

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:19-cv-20955-KMM

BRIGHTSTAR CORP.,

Plaintiff,

v.

EULER HERMES WORLD AGENCY S.A.S.,

Defendant.

ORDER ON MOTION TO STAY

THIS CAUSE came before the Court upon Defendant Euler Hermes World Agency S.A.S.'s ("Defendant") Motion to Stay Action. ("Mot.") (ECF No. 18). Plaintiff Brightstar Corp. ("Plaintiff") filed a response ("Resp.") (ECF No. 23), and Defendant replied ("Reply") (ECF No. 26). The Motion is now ripe for review.

I. BACKGROUND

This dispute arises out of the alleged breach of an agreement providing trade credit insurance coverage entered into between Plaintiff and Defendant, and their respective subsidiaries and affiliates. *See generally* ("Compl.") (ECF No. 1). Plaintiff and one of its subsidiaries, and Defendant and one of its affiliates, are currently parties to two arbitrations arising from that alleged breach, both of which involve the same facts. *See id.* ¶ 1. One arbitration is pending in Florida before the American Arbitration Association's International Center for Dispute Resolution ("ICDR"), pursuant to the arbitration provision in the Master Agreement entered into between Plaintiff and Defendant (the "Florida Arbitration"). *Id.* ¶¶ 1, 29. The other arbitration is pending in Germany pursuant to the arbitration provision in a policy of insurance issued by one of Defendant's affiliates to one of Plaintiff's subsidiaries, pursuant to the Master Agreement (the

“German Arbitration”). *Id.* ¶¶ 1, 31. In the Complaint, Plaintiff seeks a declaratory judgment as to which arbitration provision applies to the Parties’ underlying contract dispute and corresponding injunctive relief. *See id.* ¶¶ 35–44.

Plaintiff is a global distributor of mobile phones based in Miami, Florida. *Id.* ¶ 2. Defendant is an entity based in Paris, France, that provides trade credit insurance and related services. *Id.* ¶ 3. In June 2013, the Parties entered into a Master Agreement, which governs Plaintiff’s global trade credit insurance program. *Id.* ¶ 6; *see also* (“Ex. 2”) (ECF No. 1–4) at 17–20. The Master Agreement contains an arbitration provision requiring that the Parties submit “any question, difference or dispute between the Parties which may arise concerning the construction, meaning or effect of the Master Agreement or concerning [the Parties’] rights and liabilities under the Master Agreement or any other matter arising out of or in connection with the Master Agreement . . . to a sole Arbitrator, in Florida, United States, who will apply [Florida law] to the Master Agreement.” Ex. 2 at 20; Compl. ¶ 16.

The Master Agreement is “the contractual framework for the provision of insurance and services,” and requires that Defendant “take the necessary steps in order to get each participating insurance and service company of the Euler Hermes Group to issue the World Program insurance policies and service contracts to each designated participating company of [Plaintiff].” Ex. 2 at 19; Compl. ¶ 8. The Master Agreement provides that “[i]n case there is any contradiction between the provisions of [the] Master Agreement and the provisions of the insurance policies issued pursuant to it, the provisions of the insurance policies will prevail.” Ex. 2 at 19.

The Euler Hermes World Policy General Terms and Conditions – WPGCI0712 (“World Policy”) is attached as Addendum 3 to the Master Agreement. *See* Ex. 2 at 31. The World Policy provides that Euler Hermes insurance companies will provide indemnity “if a Buyer fails, due to

an event of loss, to pay [] an undisputed Insured Debt.” *Id.* at 35. The World Policy provides the scope of coverage, the conditions of coverage, and various other provisions of the Policy, including definitions of key terms. *Id.* at 35–46; Compl. ¶¶ 10–15. The World Policy also includes an arbitration provision, which provides that “[i]f any dispute cannot be resolved amicably, it will be resolved by arbitration proceedings in accordance with the provisions set out in the [country-specific policy].” Ex. 2 at 45. The World Policy further provides that it is “governed by and construed in accordance with the applicable law specified in the [country-specific policy].” *Id.*

