UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

FARMERS RICE MILLING COMPANY, LLC AND HARDY RICE DRYER, LLC	CIVIL ACTION
VS.	21-503-SDD-SDJ
CERTAIN UNDERWRITERS AT LLOYD'S LONDON; INDIAN HARBOR INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; QBE SPECIALTY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY, UNITED SPECIALTY INSURANCE COMPANY; GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA; HDI GLOBAL SPECIALTY SE; OLD REPUBLIC UNION INSURANCE COMPANY, HUB INTERNATIONAL LIMITED; AND ROBERT ZETZMANN	

RULING

Before the Court is a *Motion to Dismiss Counterclaim and Stay Arbitration Proceedings*[1] filed by Farmers Rice Milling Company and Hardy Rice Dryer, LLC ("Plaintiffs") and a *Motion to Compel Arbitration and Stay Proceedings*[2] filed on behalf of Certain Underwriters at Lloyd's, London; Indian Harbor Insurance Company; Lexington Insurance Company; QBE Specialty Insurance Company; Steadfast Insurance Company; United Specialty Insurance Company; General Security Indemnity Company of Arizona; HDI Global Specialty, SE; Old Republic Union Insurance Company; and Safety Specialty

[1] R. Doc. 5.
[2] R. Doc. 18.

Insurance Company (collectively, "Defendants").[3] Both motions were opposed,[4] followed by a *Reply*,[5] a *Sur-Reply*[6] and supplemental responses.[7] For the following reasons, Plaintiffs' *Motion to Dismiss Counterclaim and Stay Arbitration Proceedings* is DENIED, and Defendants' *Motion to Compel Arbitration and Stay Proceedings* is GRANTED.

I. BACKGROUND

A. Factual and Procedural History

Plaintiffs operate multiple rice processing and storage facilities around Lake Charles and Lacassine, Louisiana.[8] These areas were impacted by Hurricane Laura and Hurricane Delta in August 2020 and October 2020, respectively.[9] Plaintiffs claim the hurricanes resulted in extensive damage to their properties and interrupted their business operations.[10] To recover for the alleged damages, Plaintiffs submitted proof of loss and demands for payment under insurance policies (collectively, the "Account Policy")[11] purchased from Defendants.[12]

After allegedly receiving only "partial payments" on their property damage and business income claims from Defendants, Plaintiffs initiated this litigation in the 19th Judicial District Court for East Baton Rouge Parish on June 24, 2021.[13] Defendants removed this matter, claiming that an arbitration clause in the Account Policy falls under

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[3] R. Doc. 1-2, p. 8–9. The Court notes that there are two additional Defendants in this action that are not parties to the pending motions: (1) HUB International Limited ("HUB"), Rice Mill's insurance agent; and (2) Robert Zetzman, an employee with HUB.
[4] R. Doc. 8; R. Doc. 28.
[5] R. Doc. 15.
[6] R. Doc. 45.
[7] R. Doc. 42; R. Doc. 43.
[8] R. Doc. 1-2, p. 3–5.
[9] *Id.* at p. 3.
[10] *Id.*
[11] As described by Plaintiffs, "[t]he terms of the policies were contained in a single policy form." *Id.* at p. 9.
[12] R. Doc. 1-2.
[13] *Id.* at p. 13–14.

the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the Convention"), which provides this Court with original federal question jurisdiction under 9 U.S.C. §§ 202, 203, and 205.[14] Defendants further filed a *Counterclaim*[15] seeking a declaratory judgment that all matters in dispute between the parties are subject to arbitration in accordance with the arbitration clause in the Account Policy.

In response, Plaintiffs argued that a service of suit endorsement to the Account Policy supersedes the arbitration clause, negating the arbitration agreement and thus invalidating the basis of this Court's subject matter jurisdiction.[16] Plaintiffs moved to remand this matter and additionally filed the instant *Motion to Dismiss Counterclaim Pursuant to Rule 12(b)(6) and 12(b)(1) and Motion to Stay Arbitration Proceedings*.[17] Defendants opposed Plaintiffs' motions and moved to compel arbitration and stay the litigation proceedings pending the outcome of arbitration.[18]

On April 28, 2021, the Court adopted the Report and Recommendation of the Magistrate Judge, denying Plaintiffs' motion to remand on grounds that the arbitration clause was facially valid, but finding a merits-based assessment of the Account Policy was necessary to determine whether the dispute falls under the Convention.[19] Accordingly, resolution of the parties' competing motions hinges on whether the arbitration agreement is valid and enforceable or whether it is superseded by the service of suit endorsement.

