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UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

MATSON TERMINALS, INC., et al.,

No. C 13-05571 LB

Plaintiffs,

**ORDER DENYING MATSON'S
PETITION TO COMPEL
ARBITRATION**

v.

INSURANCE COMPANY OF NORTH
AMERICA,

[Re: ECF No. 22]

Defendant.

INTRODUCTION

Petitioners Matson Terminals, Inc. and Matson Navigation Co. (collectively, “Matson”) ask the court to compel Respondent Insurance Company of North America (“INA”) to arbitrate the parties’ current dispute regarding Matson’s claims under an insurance policy. Matson argues that the policy’s arbitration agreement requires the dispute to be arbitrated, while INA argues that it does not. The court held a hearing on the matter on March 20, 2014. Upon consideration of the arbitration agreement, the arguments of counsel in their papers and at the hearing, and the applicable legal authority, the court **DENIES** Matson’s petition.

STATEMENT

Matson is an employer whose employees are, or at least were, subject to the federal Longshore

1 and Harbor Workers' Compensation Act ("LHCWA"). *See* Amended Petition, ECF No. 22 ¶ 7.¹ In
2 1980 INA issued an "Excess Workmen's Compensation and Employers' Liability Policy" (the
3 "Policy") to Matson.² The Policy was effective from January 1, 1980 to January 1, 1982, and
4 provides that Matson's retained limit is \$250,000 for each accident. Under the Excess Policy, INA
5 covers Matson's "excess loss" above the \$250,000 retained limit.

6 Crucial to the parties' dispute and Matson's petition is Endorsement # 6, which relates to claims
7 involving permanent total disability ("PTD") or death. It states in relevant part:

8 It is agreed that Annuity Endorsement number 2 is deleted in its entirety and
9 replaced by the following:

10 It is agreed that the following provisions apply only with respect to claims under
11 the United Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §
12 901 *et. seq.*) involving permanent total disability or death (except as provided in
13 paragraph 4, "Multiple Claims Arising in One Accident," below).

14 1. Election of Options

15 The insured within twelve months from the final establishment of compensable
16 permanent total disability or death status, or within ninety (90) days of the final
17 determination communicated to the insured of the Annuity Value or Value of the
18 Claim, whichever is later, shall elect either Option (1) or Option (2) below:

19 Option (1): Pay INA \$250,000.00 less the amount the insured has paid to date against
20 the claim, thereby transferring all liabilities on the claim up to the policy limit to
21 INA; or

22 Option (2): Receive from INA the Annuity Value or Value of the Claim less
23 \$250,000.00, plus any amounts paid by the insured in excess of \$250,000.00 but not
24 reimbursed by INA, but not to exceed the policy limit, thereby relieving INA of all
25 future liabilities under the policy as respects that claim.

26 2. Annuity Value or Value of the Claim

27 For purposes of Option (1) and Option (2) above, the Annuity Value of any claim
28 arising from accident or disease to an individual shall be the annuity value of that
total claim, including but not limited to all compensation amounts paid and future,
and medical benefits paid and future, whether such compensation amounts paid or
medical benefits paid were based on permanent total disability status or otherwise,
based upon open market pricing of the annuity with a rate of escalation assumption
agreed upon between INA and the insured. In the event that open market annuities
are not available for this purpose, the Value of the Claim shall be determined as the
value of that total claim (unescalated and nondiscounted) as established by standard

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

² Both Matson Terminals, Inc. and Matson Navigation Co. were signatories to the Policy.

1 INA reserving practices. Either the Annuity Value or Value of the Claim will be
2 established as of the time that compensable permanent total disability status has been
3 finally established, or compensable status of a death claim has been finally
4 established. In the event that a claimant established as totally and permanently
5 disable should die before an election is made between Options (1) and (2) and the
6 death is compensable, then the Annuity Value or Value of the Claim shall be re-
7 established as a death claim and a new “Election of Options” period shall commence.

