

**IN THE UNITED STATES DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

CERTAIN INSURERS SUBSCRIBING TO  
POLICY NOS. B0391TY1701167,  
B0391TY1701165, and B0391TY1701166,

Plaintiff,

v.

CBI ACQUISITIONS, LLC,

Defendant.

Case No.: 3:19-cv-16

**COMPLAINT FOR SELECTION OF AN UMPIRE**

Certain Insurers Subscribing to Policy Nos. B0391TY1701167, B0391TY1701165, and B0391TY1701166 (“Insurers”), by and through counsel, hereby file this Complaint for Selection of an Umpire against CBIA Acquisitions, LLC (“CBIA”), stating as follows:

**I. INTRODUCTION**

1. This lawsuit arises out of an insurance coverage dispute pertaining to CBIA’s property and business income loss on St. John purportedly caused by Hurricane Maria.

2. Because the Insurers and CBIA (the “Parties”) could not agree as to the scope of damages arising from Hurricane Maria, the insurance policies’ arbitration provision was invoked. As a result, each side was required to appoint a “competent and disinterested” arbitrator. The party-appointed arbitrators were then required to select a neutral umpire.

3. The subject insurance policies are subject to U.S. Virgin Islands choice of law.

4. Insurers appointed Robert Robinson as their arbitrator. Mr. Robinson was a former partner at the law firm Lord, Bissell and Brook handling insurance coverage disputes, and then worked as General Counsel for two managing agents in the Lloyd’s of London insurance market. Mr. Robinson is now retired and doing consulting and arbitration work.

5. CBIA selected Eric Eisenberg as its party-appointed arbitrator. Mr. Eisenberg is partner at the law firm Hinckley Allen in Boston, Massachusetts.

6. Mr. Robinson put forth four competent and disinterested umpire selections, three of which are attorneys and/or retired judges in the U.S. Virgin Islands.

7. CBIA, through Mr. Eisenberg, put forth four umpire selections, none of which appear to be familiar with the laws of the U.S. Virgin Islands and were otherwise objectionable. Nevertheless, Mr. Robinson was willing to conduct phone interviews with one or two of CBIA's umpire selections to learn further about their experience, provided that Mr. Eisenberg was willing to do the same with Mr. Robinson's selections.

8. CBIA refused to consider or interview any of Mr. Robinson's first set of umpire selections.

9. Mr. Robinson then put forth another three competent and disinterested umpire selections.

10. Mr. Eisenberg and Mr. Robinson agreed to conduct phone interviews with one umpire for each list.

11. Following the phone interview, Mr. Eisenberg rejected Mr. Robinson's umpire selection without reason.

12. Mr. Robinson rejected Mr. Eisenberg's umpire selection as he was not familiar with U.S. Virgin Island laws or insurance property disputes.

13. CBIA also failed to put forth any additional umpire selections.

14. Due to CBIA's unwillingness to consider any of Mr. Robinson's umpire selections or to put forth any further umpire selections who might be acceptable to Insurers, Insurers now petition this Court to appoint an umpire to avoid further delays in the proceedings.

15. Specifically, Insurers seek an order appointing Carl A. Beckstedt as umpire. In the alternative, Insurers seek an order appointing Britain H. Bryant as umpire. As further alternatives, Insurers seek an order appointing Judge Henry Smock as umpire. Mr. Robinson also nominated Lawrence Pollack, Timothy Howe, Justice Raoul Cantero, and Judge Victoria Platzer as umpires. Each was rejected by CBIA.

16. Insurers have contemporaneously filed a Motion to Appoint an Umpire.

## **II. THE PARTIES**

17. Insurers are subscribers to the policies, located in and are citizens of the United Kingdom and Germany<sup>1</sup>.

18. Upon information and belief, CBIA is a limited liability company organized under the laws of the U.S. Virgin Islands. CBIA is licensed to operate the Caneel Bay Resort on the island of St. John in the U.S. Virgin Islands. By virtue of its members, CBIA is also a citizen of the state of New York. CBIA's principals are located in New York.

## **III. JURISDICTION AND VENUE**

19. This Court possesses jurisdiction over this civil action pursuant to the Federal Arbitration Act ("FAA"), specifically 9 U.S.C. § 203, which confers federal court jurisdiction to actions falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). Here, this lawsuit concerns an arbitration arising out of CBIA's claim for insurance coverage for property located in the U.S. Virgin Islands under three insurance policies containing arbitration clauses subscribed to by Insurers, which are citizens of the United Kingdom and Germany<sup>2</sup>.

