IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ADCOCK PROPERTY MANAGEMENT, LLC	§	**PLAINTIFF**
v.	§	**Civil No. 1:22-cv-306-HSO-BWR**
CERTAIN UNDERWRITERS AT LLOYD'S LONDON; INDIAN HARBOUR INSURANCE COMPANY; QBE SPECIALITY INSURANCE COMPANY; GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA; UNITED SPECIALTY INSURANCE COMPANY; LEXINGTON INSURANCE COMPANY; SAFETY SPECIALTY INSURANCE COMPANY; HDI GLOBAL SPECIALTY SE; OLD REPUBLIC UNION INSURANCE COMPANY	§	**DEFENDANTS**

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION [2] TO COMPEL ARBITRATION AND STAY LITIGATION

BEFORE THE COURT is Defendants Certain Underwriters at Lloyd's London Subscribing to Policy No. AMR-56846-04 ("Underwriters"), Indian Harbor Insurance Company, QBE Specialty Insurance Company, General Security Indemnity Company of Arizona, United Specialty Insurance Company, Lexington Insurance Company, Safety Specialty Insurance Company, HDI Global Specialty SE, and Old Republic Union Insurance Company's (collectively, "Defendants") Motion [2] to Compel Arbitration and Stay Litigation. The Motion [2] is fully briefed. After due consideration of the Motion [2], the parties' submissions, and

relevant legal authority, the Court finds that the Motion [2] should be granted. The parties will be compelled to arbitrate their claims in this case, which will be stayed.

I. BACKGROUND

A. Procedural history

Plaintiff Adcock Property Management, LLC's ("Plaintiff") claims arise out of a commercial property insurance policy ("the Policy") issued to it by Defendants. Ex. [1-1] at 5. Plaintiff alleges that the Policy provided coverage for its properties "against physical damage by or from wind and hurricane," and that the Policy was in full force and effect at all relevant times. *Id.* Plaintiff asserts that Defendants breached the Policy by mishandling and ultimately denying its claim for losses and property damage sustained as a result of Hurricane Zeta, which occurred on or about October 28, 2020. *Id.* at 5-6.

On September 22, 2022, Plaintiff filed suit in the Circuit Court of Jackson County, Mississippi, bringing claims against Defendants for bad faith and breach of contract. Ex. [1-1] at 7-14. Defendants removed the case to this Court on the basis of federal question jurisdiction, *see generally* Not. [1], and filed the present Motion [2] to Compel Arbitration and Stay Litigation.

Defendants argue that the Policy contains a valid arbitration agreement, that the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards governs, that the Arbitration Clause contains a broad delegation clause, and that this Court "is duty bound to compel Plaintiff to arbitrate all matters in dispute with Underwriters and to stay this action pending arbitration."

Mem. [3] at 2. Plaintiff responds that no valid arbitration agreement exists because the Policy's Arbitration Clause was superseded by the Policy's amendatory endorsements, which contain Suit Against Companies, Service of Suit, and Applicable Law Clauses, such that Mississippi state law controls the outcome of the case. Mem. [7] at 2. Defendants point out in their Reply [8] that the United States Court of Appeals for the Fifth Circuit and an overwhelming majority of federal courts have rejected Plaintiff's argument in similar cases involving identical language contained in amendatory endorsements.

B. Relevant Policy Provisions

The Policy contains an Arbitration Clause, which provides in relevant part:

> 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. . . . 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.

Ex. [2-1] at 46. By way of amendatory endorsements, the Policy also contains Suit Against Companies, Service of Suit, and Applicable Law Clauses, which state in relevant part as follows:

> SUIT AGAINST COMPANIES: No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all the requirements of this Policy, nor unless the same be commenced within twelve (12) months next after the date of the loss, provided however, that if under the laws of the jurisdiction in which the property is located such time limitation is invalid, then any such claims shall be void unless such action, suit or proceedings is commenced within the shortest limit of time permitted by the laws of such jurisdiction.

> . . .
>
> 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 by the laws of the United States or of any State in the United States.
>
> . . .
>
> This Insurance shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Clause (USA).
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> . . .
>
> WITH RESPECT TO THE COVERAGE PROVIDED BY: . . . HDI GLOBAL SPECIALTY SE; OR LEXINGTON INSURANCE COMPANY; OR OLD REPUBLIC UNION INSURANCE COMPANY; OR UNITED SPECIALTY INSURANCE COMPANY; OR SAFETY SPECIALTY INSURANCE COMPANY. THE FOLLOWING APPLICABLE CLAUSES SHALL APPLY TO THE INDICATED COMPANY(IES), PROVIDED THAT COMPANY IS PARTICIPATING IN THE POLICY: . . . It is agreed that in the event of the failure of the Company hereon to pay any amount claimed to be due hereunder, the Company 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 the Company's 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 by the laws of the United States or of any State in the United States.