8 **3. Arbitration**

9 **In the event that INA and the insured cannot agree upon the Annuity Value**
10 **or Value of the Claim, the matter shall be submitted to binding arbitration in**
11 **San Francisco, California.** The parties shall attempt to agree upon a single neutral
12 arbitrator and if they so agree, the arbitration shall be conducted before that single
13 neutral arbitrator. If the parties cannot agree upon a single neutral arbitrator, the
14 arbitration shall be conducted before three arbitrators, of which each party shall select
15 one, and the third, a neutral arbitrator, shall be selected by the two arbitrators selected
16 by the parties. If there are three arbitrators, the decision of two of them shall be
17 binding. Arbitration shall be in accordance with the provisions of California Code of
18 Civil Procedure sections 1280 et seq., and the provisions of California Code of Civil
19 Procedure section 1280.5 are specifically incorporated herein.

20 Amended Petition, Ex. A, ECF No. 22-1 at 16-18 (underlining in original; bolding added; footnotes
21 omitted). As seen above, Section 2 of Endorsement # 6 sets forth the procedures to determining the
22 “Annuity Value” or “Value of the Claim.” Section 3 is the arbitration agreement. It simply states,
23 “In the event that INA and the insured cannot agree upon the Annuity Value or Value of the Claim,
24 the matter shall be submitted to binding arbitration in San Francisco, California.”

25 Recently, Matson has submitted to INA claims based on the disabilities of former Matson
26 employees Homer Catt, Rudy Ceballos, Joe Comparisi, Benjamin Duvauchelle, Hyam Ganish,
27 Norman E. Hutchins, Lyle Hyde, Alfred Musumeci, Harry Perry, Henry Randolph, Walter E. Stayart
28 and Elijah West (the “Claimants”). *Id.* ¶ 11. The Claimants were Matson employees who suffered
injuries—during the Policy period, while working for Matson—that left each individual permanently
and totally disabled. *Id.* According to Matson, it was ordered to pay, has paid, and continues to pay
statutory compensation and medical benefits on behalf of the Claimants from the dates of their
disabling injuries through the present (except in the case of those claimants who have died). *Id.* It
also says that some of the benefit payments it made on behalf of the Claimants were made through
assessment payments that funded a trust fund established under the LHWCA (the “Special Fund”).
Id. ¶ 12. The Special Fund has made direct payments of compensation benefits to each of the

1 Claimants, discharging Matson’s legal liability for providing such benefits. *Id.* In return, Matson
2 has been obligated to fund—through annual assessment payments—more than half of the Special
3 Fund’s payments to the Claimants. *Id.*

4 INA denied Matson’s claims as falling outside of the Policy’s coverage, arguing that Special
5 Fund assessments are not covered because they do not qualify as ultimate net loss. Leverett
6 Declaration, Ex. C, ECF No. 3-3 (October 3, 2013 Letter of Ray Wong). Matson has interpreted
7 INA’s denial as being an assertion that the claims are valued at \$0, thus making this a dispute about
8 the Annuity Value or Value of the Claim that is subject to arbitration. Amended Petition, ECF No.
9 22 ¶ 19.

10 Accordingly, on December 2, 2013, Matson Terminals, Inc. filed a petition to compel INA to
11 arbitrate the dispute. Original Petition, ECF No. 1 at 1-13. On February 18, 2013, Matson filed an
12 Amended Petition that added Matson Navigation Co. as a petitioner and is identical to the Original
13 Petition in all material respects. Amended Petition, ECF No. 22. (The memorandum of points and
14 authorities filed in support of the Original Petition is still the operative briefing, though. *See* Memo,
15 ECF No. 1 at 14-30.) Pursuant to the parties’ stipulated briefing schedule, INA filed an opposition
16 on February 27, 2014, and Matson filed a reply on March 6, 2014. Opposition, ECF No. 26; Reply,
17 ECF No. 29. A few days before the hearing, the parties’ stipulated to allow INA to file a sur-reply,
18 which the court considered. Stipulation, ECF No. 31; *see* Sur-Reply, ECF No. 30-2.³ The court held
19 a hearing on the matter on March 20, 2014. 3/20/2014 Minute Order, ECF No. 33.

20 ANALYSIS

21 I. LEGAL STANDARD

22 Under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et seq., arbitration agreements “shall be
23 valid, irrevocable, and enforceable, save upon such grounds that exist at law or in equity for the
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25 ³ Before the parties filed their stipulation, INA filed an administrative motion for leave to file
26 its sur-reply. Administrative Motion, ECF No. 30. Whether by way of INA’s administrative motion
27 or the parties’ stipulation, the court will consider INA’s sur-reply, as well as the points Matson
28 makes in response to INA’s administrative motion. *See* Response to Administrative Motion, ECF
No. 32. Accordingly, the court **GRANTS** INA’s administrative motion and **APPROVES** the
parties’ stipulation.