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[14] R. Doc. 1, p. 2.
[15] R. Doc. 2, p. 17.
[16] R. Doc. 5-1, p. 3; R. Doc. 6-1, p. 3.
[17] R. Doc. 5.
[18] R. Doc. 18.
[19] R. Doc. 37 (Adopting the Report and Recommendation of the Magistrate Judge (R. Doc. 35)).

B. The Policy and Endorsement

Paragraph C of Section VII (Conditions) of the Policy contains the following arbitration clause:

> C. ARBITRATION CLAUSE: All matters in difference between the Insured and the Companies (hereinafter referred to as "the parties") in relation to this insurance, including its formation and validity, and whether arising during or after the period of this insurance, shall be referred to an Arbitration Tribunal in the manner hereinafter set out.
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> * * *
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> Should the Arbitrators fail to agree, they shall appoint, by mutual agreement only, an Umpire to whom the matter in difference shall be referred. If the Arbitrators cannot agree to an Umpire, either may request the selection be made by a judge of a New York court.
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> The seat of the Arbitration shall be in New York and the Arbitration Tribunal shall apply the law of New York as the proper law of this insurance.
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> * * *
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> A decision agreed to by any two members of the Arbitration Tribunal shall be binding. The award of the Arbitration Tribunal shall be in writing and binding upon the parties who covenant to carry out the same. If either of the parties should fail to carry out any award the other may apply for its enforcement to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.[20]

In addition, the Policy includes an endorsement containing both a service of suit and applicable law clause. The clauses are prefaced at the top of the page with the following note: "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY."[21] The "Service of Suit Clause (U.S.A.)" reads as follows:

> It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted

[20] R. Doc. 1-4, p. 37.
[21] *Id*. at p. 65.

> by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon [addresses inserted] and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.[22]

The "Applicable Law (U.S.A.)" clause provides that "[t]his insurance shall be subject to applicable state law to be determined by the court of competent jurisdiction as determined by the service of suit clause (USA)."[23]

II. LAW AND ANALYSIS

A. The Federal Arbitration Act

The Federal Arbitration Act ("FAA") places arbitration agreements on equal footing with all other contracts and sets forth a national policy in favor of arbitration.[24] This policy "applies with special force in the field of international commerce."[25] Chapter 1 of the FAA provides that a written arbitration agreement is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[26] Chapter 2 of the FAA promulgates the Convention, an international treaty guaranteeing citizens of signatory countries the right to enforce agreements to arbitrate disputes.[27] The FAA empowers district courts to compel arbitration in accordance with agreements falling

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[22] *Id.*

[23] *Id.* The specific language quoted comes from the service of suit clause applicable with respect to the coverage provided by Certain Underwriters at Lloyd's, London only. However, the other insurers have also included service of suit endorsements to the policy applicable to them which are substantively the same as the one quoted herein and which have not been included for the purpose of avoiding unnecessary repetition. *See* R. Doc. 2-2, p. 66-86 for the specific language applicable to the remaining insurer defendants.

[24] *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006).

[25] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985).

[26] 9 U.S.C. § 2.

[27] 9 U.S.C. §§ 201-208. The Supreme Court has explained, "[t]he goal of the [C]onvention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standard by which the agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974); *See also McDermott Int'l, Inc. v. Lloyd's Underwriters of London*, 944 F.2d 1199, 1207 (5th Cir. 1991).

under the Convention.[28] If arbitration is ordered, the FAA requires the Court to stay or dismiss the proceedings.[29]

Courts "conduct only a very limited inquiry" in determining whether to compel arbitration under the Convention.[30] A court should compel arbitration if: (1) There is a written agreement to arbitrate the matter; (2) the agreement provides for arbitration in a Convention signatory nation; (3) the agreement arises out of a commercial legal relationship; and (4) a party to the agreement is not an American citizen.[31] If the arbitration agreement satisfies these four requirements, the court must order arbitration "unless it finds that the said agreement is null and void, inoperative or incapable of being performed."[32]

