

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FARM BUREAU MUTUAL)	
INSURANCE COMPANY,)	
Plaintiff,)	4:03-CV-10050
)	
vs.)	
)	
AMERICAN INTERNATIONAL)	
GROUP, INC; NEW HAMPSHIRE)	
INSURANCE COMPANY; AMERICAN)	
HOME ASSURANCE COMPANY;))	
NATIONAL UNION FIRE INSURANCE)	ORDER
COMPANY OF PITTSBURGH,)	
PENNSYLVANIA; and AMERICAN)	
INTERNATIONAL UNDERWRITERS)	
OVERSEAS, LTD.,)	
)	
Defendants)	
)	

Defendants, American International Group, Inc. (“AIG”), New Hampshire Insurance Company, American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pennsylvania, and American International Underwriters Overseas, Ltd., filed a motion to stay this action on February 10, 2003. Plaintiff, Farm Bureau Mutual Insurance Company, filed a resistance on February 25, 2003. Defendants replied on March 4, 2003. The matter is now fully submitted.

I. BACKGROUND

When considering a motion to dismiss, the Court will accept as true all factual allegations in

plaintiff's complaint. *McSherry v. Trans World Airlines, Inc.*, 81 F.3d 739, 740 (8th Cir. 1996) (citing *Leatherman v. Tarrant Co. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 163-65 (1993)).

In 1998, plaintiff and defendants entered into a written agreement whereby plaintiff assumed responsibility for certain insurance risks underwritten by defendants. The parties' agreement is memorialized in the Primary Reinsurance Facultative Facility for American International Group ("1997/98 Reinsurance Facility"). See Plaintiff's Brief in Support of Resistance to Defendants' Motion to Stay, Exhibit 1-A. The 1997/98 Reinsurance Facility covered risks underwritten by defendants over a thirteen-month period beginning December 1, 1997. *Id.* The parties renewed the reinsurance agreement, extending it to cover risks underwritten by defendants in 1999.¹ See *id.*, Exhibit 1-B (1999 Reinsurance Facility).

Initially, plaintiff paid its obligations under the Reinsurance Facilities without issue. In October, 2001, plaintiff requested additional information to support defendants' then-most-recent request for

¹ Articles 1 and 2 of the Reinsurance Facilities discuss the risks ceded in the agreements. Article 1 of the Reinsurance Facilities provides:

BUSINESS COVERED

Including but not limited to Construction risks written as direct and indirect insurance including Advance Loss Of Profits and/or Business Interruption. Construction risks (CAR/EAR) also include associated Third-Party Liabilities.

Article 2 of the Reinsurance Facilities provides:

TERRITORY

All risks submitted by American International Group's Energy Department office in London, however, excluding exposure in the United States of America and United Kingdom other than incidental and/or as may be agreed.

payment. For several months, the parties disputed the amount of money plaintiff owed defendants. During that time, plaintiff learned that defendants' agents had made misrepresentations upon which plaintiff relied when it entered into the Reinsurance Facilities. After discovering this information, plaintiff challenged the validity of the parties' agreements.

The parties were unable to settle their disputes on their own. In October 2002, defendants demanded the issues be submitted to arbitration. They claimed that the controversies were within the scope of the Reinsurance Facilities' arbitration clause, which provides: "All disputes or differences arising out of the interpretation of this Agreement shall be submitted to the decision of two arbitrators" Plaintiff's Exhibit 1-A, (1997/98 Reinsurance Facility, Article 22); and Plaintiff's Exhibit 1-B, (1999 Reinsurance Facility, Article 22). Plaintiff, believing the controversies were not subject to arbitration, filed a civil action in Polk County District Court on December 31, 2002.

In Count I of its petition, plaintiff alleged that it relied on fraudulent misrepresentations made by defendants when it entered into the 1997/98 Reinsurance Facility. Specifically, plaintiff alleged that defendants had provided it with information suggesting that: (1) the 1997/98 Reinsurance Facility only included risks that were originally underwritten by AIG; and (2) the loss-to-premium income comparison for the Reinsurance Facility were calculated and presented on the same risk-attaching basis as the policies that were included in the Reinsurance Facility. Plaintiff alleged it later discovered that AIG did not originally underwrite all of the risks included in the Reinsurance Facility, and that the loss-to-premium income comparisons were not calculated and presented on the same risk-attaching basis as the policies ceded to the Reinsurance Facility.