1 revocation of a contract.” 9 U.S.C. § 2. “Once the court has determined that an arbitration
2 agreement relates to a transaction involving interstate commerce, thereby falling under the FAA, the
3 court’s only role is to determine whether a valid arbitration agreement exists and whether the scope
4 of the dispute falls within that agreement.” *Ramirez v. Cintas Corp.*, No. C 04-00281 JSW, 2005
5 WL 2894628, at *3 (N.D. Cal. Nov. 2, 2005) (citing 9 U.S.C. § 4; *Chiron Corp. v. Ortho Diagnostic*
6 *Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). If the court is satisfied “that the making of the
7 arbitration agreement or the failure to comply with the agreement is not in issue, the court shall
8 make an order directing the parties to proceed to arbitration in accordance with the terms of the
9 agreement.” 9 U.S.C. § 4.

10 The FAA reflects “both a ‘liberal federal policy favoring arbitration,’ and the ‘fundamental
11 principle that arbitration is a matter of contract.’” *AT&T Mobility, Inc. v. Concepcion*, 131 S.Ct.
12 1740, 1745 (2011) (quoting *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S.
13 1, 24 (1983) and *Rent-A-Center, West, Inc. v. Jackson*, 130 S.Ct. 2772, 2776 (2010)). “In line with
14 these principles, courts must place arbitration agreements on an equal footing with other contracts,
15 and enforce them according to their terms. *Id.* at 1745-46 (citing *Buckeye Check Cashing, Inc. v.*
16 *Cardegna*, 546 U.S. 440, 443 (2006) and *Volt Information Sciences, Inc. v. Board of Trustees of*
17 *Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989) (citations omitted)).

18 Nonetheless, when a question arises as to whether “a particular party is bound by the arbitration
19 agreement,” “the liberal federal policy regarding the scope of arbitrable issues is inapposite.”
20 *Comer v. Micor, Inc.*, 436 F.3d 1098, 1104 n.11 (9th Cir. 2006) (emphasis in original; citation
21 omitted). This is because “arbitration is a matter of contract and a party cannot be required to submit
22 to arbitration any dispute which he has not agreed so to submit.” *United Steelworkers v. Warrior &*
23 *Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). “Thus, a federal court must review the contract at
24 issue to determine whether the parties have each agreed to submit a particular dispute to arbitration.”
25 *Goodrich Cargo Sys. v. Aero Union Corp.*, No. 06-06226 CRB, 2006 WL 3708065, at *2 (N.D. Cal.
26 Dec. 14, 2006) (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (“The
27 question whether the parties have submitted a particular dispute to arbitration, i.e., the ‘question of
28 arbitrability,’ is an issue for judicial determination”)); *John Wiley & Sons, Inc. v. Livingston*,

1 376 U.S. 543, 547 (1964) (“The duty to arbitrate being of contractual origin, a compulsory
2 submission to arbitration cannot precede judicial determination that the . . . agreement does in fact
3 create such a duty.”)).

4 **II. THE COURT CAN DECIDE THE QUESTION OF ARBITRABILITY**

5 As an initial matter, the court must decide whether it can decide Matson’s motion. Whether a
6 dispute is arbitrable is generally a question for a court, not an arbitrator, to answer in the first
7 instance. *See, e.g., PowerAgent v. Electronic Data Systems Corp.*, 358 F.3d 1187 (9th Cir. 2004).
8 Still, “arbitration is simply a matter of contract between the parties; it is a way to resolve those
9 disputes – but only those disputes – that the parties have agreed to submit to arbitration.” *First*
10 *Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). “The language of an arbitration
11 agreement establishes whether the determination of arbitrability is for the court or delegated to an
12 arbitrator.” *Fadal Machining Ctrs., LLC v. Compumachine, Inc.*, 461 F. App’x, 630, 632 (9th Cir.
13 2011) (citing *First Options*, 514 U.S. at 943). The court cannot “assume that the parties agreed to
14 arbitrate arbitrability unless there is clea[r] and unmistakabl[e] evidence that they did so.” *Rent-A-*
15 *Center, West*, 130 S.Ct. at 2777 n.1 (internal quotation marks omitted).