As previously held by this Court in affirming its original jurisdiction under 9 U.S.C. §§ 202, 203, 205, these four requirements are satisfied by the Account Policy at issue.[33] Accordingly, the Court next turns to the question of whether the agreement to arbitrate between the parties is null, void, or invalid. Courts narrowly construe this "null and void" exception.[34]

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[28] 9 U.S.C. § 206. Due to the lack of conflict between Chapters 1 and 2 of the FAA, both chapters apply to actions and proceedings brought under the Convention. *See* 9 U.S.C. § 208.
[29] *Tittle v. Enron Corp.*, 463 F.3d 410, 417 n.6 (5th Cir. 2006); *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992).
[30] *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 339 (5th Cir. 2004).
[31] *Id*.
[32] *Id.*
[33] *See* R. Doc. 37, adopting the Report and Recommendations of the Magistrate Judge (R. Doc. 35). The four requirements are satisfied, and "the arbitration agreement here at issue 'falls Under' the Convention." R. Doc. 35, p. 8; *see also Georgetown Home Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's, London*, No. CV 20-102-JWD-SDJ, 2021 WL 359735, at *1, *5 (M.D. La. Feb. 2, 2021) (finding an arbitration clause identical to the one at issue in the current matter satisfies the four requirements for arbitration under the Convention.).
[34] Under the FAA, a written arbitration agreement is prima facie valid and must be enforced unless a party proves the arbitration clause "was a product of fraud, coercion, or 'such grounds exist at law or in equity for the revocation of the contract.'" *Freudensprung*, 379 F.3d at 341.

B. Validity of the Agreement to Arbitrate

In determining whether to compel arbitration and stay the proceedings pending arbitration, a court must ascertain whether there is a valid agreement to arbitrate and, if so, whether the specific dispute falls within the substantive scope of the agreement.[35] Plaintiffs claim the agreement to arbitrate found in the Account Policy is unenforceable because the service of suit endorsement explicitly "changes the policy" and provides an insured the right to bypass arbitration in the event that Defendants fail to pay a claim.[36] Per Plaintiffs, the specific language in the service of suit endorsement addressing "the event of the failure of the [Defendants] to pay" supersedes the arbitration clause's broad application to "all matters in difference" between the parties.[37] Because Plaintiffs brought the instant action against Defendants for an amount owed under the policy, Plaintiffs claim the dispute falls within the narrow scope of the service of suit provision. This would require Defendants to submit to "a Court of competent jurisdiction" in lieu of arbitration.

Defendants point to a body of existing case law contrary to Plaintiffs' position.[38] As held in *McDermott Int'l v. Lloyds Underwriters of London* and its progeny, similar

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[35] *Polyflow, L.L.C. v. Specialty RTP, L.L.C.*, 993 F.3d 295, 302 (5th Cir. 2021). If a court finds the parties agreed to arbitrate, then it typically considers whether any federal statute or policy renders the claims nonarbitrable. However, neither party contends a federal statute or policy would bar arbitration, rendering further analysis unnecessary. *See Jones v. Halliburton Co.*, 583 F.3d 228, 234 (5th Cir. 2009).

[36] R. Doc. 5-1, p. 14.

[37] *Id.* at p. 11, 14. In support of their argument, Plaintiffs refer to principles of contract interpretation under Louisiana law and assert that the alleged contradiction between the service of suit endorsement and arbitration clause renders the endorsement language superfluous. R. Doc. 15, p. 2–3; 6. However, finding that the service of suit provision complements the arbitration clause by providing a judicial forum for enforcing an arbitration award gives both provisions equal effect. Plaintiffs' proposed interpretation would upset this balance and render the arbitration clause superfluous in contravention of Louisiana law. *See* La. Civ. Code Art. 2050; *see also 1010 Common, LLC v. Certain Underwriters at Lloyd's, London*, No. CV 20-2326, 2020 WL 7342752, at *11 (E.D. La. Dec. 14, 2020).

