

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ONEBEACON AMERICA INSURANCE
COMPANY, F/K/A COMMERCIAL UNION
INSURANCE COMPANY, EMPLOYERS
COMMERCIAL UNION INSURANCE
COMPANY, EMPLOYERS LIABILITY
ASSURANCE CORPORATION, AMERICAN
EMPLOYERS INSURANCE COMPANY,
EMPLOYERS' FIRE INSURANCE
COMPANY, AND NORTHERN ASSURANCE
COMPANY OF AMERICA,

Petitioner,

-and-

NATIONAL CASUALTY COMPANY and
EMPLOYERS INSURANCE COMPANY OF
WAUSAU,

Respondent.

Case No. 14-cv-12570 (RGS)

~~PROPOSED~~ ORDER

Upon OneBeacon's Motion for Entry of an Order confirming the Award that is attached hereto as Exhibit 1, it is hereby ORDERED that: (1) OneBeacon's Amended Petition to Confirm an Arbitration Award Pursuant to Section 9 of the Federal Arbitration Act is GRANTED; and (2) Judgment is entered in favor of OneBeacon and against Reinsurers in accordance with the Award.

Dated: Boston, Massachusetts
August 21, 2014


Judge Richard G. Sterns



In the Matter of the Arbitration Between:

**ONEBEACON AMERICA INSURANCE
COMPANY, ET AL.,**

Petitioner(s),

- and -

**NATIONAL CASUALTY COMPANY and
EMPLOYERS INSURANCE COMPANY OF
WAUSAU,**

Respondents.

**John P. Allare, Umpire
Paul R. Aiudi, Arbitrator
Spiro K. Bantis, Arbitrator**

PANEL ORDER ON SUBMISSIONS

The Panel, has considered and conferred with respect to the two motions submitted by the Parties, namely, (1) OneBeacon's Motion with respect to "Causative Agency" and (2) Wausau's and National Casualty's (collectively "Wausau") Motion with respect to "Retention". Both Parties argue that these motions are dispositive with respect to Treaty years 1971-79 (i.e., those Treaties containing the "Causative Agency" language). Based on all of the Parties' Motions, Responses, Replies and oral argument (the "Submissions"), the Panel hereby orders as follows:

- (1) OneBeacon may bill its asbestos non-products bodily injury claims to Wausau on the basis that, per insured, asbestos is the "causative agency" within the meaning of Section 5(d) of the MLRT Treaty and that Wausau must accept OneBeacon's billings on that basis.
- (2) One Beacon shall submit the claims to the first Treaty year covering a reinsured policy, after the first Treaty Year Retention is exhausted.
- (3) To the extent that multi-year reinsured policies pay in excess of a single year's per-occurrence limit, One Beacon shall submit the claims to the next implicated Treaty year after that Treaty Year Retention is exhausted. To the

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extent per-occurrence limits are exhausted in the second year of a multi-year reinsured policy and subsequent policy years are utilized, coverage in subsequent Treaty years shall apply in the same manner as the first and second years, in excess of the Treaty Year Retention.

- (4) "Treaty Year Retention" shall mean the retention as specified in the Treaty for the applicable Treaty year, without reduction or pro-ration.
- (5) The National Lead (NL) Industries and Grinnell Corp. product billings identified in the Submissions (the "Product Billings") are due and payable.
- (6) Revised non-product billings submitted pursuant to this Order, together with the Product Billings (collectively the "Billings"), shall be paid within 60 days of One Beacon's submission of the revised non-product billings. With respect to the Product Billings only, simple interest at One Beacon's portfolio rate in its most recent Annual Statement (i.e., yellow book) shall also be paid from 30 days after original billing to date of payment. To the extent any portion of the Billings remains unpaid after 60 days, interest shall accrue at 8% on such unpaid portion until all amounts are fully paid.
- (7) This Order should not be construed to apply to or alter any agreed upon practice, course of performance, course of dealing or course of conduct established as between One Beacon and other MLRT reinsurers.
- (8) All other requests for relief under the Submissions are denied.

The Panel believes this order is final as respects the joined issues presented under the Submissions and that an evidentiary hearing is unnecessary. The Panel will retain authority over this matter for 90 days from the date of this Order. To the extent additional issues should be heard, the Panel will entertain a request by either Party (or the Parties jointly) that such additional issues should be heard by dispositive motion or otherwise. Any such request should be accompanied by a proposed schedule for adjudication. Any additional hearing, which should be brief, will take place before December 31, 2014 in New York City (or other location agreed by the Parties) on mutually convenient date[s] for the Parties, Counsel and the Panel, and the Requesting Party shall suggest dates in its request.

