UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

SAWGRASS MUTUAL INSURANCE COMPANY,

Plaintiff,

v. **CASE NO. 4:16cv449-MW/CAS**

ENDURANCE SPECIALTY INSURANCE LTD.,

Defendant.

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ORDER

This matter is before this Court on Plaintiff's Motion to Remand to State Court, ECF No. 4, to which Defendant responded at ECF Nos. 11 and 12. Defendant also filed a Motion to Dismiss in Favor of Arbitration, ECF No. 5, and a Petition to Confirm Final Arbitration Award under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9, ECF No. 25. Plaintiff responded to each motion at ECF Nos. 13 and 27, respectively. For the reasons which follow, this Court finds that Defendant has not met its burden of demonstrating this Court's subject matter jurisdiction, and so this case is remanded to state court.

Sawgrass is a Florida mutual insurance company with over 40,000 policyholders in Florida. Complaint ¶ 4, ECF No. 1 ex. 1. Sawgrass sold its policies with the assistance of a managing general agency, Cladium, Inc.

("Cladium"). *Id.* at ¶ 8. Also, Sawgrass entered into two reinsurance contracts with approximately 23 reinsurers including Montpelier Reinsurance LTD. *Id.* at 6. Both Reinsurance Contracts were effective June 1, 2015, and expired on June 1, 2016. No losses were paid under the Contracts, and no premium disputes were ever raised during the term of the Contracts. *Id.*

Later, Montpelier acquired Cladium and was itself acquired by Endurance Specialty Insurance ("ESI"). *Id.* at 9. Thus, ESI owned both the managing general agency serving Sawgrass and one of the reinsurers of Sawgrass. Beginning in December of 2015, ESI sought to exercise what it called its rights under Article 15 of the reinsurance contract. Def.'s Mot. To Dismiss In Favor of Arbitration 5, ECF No. 5. Article 15 of the reinsurance contracts stated as follows in relevant part:

> The Reinsurer or its designated representatives shall have access to, with the exception of privileged information, the books and records of the Company on matters relating to this reinsurance at all reasonable times for the purpose of obtaining information concerning this Contract or the subject matter hereof.
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> * * * *
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> However, any Company Information provided to the Reinsurer, including underwriting and claim information provided prior to the inception, during and after the term of this Contract is confidential and is the sole property of the Company. It is only to be used by the Reinsurer for underwriting and claims-handling purposes. The Reinsurer may not disclose this information to other parties except to

> evaluate the Contract or program placement or claim, actual or precautionary against the Contract or program.

Reinsurance Contract, June 1, 2015, attached to end of the Complaint at ECF No. 1 ex. 1.

In its motion to confirm the arbitration award, ESI claims that it requested information under Article 15, "[i]n an attempt to better understand its potential obligations to Sawgrass under the Reinsurance Contracts." ECF No. 25 at 4. In paragraph 43 of the Complaint, however, Plaintiff disputes that motivation, alleging as follows:

> Instead, the sole reason why [Defendant's general counsel] requested the information was to effectuate the stated plan to "auction" off renewal information to the highest bidder in an effort to move the business and destroy Sawgrass. Cladium has admitted this plan in court proceedings and, ironically, certain Endurance entities allege it to be no secret. *See Counterclaim and Third Party Complaint*, Case No. 2016 CA 0 00158, Leon County Circuit Court, attached as Exhibit 5.

Sawgrass therefore insisted on a non-disclosure agreement. Complaint ¶ 44, ECF No. 1 ex. 1, but the parties were unable to finalize such an agreement. Def.'s Mot. to Dismiss in Favor of Arbitration 5, ECF No. 5. Eventually, in April of 2016, ESI demanded that Sawgrass arbitrate the issue of its "access to records" under Article 15. Complaint ¶ 48. Article 26 of the Reinsurance Contract provided that "[a]ny dispute arising out of the interpretation, performance or breach of this Contract, including the formation or validity thereof, shall be submitted for decision to a panel of

three (3) arbitrators." Complaint ¶ 46. Paragraph B of Article 26 provides that "[o]ne arbitrator shall be chosen by each party and the two (2) arbitrators shall then choose an impartial third arbitrator…." *Id.*

After some dispute about whether the Defendant had followed the proper notice procedures to trigger arbitration and whether the Plaintiff had timeously named its preferred arbitrator, Defendant unilaterally named two arbitrators and moved forward with arbitration. Complaint ¶¶ 48-62. On June 22, 2016, twenty-one days after the Reinsurance Contract expired, ESI notified Sawgrass that an umpire had been appointed over the arbitration. *Id.* at ¶ 62. Sawgrass declined to participate. Resp. in Opp'n to ESI's Pet. to Confirm Arbitration Award 5, ECF No. 27.

Sawgrass, on June 30, 2016, filed an action in state court, seeking declaratory and injunctive relief that ESI was not entitled to receive the information under Article 15 and that ESI had "no right to arbitration under the Reinsurance Contract." Notice of Removal ¶¶ 1 and 5, ECF No. 1. Sawgrass also filed in state court an Emergency Motion to Stay Arbitration on July 18, 2016. ESI filed a Notice of Removal the next day. Resp. in Opp'n to ESI's Pet. to Confirm Arbitration Award 5, ECF No. 27. As the case pended in federal court, ESI proceeded to conduct the arbitration, over the objection of Sawgrass and without its participation. *Id.*

In its Notice of Removal, ESI claimed diversity of citizenship. *Id.* at ¶¶ 5-6. As to the amount in controversy, ESI claimed the following in the Notice of Removal:

> As successor to Montpelier, Endurance provided valuable consideration for its rights under the Reinsurance Contracts, having received premium payments in excess of $2,000,000 pursuant to the Reinsurance Contracts, and, in exchange, assumed risk and obtained important rights under the Reinsurance Contracts. Therefore, the amount in controversy exceeds $75,000.