16 Thus, the court begins from the presumption that arbitrability is an issue for the court to decide.
17 *See Kimble v. Rhode College, Inc.*, No. C-10-5786 EMC, 2011 WL 2175249, at *1 (N.D. Cal. June
18 2, 2011). “If, however, the court concludes that the parties to the agreement did clearly and
19 unmistakably intend to delegate the power to decide arbitrability to an arbitrator, then the court
20 should perform a second, more limited inquiry to determine whether the assertion of arbitrability is
21 “wholly groundless.” *Qualcomm, Inc. v. Nokia Corp.*, 466 F.3d 1366, 1371 (Fed. Cir. 2006)
22 (applying Ninth Circuit law); *accord, DK Joint Venture 1 v. Weyand*, 649 F.3d 310, 317 (5th Cir.
23 2011); *Agere Systems, Inc. v. Samsung Electronics Co. Ltd.*, 560 F.3d 337, 339 (5th Cir.2009);
24 *Madrigal v. New Cingular Wireless Services, Inc.*, 09-CV-00033-OWW-SMS, 2009 WL 2513478
25 (E.D. Cal. Aug. 17, 2009); *Clarium Capital Mgmt. LLC v. Choudhury*, No. C 08-5157 SBA, 2009
26 WL 331588, at *4-5 (N.D. Cal. Feb. 10, 2009); *Clyde Bergemann, Inc. v. Sullivan, Higgins & Brion,*
27 *PPE, LLC*, CIV.A. 08-162-KI, 2008 WL 2116908 (D. Or. May 14, 2008) *adhered to on*
28 *reconsideration sub nom. Clyde Bergemann, Inc. v. Sullivan, Higgins & Brion*, 2008 WL 4279632

1 (D. Or. Sept. 18, 2008).

2 Here, neither party contends that the parties agreed to arbitrate arbitrability—INA does not make
3 this argument, and Matson filed its petition specifically asking the court to make this
4 determination—and the court sees nothing in the Policy, Endorsement # 6, or the arbitration
5 agreement that suggests otherwise. Accordingly, and in light of the presumption that arbitrability is
6 an issue for a court to decide, the court finds that the parties did not agree to arbitrate arbitrability
7 and that the court can decide this dispute.

8 **III. THE PARTIES’ DISPUTE IS NOT WITHIN THE SCOPE OF THE ARBITRATION**
9 **AGREEMENT**

10 The court begins its analysis by looking to the words of the arbitration agreement. The language
11 defining the scope of the arbitration agreement states simply that “[i]n the event that INA and the
12 insured cannot agree upon the Annuity Value or Value of the Claim, the matter shall be submitted to
13 binding arbitration in San Francisco, California.” The terms “Annuity Value” and “Value of the
14 Claim” are defined in Endorsement #6 and describe the process by which to calculate how much
15 INA has to pay Matson for a permanent total disability of death claim. The court agrees with INA
16 that the arbitration agreement’s language is quite narrow: it specifies exactly the type of dispute that
17 is covered, and it does not, for example, require arbitration of “all disputes related to” or “arising out
18 of” a particular contract (i.e., the Policy) or relationship. *Cf. Simula, Inc. v. Autoliv, Inc.*, 175 F.3d
19 716, 720 (9th Cir. 1999) (arbitration clause containing the language “all disputes arising in
20 connection with this Agreement” “reaches every dispute between the parties having a significant
21 relationship to the contract and all disputes having their origin or genesis in the contract”); *Republic*
22 *of Nicaragua v. Standard Fruit Co.*, 937 F.2d 469, 479 (9th Cir. 1991) (arbitration clause containing
23 the phrase “any and all disputes arising under the arrangements contemplated hereunder” must be
24 interpreted liberally).⁴ Instead, it requires arbitration only of disputes about “the Annuity Value or

26 ⁴ In response to INA’s citation of these opinions, Matson argues that there are no “judicially
27 recognized words” or specific language that are required to make an arbitration agreement broad in
28 scope. *See* Reply, ECF No. 29 at 15-16. This is true, but INA does not make this argument.
Instead, INA (and the court) cite these opinions for the simple point that the arbitration agreement
here does not contain language that courts have found to be broad. That the arbitration agreement is

