Published on *The National Law Review* https://natlawreview.com

Destination Arbitration: Court Holds Service-Of-Suit Clause Does Not Conflict With Policy's Arbitration Requirement

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Coverage disputes often come down to the interplay between endorsements and the body of the policy. But this tension is not limited to terms addressing coverage. It can also extend to areas such as dispute resolution. In *Southwest LTC-Management Services, LLC v. Lexington Insurance Co.*, No. 1:18-cv-00491-MAC (E.D. Tex. Apr. 17, 2019), the court held that a service-of-suit endorsement did not supersede the arbitration clause in the policy.

A group of carriers paid $2.5 million for a Hurricane Harvey claim under a commercial property insurance policy. The insured sought an additional $5.9 million, but the carriers argued that the $2.5 million flood sublimit applied. The carriers invoked the policy's arbitration clause, and the policyholder filed suit. After removing to the Eastern District of Texas, the carriers argued that the court should stay the case and send it to arbitration. In support, they cited the arbitration clause, which states that:

> [A]ll matters in difference between the Insured and the Companies … in relation to this insurance, including its formation and validity, and whether arising during or after the period of this insurance, shall be referred to an Arbitration Tribunal in the manner hereinafter set out.

Before analyzing whether the arbitration clause conflicted with any endorsements, the court first analyzed whether the arbitration agreement was valid. The first step is determining whether the agreement was subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. An arbitration agreement falls under the Convention if the agreement (1) is in writing; (2) the place of the arbitration is in a country that is a signatory to the convention; (3) the dispute arises out of a commercial relationship; and (4) at least one of the parties is not a citizen of the United States. The court determined that the arbitration clause was in writing, required New York arbitration, arose from a commercial relationship (the insurance policy), and involved foreign insurers. Thus, it met all four criteria.

Once an arbitration agreement satisfies these four requirements, the Convention mandates that the court order the case to arbitration unless the agreement is "null and void, inoperative or incapable of

being performed." Here, the insured argued that there was no longer an arbitration agreement at all. Specifically, the insured asserted that the policy's service-of-suit endorsement supersedes any arbitration agreement based on the following language:

> It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured) will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

Because the carriers allegedly "failed to pay any amount claimed to be due," the insured argued that the carriers should be required "to submit to the jurisdiction of a Court of competent jurisdiction within the United States," irrespective of the arbitration clause.

The court disagreed and found that the clauses are harmonious and, in fact, complement one another. First, the "court of competent jurisdiction" (as identified in the service-of-suit endorsement) may be necessary to enforce the arbitration award. Second, the court would also have the ability to compel arbitration if either party resists. Because the court and arbitration panel would have different functions, their roles would not necessarily conflict. The court explained that this interpretation "gives meaning to both the arbitration clause and the service-of-suit clause, whereas Plaintiff's reading renders the arbitration clause superfluous." Accordingly, the magistrate judge recommended staying the case and compelling arbitration, and the district court adopted the magistrate judge's report and recommendation.

This decision falls in line with the majority of courts, which have held that a service-of-suit endorsement does not negate accompanying arbitration clauses. *See, e.g. Century Indem. Co. v. Certain Underwriters at Lloyds, London*, 584 F. 3d 513, 554 (3d Cir. 2009); *Gemini Ins. Co. v. Certain Underwriters at Lloyd's London*, No. 4:17-cv-01044, 2017 WL 1354149 (S.D. Tex. Apr. 13, 2017).

National Law Review, Volume IX, Number 140