Brightstar Germany GmbH (“Brightstar Germany”), a subsidiary of Plaintiff, and Euler Hermes Deutschland AG (“EH Germany”), an affiliate of Defendant, entered into a country-specific policy of the Euler Hermes World Program, Special Terms – Policy No. WP-468.00003 (the “German Policy”). *Id.* ¶¶ 2–3; Ex. 2 at 49–80. The German Policy includes the policy period, the maximum liability, the premiums due, and the identity of the insurer (EH Germany) and the insured (Brightstar Germany). *See* Ex. 2 at 49–52.

The German Policy also includes an arbitration provision, which provides that “any question, difference or dispute between [the parties] which may arise concerning the construction, meaning or effect of the Policy or concerning [the parties’] rights and liabilities under the Policy or any other matter arising out of or in connection with the Policy will be referred to a sole Arbitrator.” *Id.* at 54. The provision further states that the “Arbitrator will be chosen and appointed by [the parties], or failing agreement, by [Handelskammer Hamburg ‘Chamber of Commerce Hamburg.’]” *Id.* The arbitration is to take place in Hamburg, Germany, and the German Policy is governed by German law. *Id.*

The underlying contract dispute relates to one of Plaintiff’s customers, Getgoods.de Vertriebs GmbH (“Getgoods”). Compl. ¶ 17. Getgoods entered into a distribution agreement with

Brightstar Germany for the sale and distribution of mobile phones. *Id.* Pursuant to that agreement, Getgoods made several orders for mobile phones in October 2013 for which it failed to make payment. *Id.* ¶¶ 17, 19–20. In November 2013, Getgoods filed for insolvency protection under German law. *Id.* ¶ 21. Plaintiff alleges that this was an “Insolvency” and “Event of Loss” as defined in the Master Agreement and thus triggered coverage under the German Policy. *Id.* ¶¶ 21–22. Brightstar Germany made a claim under the German Policy, which was denied. *Id.* ¶¶ 23–25.

As a result, on November 6, 2018, Plaintiff and Brightstar Germany commenced the Florida Arbitration against Defendant and EH Germany pursuant to the Master Agreement. *Id.* ¶ 29; (“Ex. 1”) (ECF No. 1–3). Plaintiff and Brightstar Germany contend that Defendant and EH Germany improperly “refused to authorize payment of Brightstar’s claim” arising from Getgoods’ nonpayment. Ex. 1 at 7.

On December 21, 2018, Brightstar Germany initiated the German Arbitration against Euler Hermes Deutschland Niederlassung der Euler Hermes S.A. (“New EH Germany”)¹ pursuant to the German Policy.² Compl. ¶ 31; (“Ex. 3”) (ECF No. 1–5). The German Arbitration is based on the same facts as the Florida Arbitration. *See* Ex. 3 at 11–12. However, in the Request for Arbitration, Brightstar Germany maintained that the Master Agreement required arbitration in the United States under Florida law and requested a stay of the German Arbitration “pending the outcome of the [Florida Arbitration].” *Id.* at 15–16.

¹ Following a merger, the business of EH Germany was taken over by New EH Germany, which denied coverage for Brightstar Germany’s claim. Mot. at 5; Compl. ¶ 25; Ex. 3 at 6.

² Plaintiff alleges that Defendant “took the position that [Plaintiff’s] commencement of the Florida Arbitration did not toll any statute of limitations for Brightstar Germany to make a claim under the Germany Policy” and thus “solely in order to satisfy any statute of limitations, Brightstar Germany commenced [the German Arbitration].” Compl. ¶ 31.

On March 12, 2019, Plaintiff initiated the instant suit seeking a declaratory judgment as to which arbitration provision (*i.e.*, the provision in the Master Agreement or the provision in the German Policy) applies to the Parties' underlying contract dispute. *See* Compl.