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<sup>1</sup> Although one of the subscribers is a Bafin regulated company, the claim is being handled in London, United Kingdom.

<sup>2</sup> Although one of the subscribers is a Bafin regulated company, the claim is being handled in London, United Kingdom.

20. This Court has personal jurisdiction over CBIA with respect to this matter, as CBIA is a limited liability company organized under the laws of U.S. Virgin Islands and, thus, has sufficient contacts with the U.S. Virgin Islands.

21. As an alternative basis for jurisdiction, Insurers and CBIA are entirely diverse and CBIA seeks in excess of the jurisdictional minimum (\$75,000) for diversity of citizenship jurisdiction.

22. Venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

23. An actual case and controversy of a justiciable nature exists between Insurers and CBIA regarding their duties, rights, and obligations, if any, under the subject insurance policies. Insurers are, therefore, entitled to bring this declaratory judgment action in this Court pursuant to the Federal Declaratory Judgment Act, 28 U.S. C. § 2201, et seq.

#### **IV. THE UNDERLYING FACTS**

##### **A. THE POLICIES**

24. Insurers are the various subscribers to three policies issued to CBIA as respects its interest in the Caneel Bay Resort and certain other Caneel Bay properties (collectively, the “Caneel Bay Properties”), Policies No. B0391TY1701167, B0391TY1701165, and B0391TY1701166 (the “Policies”). A true and complete copy of the Policies are attached hereto as Exhibit A.

25. The Policies’ term was March 1, 2017 to March 1, 2018.

26. CBIA chose to obtain property and business interruption coverage under the Policies for a total limit of \$32 million per occurrence, despite the total insurable value being listed as \$65,413,068.

27. The Policies contain a Flood, Wind and Wind-Driven Water deductible of 5% of “Total Property Damage Values involved in the loss” and 5% of “Total Business Interruption at Risk.”

28. The Policies’ Overseas Jurisdiction Clause states, in relevant part: “this insurance shall be governed by the law of US Virgin Islands whose Courts shall have jurisdiction in any dispute arising hereunder.”

29. The Policies contain an arbitration provision (the “Arbitration Provision”), which states:

If the Insured and the Underwriters fail to agree in whole or in part regarding any aspect of this Policy, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two chosen shall before commencing the arbitration select a competent and disinterested umpire. The arbitrators together shall determine such matters in which the Insured and the Underwriters shall so fail to agree and shall make an award thereon, and if they fail to agree, they will submit their differences to the umpire and the award in writing of any two, duly verified, shall determine the same.

The Parties to such arbitration shall pay the arbitrators respectively appointed by them and bear equally the expenses of the arbitration and the charges of the umpire.

**B. THE LOSS**

30. On September 6, 2017, Hurricane Irma hit St. John.

31. Hurricane Irma caused extensive damage to the Caneel Bay Properties, and the business personal property located therein, from high winds, driving rain, storm surge, and flooding.

32. On or around September 19 and 20, 2017, Hurricane Maria also passed over St. John.

**C. THE CLAIM**

33. CBIA noticed a claim under the Policies for damage to the Caneel Bay Properties purportedly arising from both Hurricane Irma and Hurricane Maria.

34. Insurers proceeded to adjust the claim, and tendered the full limits under the Policies of \$32 million to CBIA for the Hurricane Irma claim.

35. The Parties dispute whether and to what extent Hurricane Maria may have caused additional damages covered by the Policies.

**D. INVOCATION OF ARBITRATION**

36. As the Parties disagreed as to coverage under the Policies for the purported Hurricane Maria damage, CBIA invoked the Arbitration Provision under the Policies, and Insurers agreed.

37. The Parties agreed to arbitration and set forth a Proposed Arbitration Schedule, where each party would appoint their selected arbitrator by January 17, 2019.

38. Both Parties timely selected their party-appointed arbitrators.

**E. SELECTION OF AN UMPIRE**

39. Pursuant to the Arbitration Provision in the Policies, Mr. Eisenberg and Mr. Robinson each exchanged their selections for appointment of a competent and disinterested umpire.

40. Mr. Robinson, on behalf of Insurers, put forth the following individuals as umpire: (1) Carl Beckstedt, a practicing attorney in the U.S. Virgin Islands who has experience in insurance coverage, specifically commercial property disputes, on behalf of insurance brokers; (2) Britain Bryant, a practicing U.S. Virgin Islands attorney, who is a current arbitrator and mediator with experience in civil litigation and insurance matters; (3) Judge Henry Smock, a former judge of the

Territorial Court of the U.S. Virgin Islands and current arbitrator and mediator with experience in insurance disputes; and (4) Lawrence Pollack, a neutral arbitrator and mediator specializing in insurance disputes.