Ex. [2-1] at 53, 82, 101.

II. DISCUSSION

A. Relevant legal standards

Congress's enactment of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et seq., embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts. *SW LTC-Mgmt. Servs., LLC v. Lexington Ins. Co.*, No. 1:18-CV-00491-MAC, 2019 U.S. Dist. LEXIS 66210, at *4 (E.D. Tex. Mar. 29, 2019), *report and recommendation adopted by* 2019 U.S. Dist. LEXIS 65653 (E.D. Tex., Apr. 17, 2019) (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006)). Chapter Two of the FAA, 9 U.S.C. §§ 201 et seq., incorporates the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the Convention") into federal law. Under the Convention, the substantive law of the FAA applies except to the extent of any conflict with the Convention. *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 339 (5th Cir. 2004). Where, as here, the parties have not identified any conflict and no such conflict appears on the record, FAA caselaw applies. *See Gemini Ins. Co. v. Certain Underwriters at Lloyd's London*, No. H-17-1044, 2017 U.S. Dist. LEXIS 56583, at *7 (S.D. Tex. Apr. 13, 2017).

"In determining whether the Convention requires compelling arbitration in a given case, courts conduct only a very limited inquiry." *Freudensprung*, 379 F.3d at 339. Specifically, a district court must determine whether four conditions are met: (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. *Id.* If all four conditions are met, a court must order arbitration unless it finds that the arbitration agreement is "null and void, inoperative or incapable of being performed," *Freudensprung*, 379 F.3d at 339, as determined by analyzing "standard breach-of-contract type defenses—such as fraud, mistake, duress, or waiver—which defenses can be applied neutrally before international tribunals," *SW LTC-Mgmt. Servs., LLC*, U.S. Dist. LEXIS 66210, at *6 (quoting *Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1289 (11th Cir. 2015)).

In deciding whether to enforce an arbitration agreement, the Court must typically decide (1) "whether the parties entered into *any arbitration agreement at all*;" and (2) "whether *this* claim is covered by the arbitration agreement." *Kubala v. Supreme Prod. Servs.*, 830 F.3d 199, 201 (5th Cir. 2016) (original emphasis). However, if the arbitration agreement in question contains a valid delegation clause, the district court is required "to refer a claim to arbitration to allow the arbitrator to decide gateway arbitrability issues." *Id.* at 202 (citing *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010)). If, as in this case,

> the party seeking arbitration points to a purported delegation clause, the court's analysis is limited. It performs the first step—an analysis of contract formation—as it always does. But the only question, after finding that there is in fact a valid agreement, is whether the purported delegation clause is in fact a delegation clause—that is, if it evinces an intent to have the arbitrator decide whether a given claim must be arbitrated. If there is a delegation clause, the motion to compel arbitration should be granted in almost all cases.

Id. (internal citations omitted).

B. Analysis

1. The Arbitration Agreement is subject to the Convention

The Court is of the opinion that all four conditions under the Convention are satisfied in the present case. First, a written agreement to arbitrate "all matters in difference" clearly exists. *See* Ex. [2-1] at 46. The plain language of the Policy's Arbitration Clause states that "[a]ll matters in difference between the Insured and the Companies . . . 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." Ex. [2-1] at 46. Second, the Arbitration Clause provides that the "seat of the Arbitration shall be in New York," thereby providing for arbitration in a Convention signatory nation. *Id.*; *see* New York Arbitration Convention, Contracting States, http://www.newyorkconvention.org/countries (last visited March 13, 2023) (listing the United States of America as a signatory nation). Third, the Complaint [1-1] makes it clear that the parties' dispute "arises out of a commercial relationship, namely the parties' insurance agreement." *SW LTC-Mgmt. Servs., LLC*, 2019 U.S. Dist. LEXIS 66210, at *11; *see Port Cargo Serv., LLC v. Certain Underwriters at Lloyd's London*, 2018 U.S. Dist. LEXIS 144291, 2018 WL 4042874 (E.D. La. Aug. 24, 2018). Finally, Defendants have demonstrated, and Plaintiff does not dispute, that several parties are not American citizens. *See generally* Corporate Disclosure Statement [4] (describing HDI Global Specialty SE as a German corporation and describing several syndicates which comprise Underwriters as entities registered in foreign nations, including England, Wales

and Bermuda); Mem. [3] at 8; *see also Corefield v. Dallas Glen Hills LP*, 355 F.3d 853, 857-58 (5th Cir. 2003) ("Lloyd's of London is not an insurance company but rather a self-regulating entity which operates and controls an insurance market. The Lloyd's entity provides a market for the buying and selling of insurance risk among its members who collectively make up Lloyd's. Thus, a policyholder insures at Lloyd's but not with Lloyd's." (internal citations omitted)). Because all four conditions under the Convention are satisfied, the Court must compel arbitration unless the agreement is "null and void, inoperative or incapable of being performed." *Freudensprung*, 379 F.3d at 339.

