

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION)	
)	
)	
)	18-cv-6658 (JSR)
)	
)	
MELANIE L. CYGANOWSKI, as Equity Receiver for PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (TE) LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL LTD., PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL (A) LTD., and PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (BL) LLC,)	
)	18-cv-12018 (JSR)
)	
Plaintiffs,)	
)	
v.)	
)	
BEECHWOOD RE LTD., et al.,)	
)	
Defendants.)	

**DECLARATION OF ADAM J. KAISER IN SUPPORT OF UNOPPOSED MOTION TO
CONFIRM ARBITRAL AWARDS**

I, Adam J. Kaiser, declare and state as follows:

1. I am a partner at Alston & Bird LLP, counsel to Bankers Consec Life Insurance Company and Washington National Insurance Company (collectively, “Movants”) in the above-captioned consolidated action.
2. I make this Declaration, of my own personal knowledge and based upon the documents in my possession referred to herein, in support of Movants’ unopposed motion to confirm an arbitral award.

3. A true and correct copy of the “Third Order Regarding Claimants’ Motion for Interim Security,” in the arbitration captioned *Bankers Consec Life Insurance Company and Washington National Insurance Company v. Beechwood Re Limited et al.*, AAA Case No. 01-16-0004-02510, dated October 23, 2017, is attached hereto as **Exhibit 1**.

4. A true and correct copy of the “Order Staying Proceeding,” in the arbitration captioned *Bankers Consec Life Insurance Company and Washington National Insurance Company v. Beechwood Re Limited et al.*, AAA Case No. 01-16-0004-02510, dated January 23, 2019, is attached hereto as **Exhibit 2**.

Dated: New York, New York
April 23, 2019

ALSTON & BIRD LLP

By: /s/ Adam J. Kaiser

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EXHIBIT 1

IN THE MATTER OF THE ARBITRATION BETWEEN

**BANKERS CONSECO LIFE INSURANCE
COMPANY and WASHINGTON NATIONAL
INSURANCE COMPANY,**

Claimants / Counterclaim Respondents,

v.

AAA Case No. 01-16-0004-2510

BEECHWOOD RE LIMITED,

Respondent / Counterclaimant.

THIRD ORDER REGARDING CLAIMANTS' MOTION FOR INTERIM SECURITY

Having considered the Claimant's Motion For Interim Security, Beechwood's Response to CNO's Motion For Interim Security, Claimant's Reply Brief In Further Support of Their Motion For Interim Security, numerous exhibits, declarations and authorities supporting the Parties' briefs; having heard oral argument on August 18, 2017, as well as numerous additional email submissions of the parties subsequent to this Panel's two prior Orders on this motion,

THE PANEL HEREBY FINDS:

1. This Panel entered an Order on August 22, 2017, requiring Beechwood Re to provide interim security to Claimants; ordering Beechwood's Controller to produce a financial report to the Panel on or before September 1, 2017; and ordering the parties to meet and confer in an attempt to agree on the amount of security to be provided;
2. This Panel entered a second Order on September 14, 2017, requiring Claimants to prepare an estimate of the amount it will cost to pursue this arbitration against Beechwood; directing both parties to give serious consideration to ways in which this matter can be streamlined/expedited; and requiring the parties to again meet and confer;
3. The parties have reported back to the Panel with respect to the Panel's September 14, 2017 Order. The Claimants estimate that it will cost (conservatively) \$5 million in attorneys' fees plus \$3 million in expert fees from now until submittal of post-

hearing briefs. Claimants have also requested that their previously incurred attorneys' fees and expert fees of \$5 million be included in the interim security award for a total of \$13 million. Because they understandably want to ensure collection of some amount of their award should they prevail, Claimants have requested that additional interim security be provided beyond the \$13 million. There is some indication that Beechwood could provide a letter of credit in the amount of \$2.5 million within 30 days and an additional amount, perhaps \$2.5 million, at some future point in time;

4. The parties have made no progress with respect to the Panel's request that they give serious consideration regarding ways to streamline/expedite the arbitration, nor have they reached any agreement with respect to the amount of security to be provided by Beechwood;

5. As stated in the Panel's September 14, 2017 Order, the Panel remains willing to enter a default judgment in the event that its Orders for interim security are not met by Beechwood. The Panel also noted in the same Order that it believes that justice is not best-served in this matter by striking Beechwood's counterclaim and defenses and proceeding to a default judgment and hearing on damages;

6. Although Claimants are understandably frustrated by Beechwood's essentially insolvent financial condition, making any potential judgment they obtain of questionable value, it is Beechwood's financial status that has put Claimants in that position, not this Panel. What this Panel can and will strive to achieve is a fair and full presentation of the issues in dispute in a streamlined and expedited manner by ordering a phased approach to interim security; working closely with counsel to impose streamlined procedures and processes on the parties; imposing discovery expectations and limitations upon the parties; and monitoring the expenditure of attorneys' fees and costs.

THE PANEL HEREBY ORDERS:

1. Beechwood shall provide security in the amount of \$2.5 million no later than thirty (30) days from the date of this Order;

2. Beechwood shall provide security in the target amount of an additional \$2.5 million by a target date of one hundred twenty (120) days from the date of this Order;

3. Within seven (7) days, the parties shall provide the Panel with availability on January 17th or 18th, 2018 for a second organizational meeting, in person in New

York City, at which the parties shall be prepared to discuss the specifics of the discovery that each party wishes to pursue, including depositions, subpoenas and document discovery. The Panel plans at that time to specify dates by which discovery will be complete and will impose restrictions, if necessary, on the amount and type of discovery that will be permitted with the intent of streamlining and expediting this matter;

4. The parties will provide the Panel with suggested status conferences monthly thereafter and updates on subsequent orders to be issued by the Panel;

5. The Panel will monitor the expenditure of attorneys' fees and costs in this matter as well as the ongoing financial condition of Beechwood, through anticipated reports of Beechwood's Controllers, and adjust or increase any interim security as appropriate throughout the pendency of this proceeding.

