

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: FSD 0121 OF 2013

IN THE MATTER OF THE ARBITRATION LAW, 2012

AND IN THE MATTER OF AN ARBITRATION BETWEEN APPALACHIAN REINSURANCE (BERMUDA) LTD. AND GREENLIGHT REINSURANCE, LTD. ("THE ARBITRATION")

BETWEEN: APPALACHIAN REINSURANCE (BERMUDA) LTD. PLAINTIFF

AND: ROBERT M. MANGINO 1st DEFENDANT

AND: ROBERT M. HALL 2nd DEFENDANT

AND: THOMAS M. TOBIN 3rd DEFENDANT

AND: GREENLIGHT REINSURANCE, LTD. 4th DEFENDANT



ORIGINATING SUMMONS

LET EACH DEFENDANT, within 28 days after service of this Summons on him, counting the day of service, return the accompanying Acknowledgment of Service to the Courts office, P.O. Box 495GT, George Town, Grand Cayman.

By this Summons, which is issued on the application of Appalachian Reinsurance (Bermuda) Ltd., the Plaintiff seeks the following relief pursuant to section 75 of the Arbitration Law, 2012:

1. a Declaration that the 1st, 2nd and 3rd Defendants do not possess the authority to hear an application for Summary Judgment;
2. an Order that Order No. 3 made by the 1st, 2nd and 3rd Defendants, in their capacity as Arbitrators presiding over the Arbitration, be set aside;

3. an Order that the 1st, 2nd and 3rd Defendants dismiss the 4th Defendant's application for Summary Judgment;
4. an Order that the Plaintiff is at liberty to file affidavit evidence in respect of factual matters concerning the substantive merits of the Arbitration; and
5. such other Orders and Directions as this Honourable Court deems fit.

PARTICULARS

1. In or around 2 November 2012, the Plaintiff and the 4th Defendant entered into arbitration (the "**Arbitration**") concerning a dispute over the payment and calculation of collateral due under the terms of an agreement dated 9 December 2008 which had been entered into by them (the "**Retrocession Agreement**").
2. In or around 15 July 2013 the 4th Defendant filed an application for summary judgment in the Arbitration (the "**Application**") in the Arbitration proceedings.
3. Upon receiving notice of the Application, the Plaintiff notified 1st, 2nd and 3rd Defendants (hereinafter referred to collectively as the "**Panel**"), as well as the 4th Defendant, of its objection to the Application. Such notification initially occurred orally during a telephone conference call which took place on 25 June 2013 between the Plaintiff and the 4th Defendant on the direction of the Panel. Subsequently, the Plaintiff notified the Defendants, in writing, by way of email dated 25 June 2013 that:
 - (i) the Application was opposed; and
 - (ii) the Application was misconceived on the grounds that there was a factual dispute between the parties.
4. The basis of the objection raised by the Plaintiff was that the Panel did not possess the authority to hear the Application as no jurisdiction to entertain summary judgment applications had been granted to the Panel by the relevant governing law or the provisions of the Retrocession Agreements.
5. The Plaintiff and the 4th Defendant each provided the Panel with written submissions on the jurisdictional objection raised by the Plaintiff. Upon consideration of those submissions, and

without the benefit of oral argument, the Panel made an order dated 15 August 2013 (the "Order") in the following terms:-

1. *It has the authority to decide the merits of this proceeding upon written submissions, without an oral hearing, and that such an oral hearing is not necessary in this matter because Petitioner has not presented evidence of a contested fact as to Greenlight Re's entitlement to the relief it seeks;*
2. *Petitioner App Re must immediately post the \$7,005,618 in collateral that is due under the Quota Share Retrocession Agreement, effective July 1, 2008, between Greenlight Re and App Re, and that such collateral must be posted in cash or a clean, irrevocable evergreen letter of credit from a bank acceptable to Greenlight Re;*
3. *Petitioner App Re must immediately post the \$17,450,595 in collateral that is due under the Quota Share Retrocession Agreement, effective July 1, 2010, between Greenlight Re and App Re, and that such collateral must be posted in cash or a clean, irrevocable evergreen letter of credit from a bank acceptable to Greenlight Re;*
4. *App Re must reimburse Greenlight Re for the \$460,354 in costs it has incurred in posting App Re's portion of the collateral due under the Reinsurance Agreements; and*
5. *Greenlight Re may submit an application to the Panel for fees and costs".*
6. In making the Order, the Panel failed to provide the parties with reasons, written or oral, for its decision.
7. The Panel did not provide reasons for its decision. It is averred that, by finding that it had the authority to hear and ultimately decide the Application, the award made by the Panel was induced and/or affected by misconduct on the part of the Panel.
8. Further, or in the alternative, it is averred that the Panel's finding that it possessed the jurisdiction to hear and determine the 4th Defendant's application, without the benefit of an oral hearing, was a breach of the rules of natural justice with the consequence that the rights of the Plaintiff were prejudiced.

If the Defendant does not acknowledge service, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated this 6th day of September 2013

Filed this 6th day of September 2013



STUARTS WALKER HERSANT
Attorneys-at-law for the Plaintiff

NOTE – This Summons may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date unless renewed by order of the court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

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AND: ROBERT M. HALL 2nd DEFENDANT

AND: THOMAS M. TOBIN 3rd DEFENDANT

AND: GREENLIGHT REINSURANCE, LTD. 4TH DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information

required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

-
1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged

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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

Yes No

Service of the Originating Summons is acknowledged accordingly

(Signed) _____
Attorney for

NOTE ON ADDRESS FOR SERVICE

Attorney: Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his/her name, address and reference, if any, in the box below.

Anthony Akiwumi/Christopher Levers
STUARTS WALKER HERSANT
Attorneys-at-Law
4th Floor, Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman, KY1-1104
Cayman Islands

Tel: 345 949 3344
Fax: 345 949 2888
Ref: AA/CL/5962

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF
ORIGINATING SUMMONS**

The accompanying form of ***Acknowledgment of Service*** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion, it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts office.
2. If you wish to defend the claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner), you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, an Originating Summons served on the Defendant personally is treated as having been served on the day it was delivered to him/her.
4. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Originating Summons*)".
5. Where the Defendant is a **FIRM** and an Attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
6. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
7. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
8. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.