[38] *1010 Common,* No. CV 20-2326 (E.D. La. Dec. 14, 2020); *Woodward Design + Build, LLC v. Certain Underwriters at Lloyd's London*, No. CV 19-14017, 2020 WL 5793715 (E.D. La. Sept. 29, 2020); *Gold Coast*

arbitration and service of suit clauses can be read in harmony: The arbitration clause ensures that all disputes arising from the policy will be determined by arbitration, and the service of suit clause provides a means to enforce any resulting arbitration award.[39]

Plaintiffs concede there is a body of law holding the arbitration and service of suit provisions are not in conflict.[40] However, Plaintiffs attempt to distinguish this matter from *McDermott* and subsequent authorities by claiming that *McDermott* only addresses whether a service of suit provision serves as a waiver to a defendant's right to removal.[41] Plaintiffs further argue that *McDermott's* service of suit provision was found in the body of the policy rather than a separate endorsement, but simultaneously concede that when an endorsement is attached to an insurance policy, the two form equal parts of a contract.[42]

Finally, Plaintiffs claim that the separate enforcement provisions found in both the arbitration and service of suit clauses evidence Defendants' intent to offer the insured an additional, convenient route to pursue their remedies, "should they so choose."[43] To support their position regarding Defendants' "intent," Plaintiffs point to a policy Defendants issued in an unrelated matter that expressly reserves the right to

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Prop. Mgmt. Inc. v. Certain Underwriters at Lloyd's London, No. 18-CV-23693, 2019 WL 2482058, at *5 (S.D. Fla. June 14, 2019). Defendants further assert that Plaintiffs are equitably estopped from objecting to arbitration (R. Doc. 18-1, p. 7). However, this argument is moot considering the Court's findings regarding the invalidity of Plaintiffs' objections.

[39] *McDermott Int'l v. Lloyds Underwriters of London*, 944 F.2d 1199 (5th Cir. 1991); *Ochsner/Sisters of Charity Health Plan, Inc. v. Certain Underwriters at Lloyd's*, No. CIV. A. 96-1627, 1996 WL 495157, at *2 (E.D. La. Aug. 30, 1996);*1010 Common,* No. CV 20-2326 (E.D. La. Dec. 14, 2020).

[40] R. Doc. 5-1, p. 12 ("Plaintiffs are cognizant of Fifth Circuit cases stating that, in some circumstances, the two provisions maty [sic] be interpreted as being complimentary. Such courts often rely on *McDermott v. Lloyds Underwriters of London*, 944 F.2d 1199 (1991).").

[41] R. Doc. 5-1, p. 12.

[42] *Id.* at p. 12, 7.

[43] *Id.* at p. 15.

arbitrate.[44] In sum, Plaintiffs claim the current dispute falls within the scope of the service of suit endorsement, which supersedes the Account Policy's arbitration clause either on its face or, alternatively, when the insured chooses.

1. The Account Policy's service of suit provision does not supersede the arbitration clause.

The Court finds Plaintiffs' arguments unpersuasive. The allegation that *McDermott* only addresses whether a service of suit provision serves as a waiver to a defendant's right to removal has been rejected.[45] Several courts have further rejected the additional arguments Plaintiffs assert here, including the notion that Defendants' "intent" to allow an insured to bypass arbitration is evident when looking at policies these Defendants issued in unrelated matters.[46] In interpreting provisions similar to those before the Court, the Fifth Circuit finds it unlikely that an insurer would secure "an almost infinitely broad arbitration clause" if it intended to allow its insured to attack it in a court of the insured's choice.[47]

Multiple courts have analyzed substantially similar, and even identical policies, to the Account Policy at issue and found that the arbitration and service of suit clauses are

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[44] R. Doc. 5-2; R. Doc. 5-1, p. 11-12.
[45] *Ochsner/Sisters of Charity Health Plan, Inc. v. Certain Underwriters at Lloyd's*, No. CIV. A. 96-1627, 1996 WL 495157, at *2 (E.D. La. Aug. 30, 1996).
[46] *Holiday Isle Owners Ass'n v. Certain Underwriters at Lloyd's London*, No. CV 21-00512-JB-B, 2022 WL 2161511, at *3, *10 (S.D. Ala. June 15, 2022) ("[T]he sole manner in which to reconcile the clauses is to read them together, as several other courts have done, and find the Policy mandates the Insured participates in arbitration, per the Arbitration Clause. Thereafter, the Lloyd's Endorsement, specifically the Service of Suit Clause, ensures the Insurer will submit to jurisdiction in the United States if court action is necessary to either compel arbitration or enforce an arbitration award. The Court finds support for its position in several cases which have considered similar insurance provisions."); *see also Sw. LTC-Mgmt. Servs., LLC v. Lexington Ins. Co.*, 2019 WL 1715832, at *6 (E.D. Tex. Mar. 29, 2019), report and recommendation adopted, 2019 WL 1695498 (E.D. Tex. Apr. 17, 2019).
[47] *McDermott*, 944 F.2d at 1205.