Ordered this 23rd day of October 2017.

Debra J. Hall, Chair
Susan S. Claflin
Caleb Fowler

IN THE MATTER OF THE ARBITRATION BETWEEN

**BANKERS CONSECO LIFE INSURANCE
COMPANY and WASHINGTON NATIONAL
INSURANCE COMPANY,**

Claimants / Counterclaim Respondents,

v.

AAA Case No. 01-16-0004-2510

BEECHWOOD RE LIMITED,

Respondent / Counterclaimant.

ORDER REGARDING CLAIMANT'S MOTION TO VACATE INTERIM ORDER

Claimants have filed a Motion to Vacate Interim Order, requesting that this Panel vacate the portion of the Interim Order entered by Emergency Arbitrator Michael S. Wilder, dated October 27, 2016, (hereinafter "Emergency Order") which ordered that attorneys' fees and costs associated with the application for emergency relief be apportioned entirely against Claimants.

Having considered the pleadings filed by both parties and having heard oral argument on October 19, 2017,

THE PANEL HEREBY FINDS:

1. This Panel has jurisdiction to review and modify the Emergency Order generally, and specifically pursuant to AAA R-38(f);
2. The Emergency Arbitrator exceeded his authority by apportioning attorneys' fees against the Claimants;
3. Pursuant to AAA R-38(i), the Emergency Arbitrator had jurisdiction to apportion costs, subject to the power of this Panel to make the final determination on apportionment.

THE PANEL HEREBY ORDERS:

1. That portion of the Emergency Order awarding attorneys' fees against Claimants is hereby vacated;

2. That portion of the Emergency Order apportioning costs entirely against Claimants is hereby stayed. Final judgment on the apportionment of costs associated with the Claimant's application for emergency relief, and any other costs in this matter will be reserved until the conclusion of this arbitration, unless otherwise determined by the Panel.

Ordered this 23rd day of October, 2017

Debra J. Hall, Chair
Susan S. Claflin
Caleb Fowler

EXHIBIT 2

In the Matter of the Arbitration Between:

-----X)	
)	
BANKERS CONSECO LIFE INSURANCE)	
COMPANY and WASHINGTON NATIONAL)	
INSURANCE COMPANY,)	
)	
Claimants,)	AAA Case No. 01-16-0004-02510
)	
v.)	
)	
BEECHWOOD RE LIMITED, MOSHE M.)	
FEUER, SCOTT TAYLOR, DAVID LEVY and)	
BEECHWOOD CAPITAL GROUP, LLC,)	
)	
Respondents.)	
-----X)	

ORDER STAYING PROCEEDING

This arbitration proceeding is scheduled to proceed to a final hearing the weeks of March 11, 2019 and March 18, 2019. The Panel was advised on January 22, 2019 that the parties have agreed to a stay and request the Panel enter an order pursuant to the following terms:

THE PANEL HEREBY ORDERS:

1. That this arbitration shall be stayed until after the final disposition in the trial court of all claims against Claimants in the PPCO action and Respondents in the SHIP, PPVA and PPCO actions (the "Final Disposition"). Within 30 days after the Final Disposition, Claimants and Respondents agree to meet and confer in good faith to discuss rescheduling the arbitration hearing and the remaining prehearing proceedings in this matter, and to jointly approach the Panel to request a new schedule;
2. Respondents shall immediately post the \$5 million Letter of Credit ("LOC") as ordered by this Panel. The Panel shall retain jurisdiction with respect to any issues concerning the LOC;
3. Claimant's Motion for Interim Security and to Limit Beechwood's Counterclaim is withdrawn without prejudice to Claimants' rights to renew such motion after the Final Disposition; and
4. All dates in the current scheduling order shall be adjourned until after the Final Disposition. This includes without limitation all expert report deadlines, dates for testimony, and the March hearing dates.

IN ADDITION TO THE TERMS REQUESTED BY THE PARTIES, THE PANEL FURTHER ORDERS:

5. The Panel security ordered by this Panel on November 6, 2018, to be established to secure the anticipated amounts for payment of Panel fees and expenses for a hearing in this matter shall remain in force until further order of this Panel. The Parties, at least at this time, contemplate an eventual hearing to proceed. If and until that is no longer an eventuality, the Panel security shall remain in place, until this Panel orders otherwise;
6. This Panel retains jurisdiction of this matter for the enforcement of any Orders entered by this Panel. While this matter shall remain stayed until the Final Disposition, or until further Order of this Panel, the Panel retains jurisdiction for any related dispute brought before this Panel;
7. The Panel shall be paid for all costs and expenses incurred to date in this matter that have not yet been billed, consistent with, and pursuant to the terms of, the November 6, 2018 Order it previously issued in this matter;
8. To the extent this Panel addresses any matter brought before the Panel, in accordance with this Order, the Panel shall be paid for its time and expenses consistent with, and pursuant to the terms of, the November 6, 2018 Order it previously issued in this matter;
9. In accordance with the Order entered by this Panel on July 16, 2018, the Parties shall report to this Panel within 48 hours during the pendency of this proceeding any matter significantly affecting this proceeding, including but not limited to: any settlement entered into by the Parties; and the disposition of the SHIP, PPVA or PPCO actions (including any written opinions disposing of such actions).

Ordered this 23rd day of January 2019.

Debra J. Hall, Umpire/Chair
Susan S. Clafin, Arbitrator
Caleb Fowler, Arbitrator