Following the initiation of this case, Plaintiff and Brightstar Germany requested that the ICDR stay the Florida Arbitration pending the result of this case. *See* Resp. at 9. The ICDR stayed the Florida Arbitration pending the conclusion of this case. *Id.*

Additionally, Brightstar Germany moved for a stay of the German Arbitration pending the outcome of the Florida Arbitration. *See* Ex. 3; *see also* (ECF No. 29–1). On September 2, 2019, the arbitration tribunal in the German Arbitration (the “German Arbitration Tribunal”) denied the request for a stay pending the conclusion of the Florida Arbitration. *See* (ECF No. 29–1). Defendant notified the Court that the German Arbitration was expected to proceed to a hearing in December 2019.³ (ECF No. 29).

Now, Defendant moves to stay the instant action pending the resolution of the German Arbitration. *See generally* Mot.; *see also* (ECF No. 29).

II. LEGAL STANDARD

“A variety of circumstances may justify a district court stay pending the resolution of a related case in another court.” *Ortega Trujillo v. Conover & Co. Commc’ns*, 221 F.3d 1262, 1264 (11th Cir. 2000). “A stay sometimes is authorized simply as a means of controlling the district court’s docket and of managing cases before the district court.” *Id.* The “principles of abstention” may also authorize a stay. *Id.* “The moving party bears the burden of demonstrating that a stay is

³ Defendant had previously provided the Court with the Procedural Timetable for the German Arbitration, which states that the evidentiary hearing was scheduled for December 13–14, 2019. (ECF No. 18–1).

appropriate.” *Friends of the Everglades v. United States*, No. 08-21785-CIV-ALTONAGA/Brown, 2008 WL 11410108, at *2 (S.D. Fla. Nov. 7, 2008).

III. DISCUSSION

Defendant argues that the Court should stay this action pending resolution of the German Arbitration on two alternative grounds: (1) pursuant to the Court’s inherent, discretionary authority to control its docket; or (2) pursuant to the doctrine of international abstention. *See Mot.* at 8–16. In response, Plaintiff argues that the Court should not stay this action because (1) the issues before the German Arbitration Tribunal are different than the issue now before this Court; and (2) the doctrine of international abstention does not apply.⁴ *See generally Resp.*

Defendant argues that this Court should stay this case pursuant to its inherent, discretionary authority to control its docket because (1) the German Arbitration will decide the issue now pending before this Court (*i.e.*, which arbitration provision applies to the Parties’ underlying dispute), (2) this Court does not have the authority to enjoin the Parties from proceeding with the German Arbitration; and (3) the stay would be short and subject to reasonable time limits. *See Mot.* at 8–10. In response, Plaintiff argues that a stay is not appropriate because (1) the question of which of the two competing arbitration provisions applies is a question for this Court to decide—not the German Arbitration Tribunal; (2) this question is not a legal question that will be resolved during the German Arbitration; (3) this Court has the authority to enjoin the Parties from proceeding during the Florida Arbitration and the German Arbitration until this litigation is complete; and (4) a stay would be contrary to Florida public policy. *See generally Resp.*

⁴ Because the Court finds that a stay is appropriate pursuant to the Court’s inherent, discretionary authority to control its docket, the Court addresses only the Parties’ arguments as to the propriety of a stay on these grounds.

District courts have the “discretion to stay a case pending the resolution of related proceedings in another forum.” *Ortega Trujillo*, 221 F.3d at 1264; *Advanced Bodycare Sols., LLC v. Thione Int’l, Inc.*, 524 F.3d 1235, 1241 (11th Cir. 2008) (“[D]istrict courts have inherent, discretionary authority to issue stays in many circumstances.”). “A stay is authorized simply as a means of controlling the district court’s docket and managing cases before the district court.” *Postel Indus., Inc. v. Abrams Grp. Const., L.L.C.*, No. 6:11-CV-1179-OrL-28DAB, 2013 WL 1881560, at *3 (M.D. Fla. Mar. 29, 2013), *report and recommendation adopted*, No. 6:11-CV-1179-ORL-28DAB, 2013 WL 1881556 (M.D. Fla. May 3, 2013).

