

¹ As the Court previously noted in its Order of February 14, 2018, the Liquidator's petition avers that Westmoreland Casualty Company (Westmoreland) and Gen Re were parties to a reinsurance agreement that contained an arbitration provision. The Liquidator and Gen Re submitted a dispute arising under the reinsurance agreement to a panel of arbitrators selected pursuant to the terms of the arbitration provision. The parties aver that the arbitration proceedings were subject to a Confidentiality Agreement and Protective Order (Confidentiality Agreement), which required that all arbitration information, including the final arbitration award, be kept confidential. Pursuant to the Confidentiality Agreement, however, an award may be disclosed as is necessary in connection with court proceedings to confirm the award. The arbitration panel issued its award resolving the dispute on January 22, 2018. The Liquidator subsequently filed the

award, it requests that the award be placed under seal. According to Gen Re:

Disclosure of the Award would put [Gen Re] at a competitive disadvantage when seeking to resolve similar disputes with others in the future. The Award provides details concerning Gen Re's obligations under its reinsurance contract and the manner in which underlying claims may be resolved between a ceding insurer in liquidation and state insurance guaranty associations. Counterparties could use knowledge gained from this Award for negotiating advantage over [Gen Re].

Motion at 4, ¶ 14. Gen Re further argues that keeping the award under seal is consistent with the parties' expectations under the Confidentiality Agreement and the practices and standards in the reinsurance industry. Finally, Gen Re asserts that this matter involves unusual facts and a legal dispute that is not an issue of public concern.

It is well recognized that the public has a common law right of access to judicial records. *See generally Katz v. Katz*, 514 A.2d 1374, 1377 (Pa. Super. 1986) (recognizing public's common law right of access to court records). The Court may deny or limit public access, however, to protect, inter alia, private interests, the privacy and reputation of innocent third parties, trade secrets, risks to national security and to guard against an unfair trial. *See id.*, 514 A.2d at 1377-79 (discussing court's authority to limit access to court proceedings and records); *Storms ex rel. Storms v. O'Malley*, 779 A.2d 548, 569 (Pa. Super. 2001) (discussing common law right to access public records, and the balancing test set forth by the Third Circuit to

above petition seeking to confirm the award as well as a determination regarding whether the award should be sealed. Gen Re filed the instant motion to seal.

determine whether the presumption of public access has been overcome). After weighing the public's right to access judicial records against the interest in privacy articulated by Gen Re, the Court denies the motion to seal.

Here, the arbitration award does not reveal secretive or confidential business information, nor information that could put Gen Re's competitors, or "counterparties" at a competitive advantage. The award sets forth the arbitration panel's legal conclusion regarding Gen Re's payment obligation following an Order of this Court. While Gen Re believes that the panel's decision may have some persuasive value, it is not binding on this Court in other circumstances. Moreover, in light of the fact that this litigation occurs in the context of a liquidation under Article V of the Insurance Department Act of 1921 (Act), Act of May 17, 1921, P.L. 789, added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §§ 221.1 – 221.63, the need for transparency is utmost. Indeed, one of the express purposes of Article V is the "protection of the interests of insureds, creditors, and the public generally" Section 501(c) of the Act, 40 P.S. § 221.1(c). Accordingly, Gen Re's interest in secrecy does not overcome the public's right to access the award.² Therefore, the Court enters the following Order.

AND NOW, this 11th day of April, 2018, upon consideration of the Liquidator's petition to confirm arbitration award (petition), General Reinsurance Corporation's (Gen Re) motion to seal arbitration award

² In reaching this conclusion, the Court does not find persuasive *Century Indem. Co. v. Certain Underwriters at Lloyd's*, 592 F.Supp.2d 825 (Ed. Pa. 2009).

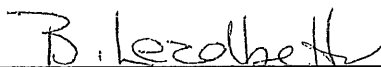
(motion to seal), the Liquidator's response in opposition thereto and Gen Re's reply, the Court orders as follows:

1. The Liquidator's petition to confirm arbitration award is GRANTED;

2. Gen Re's motion to seal arbitration award is DENIED;

3. The Liquidator shall file an amended petition to confirm arbitration award with a copy of the award attached.

4. The pleadings and exhibits generated during the course of the underlying arbitration proceedings shall remain confidential.



BONNIE BRIGANCE LEADBETTER
Senior Judge

Certified from the Record

APR 11 2018

And Order Exit