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

AMERICAN SPECIAL RISK INSURANCE COMPANY as successor to CRANFORD INSURANCE COMPANY	:	November Term 2004
	:	No. 3833
Plaintiff,	:	
v.	:	Commerce Program
	:	
FACTORY MUTUAL INSURANCE COMPANY, formerly known as ARKWRIGHT MUTUAL INSURANCE COMPANY, as successor to PHILADELPHIA MANUFACTURERS MUTUAL INSURANCE COMPANY	:	Control No. 040372
	:	
Defendant.	:	

O R D E R

AND NOW, this 30th day of June, 2005, upon consideration of the Preliminary Objections of Defendant Factory Mutual Insurance Company to the Complaint of Plaintiff American Special Risk Insurance Company and the response thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** that Defendant's Preliminary Objections are **OVERRULED** and Defendant is further **ORDERED** to file an answer to Plaintiff's Complaint within twenty (20) days of this Order.

BY THE COURT,

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HOWLAND W. ABRAMSON, J.

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MEMORANDUM

Presently before the court are the Preliminary Objections of Defendant Factory Mutual Insurance Company to the Complaint of Plaintiff American Special Risk Insurance Company.

According to the Complaint, both parties are the successors of other insurance companies.[1] Plaintiff issued a commercial umbrella policy to A-Best Products Inc. ("A-Best"). Plaintiff and Defendant entered into a reinsurance agreement (the "Agreement") to cover the umbrella policy. The Agreement requires Defendant to pay its proportion of settled claims generated by the umbrella policy. Compl., Ex. A, at D. The Agreement also contains an arbitration provision that states: "Should an irreconcilable difference of opinion arise as to the interpretation of this Certificate, it is hereby mutually agreed that

[1] For clarity, Plaintiff shall refer to American Special Risk Insurance Company and its predecessors and Defendant shall refer to Factory Mutual Insurance Company and its predecessors.

as a condition precedent to any right of action hereunder, such difference shall be submitted to arbitration ..." Id., at I.

Following exhaustion of its primary insurance coverage, A-Best demanded coverage under the umbrella policy pursuant to numerous asbestos claims. Plaintiff notified Defendant of the A-Best claims. Several years later, Plaintiff notified Defendant that it had reached an agreement with A-Best's other excess insurance carriers to handle the A-Best asbestos claims. More recently, Plaintiff submitted a reimbursement request to Defendant for the A-Best claims. To date, Plaintiff has paid approximately $3 million to A-Best, of which approximately $1 million is attributable to Defendant through the Agreement. Defendant asserts that the Agreement does not apply to the A-Best asbestos claims and has made no payments to Plaintiff.

Plaintiff brings a single cause of action seeking reimbursement from Defendant for the amount it has paid to resolve the A-Best claims that are within the scope of the Agreement. Defendant contends that the Agreement's arbitration provision requires submission of the reimbursement dispute to arbitration, not this court.

Generally, to determine whether a suit must proceed to arbitration requires the court to decide (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision. Smith v. Cumberland Group Ltd., 455 Pa. Super. 276, 284, 687 A.2d 1167, 1171 (1997); Messa v. State Farm Ins. Co., 433 Pa. Super. 594, 597, 641 A.2d 1167, 1168 (1994); PBS Coal, Inc. v. Hardhat Mining, Inc., 429 Pa. Super. 372, 376-77, 632 A.2d 903, 905 (1993). The court determines whether a matter is subject to arbitration. Ross Dev. Co. v. Advanced Bldg. Dev., Inc., 803 A.2d 194, 196 (Pa. Super. 2002). Pennsylvania law advocates strict construction of arbitration agreements. PBS Coal, at 377, at 905.

The parties agree that the arbitration provision is valid, but disagree on its application to the reimbursement dispute. Relying on American Re-Insurance Co. v. Frankford Union Mut. Ins. Co., 47 Pa. D&C.2d 640 (Phila. Com. Pls. 1969), Defendant contends that any "factual dispute" surrounding the Agreement raises a question of interpretation. Defendant, however, demonstrates no factual dispute. Although Defendant states that Plaintiff may have violated the "notice provisions," Def. Mem., at 5, of the Agreement and that "certain underwriting materials," id., may influence interpretation of the Agreement, these facts are not properly before the court. In an attempt to create a factual dispute, Defendant asserts that "enforcement" of the Agreement is "interpretation" of the Agreement, but this argument strips both words of their typical meanings. Lacking a factual dispute, the Agreement must be interpreted on its face. See PBS Coal, at 378, at 905 ("to ascertain the intent of the parties, a court must first look to the four corners of the document – the express language of the contract.") Defendant identifies no provision of the Agreement that creates an interpretative dispute between the parties. Since the Agreement clearly restricts arbitration to such instances, Defendant's preliminary objections are overruled.

BY THE COURT,

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HOWLAND W. ABRAMSON, J.