

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica K. Altman, :
Acting Insurance Commissioner of the :
Commonwealth of Pennsylvania, in her official :
capacity as Liquidator of Westmoreland :
Casualty Company (In Liquidation), : NO. 2645 C.D. 1987
: :
Petitioner, :
: :
v. :
: :
General Reinsurance Corporation, :
: :
Respondent. :

ORDER

AND NOW, this ____ day of _____, 2018, upon review of the Liquidator's Amended Petition to Confirm Arbitration Award and any responses thereto, it is hereby ORDERED that the Amended Petition to Confirm the Arbitration of January 22, 2018 is hereby **GRANTED** and judgment is entered thereon.

BONNIE BRIGANCE LEADBETTER
Senior Judge

4. Pursuant to the terms of the Confidentiality Agreement and Protective Order “the result and all other terms of the final award” are defined as Arbitration Information and are to be kept confidential and not disclosed.

5. In the event of, *inter alia*, a motion to confirm an award issued in the arbitration the Confidentiality Agreement and Protective Order provides that “**subject to court approval, that all submissions of Arbitration Information shall be sealed and/or redacted ...**”.

6. Westmoreland and Gen Re agreed to a format for submitting the dispute to the Panel on summary judgment, which included a discovery process, the submission of briefs and exhibits, and oral argument before the Panel.

7. Following oral argument the Panel issued an Award on January 22, 2018.

8. The Liquidator subsequently filed her Original Petition to Confirm on February 6, 2018; and thereafter Gen Re filed its Motion to Seal the Award on March 8, 2018.

9. This Court entered an Order of April 11, 2018 denying Gen Re’s Motion to Seal the Award; pursuant to that Order a copy of the Award is attached hereto as Exhibit A.

10. The Liquidator hereby petitions this Court to confirm the Panel’s Award of January 22, 2018.


WHEREFORE, Petitioner, Jessica K. Altman, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Westmoreland Casualty Company (In Liquidation) respectfully requests that this Court confirm the Award of

the arbitrators and enter judgment thereon and for such other relief as the Court deems appropriate.

Respectfully Submitted,

CLARK HILL PLC

Dated: April 16, 2018




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Jessica K. Altman, Acting Insurance
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Pennsylvania, in her official capacity as
Liquidator of Westmoreland Casualty
Company (In Liquidation) ("Liquidator")*

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



Joseph M. Donley (PA 23058)
Christopher M. Brubaker, Esq. (PA ID 82057)

*Counsel for Petitioner Jessica K. Altman, Acting
Insurance Commissioner of the Commonwealth of
Pennsylvania, in her official capacity as Liquidator
of Westmoreland Casualty Company (In
Liquidation) ("Liquidator")*

EXHIBIT A

In the Matter of The Arbitration Between

Westmoreland Insurance Company in Liquidation,
Petitioner,

Panel:

Mark S. Gurevitz, Umpire
Mary Ellen Burns, Arbitrator
Debra J. Hall, Arbitrator

And

General Reinsurance Corporation,
Respondent.

Panel Ruling on Summary Judgment and Final Award

Before the Panel for decision is Westmoreland Insurance Company in Liquidation's ("Westmoreland's") Motion for Summary Judgment ("Motion").

Westmoreland contends in its Motion that under the terms of the reinsurance treaty at issue, reinsurer General Reinsurance Corporation ("General Re") is bound by the Pennsylvania Commonwealth Court Order of May 13, 2016, made after Application of the Pennsylvania Insurance Commissioner as Liquidator, approving the Application and accepting amounts of individual Workers Compensation claims settled between Westmoreland and various state Guaranty Associations as "Westmoreland's full and final obligation to each relevant guaranty association." Westmoreland argues that these settled losses, in the amount of \$4,889,115.43, are now properly due from General Re under the reinsurance treaty.

General Re opposes the Motion on the ground that under the reinsurance treaty at issue between the parties it is understood that General Re would only indemnify Westmoreland for covered paid losses and that the compromise of open claims with the Guaranty Associations here is not a settlement of claims or losses paid by Westmoreland under the Treaty. General Re argues that as these claims have not been paid to the insureds by the Guaranty Associations, they are not paid claims in accordance with the Treaty. General Re maintains that "[t]he liquidation alters the indemnity nature of the reinsurance bargain to expand it to Westmoreland's liabilities for its claims, but it still requires that the underlying claims be resolved (allowed by the court in liquidation or paid by the Guaranty Associations on Westmoreland's behalf)." General Re Rebuttal Brief, at p. 9.