compatible.[48] The arbitration clause governs all disputes arising from the policy and mandates the insured participates in arbitration. Thereafter, the service of suit clause ensures the insurer will submit to jurisdiction in the United States if court action is necessary to compel or enforce an arbitration award. The fact that the service of suit clause appears in a separate endorsement does not change this analysis or the result.[49]

2. The dispute falls within the scope of the valid arbitration agreement.

Having determined that the service of suit endorsement does not negate the arbitration agreement, the Court must address whether the parties' dispute falls within the scope of the agreement before ordering arbitration. The Court finds that it does. As a general rule, whenever the scope of an arbitration clause is in question, the court should construe the clause in favor of arbitration.[50]

The central dispute in this matter is based on Defendants' alleged failure to issue full payments to Plaintiffs under the Account Policy.[51] The Account Policy's arbitration clause directs the parties to arbitrate "all matters in difference between [the parties] in relation to this insurance."[52] There is no question that a dispute over the amount owed to

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[48] *Ochsner/Sisters*, 1996 WL 495157, at *2 ("This Court finds that the arbitration clause, on its face, requires arbitration of the dispute between the parties and that the service of suit clause provides a means to enforce any resulting arbitration award, but that the latter clause does not provide an independent means by which to resolve disputes covered by the arbitration clause."); *Woodward Design*, 2020 WL 5793715, at *4; *Certain Underwriters at Lloyd's, London v. Vintage Grand Condo. Ass'n, Inc.*, No. 18 CIV. 10382 (CM), 2019 WL 760802, at *5 (S.D.N.Y. Feb. 6, 2019) ("[I]t has been settled law in this Court, for a very long time indeed, that a 'service of suit' endorsement does not read an arbitration clause out of an insurance policy, but merely provides a means for enforcing an arbitration award in a court of law."); *Gold Coast Prop. Mgmt. Inc. v. Certain Underwriters at Lloyd's London*, No. 18-CV-23693, 2019 WL 2482058, at *5 (S.D. Fla. June 14, 2019) ("Here, the Court reads the Policy's Service of Suit Clause and the arbitration provision as compatible. The Policy mandates arbitration and the Service of Suit Clause merely provides a means for the parties to go to court to either compel arbitration or enforce an arbitration award.").

[49] *See 1010 Common,* 2020 WL 7342752, at *10 (E.D. La. Dec. 14, 2020); *Woodward Design*, No. CV 19-14017 (E.D. La. Sept. 29, 2020); *Gold Coast Prop. Mgmt.*, 2019 WL 2482058, at *5 (S.D. Fla. June 14, 2019).

[50] *Sedco, Inc. v. Petroleos Mexicanos Mexican Nat. Oil Co. (Pemex)*, 767 F.2d 1140, 1145 (5th Cir. 1985).

[51] R. Doc. 1-2, p. 13–14.

[52] R. Doc. 1-4, p. 37.

Plaintiffs per the insurance policy falls within the broad scope of the arbitration agreement covering "all matters" in difference between Plaintiffs and Defendants.

The FAA's requirements for arbitration are present under the current facts. As noted by the Supreme Court, the FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed."[53] Accordingly, the parties must arbitrate their dispute in accordance with the agreement in the Account Policy.

III. CONCLUSION

For the reasons set forth above, the *Motion to Dismiss and Stay Arbitration Proceedings*[54] filed by Plaintiffs is DENIED, and the *Motion to Compel Arbitration and Stay Litigation*[55] filed by Defendants is GRANTED. This litigation is hereby STAYED and ADMINISTRATIVELY CLOSED pending resolution of the arbitration proceedings.

IT IS SO ORDERED.

Baton Rouge, Louisiana, this 14th day of September, 2022.

SHELLY D. DICK
CHIEF DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

[53] *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).
[54] R. Doc. 5.
[55] R. Doc. 18.