

New York Federal Court Compels Arbitration in Life Reinsurance Dispute Over Trust Assets

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Where two or more agreements are involved in a transaction, a dispute over one of the agreements often raises arbitrability questions. This is especially true where a reinsurance agreement with an arbitration clause is paired with a trust agreement with no arbitration clause. In a recent life reinsurance case, a New York federal court addressed a dispute over trust assets and whether that dispute was arbitrable under the reinsurance agreement.

In *PB Life & Annuity Co., Ltd. v. Universal Life Insurance Co.*, No. 20-cv-2284 (LJL) (S.D.N.Y. May 12, 2020), a dispute arose over whether assets in a reinsurance trust account complied with the insurance law. The parties entered into a coinsurance reinsurance agreement. The credit for reinsurance article of the reinsurance agreement required that a reinsurance trust fund be established to ensure that the cedent received full credit for reinsurance. The trust fund had to comply with the laws of each party's domiciliary jurisdiction.

The parties entered into a reinsurance trust agreement as required by the reinsurance agreement. A dispute arose over whether the assets the reinsurer placed in the trust agreement qualified under Puerto Rico law. Allegedly, over 65% of the trust assets were loan obligations of the reinsurer's affiliated entities, which violated the 10% limit on investing in assets of affiliated entities.

The cedent demanded arbitration and the reinsurer brought this action. The cedent moved to compel arbitration and the reinsurer sought an injunction precluding arbitration.

In granting the motion to compel and denying the injunction request, the court focused on the two agreements. The court ultimately determined that the reinsurance agreement's arbitration was broad enough to leave to the arbitrators the question of whether disputes under the trust agreement came within the arbitration clause of the reinsurance agreement. The arbitration provision provided that:

. . . all disputes and differences between the Parties arising under or relating to this Reinsurance Agreement . . . shall be decided by arbitration . . . the arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

The entire agreement clause in the reinsurance agreement clearly incorporated the trust agreement:

This Reinsurance Agreement, the Reinsurance Trust Agreement and the Comfort Trust Agreement supersede all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes . . . a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter.

The court found that the reinsurance agreement, which contained the binding arbitration clause, remained in effect and that the trust agreement did not amend or replace the reinsurance agreement. The court noted that the agreements were meant to be read in conjunction with each other. The court rejected the notion that the trust agreement could replace the reinsurance agreement and its arbitration clause, and agreed with the cedent that such an argument would lead to an absurd result.

The court then determined that the question of arbitrability should be left to the arbitrators. The reinsurer argued that the dispute about the trust agreement assets did not fall within the scope of the reinsurance agreement's arbitration clause. The court held that this was a question of arbitrability, which fell within the broad scope of the arbitration clause. The court also commented that the American Arbitration Association rules, which were incorporated into the arbitration clause, vested the arbitrator with the power to determine questions of arbitrability.

Accordingly, the court granted the cedent's motion to compel arbitration and denied the reinsurer's motion to enjoin arbitration.

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