In Count II, plaintiff alleged that defendant made fraudulent misrepresentations concerning the

1999 Reinsurance Facility. Plaintiff included claims similar to those it made in Count I. In addition, plaintiff alleged that defendants misrepresented that the 1997/98 Reinsurance Facility had only incurred \$442,911.71 of losses for the 1997/98 operating year. Plaintiff further alleged that defendants falsely suggested Albingia Versicherungs Aktiengesellschaft (“Albingia”) would be continuing as a lead reinsurer in the Reinsurance Facility for the 1999 operating year.

Count III is based on the same facts alleged in Counts I and II of plaintiff’s petition. In Count III, the plaintiff alternatively claimed that defendants’ actions constituted negligent misrepresentation.

In Counts I-III, plaintiff sought rescission of the 1997/98 and 1999 Reinsurance Facilities. In Count IV, plaintiff alternatively sought a declaration setting forth what amounts, if any, it owed defendant under the terms of the facilities.

On January 29, 2003, defendants removed this case to the United States District Court for the Southern District of Iowa. Defendants now seek a stay, claiming that the disputes should be resolved in an arbitral forum.

II. APPLICABLE LAW AND DISCUSSION

Courts must direct parties to arbitration on issues to which an arbitration agreement has been signed. *See* 9 U.S.C. § 1 et seq. (Federal Arbitration Act); and *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Although there is a strong federal policy in favor of arbitration, *see Moses H. Cone Mem. Hop. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983), a party who has not agreed to arbitrate a dispute cannot be forced to do so. *AT&T Tech., Inc. v. Communications Workers of America*, 475 U.S. 643, 648 (1986)). As the Eighth Circuit has stated, “[N]either state nor federal

law confers a right of arbitration; the right must be found in a contract between the parties seeking to compel arbitration.”

The question now before the Court is whether the parties contracted to resolve plaintiff’s claims in an arbitral forum. The Reinsurance Facilities’ arbitration clause provides: “All disputes or differences arising out of the *interpretation* of this Agreement shall be submitted to the decision of two arbitrators” Plaintiff’s Exhibit 1-A, (1997/98 Reinsurance Facility, Article 22); and Plaintiff’s Exhibit 1-B, (1999 Reinsurance Facility, Article 22) (emphasis added). The Court initially finds that the arbitration clause in the case at bar is relatively narrow, as it applies only to disputes “arising out of the interpretation of” the parties’ Reinsurance Facilities. Had the parties intended to submit all controversies arising from their Reinsurance Facilities to arbitration, they would have used broader language. *See, e.g., AT&T Tech. Inc.*, 475 U.S. 643, 645 (1986) (“any differences arising with respect to the interpretation of this contract or the performance of any obligation hereunder”); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 396 (1967) (“[a]ny controversy or claim arising out of or relating to this Agreement”); and *Larry’s United Super, Inc., v. Werries*, 253 F.3d 1083, 1084 (8th Cir. 2001) (“all disputes relating to the agreement”). The Court finds that the cases cited by defendants, which involve broad, all-embracing arbitration clauses, are not controlling. *See, e.g., Dominion Austin Partners, L.L.C., v. Emerson*, 248 F.3d 720, 724, 728 (8th Cir. 2001) (issue of whether appellants were fraudulently induced to adopt multiple amendments to a partnership agreement must be resolved in arbitration, where parties’ broad arbitration clause applies to “all disputes arising out of the partnerships”).

A. Counts I-III

The Court will now consider whether Counts I-III of plaintiff's petition "arise out of the interpretation" of the Reinsurance Facilities. Plaintiff's misrepresentation claims (Counts I, II and III) are premised on the following alleged representations made by defendants and/or their agents prior to, or contemporaneous with, the execution of the contracts:

- AIG originally underwrote each risk covered under the Reinsurance Facility.
- The loss vs. premium income comparisons for operation of the Reinsurance Facility were done on the same risk-attaching basis as the policies covered by the Reinsurance Facility. (i.e. losses were presented in the same year as the premium received for the policy covering the loss, not the year in which the loss occurred).
- The Reinsurance Facility had only incurred \$442,911.71 of losses for the 1997/98 operating year at the time of solicitation for renewal of plaintiff's participation for the 1999 operating year.
- Albingia would continue to participate as lead reinsurer in the Reinsurance Facility for the 1999 operating year.²

In order to prevail on its misrepresentation claims at trial, plaintiff must prove that defendants made these misrepresentations, and that the misrepresentations were either fraudulent or material.