On behalf of the Panel



John P. Allare, Umpire

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In the Matter of the Arbitration Between:

**ONEBEACON AMERICA INSURANCE
COMPANY, ET AL.,**

Petitioner(s),

-and-

**NATIONAL CASUALTY COMPANY and
EMPLOYERS INSURANCE COMPANY OF
WAUSAU,**

Respondents.

**John P. Allare, Umpire
Paul R. Aiudi, Arbitrator
Spiro K. Bantis, Arbitrator**

CLARIFICATION ORDER ON SUBMISSIONS

On April 29, 2014 the Panel issued an Order on Submissions (the "Order"). The Order expressed the Panel's view that its resolution of the issues presented on submission would not require an evidentiary hearing, but that the Panel was retaining jurisdiction over the matter for 90 days from the date of the Order to address additional issues. This is the Panel's clarifying order concerning the Submissions (as defined in the Order), as supplemented by the Parties' additional submissions described below (the "Clarification Order").

On June 20, 2014, before expiration of the 90 day jurisdiction retention, Respondents submitted a Motion for Clarification and/or Correction of the Order. In addition to Respondents' Motion, the Panel acknowledges receipt of: (1) Respondents' June 20, 2014 E-mail advising the Panel that Petitioners had filed for judicial confirmation of the Order; (2) Respondents' June 20, 2014 letter to Petitioners' counsel; (3) Petitioners' June 20, 2014 E-mail concerning Respondents' Motion; (4) Respondents' June 20, 2014 letter in response to Petitioners' June 20, 2014 E-mail; (5) Petitioners' June 24, 2014 letter concerning Respondents' Motion; (6) Respondents' June 25, 2014 letter responding to Petitioners' letter of June 24, 2014; (7) the

Pleadings and Order issued in OneBeacon America Insurance Company, et al v. National Casualty Company, et al 1:14-cv-12570-RGS, United States District Court, District of Massachusetts.

Having considered the Parties foregoing additional submission and after due deliberation, the Panel concludes that the Order did not clearly express the Panel's intent concerning the two product losses referenced therein. Except as clarified herein, the Order will become final pursuant to its terms on July 28, 2014 as to all other issues it addressed. This Clarification Order concerns only the Product Billings (as defined in the Order). Paragraphs (5) and (6) of the Order are amended to read as follows:

- (5) The National Lead (NL) and Grinnell Corp. product billings identified in the Submissions (the "Product Billings") shall be re-billed using the same methodology described in Paragraphs (2) through (4). The Order shall not apply to any other product billings unrelated to National Lead or Grinnell Corp (collectively "Other Product Accounts") and shall have no precedential effect on any billings related to Other Product Account under any of the Treaties here in issue.
- (6) Revised non-product billings submitted pursuant to this Order, together with the Product Billings (collectively "Billings"), shall be paid within 60 days of OneBeacon's submission of the Billings. To the extent any portion of the Billings remains unpaid after 60 days, simple interest shall accrue at 8% on such unpaid portion on such unpaid portion until all amounts are fully paid.

Except as ordered above, all the Parties' requests for relief submitted since the Order are denied.

The Panel believes that this Clarification Order resolves all issues submitted for decision. The Panel's retention of jurisdiction over this arbitration pursuant to the Order expires on July 28, 2014. The Parties are directed to identify for the Panel any additional issue(s) to be decided (which should also be accompanied by a proposed schedule for adjudication). In the event no additional issues are identified before July 28, 2014, this arbitration shall be fully concluded.

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Because this Arbitration is ongoing at the time this Clarification Order is issued, the Panel believes it has the authority to issue this Clarification Order. However, in the event that it is later determined by a court of competent jurisdiction that the Panel was without the authority to issue this Clarification Order, then the Order shall be a final order with respect to all matters set forth in the Submissions (i.e., as if this Clarification Order were never issued), with the added pronouncement that the Order's ruling with respect to the National Lead and Grinnell product claims is intended to apply solely to those specific product accounts, with no precedential effect as respects any other product accounts.

Dated: July 10, 2014

On behalf of the unanimous Panel



John P. Allaire, Empire