2. A valid arbitration agreement exists because the Arbitration Clause is not superseded by the Policy's amendatory endorsements

Plaintiff's only challenge to the force of the Policy's Arbitration Clause is that it is no longer in effect because it was superseded by amendatory endorsements to the Policy containing the Suit Against Companies, Service of Suit, and Applicable Law Clauses. Mem. [7] at 4-7. Plaintiff takes the position that these Clauses specifically alter those terms of the Policy that precede them, including the Arbitration Clause, and that they specifically state that Defendants "will submit" to state law in court. *Id.* (original emphasis). Plaintiff further argues that these clauses create ambiguity in the Policy, which must be resolved in Plaintiff's favor under state law, meaning that the Arbitration Clause is rendered moot. *Id.* at 4, 7. Critically, however, despite numerous courts in the Fifth Circuit, and others, having considered this argument in the context of insurance policies containing identical language, Plaintiff fails to cite any case law supporting its conclusion.

In *McDermott International, Inc. v. Lloyds Underwriters of London*, the Fifth Circuit considered the relationship between an arbitration clause and a service of suit clause in the same policy, and found that although seemingly contradictory, the clauses served distinct purposes and should be interpreted such that neither is rendered meaningless. 944 F.2d 1199, 1204 (5th Cir. 1991). The Fifth Circuit concluded that the arbitration clause in *McDermott* plainly required arbitration of the dispute between the parties, and that the service of suit clause merely provided a means to enforce any potential arbitration award. *Id.*

Following *McDermott,* numerous courts have interpreted insurance policies containing suit against companies, service of suit, applicable law, or other clauses which purported to supersede an arbitration clause that are similar or identical to those contained in the Policy here. Overwhelmingly, courts enforce the parties' agreement to arbitrate in spite of the presence of those clauses. *See, e.g., 1010 Common, LLC v. Certain Underwriters at Lloyd's, London*, Civ. No. 20-2326, 2020 U.S. Dist. LEXIS 233867, at *28-29 (E.D. La. Dec. 14, 2020) ("We find that the Policy's [service of suit and applicable law] endorsement is consistent with *McDermott's* finding that there was no waiver of removal rights by merely supplying a general provision indicating the service of process in a court of competent jurisdiction."); *Woodward Design + Build, LLC*, Civ. No. 19-14017, 2020 U.S. Dist. LEXIS 178799, at *8-9 (E.D. La. Sept. 29, 2020) ("Due to the federal policy favoring arbitration, there is a presumption against the finding of waiver. In this case, the Plaintiffs have failed to demonstrate that Defendants 'clearly and unequivocally'

waived the Arbitration Clause by simply issuing policy endorsements and general amendments [including service of suit and applicable law clauses] to the policies."); *SW LTC-Mgmt. Servs., LLC*, 2019 U.S. Dist. LEXIS 66210, at *18 (finding that despite the service of suit and applicable law clauses contained in the contract, "giving the words 'all,' 'matters,' and 'difference' [contained in the arbitration clause] their plain and ordinary meaning allows for the undersigned to conclude that the dispute over policy coverage . . . falls within the purview of the arbitration clause."); *Gemini Ins. Co.*, 2017 U.S. Dist. LEXIS 56583, at *20 (concluding that the service of suit and law and practice provisions did not negate the arbitration clause); *Sw. Elec. Power Co. v. Certain Underwriters at Lloyds of London*, 2013 U.S. Dist. LEXIS 138913, at *6-8 (W.D. La. Aug. 29, 2013), *adopted by* 2013 U.S. Dist. LEXIS 139002 (W.D. La., Sept. 25, 2013) (finding the arbitration clause to be valid and enforceable despite policy references to suits and service, including a provision stating that "[i]f a claim is made and rejected and no action, suit or reference to arbitration is commenced by the Insured within six months after such rejection, then, for all purposes, the claim shall be regarded as having been abandoned and shall not be recoverable under this Policy."); *Ochsner/Sisters of Charity Health Plan v. Certain Underwriters at Lloyd's*, CIVIL ACTION NO. 96-1627 SECTION "N", 1996 U.S. Dist. LEXIS 12561, at *6-7 (E.D. La. Aug. 30, 1996) ("the service of suit clause provides a means to enforce any resulting arbitration award, but [it] . . . does not provide an independent means by which to resolve dispute covered by the arbitration clause"). The Court concludes that under a plain reading of the clauses

at issue here, neither the Suit Against Companies, nor Service of Suit, nor Applicable Law Clauses supersede the Policy's Arbitration Clause. *See McDermott*, 944 F.2d at 1204.

