

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
PRS INSURANCE GROUP, INC.,	)	
et al.,	)	Case No. 00-4070 (MFW)
	)	
Debtors.	)	
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	)	
INSURANCE COMMISSIONER OF	)	
THE COMMONWEALTH OF	)	
PENNSYLVANIA AS LIQUIDATOR	)	
OF RELIANCE INSURANCE	)	
COMPANY (IN LIQUIDATION),	)	Adversary No. 02-1977 (MFW)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PRS INSURANCE GROUP, INC.,	)	
ET AL., SEAN C. LOGAN,	)	
CHAPTER 11 TRUSTEE, AND	)	
COMERICA BANK OF DETROIT,	)	
MICHIGAN,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION**<sup>1</sup>

Before the Court is the Motion of PRS Insurance Group ("PRS") to Stay Adversary Proceedings Pending Arbitration, to Retain Jurisdiction over the Trust Funds until Arbitration is Completed, and to Retain Jurisdiction over the Property of the Estate Issue ("the Motion"). For the reasons set forth below, the Motion will be granted in part and denied in part.

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<sup>1</sup> This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. FACTUAL BACKGROUND

PRS is a holding company which owns various companies engaged in the business of writing insurance and reinsurance policies and providing related services. PRS filed a chapter 7 petition on October 31, 2000, which was converted to a chapter 11 petition on January 19, 2001. A chapter 11 trustee was appointed on March 12, 2001. Subsequently, the chapter 11 trustee filed petitions for certain of PRS' subsidiaries (collectively with PRS, "the Debtors").

Prior to their bankruptcies, the Debtors had entered into several reinsurance agreements with Reliance Insurance Company ("Reliance"). To provide security for obligations due by PRS under the reinsurance agreements, the Debtors entered into several Reinsurance Trust Agreements ("RTAs") with individual Reliance entities, each dated December 15, 2000, which named Comerica Bank, N.A. ("Comerica") as trustee. The total amount placed by PRS in the trust accounts held by Comerica is approximately \$21 million.

On May 29, 2001, Reliance was placed in a rehabilitation proceeding, which became a liquidation on October 3, 2001. On February 19, 2002, an adversary proceeding was commenced by the Insurance Commissioner of the Commonwealth of Pennsylvania as Liquidator of Reliance Insurance Company (in Liquidation) ("the Liquidator") against various direct and indirect PRS subsidiaries

which are reinsurance companies domiciled in Barbados and headquartered in Bermuda. The adversary proceeding commenced by the Liquidator seeks a declaratory judgment that the funds held in trust pursuant to the RTAs are not property of the Debtors' estates. The Debtors filed the instant Motion to stay the adversary pending arbitration.

## II. JURISDICTION

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 1334 & 157(b)(1)(A), (B), (E) and (O).

## III. DISCUSSION

### A. The Adversary Proceeding is Core

Relevant to our determination of whether this adversary proceeding may be referred to arbitration is whether it is a core proceeding. The Debtors assert that this is a core dispute because the Liquidator is seeking the turnover of property of the Debtors' estates.<sup>2</sup> In order to be core an action must involve "property in the actual or constructive possession of the bankruptcy court." Beard v. Braunstein, 914 F.2d 434, 444 (3d Cir. 1990). Though the property is not in the possession of the

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<sup>2</sup> For purposes of the core/non-core determination, we assume the trust funds are property of the estates. A determination of that issue, of course, will not be made until the adversary (or arbitration) is concluded.

Debtors, they claim entitlement to it. Constructive possession exists "where the property is held by some other person who makes no claim to it." Id. quoting Taubel-Scott-Kitzmiller Co. v. Fox, 264 U.S. 426, 433 (1924). Here the property is held by Comerica, which asserts no claim to it. Thus, we conclude that this proceeding is core.

When a matter is a core proceeding, it is left to the bankruptcy court's discretion to decide whether to refer the matter to arbitration. In re GWI, Inc., 269 B.R. 114, 117 (Bankr. D. Del. 2001).

B. The Agreements Provide For Arbitration

The Supreme Court has held that:

[t]he [Federal Arbitration Act] provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement. See 9 U.S.C. §§ 3 and 4. We have read these provisions to "manifest a 'liberal federal policy favoring arbitration agreements.'" Absent some ambiguity in the agreement, however, it is the language of the contract that defines the scope of disputes subject to arbitration.

EEOC v. Waffle House, Inc., 534 U.S. 279, 289 (2002) (internal citations omitted). The Debtors assert that the governing arbitration provision is found in Article VIII of the Reinsurance Agreements which provides that "any dispute arising out of this

Agreement shall be submitted to the decision of a board of arbitration." The Liquidator, however, asserts that Article XV.E of the Reinsurance Agreements governs.

Article XV.E provides:

It is agreed that in the event of the failure of the Reinsurer [Debtors] herein to pay any amount claimed to be due hereunder or the breach of any other term or condition of the Agreement and for which the Company [Reliance] in its sole discretion has chosen not to file for Arbitration under Article VIII, the Reinsurer herein, at the request of the Company, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

Thus, the Liquidator argues the decision of whether to arbitrate is in her sole discretion.

Which provision controls is significant "[f]or nothing in the [FAA] authorizes a court to compel arbitration of any issues . . . that are not already covered in the agreement." Waffle House, 534 U.S. at 289. Thus, if Article XV.E governs, we lack authority to order the arbitration of the Debtors' dispute without the Liquidator's consent.

