

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

ONEBEACON INSURANCE GROUP, INC., and	:	AUGUST TERM, 2004
ONEBEACON INSURANCE CO.,	:	
	:	No. 02670
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 031934
LIBERTY MUTUAL INSURANCE CO., and	:	
PEERLESS INSURANCE CO.,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 19<sup>TH</sup> day of April, 2005, upon consideration of plaintiffs' Emergency Motion to Lift, Stay, or Vacate the Court's March 22, 2005 Order which the court treats as a Motion for Reconsideration of the court's March 22, 2005 Order, [defendants' response thereto, the briefs in support and opposition,] and all other matters of record, and in accord with the Memorandum Opinion issued simultaneously herewith, it is hereby **ORDERED** that said Motion is **DENIED**.

**BY THE COURT,**

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**HOWLAND W. ABRAMSON, J.**

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	:	
Defendants.	:	

**MEMORANDUM OPINION**

In the Motion presently before the court, plaintiffs have requested that the court lift, stay or vacate its prior Order dated March 22, 2005 (the “March 22<sup>nd</sup> Order”).<sup>1</sup> In the March 22<sup>nd</sup> Order, the court lifted a stay of arbitration that it had previously entered and stayed the remainder of this action pending the outcome of the arbitration. Plaintiffs object that the March 22<sup>nd</sup> Order contradicts the court’s prior Order dated January 21, 2005(the “January 21<sup>st</sup> Order”), in which the court sustained, in part, defendants’ Preliminary Objections based on a written arbitration agreement between the parties, dismissed one of the breach of contract claims in favor of arbitration (the “Arbitrable Contract Claim”), and stayed the arbitration “until further order of this court.”

In the court’s Memorandum Opinion in support of the January 21<sup>st</sup> Order, the court voiced its suspicions that many of the remaining claims would prove not to be viable or would prove to be arbitrable. However, the court stated that

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<sup>1</sup> By Order dated March 3, 2005, the court opted to treat this motion as a Motion for Reconsideration of the March 22<sup>nd</sup> Order.

Given that the court is presently unable to determine the arbitrability and viability of the plaintiffs' remaining claims, and mindful that neither judicial nor arbitration resources should be wasted, the court opts for a temporary resolution:

- 1) [The Arbitrable Contract Claim] shall be heard by the arbitrator;
- 2) The arbitration proceedings shall be stayed pending this court's subsequent determination of the arbitrability and/or viability of the remaining claims;
- 3) Once the pleadings are closed, defendants shall file a motion requesting the court to determine the arbitrability and viability of plaintiffs' remaining claims.

January 21, 2005, Memorandum Opinion, p. 4. Defendants did not file an appeal from the January 21<sup>st</sup> Order, plaintiffs did not request permission to appeal it, and neither party asked the court to reconsider its decision. Therefore, the rule of coordinate jurisdiction prohibits the court from disturbing its prior decision that the contract claim must be arbitrated.<sup>2</sup>

On the other hand, the court's decision to stay arbitration of the contract claim pending its subsequent determination of the arbitrability and/or viability of the remaining claims was expressly intended to be "temporary" and to last only "until further order of this court." At the time that the court entered the January 21<sup>st</sup> Order, it contemplated a swift resolution of the viability and arbitrability issues once the pleadings closed. However, over two months have passed and no such resolution has occurred, nor is it anticipated that one will occur in the near future.