1 Value of the Claim.”

2 Matson’s argument that “any collateral or peripheral issue” that impacts a dispute that is covered
3 by an arbitration agreement, *see* Memo, ECF No. 1 at 25, is not persuasive. The scope of an
4 arbitration agreement is determined by its language. Where that language is broad and reasonably
5 can be read to include collateral or peripheral issues, then collateral or peripheral issues are subject
6 to arbitration, but where the language is narrow and reasonably cannot be read to include collateral
7 or peripheral issues, then collateral or peripheral issues are not subject to arbitration. The opinions
8 Matson cites merely hold that where an arbitration agreement is ambiguous and it cannot be clearly
9 determined whether a particular dispute is covered by the arbitration agreement, then courts should
10 find that arbitration is appropriate. *See Comedy Club, Inc. v. Improv West. Assocs.*, 553 F.3d 1277,
11 1286 (9th Cir. 2009) (“We conclude that the arbitration agreement is ‘capable of two different
12 reasonable interpretations.’ Under the federal presumption in favor of arbitration, because the
13 arbitration agreement is ambiguous, it should be interpreted as granting arbitration coverage over
14 ‘all disputes’ arising from the Trademark Agreement.”) (citations omitted); *Gravillis v. Coldwell*
15 *Banker Residential Brokerage Co.*, 143 Cal. App. 4th 761, 771-72 (Cal. Ct. App. 2006) (“The
16 burden is on the party opposing arbitration to show the agreement cannot be interpreted to apply to
17 the dispute Whether a contract is reasonably susceptible to a party’s interpretation can be
18 determined from the language of the contract itself The policy in favor of arbitration does not
19 apply when the contract cannot be interpreted in favor of arbitration. There is no policy in favor of
20 arbitrating a dispute the parties did not agree to arbitrate.”) (quoting *Balandran v. Labor Ready,*
21 *Inc.*, 124 Cal. App. 4th 1522, 1527-1528 (Cal. Ct. App. 2004)).⁵

22 Matson’s citation to *Zenger-Miller v. Training Team, GMBH*, 757 F. Supp. 1062 (N.D. Cal.
23 1991), also is unavailing. There, the defendant sought require the plaintiff to arbitrate its claims,

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25 narrow can be determined by looking to its language only.

26 ⁵ Nor do *Howsam v. Deam Witter Reynolds, Inc.*, 537 U.S. 79, 84-85 (2002) and *Int’l Union*
27 *of Operating Eng’rs, Local 150, AFL-CIO v. Flair Builders, Inc.*, 406 U.S. 487, 490-91 (1972)—two
28 other opinions Matson cites—help. Those opinions merely hold that when a party asserts laches as a
defense to a claim that is covered by an arbitration clause, the laches defense, too, must be
arbitrated.

1 among others, based on an arbitration clause in the contract between them that stated that “any
2 controversy, or claim arising out of, or related to, amounts due and owing under this
3 agreement shall be settled by arbitration” *Id.* at 1066. Although a separate choice of law
4 provision rendered the following reading implausible, the court noted that, under the arbitration
5 clause’s language only, the plaintiff’s claims, which sought damages, would have “related to
6 amounts due and owing” and may have been arbitrable. *Id.* at 1067. Matson says that this statement
7 means that INA’s “coverage defense” is arbitrable because it affects the amounts due to it. *See*
8 *Opposition*, ECF No. 1 at 27. The problem with this argument, though, is that the arbitration clause
9 in *Zenger-Miller* is broader than the one at issue here. The arbitration clause in *Zenger-Miller*
10 specifically required arbitration of “any controversy, or claim arising out of, or related to, amounts
11 due and owing under this agreement,” while the arbitration agreement here requires arbitration of
12 disputes about “the Annuity Value or Value of the Claim.” As the court has made clear in the
13 preceding paragraphs, it is the specific language of *this* arbitration agreement that matters, and that
14 language is quite narrow.⁶

15 Given the narrow scope of the arbitration agreement, the resolution of Matson’s Amended
16 Petition turns on how the parties’ dispute is characterized. INA characterizes it as a dispute over
17 whether the claims are covered under the Policy. *See Opposition*, ECF No. 26 at 5, 14-19. Indeed,
18 INA denied Matson’s claims because it believes that Matson’s payments to the Special Fund are
19 administrative assessments and are not “losses” that are covered by the Policy. *See id.* at 5 (citing
20 *Nat’l Steel & Shipbuilder Co. v. Century Indem. Co.*, No. 12-cv-1147-MMA-MDD, 2013 WL
21 3989194 (S.D. Cal. Aug. 2, 2013)); *see also* Leverett Declaration, Ex. C, ECF No. 3-3. INA then
22 argues that a dispute over whether a claim is covered under the Policy is not within the narrow scope
23 of the arbitration agreement, which requires arbitration only when the parties “cannot agree upon the
24 Annuity Value or Value of the Claim.” *Opposition*, ECF No. 26 at 5-6, 14-15, 17.