The provisions of Article VIII and Article XV.E are in conflict. As a general rule of contract interpretation, when a document contains both general and specific provisions relating to the same subject, the specific provision controls. See, e.g.,

Boatmen's Nat'l Bank of St. Louis v. Smith, 835 F.2d 1200, 1203 (7th Cir. 1987). Article VIII states the general proposition that disputes under the Reinsurance Agreement are arbitrable. Article XV.E deals with a subset of disputes under the Reinsurance Agreement -- where the Debtor breaches the Agreement. Thus, we conclude that Article XV.E is the more specific of the two provisions and its terms supplant those of Article VIII.

However, the Trust Agreements have their own arbitration provision, which states that any disputes hereunder "shall be resolved in accordance with and as provided for in Article VIII of the Reinsurance Agreements." Trust Agreement, Art. XIV.F (emphasis added). The Trust Agreements specifically state that their disputes are to be handled in accordance with Article VIII of the Reinsurance Agreements (rather than Article XV.E, which otherwise governs disputes under the Reinsurance Agreements if the Debtors default). Thus, we conclude that Article VIII of the Reinsurance Agreements applies to disputes under the Trust Agreements, mandating that those disputes be sent to arbitration.

The Debtors assert that the crux of the dispute is how various agreements (certain reinsurance slip agreements, the reinsurance agreements, and the trust agreements) are to be interpreted and which of those documents constitutes the applicable contract between the parties. All potentially governing agreements, however, provide for arbitration. Thus,

the Debtors request that this Court stay the adversary proceeding pending an arbitrator's determination of which agreements, if any, govern.

In response, the Liquidator asserts that there is no question about what the parties' agreement was. The issuance of the reinsurance agreements and slip agreements and the establishment of the trust accounts and their funding in the amount of \$21,000,000 is evidence of this. The Liquidator asserts that there are no underlying contract issues in dispute; only the amount of (and title to) the trust funds remains at issue. Therefore, if the liquidator is correct, the dispute is governed by the Trust Agreement and arbitration is warranted even without its consent.

We conclude, therefore, that in the absence of this bankruptcy case all disputes between the parties would be arbitrable. We see no reason why this dispute should not proceed to arbitration as the parties had agreed.

### C. Retention of Jurisdiction

The Debtors request, however, that only the issue of which Agreement (the Trust, Reinsurance, or Slip) governs the parties' rights should be referred to arbitration. They ask us to retain jurisdiction over the ultimate issue of who is entitled to the trust funds, asserting they are property of the estate and thus

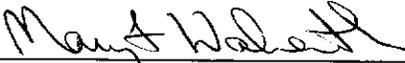
within our exclusive jurisdiction. Once the arbitration panel determines what agreement governs the relationship between the parties, however, the amount, if any, that the Debtors owe Reliance can be readily determined. If the arbitrator determines which agreements are applicable, he or she can also determine what those agreements provide. If it is determined that Reliance is entitled to any portion of the monies in the Trust Accounts, they will not be property of the Debtors' estates. If it is determined that Reliance is not entitled to the entire amount in the Trust Accounts, the remaining funds will be property of the estates. There is, therefore, no reason for this Court to retain jurisdiction over any issue as the arbitrator can decide all disputes.

#### IV. CONCLUSION

For the foregoing reasons, the Motion of PRS to Stay Adversary Proceedings Pending Arbitration, to Retain Jurisdiction Over the Trust Funds Until Arbitration is Completed, and to Retain Jurisdiction Over the Property of the Estate Issue will be granted in part and denied in part.

An appropriate Order is attached.

BY THE COURT:

  
\_\_\_\_\_  
Mary F. Walrath  
United States Bankruptcy Judge

Dated: May 30, 2003

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
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PRS INSURANCE GROUP, INC., et	)	
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INSURANCE COMMISSIONER OF THE	)	
COMMONWEALTH OF PENNSYLVANIA	)	
AS LIQUIDATOR OF RELIANCE	)	
INSURANCE COMPANY (IN	)	
LIQUIDATION),	)	Adversary No. 02-1977 (MFW)
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Plaintiff,	)	
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PRS INSURANCE GROUP, INC., ET	)	
AL., SEAN C. LOGAN, CHAPTER	)	
11 TRUSTEE, AND COMERICA BANK	)	
OF DETROIT, MICHIGAN,	)	
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Defendants.	)	

ORDER

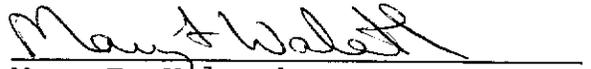
AND NOW, this 30TH day of MAY, 2003, upon consideration of the Motion of PRS Insurance Group ("PRS") to Stay Adversary Proceedings Pending Arbitration, to Retain Jurisdiction Over the Trust Funds until Arbitration is Completed, and to Retain Jurisdiction over the Property of the Estate Issue, it is hereby

**ORDERED** that for the reasons stated in the accompanying Memorandum Opinion, the Motion is **GRANTED IN PART** and **DENIED IN PART**; and it is further

**ORDERED** that the instant Adversary Proceeding is stayed while the parties' dispute is referred to arbitration; and it is further

**ORDERED** that the Motion is **DENIED** in all other respects.

BY THE COURT:

  
\_\_\_\_\_  
Mary F. Walrath  
United States Bankruptcy Judge

cc: See attached

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