As directed by the court in the January 21<sup>st</sup> Order, defendants filed an Answer to the Complaint. That Answer contained New Matter, which required a response from plaintiffs. However, plaintiffs claim they are unable to respond to the New Matter without taking some discovery from defendants. To that end, plaintiffs served discovery requests upon defendants, which defendants refuse to answer because they claim such requests go to the merits of the

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<sup>2</sup> Judge Cohen entered the January 21<sup>st</sup> Order. Judge Abramson is now handling this case. In our legal system, the advent of a new judge does not herald a sea change in the law of the case, and the parties are not entitled to re-argue issues that were decided by the previous judge. Both the new judge and the parties must abide by the previous judge's decisions. See Commonwealth v. Starr, 541 Pa. 564, 664 A.2d 1326 (1995) (discussing the coordinate jurisdiction rule, which is "part of the family of rules making up the law of the case doctrine"). As a result, the court cannot now take the contract claim back from the arbitrator and try it alongside the other related claims, as plaintiffs argue the court must do under New York law.

claims, including the arbitrable matter, and are overbroad. As a result, the parties have reached an impasse, as evidenced by the two Motions to Compel filed by plaintiffs and the two Motions for Stay of Proceedings filed by defendants. Defendants then filed a Petition to Compel Arbitration of the claims raised in this matter, which the court denied on the basis that such issues had previously been raised and decided by way of Preliminary Objection.<sup>3</sup>

Subsequently, and based upon the entire record before it, the court issued the March 22<sup>nd</sup> Order lifting the stay of arbitration and staying the remainder of this action pending the outcome of the arbitration. The March 22<sup>nd</sup> Order is the “further order of court” contemplated by the January 21<sup>st</sup> Order, and the March 22<sup>nd</sup> Order puts an end to the “temporary resolution” of the Preliminary Objections set forth in the Memorandum Opinion in support of the January 21<sup>st</sup> Order.

A trial court has discretion to stay or to litigate non-arbitrable claims. *See Moss v. Prudential Bache Securities, Inc.*, 18 Phila. 436, 460-462 (1989); *Donegal Mut. Ins. Co. v. Stern*, 34 Pa. D&C 3d 314 (Allegheny Co. 1984). The court in its January 21<sup>st</sup> Order did nothing to limit this discretion; instead, it merely postponed its exercise of that discretion. In doing so, the court was trying to promote the most efficient use of the court’s, the arbitrators’ and the litigants’ resources. By allowing the parties time to hone the claims raised in this action, it was the court’s hope that there would cease to be any necessity for those claims to proceed before both the court and the arbitrators. However, it now appears that the issue of whether the remaining claims are viable and/or arbitrable will require a significant investment of the parties’ and this court’s resources in the form of repeated motion practice. Given that the parties agreed to arbitration in

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<sup>3</sup> In this instance, the court acted through Judge Manfredi because he is the Supervising Judge and, pursuant to local Administrative Order, all Petitions to Compel Arbitration filed with this court are decided by the Supervising Judge.

the hopes of saving both the time and the money it would take to litigate their disputes in court, the court would be doing them a disservice if it compelled them to continue wrangling over preliminary matters instead of letting them put the merits of their dispute before the arbitrators promptly. Therefore, the court felt it was appropriate to lift the stay of arbitration and let the parties resolve their dispute expeditiously as contemplated in their agreement.

The court also felt it was appropriate to stay further proceedings in this action for two reasons. Firstly, the efficiency gained by proceeding to arbitration is lost if the parties must continue to fight their battles on two fronts at once. *See Davidson v. Becker*, 256 F. Supp. 2d 377, 385 (D. Md., 2003) (“The rationale for staying the action, above and beyond the [FAA’s] mandate, is that it would clearly be a waste of judicial resources to litigate some claims while both of the same parties are currently in arbitration on the other claims.”); *Moss*, 18 Phila. at 461 (“The court concludes that judicial economies and economies of time and effort for the litigants are best served by a stay of these proceedings pending arbitration.”) Secondly, since several of the claims in this action are based on the same allegedly wrongful conduct as the Arbitrable Contract Claim, the decisions of this court and of the arbitrators could end up being inconsistent. Therefore, it makes sense for this court to wait until the arbitration is concluded before proceeding further with the claims before it.

### **CONCLUSION**

For all these reasons, defendants’ Motion for Reconsideration of the court’s March 22<sup>nd</sup> Order is denied.

**BY THE COURT,**

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**HOWLAND W. ABRAMSON, J.**