25 Matson, on the other hand, characterizes it as a dispute over the “amounts of benefits payable for
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27 ⁶ Matson’s citation to *Zolezzi v. Dean Witter Reynolds, Inc.*, 789 F.2d 1447, 1450-51 (9th
28 Cir. 1986), *Bixler v. Next Fin’l Group, Inc.*, 858 F. Supp. 2d 1136, 1149 (D. Mont. 2012), and *Sacks*
v. Dean Witter Reynolds, Inc., 627 F. Supp. 377, 378 (C.D. Cal. 1985), is unavailing for the same
reason. The arbitration agreements in those cases were all much broader than the one at issue here.

1 permanent total disability losses” that is covered by the arbitration agreement. Memo, ECF No. 1 at
2 21-24. It argues that INA’s “coverage defense” is “valuation-based” and a “peripheral issue that
3 impacts a claim’s value” that must be arbitrated because otherwise the “entire benefit of arbitration
4 will be lost.” *Id.* at 24-28. Indeed, Matson repeatedly argues that INA’s denial essentially is an
5 assertion that the claims have “no value at all (zero dollars) because it argues that it has no
6 indemnity obligation.” Amended Petition, ECF No. 22 ¶ 19; *see also* Memo, ECF No. 1 at 16
7 (INA’s response that the claims are not covered “amounts to an assertion that the value of each of
8 the 12 claims is zero”), 24 (“Ultimately, INA’s position is that it owes Matson zero dollars . . .”),
9 25 (INA’s defense is “offered in an effort to establish that the claims have no value”).

10 The court views the parties’ dispute as INA does. To interpret the dispute as Matson does would
11 be render arbitrable any dispute based upon any permanent total disability or death claim denial
12 based on a purported lack of coverage because the denial of a claim necessarily means that the
13 claimant receives nothing. INA is not agreeing that Matson has covered claims and then contending
14 that those claims are valued at \$0; it is saying that Matson’s claims are not covered. Such a dispute
15 is not contemplated by the narrow arbitration agreement that the parties entered into, and the
16 negotiations surrounding the drafting of Endorsement # 6, which Matson discussed in its reply and
17 at oral argument, do not suggest otherwise. The inclusion of Endorsement # 6’s “Election of
18 Options” for payment also does not mean that INA’s “no covered loss” denial is turned into a
19 dispute about “the Annuity Value or Value of the Claim.” Moreover, the court rejects Matson’s
20 argument that the court must nevertheless find arbitration appropriate because its characterization of
21 the dispute is a reasonable one and therefore it is ambiguous whether the dispute falls within the
22 scope of the arbitration clause. *See* Reply, ECF No. 29 at 16-18. The opinions it cites do not stand
23 for this proposition; instead, they support the proposition that where an arbitration agreement is
24 ambiguous and it cannot be clearly determined whether a particular dispute is covered by the
25 arbitration agreement, then courts should find that arbitration is appropriate. *See Mastrobuono v.*
26 *Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995); *Moses H. Cone*, 460 U.S. at 24-25;
27 *Marchese v. Shearson Hayden Stone, Inc.*, 734 F.2d 414, 419 (9th Cir. 1984); *Gravillis*, 143 Cal.
28 App. 4th at 771-72. Here, the court does not find the language of the arbitration agreement to be

1 ambiguous. In the court's opinion, the arbitration agreement cannot reasonably be read to include
2 the dispute before the court now.

3 **CONCLUSION**

4 For the reasons stated above, the court **DENIES** Matson's Amended Petition to compel
5 arbitration.

6 **IT IS SO ORDERED.**

7 Dated: March 21, 2014



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9 LAUREL BEELER
10 United States Magistrate Judge
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