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MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

SPHERE DRAKE INSURANCE LIMITED, )  
 )  
 Movant, )  
 )  
 v. )  
 )  
 THE LINCOLN NATIONAL LIFE INSURANCE )  
 COMPANY and FORT WAYNE HEALTH AND )  
 CASUALTY INSURANCE COMPANY, )  
 )  
 Respondents. )

Civil Action No.

05C 6411

Judge Hart  
Judge Cole

**MOTION FOR CONFIRMATION OF ARBITRATION PANEL'S AWARD**

Sphere Drake Insurance Limited ("Sphere Drake") moves this Court to confirm the Final Award of an arbitration panel entered on November 2, 2005, in an arbitration between Sphere Drake and The Lincoln National Life Insurance Company and Fort Wayne Health and Casualty Insurance Company (collectively "Lincoln"). In support of this Motion, Sphere Drake submits the Affidavit of Teresa Snider ("Snider Affidavit" or "Snider Aff.") (filed contemporaneously herewith), and further states as follows:

**Nature of the Action**

1. This Motion is brought pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "FAA") and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention") 9 U.S.C. § 201, *et seq.*, to confirm a final arbitration award.
2. Sphere Drake is an English reinsurance company that purportedly entered into four contracts of reinsurance (the "Lincoln Contracts") with Lincoln, a domestic insurance company. (Copies of the Lincoln Contracts, slips and confirmations of acceptance are attached to the Affidavit of Teresa Snider ("Snider Affidavit") as Exhibit 1.) On December 9, 2004, Lincoln initiated an arbitration proceeding against Sphere Drake contending that Sphere Drake

was required to honor obligations Sphere Drake supposedly owed pursuant to the Lincoln Contracts. Sphere Drake named Ronald Jacks as its arbitrator (Snider Aff., Ex. 2), Lincoln named Dennis Gentry as its arbitrator (Snider Aff., Ex. 3), and Robert Reinartz was selected to act as umpire. The curriculum vitae of each member of the arbitration panel (the "Panel") is attached as Exhibit 4 to the Snider Affidavit. All three Panel members are certified as arbitrators by the AIDA Reinsurance and Insurance Arbitration Society ("ARIAS-U.S."). (*See id.*)

3. An organizational meeting was held in Chicago, Illinois on July 28, 2005, wherein the parties accepted the Panel as duly constituted.

#### **The Parties**

4. Sphere Drake is a corporation organized under the laws of England and Wales, with its principal place of business in Brighton, England. During the time relevant to the events described in this complaint, Sphere Drake was known as Odyssey Re (London) Limited, and prior to that, as Sphere Drake Insurance PLC.

5. The Lincoln National Life Insurance Company is a corporation organized under the laws of Indiana with its principal place of business in Fort Wayne, Indiana.

6. Fort Wayne Health and Casualty Insurance Company is a corporation organized under the laws of Indiana with its principal place of business in Fort Wayne, Indiana.

#### **Jurisdiction**

7. Jurisdiction of this Court is proper pursuant to 9 U.S.C. § 203.

8. Venue is properly maintained in this district pursuant to 9 U.S.C. § 204 and 9 U.S.C. § 9.

### Facts

9. The Lincoln Contracts were among more than 100 putative reinsurance contracts that were placed by English brokers Stirling Cooke Brown Reinsurance Brokers Limited and Stirling Cooke Brown Insurance Brokers Limited (collectively "Stirling Cooke"), with Sphere Drake's underwriting agent Euro International Underwriters Ltd. ("EIU"). Those contracts were accepted by EIU under an agency agreement, known as the "Binding Authority," that Sphere Drake had granted to EIU.

10. Prior to Lincoln's initiation of the Arbitration, Sphere Drake sued EIU and Stirling Cooke, and their respective principals, in the High Court of Justice, Queen's Bench Division, Commercial Court in London, England in the case captioned *Sphere Drake Insurance Ltd. v. Euro International Underwriters, et al.*, (2000 Folio 249) (the "English Action"). In the English Action Sphere Drake alleged that the reinsurance contracts placed by Stirling Cooke with EIU, including the Lincoln Contracts, had been placed pursuant to a collusive scheme to defraud Sphere Drake. Specifically, Sphere Drake alleged that EIU had fraudulently induced Sphere Drake to grant the Binding Authority, and that Stirling Cooke and EIU had schemed to dump huge reinsurance losses on Sphere Drake. Sphere Drake's principal claim against EIU was for dishonest breach of fiduciary duty and its principal claim against Stirling Cooke was for dishonest assistance in that breach of duty.

11. The English Action took over a year and more than twenty witnesses testified before Mr. Justice Thomas (now Lord Justice Thomas after his elevation to the Court of Appeals in July 2003). After completion the of trial, Lord Justice Thomas ruled that over 100 reinsurance contracts had been accepted as part of a dishonest and fraudulent scheme between Sphere Drake's underwriting agent EIU and Lincoln's broking agent, Stirling Cooke. The four Lincoln

Contracts before the Panel (which the Court referred to collectively as “Programme 4”) were among the contracts that Justice Thomas ruled were accepted as part of the fraudulent EIU-Stirling Cooke scheme.

