IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AR CAPITAL, LLC, EDWARD M. WEIL, WILLIAM M. KAHANE, NICHOLAS S. SCHORSCH, and PETER M. BUDKO,	)
Plaintiffs,	)
v.	) C.A. No. N19C-01-024 MMJ CCLD
XL SPECIALTY INSURANCE COMPANY, CONTINENTAL CASUALTY COMPANY, ARGONAUT INSURANCE COMPANY, FREEDOM SPECIALTY INSURANCE COMPANY, QBE INSURANCE COMPANY, WESTCHESTER FIRE INSURANCE COMPANY, STARR INDEMNITY & LIABILITY COMPANY, RSUI INDEMNITY COMPANY, and AXIS INSURANCE COMPANY,	)
Defendants.	)

Submitted: May 2, 2019
Decided: May 29, 2019

On Defendant XL Specialty Insurance Company's Motion for Reargument
DENIED

ORDER

Leslie S. Ahari, Esq., (Argued), Alexander R. Karam, Esq., Cyde & Co US, LLP, Washington, District of Columbia; Robert J. Katzenstein, Esq., Eve H. Ormerod, Esq., Smith, Katzenstein, & Jenkins LLP, Wilmington, Delaware; Cara Tseng Duffield, Esq., Matthew W. Beato, Esq., Wiley Rein LLP, Washington, District of Columbia; Michael T. Skoglund, Esq., Tiffany Saltzman-Jones, Esq., Bates Carey

LLP, Chicago, Illinois; Michael P. Duffy, Esq., Scarlett M. Rajbanshi, Esq., Peabody Arnold LLP, Boston, Massachusetts; Amber W. Locklear, Esq., Geoffrey W. Heineman, Ropers, Majeski, Kohn, & Bentley LLP, New York, New York; John C. Phillips, Jr., Esq., David A. Bilson, Esq., Phillps, Goldman, McLaughlin, & Hall, P.A., Wilmington, Delaware; Alexis J. Rogoski, Esq., Edward C. Carleton, Esq., Skarzynski, Marick, & Black LLP, New York, New York; Bruce E. Jameson, Esq., John G. Day, Esq., Prickett, Jones, & Elliott P.A., Wilmington, Delaware, *Attorneys for XL Specialty Insurance Company*

Kenneth J. Nachbar, Esq., (Argued), John P. DiTomo, Esq., Elizabeth A. Mullin, Esq., Morris, Nichols, Arsht, & Tunnell LLP, Wilmington, Delaware; Robin L. Cohen, Esq., Natasha Romagnoli, Esq., Orrie A. Levy, Esq., Alexander M. Sugzda, Esq., (Argued), McKool Smith P.C., New York, New York, *Attorneys for Plaintiffs AR Capital, LLC, Edward M. Weil, William M. Kahane, Nicholas S. Schorsch, and Peter M. Budko*

JOHNSTON, J.

1. By Opinion dated April 25, 2019, the Court denied XL Specialty Insurance Company (XL)'s Motion to Dismiss. The Court held:

> This Delaware action is contemporaneously-filed with the New York actions. D&O Defendants have failed to demonstrate overwhelming hardship justifying dismissal. The *Cryo-Maid* factors are mainly neutral, and do not tip in favor of litigating in the non-Delaware forum. VEREIT is not an indispensable party to this suit, and may intervene to protect its interests. Therefore, D&O Defendants' Motion to Dismiss or Stay is hereby DENIED.[1]

2. XL has moved for reargument. XL contends that the Court mistakenly concluded that VEREIT, as an additional insured, is not a necessary party based on *Brown v. American International Group, Inc*.[2] XL also argues that the Court

[1] *AR Capital, LLC v. XL Specialty Insurance Company*, 2019 WL 1932061, at *8 (Del. Super.).
[2] 339 F. Supp. 2d 336 (D. Mass. 2004).

misapprehended VEREIT'S lack of involvement in the SEC settlement. XL also argues that the Court did not address whether proceeding in Delaware without VEREIT would leave XL subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. Finally, XL argues that the Court's statement that VEREIT "may seek to intervene in this or any related action to protect its interests"[3] does not mitigate the risks of inconsistent judgments.

3. The Court determined that Defendants were unable to demonstrate that VEREIT's interests were such that the action was unable to proceed without VEREIT's involvement. The Court found that, if VEREIT determined it had an interest in the outcome of the litigation, VEREIT could intervene. XL now argues that because VEREIT has stated it does not intend to intervene, it is a necessary party. However, the Court previously was aware of VEREIT's intentions. The Court considered VEREIT's position when it made its determination.

4. The Court also considered VEREIT's involvement in the SEC settlement. XL argues that "VEREIT clearly has an interest in whether the AR Capital parties' obligation to relinquish the OP Units is covered, and it is not an uninterested bystander." The Court found that VEREIT could intervene to protect its interests.

[3] *AR Capital v. XL Specialty Insurance Company*, 2019 WL 1932061, at *8 (Del. Super.).

Whether or not to intervene is VEREIT's decision. Merely having an interest in this action does not, by itself, make VEREIT an indispensable party.

5. The Court further considered whether the parties would be subject to a risk of multiple or inconsistent rulings. This argument already has been presented to the Court. It was part of the parties' briefings, and was addressed at oral argument. The Court held in part that VEREIT is not an indispensable party because VEREIT was not a participant in the SEC settlement negotiations. The Court found this factor weighed heavily in favor of finding that VEREIT was not a necessary party to this action.

6. The purpose of moving for reargument is to seek reconsideration of findings of fact, conclusions of law, or judgment of law.[4] Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision.[5] "A motion for reargument should not be used merely to rehash the arguments already decided by the court."[6] To the extent XL asserted issues that

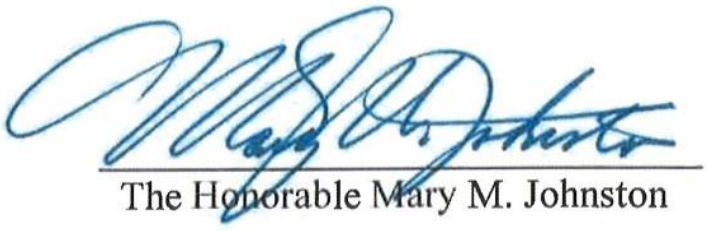
[4] *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).
[5] *Ferguson v. Vakili*, 2005 WL 628026, at *1 (Del. Super.).
[6] *Wilmington Trust Co. v. Nix*, 2002 WL 356371, at *1 (Del. Super.).

were not raised in the submissions in support of its motion, new arguments may not be presented for the first time in a motion for reargument.[7]

7. The Court has reviewed and considered the parties' written submissions and arguments. The Court did not overlook a controlling precedent or legal principle, or misapprehend the law or the facts in a manner affecting the outcome of the decision.

THEREFORE, Defendants' Motion for Reargument is hereby **DENIED.**

IT IS SO ORDERED.



The Honorable Mary M. Johnston

[7] *Oliver v. Boston University*, 2006 WL 4782232, at *1 (Del. Ch.).