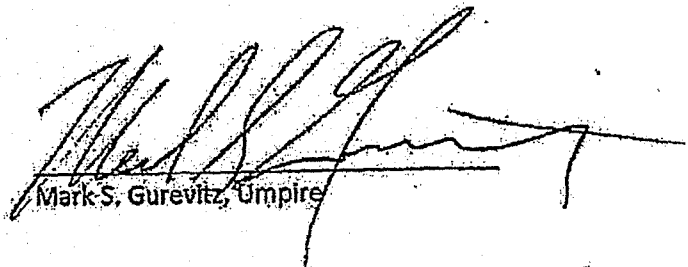
Having considered Westmoreland's Motion dated September 1, 2017, General Re's Opposition to the Motion dated October 31, 2017, Westmoreland's Rebuttal Brief in Support of its Motion dated November 20, 2017, and General Re's Rebuttal Brief of December 11, 2017, as well as all affidavits, exhibits and authorities attached thereto, after oral argument in New York, New York on January 11, 2018, and after due deliberation by the Panel in which all arguments by the parties either in writing or orally were considered, the Panel hereby rules as follows:

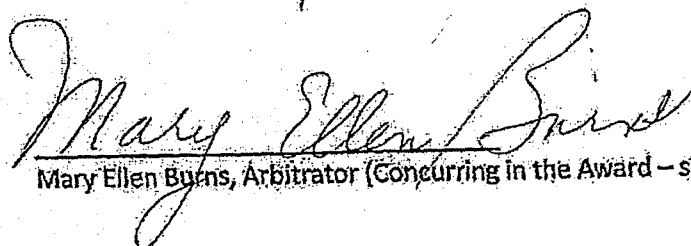
1. Westmoreland's Motion for Summary Judgment is GRANTED.

2. Payment to the insureds is not required to trigger the reinsurer's obligation. Under the insolvency clause contained in the reinsurance treaty, Article XI, "the reinsurance shall be payable by the Reinsurer on the basis of the liability of the Company under the policy or policies reinsured" It is the view of this Panel that the Order of the Commonwealth Court fully and finally resolved the liability of the company (Westmoreland) for these claims. While we understand General Re's argument that the insolvency clause addresses the amount of reinsurer's liability and not the acceleration issue here, settlements always result in acceleration, and there is no doubt that the approval of the settlement by the Commonwealth Court determined Westmoreland's liability for these claims for all time. No further action by an insured could change that. All of these claims are covered by the guaranty associations. The guaranty associations administer and resolve these claims. No insured can ever go directly against Westmoreland and must go through the guaranty associations.
3. General Re does not contend that Westmoreland cannot settle/commute its liabilities. Rather, General Reinsurance's contention is that the settlement here was with the guaranty associations, not with the insureds, and that the reinsurance contract is one of indemnification requiring payment only after payment to the insured. We view that as a distinction without difference under the circumstances here. The insureds cannot commute those liabilities with General Reinsurance, only the guaranty associations can.
4. The matter was presented to the Panel for a determination on summary judgment. General Reinsurance agreed at oral argument that a further hearing was initially contemplated to determine the reasonableness of the settlement. It is undisputed that Westmoreland reviewed and evaluated each of the individual claims that are the subject of this Motion and counsel for General Re stated at the argument that they were not contesting the quantum of the claim payment or the determination of coverage liability in any instance. Thus, not only is this a ruling on summary judgment but shall constitute a Final Award of the matters presented in this arbitration.
5. Based on the above it is the ORDER of this Panel that no later than thirty (30) days from the date of this Award, General Re shall pay to Westmoreland the sum of \$4,889,115.43. Any amounts paid later than thirty (30) days after the date of this Order shall bear interest for such period after thirty days to the date of payment calculated at the rate of ten percent (10%) simple interest.
6. All requests for relief by either party not specifically addressed herein, including costs and attorney fees, are denied.
7. The Panel shall retain jurisdiction for a period of forty-five (45) days to effectuate compliance with this Award.

8. With the issuance of this Award, the parties are entitled to resume *ex parte* communications with their party arbitrators.

SO ORDERED THIS 22nd DAY OF JANUARY, 2018.


Mark S. Gurevitz, Umpire


Mary Ellen Burns, Arbitrator (Concurring in the Award - see attached)


Debra J. Hall, Arbitrator

Concurring Statement of Mary Ellen Burns, Arbitrator

I believe that requiring Gen Re to reimburse Westmoreland's liquidator for a settlement with a guaranty association is in contravention of the treaty terms between Gen Re and Westmoreland notwithstanding the insolvency clause and even though the underlying claims were allowed by the liquidation court.

However, I am compelled by equitable considerations to concur with the award and compel payment of the amount awarded to and sought by the liquidator. The amounts due are essentially for undisputed workers compensation claims, of which have been paid in part in the past. Moreover, General Re will ultimately owe most, if not all, of the monies due for those claims at some point in time and I see no other way for Gen Re to pay them.