3. The Arbitration Clause contains a broad delegation clause

Having concluded that an agreement to arbitrate subject to the Convention exists, the Court would ordinarily turn to the question of whether Plaintiff's specific claims are covered by that agreement. *See Kubala*, 830 F.3d at 201. However, because the Court finds that the Policy contains a broad, unchallenged delegation clause, the Court may not decide questions of arbitrability. *Id.* at 202. Instead, all claims must be referred to the arbitrator "for gateway rulings" on threshold issues. *Id.*

The Policy's Arbitration Clause states that: "**All matters in difference** between the Insured and the Companies . . . 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 . . ."** Ex. [2-1] at 46 (emphasis added). Numerous other courts have construed identical language to a constitute a broad delegation clause, and this Court agrees. *See, e.g., Corpus Christi Island Apartment Villas Mgmt. Grp. LLC v. Underwriters at Lloyd's London*, No. 2:19-CV-188, 2019 U.S. Dist. LEXIS 229616, at *5 (S.D. Tex. Oct. 18, 2019); *Georgetown Home Owners Ass'n v. Certain Underwriters at Lloyd's*, No. 20-102-JWD-SDJ, 2021 U.S. Dist. LEXIS 20042, at *38 (M.D. La. Feb. 2, 2021); *5556 Gasmer Mgmt. LLC v. Underwriters at Lloyd's, London*, 463 F. Supp. 3d 785, 790-91

(S.D. Tex. 2020) ("This Court agrees that all means just that — all. But even if it somehow didn't, the delegation clause on its face makes 'formation and validity' or the arbitration agreement expressly part and parcel of 'all disputes' that must be submitted to arbitration."); *1010 Common, LLC*, 2020 U.S. Dist. LEXIS 233867, at *33 (determining that a valid delegation clause existed because the broad language mirrored the examples in *Kubala* and *5556 Gesmer Mgmt*).

Accordingly, "this Court's analysis should end here, with the referral of arbitrability to the arbitrators," because "[o]nly a challenge made to the delegation clause—as opposed to a challenge that goes to the arbitration agreement as a whole—will prolong this Court's analysis." *Corpus Christi Island Apartment Villas Mgmt. Grp. LLC*, 2019 U.S. Dist. LEXIS 229616, at *6. Plaintiff has not challenged or otherwise briefed Defendants' delegation clause argument. *See generally* Mem. [7]; Mem. [3]. "[U]nless [the plaintiff] challenged the delegation provision specifically, we must treat it as valid under [9 U.S.C.] § 2, and must enforce it under §§ 3 and 4, leaving any challenge to the validity of the Agreement as a whole for the arbitrator." *Corpus Christi Island Apartment Villas Mgmt. Grp. LLC*, 2019 U.S. Dist. LEXIS 229616, at *6 (quoting *Rent-A-Ctr.*, 561 U.S. at 72). Thus, the Court will refer Plaintiff's claims to arbitration.

III. CONCLUSION

To the extent the Court has not addressed any of the parties' remaining arguments, it has considered them and determined that they would not alter the result.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Defendants Certain Underwriters at Lloyd's London, Indian Harbor Insurance Company, QBE Specialty Insurance Company, General Security Indemnity Company of Arizona, United Specialty Insurance Company, Lexington Insurance Company, Safety Specialty Insurance Company, HDI Global Specialty SE, and Old Republic Union Insurance Company's Motion [2] to Compel Arbitration and Stay Litigation is **GRANTED.**

IT IS, FURTHER, ORDERED AND ADJUDGED that, Plaintiff Adcock Property Management, LLC is **ORDERED** to submit its claims against Defendants Certain Underwriters at Lloyd's London, Indian Harbor Insurance Company, QBE Specialty Insurance Company, General Security Indemnity Company of Arizona, United Specialty Insurance Company, Lexington Insurance Company, Safety Specialty Insurance Company, HDI Global Specialty SE, and Old Republic Union Insurance Company to arbitration in accordance with the Arbitration Clause in the Policy.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this case is **STAYED** and **ADMINISTRATIVELY CLOSED** pending the outcome of arbitration of Plaintiff's claims.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the parties shall move to lift the stay and reinstate this case to the active docket within 30 days after the conclusion of the arbitration, or otherwise advise the Court whether this matter may be fully and finally dismissed.

SO ORDERED AND ADJUDGED, this the 20th day of March, 2023.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE