

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

March 7, 2012

(VIA E-FILED)

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RE: *Viking Pump, Inc., et al. v. Century Indemnity Company, et al.*
C.A. No. 10C-06-141 FSS CCLD

**Upon Safety National Casualty Corporation's Motion to Dismiss
in Favor of Arbitration – GRANTED.**

Dear Counsel:

Safety National Casualty Corporation's insurance policy provides:

As a condition precedent to any right of
action under this Policy, any dispute arising
out of this Policy shall be submitted to the
decision of a board of arbitration.

New York law controls this case. Then-Vice Chancellor Strine held:

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I find that New York has the most significant relationship to the Excess Policies and therefore that its law governs those Policies.¹

The court rejects Plaintiffs' attempt to relitigate anything decided by the Chancery Court. So, the court reiterates: New York's law, not Missouri's or Alabama's law, controls this case.

New York favors arbitration,² and leaves the question of arbitrability to the courts, unless the parties clearly state otherwise.³ Delaware views arbitration the same.⁴ Therefore, as to the question of arbitrability, Delaware law and New York law are the same. Thus, there is a false conflict of law, which means Delaware's and New York's laws are functionally interchangeable.⁵

In its November 3, 2010 opposition to arbitration, Plaintiffs unpersuasively argue around the courts' choice of laws rulings and the policy's

¹ *Viking Pump, Inc. v. Century Indem. Co.*, 2009 WL 3297559, at *8 (Del. Ch. Oct. 14, 2009) (internal citations omitted).

² *New York City Transit Auth. v. Transp. Workers Union of Am., Local 100, AFL-CIO*, 780 N.E.2d 490, 492 (N.Y. 2002) ("Our courts . . . [are] in favor of a policy supporting arbitration and discouraging judicial interference.").

³ *Life Receivables Trust v. Goshawk Syndicate 102 at Lloyd's*, 888 N.Y.S.2d 458, 459 (N.Y. App. Div. 2009), *aff'd*, 927 N.E.2d 553 (N.Y. 2010).

⁴ *DMS Properties-First, Inc. v. P.W. Scott & Associates, Inc.*, 748 A.2d 389, 392 (Del. 2000) (Delaware public policy favors arbitration); *see also id.* ("[I]f the parties did not agree to submit the question of arbitrability itself to arbitration, the court must review the question of arbitrability independently.").

⁵ *See Deuley v. DynCorp Intern., Inc.*, 8 A.3d 1156, 1160 (Del. 2010).

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arbitration clause:

The Chancery Court determined that New York law should apply to the interpretation and application of the common substantive coverage terms found in all of the policies. That does not resolve the choice of law to be applied to an arbitration provision. Missouri statutory law prohibits arbitration provisions in insurance contracts.⁶ Section 12 of the Policy requires that the Policy Terms in conflict with the statutory law of the State in which the Policy is issued must be conformed to the issuing state's statutory law. Safety National is domiciled in Missouri, and the policy was issued in Missouri. Thus, the Policy must be read to prohibit the enforcement of the arbitration provision because inclusion of the provision conflicts with Missouri statutory law.

Plaintiffs' arguments are unavailing. The courts here have held that New York law governs all aspects, not just the Policies' common substantive terms.⁷ Missouri law does not govern this case. It appears that Safety National's policy was issued by its

⁶ See Mo. Rev. Stat. § 435.350 (“[A] provision in a written contract, except contracts of insurance . . . , to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable.”).

⁷ *Viking Pump, Inc.*, 2009 WL 3297559, at *8.

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then-Managing General Agent, E&S Facilities, Inc., based in Birmingham, Alabama.⁸ Under Alabama law, insurance contracts involving interstate commerce, like this contract, may be submitted to arbitration if the parties have contractually agreed to arbitration.⁹ In any event, this case is being decided in Delaware, under New York law, and New York law and Delaware law both favor arbitration.

Delaware courts defer to arbitration if a contract's arbitration clause is broad.¹⁰ Here, Safety National's arbitration clause refers to "any dispute arising out of the Policy." While there may be room to differ on how the arbitration board will be composed and operate, the policy is clarion that arbitration is a pre-condition to suit.¹¹ This language is broad enough for the court to initially defer to arbitration.¹² As Safety National's policy has an arbitration clause directing any dispute to an arbitration board, and this is a dispute "arising out of the policy," the policy's arbitration clause has been triggered.

For the foregoing reasons, Safety National's Motion to Dismiss in favor

⁸ See Ala. Code § 27-14-22 (1975) ("All contracts of insurance, the application for which is taken within this state, shall be deemed to have been made within this state and subject to the laws thereof.")

⁹ See, e.g., *Central Reserve Life Ins. Co. v. Fox*, 869 So.2d 1124, 1127 (Ala. 2003) ("[T]he transaction did substantially affect interstate commerce. Therefore, the Federal Arbitration Act, governs this case and preempts . . . § 8-1-41(3), Ala.Code 1975.").

¹⁰ *Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 155-56 (Del. 2002).

¹¹ See Safety National Casualty Corporation's Br. in Supp. of its Mot. to Dismiss in favor of arbitration Ex. B at 6 ¶ 11.

¹² See, e.g., *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 295 (Del. 1999) ("The parties contracted as clearly as practicable [to arbitrate] 'any' dispute 'arising out of, under or in connection with [the] Agreement or the transactions contemplated by [the] Agreement.'").

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of arbitration is **GRANTED**. If there are further questions about arbitrability or the arbitration's contours, the parties have leave to put them to the board of arbitration. If necessary, the court will address the board's composition, albeit in general terms, and at the parties' expense. The court, however, will not second-guess the dismissal here.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Civil)