Kanzmeier v. McCoppin, 398 N.W. 2d 826, 831 (Iowa 1987). If plaintiff succeeds, the contract is voidable. *Id.*

Defendants argue that plaintiffs' misrepresentation claims cannot be resolved without interpreting provisions of the Reinsurance Facilities. For example, defendants maintain that Article 1 and Article 2 of the Reinsurance Facilities must be interpreted in order to resolve plaintiff's first misrepresentation allegation—that defendants fraudulently represented that AIG originally underwrote

² The first two representations relate to the 1997/98 and the 1999 Reinsurance Facilities. The second two representations relate to the 1999 Reinsurance Facility only.

each risk covered under the Reinsurance Facilities.³ The Court disagrees.

In Counts I-III, plaintiff is not alleging that the term “Construction risks,” which appears in Article I of the Reinsurance Facilities, should be interpreted to mean “construction risks originally underwritten by AIG.” In fact, plaintiff is not claiming in Counts I-III that any provision of the Reinsurance Facilities should be interpreted to mean “construction risks originally underwritten by AIG.” Instead, plaintiff alleges that prior to the time it signed the Reinsurance Facilities, defendants falsely represented that the Reinsurance Facilities would only include risks that were originally underwritten by AIG, when in fact, the Reinsurance Facilities included additional risks. Plaintiff claims that this and other misrepresentations made by defendants render the Reinsurance Facilities invalid. Defendants have not illustrated how resolution of the misrepresentation disputes will require the decision-maker to choose between competing interpretations of contract terms. The question is not how to interpret the terms of an existing contract. The question is whether a valid contract exists. *See Larry’s United Super, Inc.*, 253 F.3d 1083, 1085 (“When a party moves to compel arbitration, . . . [the court] . . . must determine whether there is a valid agreement to arbitrate and whether the specific dispute at issue falls within the substantive scope of that agreement.”).

Because the Court finds that plaintiff’s misrepresentation claims are not disputes involving contract interpretation, it finds that Counts I-III do not fall within the scope of the Reinsurance Facilities’ arbitration clause. The Court denies defendants’ motion to stay Counts I-III.

³ See footnote 1.

B. Count IV

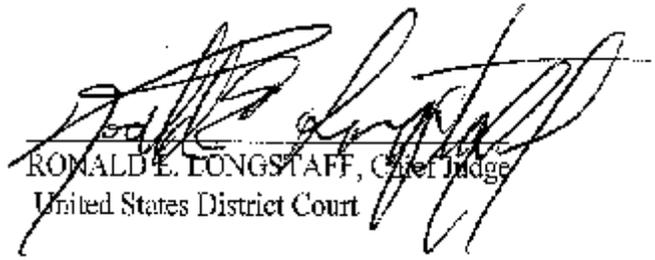
In Count IV, plaintiff alternatively seeks a declaration setting forth what amount, if any, it owes defendants under the terms of the Reinsurance Facilities. Assuming the Reinsurance Facilities are found to be valid, plaintiff will argue that defendant is seeking compensation for liabilities that are beyond the scope of the parties' agreement. For example, plaintiff will likely argue the following: (1) defendant is seeking payment for liabilities that were not originally underwritten by AIG; (2) provisions of the contract—such as the terms “Construction risks” or “All risks submitted by AIG’s Energy Department office in London”—should be construed to mean “construction risks originally underwritten by AIG;” therefore (3) plaintiff has not breached the Reinsurance Facilities by refusing to tender payment for liabilities that were not originally underwritten by AIG. The Court finds that resolution of this dispute—whether the parties’ performances are in accord with the terms of the contract—will require the decision-maker to interpret terms of the Reinsurance Facilities. Consequently, the Court finds that Count IV is within the scope of the Reinsurance Facilities’ arbitration clause. The Court therefore grants defendants’ motion to stay Count IV.

III. CONCLUSION

The Court finds that Count IV of plaintiff’s complaint falls within the scope of the Reinsurance Facilities’ arbitration clause, but that Counts I-III do not. The Court therefore grants defendants’ motion to stay Count IV and denies their motion to stay Counts I-III.

IT IS ORDERED.

This 28th day of May, 2003.



RONALD E. LONGSTAFF, Chief Judge
United States District Court