

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

S U M M A R Y O R D E R

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 30th day of June, two thousand fifteen.

Present: RALPH K. WINTER,
CHESTER J. STRAUB,
SUSAN L. CARNEY,
Circuit Judges.

MARIAH RE LIMITED (In Liquidation), acting by and through Geoffrey Varga and Jess Shakespeare, in their capacities as Liquidators thereof,

Plaintiff-Appellant,

v.

No. 14-4062-cv

AMERICAN FAMILY MUTUAL INSURANCE COMPANY, ISO SERVICES, INCORPORATED, AIR WORLDWIDE CORPORATION,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT

MARIAH RE LTD.:

JONATHAN D. COGAN, Kobre & Kim
LLP, New York, NY.

1 FOR DEFENDANT-APPELLEE
2 AM. FAMILY MUTUAL INS. CO.: ROBERT A. KOLE, (Jean-Paul
3 Jaillet, Choate, Hall &
4 Stewart, David S. Douglas and
5 Adam M. Felsenstein, Gallet
6 Dreyer & Berkey, LLP, on the
7 brief), Choate, Hall &
8 Stewart, Boston, MA.
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10 FOR DEFENDANTS-APPELLEES ISO
11 SERVS., INC. AND AIR WORLDWIDE
12 CORP.: JOEL M. COHEN (Matthew B.
13 Rowland, on the brief), Davis
14 Polk & Wardwell LLP, New York,
15 NY.
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17 Appeal from the judgment of the United States District Court
18 for the Southern District of New York (Sullivan, J.).

19 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
20 **DECREED** that the judgment of the district court is **AFFIRMED**.

21 Mariah Re Ltd. ("Mariah") appeals from Judge Sullivan's
22 dismissal of its claims against American Family Mutual Insurance
23 Co. ("American Family"), ISO Services, Inc. ("PCS"), and AIR
24 Worldwide Corporation ("AIR").

25 Mariah is a special purpose entity created to provide
26 reinsurance amounts to American Family in the event of severe
27 storms in various geographical areas. The amounts owed to
28 American Family by Mariah were not geared to losses actually
29 insured by American Family but rather to a formula dealing with
30 severe weather events in designated areas. Mariah contracted
31 with PCS, a preexisting entity that monitors severe weather

1 events, for a subscription to PCS's databases and associated
2 bulletins. Under Mariah's contract with AIR, AIR was to
3 calculate the amount Mariah owed American Family under the
4 reinsurance contract using data that PCS had compiled on a given
5 storm. Following a particularly catastrophic storm in the Midwest
6 in April 2011, AIR applied the predetermined calculations to data
7 from PCS's catastrophe bulletin and determined that Mariah was
8 liable for the full amount of the reinsurance policy. American
9 Family collected the amount from an escrow agent pursuant to its
10 contract with Mariah. Based principally on addenda issued by
11 PCS, Mariah sued the various appellees, claiming breach of
12 contract, breach of the implied covenant of good faith and fair
13 dealing, unjust enrichment, conversion, and tortious interference
14 with contract. The district court granted appellees' Fed. R.
15 Civ. P. 12(b)(6) motion to dismiss.

16 We **AFFIRM** the judgment of the district court for
17 substantially the reasons stated by Judge Sullivan in his opinion
18 of September 30, 2014.

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20 **FOR THE COURT:**
21 **Catherine O'Hagan Wolfe, Clerk**
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