41. Insurers' umpire selections are all competent in the area of insurance coverage and especially large commercial property disputes.

42. Further, three out of the four of Insurers' umpire selections have vast knowledge of U.S. Virgin Islands law, which is the law to be applied in this action.

43. Additionally, all of Insurers' umpire selections are disinterested, as they have no professional, or economic interest in the instant case.

44. Mr. Eisenberg, on behalf of CBIA, put forth the following individuals as umpire: (1) Ty Laurie, a partner at Laurie & Brennan in Chicago, Illinois who specializes in construction law and is an arbitrator and mediator; (2) Justice Anthony Carpinello, a retired Associate Justice on the Appellate Division of the New York State Supreme Court, and current arbitrator; (3) Judge Robert Holzberg, a retired Connecticut Superior Court Judge and head of the Alternative Dispute Resolution practice at Pullman & Comley; and (4) Lee Shidlofsky, a policyholder attorney from Texas at the Shidlofsky Law Firm.

45. Despite that the choice of law for this dispute falls under U.S. Virgin Islands law, none of CBIA's umpire selections appear to be familiar with U.S. Virgin Islands law or licensed to practice law in the U.S. Virgin Islands.

46. Rather, Justice Carpinello is from New York where both CBIA's law firm and at least some of CBIA's principals are located. Judge Holzberg is from Connecticut where CBIA's counsel lives, and Mr. Laurie and Mr. Shidlofsky are from Illinois and Texas, respectively.

47. Further, while most of CBIA's umpire selections are well-respected in their fields, CBIA's umpire selections do not appear to have significant experience dealing with large commercial property insurance disputes.

48. Mr. Shidlofsky's practice consists of representing insureds against insurers. Mr. Shidlofsky has posted blog entries titled "Bad Faith – Alive and Well in Texas" and makes reference to "victory for insureds" and "the good guys win" when referring to favorable court decisions for insureds. (See <http://www.shidlofskylaw.com/blogs/blog18.html>; <http://www.shidlofskylaw.com/blogs/blog11.html>; and <http://www.shidlofskylaw.com/blogs/blog2.html>). Clearly, Mr. Shidlofsky's practice raises questions about a leaning toward policyholders.

49. While Mr. Robinson had questions about CBIA's selections with respect to large commercial property insurance disputes under U.S. Virgin Islands law, Mr. Robinson was willing to reach an agreement with Mr. Eisenberg to hold joint telephone interviews of one or two umpire selections from each list.

50. Despite the fact that Insurers' umpire selections contained three U.S. Virgin Islands attorneys and/or former judge, and all selections have significant property insurance experience, CBIA refused to even agree to have preliminary telephone calls with any of Insurers' selections.

51. In an effort to come to an agreement as to an umpire Mr. Robinson, on behalf of Insurers, put forth another three individuals for umpire: (1) Timothy Howe, Queen's Counsel of Fountain Court Chambers in London, who is an experienced commercial barrister who has acted for and against insurers in a number of complex cases; (2) Justice Raoul Cantero, a former Justice of the Florida Supreme Court who is currently a practicing attorney at White & Case in Miami;



and (3) Judge Victoria Platzer, a former Circuit Court Judge for the 11<sup>th</sup> Judicial Circuit in Florida, and who is now a neutral.

52. Mr. Eisenberg then agreed to conduct phone interviews.

53. Mr. Eisenberg and Mr. Robinson agreed to conduct phone interviews of Judge Carpinello and Judge Platzer.

54. Mr. Robinson rejected Judge Carpinello as he was not familiar with the laws of the U.S. Virgin Islands nor did he have experience with large commercial property insurance disputes.

55. Mr. Eisenberg rejected Judge Platzer, without a reasonable explanation, even though Judge Platzer is immensely qualified.

56. CBIA failed to put forth any other umpire candidates other than its first set of selected umpires.

57. Due to the inability of the Parties to reach an agreement on an umpire, Insurers file this instant action petitioning the Court to appoint one of their selections as umpire.

58. Insurers seek a declaration from the Court to appoint Carl Beckstedt, or in the alternative, Britain Bryant, or in the alternative, Judge Smock or any of the other umpire selections put forth by Insurers. Undoubtedly, the U.S. Virgin Islands attorneys suggested by Insurers are qualified and would be outstanding umpire selections.