12. A copy of Part I of the court’s decision in the English Action (the “English Judgment” or “Judgment”) can be found at 2003 WL 21729222. The complete Judgment consists of three Parts and two Appendices. Part I of the Judgment consists of 1873 numbered paragraphs detailing the parameters of the action, providing a narrative account of the events, and containing the Judge’s factual findings and legal conclusions. Part II of the Judgment provides a program-by-program description and analysis of the business EIU accepted from Stirling Cooke and the court’s factual findings and legal conclusions in regard of Sphere Drake’s allegations with respect to each program. Part III of the Judgment analyzes the contracts identified by EIU as risks that EIU had declined.

13. Lord Justice Thomas unequivocally found that Sphere Drake proved beyond a reasonable doubt its principal claims against the defendants. Applying the criminal standard of proof, he concluded that Sphere Drake successfully proved its claims for dishonest breach of fiduciary duty and dishonest assistance in breach of fiduciary duty against all defendants. (Judgment, Part I, ¶¶ 107, 1863.) The Court further concluded that there was a collusive arrangement between EIU and Stirling Cooke to deliberately use Sphere Drake as a dump for gross loss making business. (*Id.* at ¶ 1865.) Lord Justice Thomas determined that Mr. Brown of Stirling Cooke was the “driving force in the dishonest enterprise,” and aided and abetted by Mr. Butler, also of Stirling Cooke, Stirling Cooke ruthlessly exploited EIU, with the knowledge that EIU was acting in dishonest breach of its fiduciary duties to Sphere Drake. (*Id.* at ¶¶ 32-33, 1865.) Moreover, he found that Messrs. Henton and Whitcombe, EIU’s principals, had made

fraudulent misrepresentations to Sphere Drake inducing the granting of the Binding Authority. (*Id.* at ¶ 1864.)

14. Lord Justice Thomas ruled that EIU lacked authority to accept “gross loss making business” for Sphere Drake, and that Stirling Cooke knew this. (Judgment, Part I, ¶¶ 721, 737, 873, 888, 1247(i), 1862(viii).) Lord Justice Thomas defined gross loss making business as “[b]usiness on which it was virtually inevitable, from the information provided, that the losses under the reinsurance would exceed the premium by a substantial margin.” (*Id.*, ¶ 151.) Lord Justice Thomas found that the Lincoln Contracts constituted gross loss making business. (*Id.*, ¶ 859.)

15. Lord Justice Thomas also specifically found, using the criminal standard of proof, that Sphere Drake’s underwriting agent EIU lacked authority to bind Sphere Drake to the Lincoln Contracts and that, further, Lincoln’s agent Stirling Cooke knew that EIU lacked authority to do so. (Judgment, Part I, ¶¶ 106-07, 859, 888.)

16. Based on Lord Justice Thomas’ findings, Sphere Drake moved for summary judgment in the Arbitration. Sphere Drake filed memoranda in support of its motion for summary judgment, and Lincoln filed a response to the motion. Copies of the briefs in support of and in opposition to Sphere Drake’s motion for summary judgment (with exhibits but without case authorities) are attached to the Snider Affidavit as Exhibits 6-8.

17. In support of its motion for summary judgment, Sphere Drake asserted that Lincoln was precluded from relitigating the findings in the English Judgment that EIU had no authority to enter into the Lincoln Contracts, and that Stirling Cooke knew EIU lacked such authority. Sphere Drake argued that since EIU lacked both actual and apparent authority to bind

Sphere Drake to the Lincoln Contracts, the Lincoln Contracts were void and unenforceable and that summary judgment should be entered in favor of Sphere Drake. (Snider Aff., Exs. 6, 8.)

18. The Panel heard oral argument on Sphere Drake's Motion for Summary Judgment on November 1, 2005 in Chicago, Illinois.

**Cause of Action**

19. After hearing argument and deliberating, the Panel, in a 3-0 decision, granted Sphere Drake's motion and entered the Final Award on November 2, 2005. Pursuant to Article IV of the Convention, a duly certified copy of the Final Award is attached to the Snider Affidavit as Exhibit 9.

20. In the Final Award, the Arbitration Panel held that Lincoln was precluded from relitigating the findings in the English Judgment that EIU had no authority to enter into the Lincoln Contracts, and that Stirling Cooke knew EIU lacked such authority. The Panel ruled that the Lincoln Contracts were void *ab initio*, and entered judgment in Sphere Drake's favor. (*See id.*, p.2.)

21. The FAA and the Convention provide that the Panel's Final Award is binding and enforceable against Lincoln. 9 U.S.C. § 1, *et seq.*; 9 U.S.C. § 201, *et seq.*

WHEREFORE, Sphere Drake Insurance Limited respectfully requests that this Court confirm and enforce the Final Award of the Arbitration Panel and enter judgment against The Lincoln National Life Insurance Company and Fort Wayne Health and Casualty Insurance Company in accordance with the terms of the Final Award.

Respectfully submitted,  
SPHERE DRAKE INSURANCE LIMITED

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