“Federal courts routinely exercise their power to stay a proceeding where a stay would promote judicial economy and efficiency.” *Morrissey v. Subaru of Am., Inc.*, No. 1:15-CV-21106-KMM, 2015 WL 4512641, at *2 (S.D. Fla. July 24, 2015) (citation omitted). “That is especially so when the related matter is likely to have a substantial or controlling effect on the claims and issues in the stayed case.” *Id.* (citation and internal quotation marks omitted); *see also Postel*, 2013 WL 1881560, at *3 (“[C]onsiderations of judicial economy and avoidance of confusion and possible inconsistent results may militate in favor of staying the entire action.”). Moreover, “courts have found it appropriate to stay the litigation . . . when ‘questions of fact common to all actions pending in the [federal lawsuit] are likely to be settled during [an] . . . arbitration.’” *Postel*, 2013 WL 1881560, at *3 (citation omitted). “The parties need not be the same or the issues identical to empower a court to stay a proceeding.” *Morrissey*, 2015 WL 4512641, at *2.

Further, “[w]hen ruling on a motion to stay pending the resolution of a related case in another forum, district courts must consider both the scope of the stay and the reasons given for the stay.” *Lipford v. Carnival Corp.*, 346 F. Supp. 2d 1276, 1278 (S.D. Fla. 2004). “A stay must not be immoderate.” *Id.* (quoting *Ortega Trujillo*, 221 F.3d at 1264). “A stay of a federal court

proceeding pending resolution of a related case will be considered immoderate if the stay is indefinite in scope.” *Id.*; *Morrissey*, 2015 WL 4512641, at *2 (“[A] stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description.”).

Here, the Court finds that a stay is appropriate, as the resolution of the German Arbitration may affect the instant proceedings. In this matter, Plaintiff seeks a declaration “regarding whether the arbitration clause in the Master Agreement or the arbitration clause in the German Policy applies to the parties’ underlying dispute,” along with corresponding injunctive relief. Compl. ¶¶ 36, 42–44. In both the Florida and German Arbitrations, the Parties disagree as to whether a “Dispute” exists over the “Insured Debt” within the meaning of the Master Agreement and thus whether Plaintiff is entitled to payment of its claim. *See id.* ¶ 29. Plaintiff and Brightstar Germany commenced the Florida Arbitration pursuant to the arbitration provision in the Master Agreement. *See generally* Ex. 1; *see also* Compl. ¶ 29. Brightstar Germany commenced the German Arbitration pursuant to the arbitration provision in the German Policy, but requested that the German Arbitration be stayed pending the conclusion of the Florida Arbitration, as the underlying contract dispute turns on the interpretation of the terms and conditions in the Master Agreement, which is subject to a Florida arbitration provision. *See generally* Ex. 3; *see also* Compl. ¶¶ 31–32. The German Arbitration Tribunal declined to stay the matter pending the outcome of the Florida Arbitration. *See* (ECF No. 29–1).

Although it does not appear that the discrete question at issue in the instant proceedings (*i.e.*, which arbitration provision governs the Parties’ underlying contract dispute) has been explicitly presented to the German Arbitration Tribunal, there appears to be overlap between the factual and legal questions presented in both this proceeding and the German Arbitration.