Id. at ¶ 6. In other words, in the Notice of Removal, ESI did not value the claim based on the worth of the policyholder information it was seeking from Sawgrass. Instead, ESI looked at the total value of the reinsurance involved.

However, with no claims being made under the Reinsurance Contract and no premium dispute involved, the amount of reinsurance is not the amount in controversy. "When a plaintiff seeks injunctive or declaratory relief, the amount in controversy is the monetary value of the object of the litigation from the plaintiff's perspective." *Federated Mut. Ins. Co. v. McKinnon Motors, LLC,* 329 F.3d 805, 807 (11th Cir. 2003) (internal quotes omitted). "In other words, the value of the requested injunctive [or declaratory] relief is the monetary value of the benefit that would flow to the plaintiff if the injunction [or declaratory relief] were granted." *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1077 (11th Cir.2000); *see SUA Ins. Co. v. Classic Home Builders, LLC*, 751 F. Supp. 2d 1245, 1251 (S.D. Ala. 2010). Here, the

"object of the litigation" from the perspective of Sawgrass is to prevent Sawgrass from having to turn over its policyholder information to ESI so that ESI could sell it.

In the Notice of Removal, ESI makes no effort to quantify the worth of the policyholder information. Thus, Sawgrass moved to remand the matter to state court, arguing that the required amount in controversy has not been shown. Plaintiff's Mot. to Remand ¶8, ECF No. 4. Indeed, the closest ESI comes to quantifying the amount in controversy is in its objection to remand, where it states "Sawgrass claims it needs an injunction to protect renewal rights information, which is worth well in excess of $75,000, and that disclosure of the information would permit Endurance to 'wipe out' Sawgrass's multi-million dollar insurance program" and put "Sawgrass out of business." ECF No. 11 at 2.

A removing defendant must prove by a preponderance of the evidence that the amount in controversy more likely than not exceeds the $75,000 jurisdictional requirement. *Roe v. Michelin North America, Inc.*, 613 F.3d 1058, 1061 (11th Cir. 2010). "A conclusory allegation in the notice of removal that the jurisdictional amount is satisfied, without setting forth the underlying facts supporting such an assertion, is insufficient to meet the defendant's burden." *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319–20 (11th Cir.2001). Likewise, a party seeking to invoke federal diversity jurisdiction

cannot show jurisdiction by a preponderance of the evidence simply by saying that over $75,000 is in dispute. *SUA Ins. Co. v. Classic Home Builders, LLC*, 751 F. Supp. 2d 1245, 1256 (S.D. Ala. 2010). That is all that ESI has done in this case.

ESI makes no effort in the Notice of Removal to value the object of the litigation — the policyholder information. Also, both parties agree that the Reinsurance Contract has expired with no claims being made. ESI has failed to explain why its original stated reason for needing access to records – "to better understand its potential obligations to Sawgrass under the Reinsurance Contracts" – still exists. Further, ESI's conclusory allegation in its objection to remand that the value of the policyholder information is over $75,000 does not suffice to meet its burden to show that the amount in controversy requirement is met. Because ESI is the party seeking to invoke federal jurisdiction, ESI bears the burden of proving by a preponderance of the evidence that the claim on which it is basing jurisdiction meets the jurisdictional minimum, *Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 807 (11th Cir. 2003). ESI has not done so in this case.

ESI also does not trigger federal jurisdiction with its motion to confirm the arbitration award under section 9 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9. Courts have long held that the FAA does not confer subject matter jurisdiction on federal courts. Instead, federal courts must have an

independent jurisdictional basis to entertain cases arising under the FAA.

The Supreme Court has stated:

> The Arbitration Act is something of an anomaly in the field of federal-court jurisdiction. It creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate, yet it does not create any independent federal-question jurisdiction under 28 U.S.C. § 1331 or otherwise.

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 26 n.32, (U.S. 1983). Specifically, the Eleventh Circuit has held that "[a]ctions brought in federal court to confirm arbitration awards pursuant to section 9 of the FAA must demonstrate independent grounds of federal subject matter jurisdiction. " *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1470 (11th Cir. 1997). As the Ninth Circuit reasoned, to hold that section 9 confers subject matter jurisdiction would present

> a significant possibility of eviscerating the clear limits on federal jurisdiction contained in sections 3 and 4. [Such an] expansive interpretation would mean, for example, that a district court lacking jurisdiction to compel arbitration under section 4 might nonetheless threaten to confirm a subsequent ex parte award under section 9. Such a threat would have a substantial compulsory effect. We cannot approve an interpretation which would achieve by indirection that which Congress has clearly forbidden.

General Atomic Co. v. United Nuclear Corp., 655 F.2d 968, 969 (9th Cir.1981), cert. denied, 455 U.S. 948, 102 S.Ct. 1449, 71 L.Ed.2d 662 (1982). Such an ex parte arbitration award is precisely what happened in the instant case.

For the above reasons,

IT IS ORDERED:

The Motion to Remand to State Court, ECF No. 4, is **GRANTED**. The Clerk is directed to remand this case to state court. The Motion to Dismiss in Favor of Arbitration, ECF No. 5, and the Petition to Confirm Final Arbitration Award, ECF No. 25, are **DENIED AS MOOT**. The Clerk is directed to close the file.

SO ORDERED on March 15, 2017.

s/Mark E. Walker
United States District Judge