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Liquidator's Motion to Dismiss Petition to Confirm Reinsurance Arbitration Award Denied

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In some states receivers may bring claims inside or outside the receivership court, including reinsurance arbitrations. In other states receivership proceedings end the ability of either party to bring a reinsurance arbitration outside of the liquidation court. In a recent case, a receiver of an insolvent cedent commenced a reinsurance arbitration outside of the receivership court. The reinsurer brought counterclaims and an award was issued in favor of the reinsurer against the insolvent cedent. When the reinsurer sought to confirm the award, the receiver moved to dismiss claiming that the court did not have jurisdiction to decide a confirmation petition. The court disagreed with the receiver.

In *Catalina Holdings (Bermuda) Limited v. Hammer*, No. 18 CV 5642, 2019 U.S. Dist. LEXIS 47783 (N.D. Ill. Mar. 22, 2019), the Illinois Director of Insurance, after more than 10 years, send the reinsurer a commutation offer to resolve balances due between the insolvent cedent and the successor reinsurer.

The reinsurer declined to pay and the Director demanded arbitration. The reinsurer counterclaimed for unpaid premiums and attorney fees and costs. An arbitration hearing was held and an award was issued in favor of the reinsurer for amounts that were to be offset against future claims billed by the Director or that might qualify as a distribution under the Illinois liquidation statutes.

Having received a favorable award, the reinsurer petitioned the federal court to confirm the award under the [Federal Arbitration Act](#) ("FAA") and the [Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (the "New York Convention"). Even though the Director had commenced a private arbitration, the director moved to dismiss the petition to confirm, claiming that Illinois insurance law through the [McCarran-Ferguson Act](#) reverse preempted the ability of the court to hear the petition to confirm.

In denying the motion to dismiss, the court rejected each of the Director's arguments and found that the court had jurisdiction to hear the petition to confirm. The court held that it had independent federal jurisdiction under the New York Convention (the successor reinsurer was a citizen of the UK and the Liquidator or the cedent a citizen of Illinois) as well as diversity of citizenship. The court rejected the reverse preemption argument, finding that confirming an arbitration award does not require the court to construe any federal law in a way that invalidates, impairs or supersedes any state law. Notably, the court commented that "[t]he Direct appears to have thought there was nothing inconsistent with arbitrating a claim that would eventually be dealt with in liquidation court right up until the panel ruled in Catalina's favor."

Given that the award already decided the liability and amount of damages, and had already perfected the reinsurer's claim, the court held that confirming the award would not interfere with, and in fact was consistent with, the liquidation proceedings. The court rejected the argument that the FAA or the New York Convention were reverse preempted under McCarran-Ferguson because neither would invalidate, impair or supersede Illinois' insurance laws. The court also noted that in confirming the award, the court was not called on to determine the priority of the reinsurer's claim or engage in any other way with Illinois' insurance or liquidation laws. All the court had to do was confirm or vacate the award and with that decision, the Director was free to proceed before the liquidation court as they saw fit.

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