Specifically, both the resolution of the question presented in the instant suit and the German Arbitration Tribunal's ultimate decision on the merits will require the interpretation and application of the Master Agreement to the Parties' underlying contract dispute. And, because the factual and legal issues in both proceedings may overlap, it is unclear to the Court what preclusive effect, if any, the German Arbitration Tribunal's decision may have on the instant matter. Accordingly, the Court finds that a stay would promote judicial economy and efficiency by avoiding the litigation of issues that may be irrelevant or moot following the German Arbitration. *Morrissey*, 2015 WL 4512641, at *2 (finding a stay appropriate because it would "promote judicial economy and efficiency by avoiding the litigation of issues that may become irrelevant or moot"). Indeed, "[e]ven if the [p]arties are not bound by the entirety of the [German Arbitration Tribunal's] decision[,] litigating the issues here before the arbitration could readily create inconsistent results with the instant litigation, or at very least, create confusion on the issue." *Postel*, 2013 WL 1881560, at *6; *see also Akzenta Paneele + Profile GmbH v. IVC US, Inc.*, No. 1:17-CV-3600-TWT, 2018 WL 1014631, at *2 (N.D. Ga. Feb. 21, 2018) (staying a matter because declining to do so would "increase the possibility of inconsistent outcomes, potentially lead the parties to incur unnecessary expenses, and generally complicate the course of this litigation") (citation and internal quotation marks omitted).

The Court also finds that the advanced stage of the German Arbitration weighs in favor of staying the instant matter. "A court may consider the progress of a related action in evaluating the lawfulness of a stay." *Morrissey*, 2015 WL 4512641, at *2; *Myron v. Rodriguez*, No. 3:06-CV-1051-J-TEM, 2008 WL 516753, at *3 (M.D. Fla. Feb. 22, 2008) (staying case and noting that "the related case is already far advanced in the appeals process and a decision is reasonably anticipated in the foreseeable future"). The German Arbitration Tribunal has already issued a decision

declining to stay the matter pending the resolution of the Florida Arbitration, and it appears that the German Arbitration Tribunal has already conducted a hearing on the merits of the dispute. *See* (ECF Nos. 29, 29–1). Therefore, a decision from the German Arbitration Tribunal is expected relatively soon.⁵

In opposition to the stay, Plaintiff argues that “[t]he question raised by this lawsuit – which of two competing arbitration clauses applies – is a legal question that cannot be decided by one of the competing arbitrators” but rather “is a ‘gateway’ issue that must be resolved by a court.” Resp. at 4. However, whether the question presented in the instant lawsuit (*i.e.*, which arbitration provision applies) is one for this Court to decide, and the authority of the German Arbitration Tribunal to decide the issues before it, are not determining factors as to whether a stay of this matter is warranted under the circumstances presented.⁶ Further, the Court notes that Plaintiff has not moved this Court for an order enjoining the Parties from proceeding with the German Arbitration. *Id.* at 9 (“The injunction sought in [Plaintiff]’s complaint ultimately may be unnecessary, which is why [Plaintiff] has not yet filed any motion asking for that injunction.”). Indeed, it does not appear that Brightstar Germany has argued during the German Arbitration that

⁵ The Court also notes that the German Arbitration Tribunal’s “concern for expediency has been well demonstrated,” which similarly weighs in favor of staying the instant matter. *Morrissey*, 2015 WL 4512641, at *2. In the German Arbitration Tribunal’s decision declining the request for a stay, the German Arbitration Tribunal stated: “[T]his arbitration is well advanced . . . [and] [t]he procedural timetable is established and the hearing will already take place in December 2019.” (ECF No. 29–1) at 10. The German Arbitration Tribunal further observed that “[g]ranting [Brightstar Germany’s] stay request would mean that the tribunal should discard the present procedural timetable and to cancel the hearing and wait for, what currently looks like an indefinite period of time, before it undertakes any further steps in the procedure” and that “[t]his is not what the tribunal can do in light of Article 13.3 DIS Rules” and the “duty of efficiency [it owes] not only to *one party* but to *both parties*.” *Id.*

⁶ For the same reason, the Court declines to address the Parties’ arguments as to whether this Court has the authority to enjoin the parties to the German Arbitration. *See* Mot. at 9–10; Resp. at 6–9.

the German Arbitration Tribunal does not have the authority to render a decision on the issues presented before it. *See* (ECF No. 26–1) at 48–49.

Regardless, Plaintiff also argues that the question before the German Arbitration Tribunal is not the same as the question now pending before this Court. *See* Resp. at 4–6. Specifically, Plaintiff argues that Brightstar Germany’s request that the German Arbitration Tribunal stay the German Arbitration pending the resolution of the Florida Arbitration (which has since been denied) required that the German Arbitration Tribunal decide “simply whether to stay the arbitration” and not “which arbitration clause applies.” Resp. at 4. Although the discrete question of which arbitration provision applies may not have been presented in the German Arbitration or resolved by the German Arbitration Tribunal in denying the request to stay, as articulated above, this Court finds that the issues are sufficiently related such that judicial economy justifies a stay of the instant proceedings pending the resolution of the German Arbitration.⁷ Indeed, “it is well-settled that a complete identity of neither parties nor issues is required for a stay.” *Morrissey*, 2015 WL

⁷ The Court notes, however, that the German Arbitration Tribunal found as follows:

[T]he arbitration clause in the Master Agreement concerns disputes between the “Parties.” These are defined as [Plaintiff, Brightstar Corp.] and [Defendant, Euler Hermes World Agency S.A.S.]. According to Respondent [New EH Germany], the US Arbitration also involves Claimant [Brightstar Germany] and Respondent [New EH Germany] in this arbitration. The arbitration clause in the German Policy, as amended, refers to disputes between “you” and “us”. The insurer and the insured under the German Policy are Respondent [New EH Germany], and Claimant [Brightstar Germany] respectively. Claimant [Brightstar Germany] explains that the US Lawsuit is aimed to determine whether the insurance dispute between [Plaintiff, Brightstar Corp.] and [Defendant, Euler Hermes World Agency S.A.S.] is governed by the arbitration agreement of the German Policy or by the arbitration agreement of the Master Agreement. This, at least *prima facie*, suggests the existence of a jurisdictional dispute, whereas the jurisdiction of this tribunal is uncontested.

(ECF No. 29–1) at 9.

4512641, at *3 (finding that although the cases were not “completely identical” that a stay was appropriate in part because “[t]he Court [was] satisfied the two cases . . . [were] sufficiently related”).

Further, Plaintiff argues that the Court should decline to stay the instant matter and resolve the legal issue of which arbitration provision applies on the merits in accordance with Florida public policy. Resp. at 10. However, the merits of this dispute (*i.e.*, which arbitration provision applies) are not before the Court on the instant Motion. Further, the imposition of a short stay of the proceedings pending the outcome of the German Arbitration would simply delay the Court’s consideration of the merits of this dispute until a later date and is thus not contrary to Florida public policy.

Finally, Plaintiff argues that the proposed stay “would essentially amount to a disfavored indefinite stay.” *Id.* Here, Defendant requests that the Court stay the matter pending the resolution of the German Arbitration. *See generally* Mot; *see also* (ECF No. 29). Although neither party has provided the Court with an expected date for the issuance of a decision in the German Arbitration, the Court finds the requested duration of the stay to be sufficiently specific, as a decision is expected from the German Arbitration Tribunal relatively soon. *See Morrissey*, 2015 WL 4512641, at *2 (finding that the plaintiffs sufficiently “identified the specific resolution point that will terminate the stay” where the plaintiffs requested that the court stay the matter pending another court’s adjudication of certain issues). Accordingly, the Court finds that a short thirty (30) day stay pending a decision from the German Arbitration Tribunal is warranted at this time.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the

Motion to Stay (ECF No. 18) is GRANTED. This case is STAYED until the German Arbitration Tribunal issues a final decision on the issues presented in the German Arbitration. The Parties shall move to lift or otherwise modify the stay within seven (7) days of a ruling by the German Arbitration Tribunal, with a report explaining how the decision affects the instant proceedings. In the event a decision is not rendered in the German Arbitration within thirty (30) days of the date of this Order, the Parties shall move to either lift or continue the stay at that time. The Clerk of the Court is instructed to administratively CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 26th day of February, 2020.



K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

c: All counsel of record