**V. CAUSES OF ACTION**

**COUNT I – DECLARATORY JUDGMENT**

**THE POLICY’S ARBITRATION PROVISION IS CLEAR, UNAMBIGUOUS, AND ENFORCEABLE**

59. Insurers repeat and re-allege each and every one of the foregoing paragraphs as if fully set forth herein.

60. The Policies’ Arbitration Provision states:

If the Insured and the Underwriters fail to agree in whole or in part regarding any aspect of this Policy, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two chosen shall before commencing the arbitration select a competent and disinterested umpire. The arbitrators together shall determine such matters in which the Insured and the Underwriters shall so fail to agree and shall make an award thereon, and if they fail to agree, they will submit their differences to the umpire and the award in writing of any two, duly verified, shall determine the same.

The Parties to such arbitration shall pay the arbitrators respectively appointed by them and bear equally the expenses of the arbitration and the charges of the umpire.

61. The aforementioned Arbitration Provision is clear and unambiguous as drafted and should be enforced as it was plainly drafted.

62. Accordingly, Insurers are entitled to a declaration that all parts of the Policies' Arbitration Provision are clear and unambiguous and, thus, enforceable as drafted.

63. Therefore, Insurers are also entitled to a declaration that the Parties must appoint an umpire who is both "competent and disinterested."

## **COUNT II – DECLARATORY JUDGMENT**

### **APPOINTMENT OF CARL BECKSTEDT AS UMPIRE**

64. Insurers repeat and re-allege each and every one of the foregoing paragraphs as if fully set forth herein.

65. The Policies' Arbitration Provision requires that the selected umpire be competent and disinterested.

66. Carl Beckstedt is both competent and disinterested.

67. Mr. Beckstedt is competent as an umpire in this case as he is a practicing attorney in the U.S. Virgin Islands, well versed with U.S. Virgin Islands law that will need to be applied in this case.

68. Mr. Beckstedt is also competent as he has experience with insurance coverage disputes, specifically large commercial property issues.

69. Mr. Beckstedt is disinterested. Mr. Beckstedt often represents insurance brokers. Although brokers are neither insurers nor insureds, brokers are usually agents of the insured. Thus, if anything, Mr. Beckstedt's experience dealing with insurance issues is closer to that of an insured, rendering him a reasonable choice for umpire.

70. Mr. Beckstedt meets the standard of both a competent and disinterested umpire.

71. Therefore, Insurers seek a declaration appointing Mr. Beckstedt as umpire.

**IN THE ALTERNATIVE, COUNT III – DECLARATORY JUDGMENT**

**APPOINTMENT OF BRITAIN BRYANT AS UMPIRE**

72. Insurers repeat and re-allege each and every one of the foregoing paragraphs as if fully set forth herein.

73. In the alternative, Insurers seek a declaration appointing Britain Bryant as umpire.

74. Mr. Bryant is both competent and disinterested.

75. Mr. Bryant is a practicing attorney in the U.S. Virgin Islands, well versed with U.S. Virgin Islands law that will need to be applied in this case.

76. Mr. Bryant also has experience with insurance coverage disputes, specifically large commercial property issues.

77. Further, Mr. Bryant is disinterested as he is a current neutral arbitrating cases and has no relationship with the parties.

78. As Mr. Bryant meets the standard of both a competent and disinterested umpire, in the alternative, Insurers seek a declaration appointing Mr. Bryant as umpire.

**IN THE ALTERNATIVE, COUNT III – DECLARATORY JUDGMENT**

**APPOINTMENT OF JUDGE HENRY SMOCK AS UMPIRE**

79. Insurers repeat and re-allege each and every one of the foregoing paragraphs as if fully set forth herein.

80. In the alternative, Insurers seek a declaration appointing Judge Henry Smock as umpire.

81. Judge Smock is both competent and disinterested.

82. Judge Smock is a former judge of the Territorial Court of the U.S. Virgin Islands, well versed with U.S. Virgin Islands law that will need to be applied in this case.

83. Judge Smock also has experience in insurance disputes coverage disputes.

84. Further, Judge Smock is disinterested as he is a current neutral arbitrating cases and has no relationship with the parties.

85. As Judge Smock meets the standard of both a competent and disinterested umpire, in the alternative, Insurers seek a declaration appointing Judge Smock as umpire.

**IN THE ALTERNATIVE, COUNT V – DECLARATORY JUDGMENT**

**APPOINTMENT OF ONE OF INSURERS' SELECTIONS AS UMPIRE**

86. Insurers repeat and re-allege each and every one of the foregoing paragraphs as if fully set forth herein.

87. Insurers put forth a total of seven individuals as potential umpires.

88. Each individual selected by Insurers is both competent and disinterested with respect to the issues surrounding this case.

