

**IN THE UNITED STATES DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

CERTAIN INSURERS SUBSCRIBING TO
POLICY NOS. B0391TY1701167,
B0391TY1701165, and B0391TY1701166,

Plaintiffs,

v.

CBI ACQUISITIONS, LLC,

Defendant.

Case No.: 3:19-cv-16

MOTION TO APPOINT AN UMPIRE AND MEMORANDUM IN SUPPORT

Certain Insurers Subscribing to Policy Nos. B0391TY1701167, B0391TY1701165, and B0391TY1701166 (“Insurers”), by and through counsel, submit their Motion to Appoint an Umpire and Memorandum in Support, requesting the Court appoint Carl Beckstedt or, in the alternative, Britain Bryant, as umpire in the arbitration between Insurers and CBI Acquisitions, LLC (“CBIA”). As further alternatives, Insurers seek an Order appointing Judge Henry Smock as umpire, or any of the other proposed umpires put forth by Insurers: Lawrence Pollack, Timothy Howe, Justice Raoul Cantero, and Judge Victoria Platzer. In support thereof, Insurers show the Court as follows:

I. INTRODUCTION

This lawsuit arises out of an insurance coverage dispute. Caneel Bay Resort and surrounding properties on St. John, U.S. Virgin Islands, owned by CBIA, suffered significant damage from Hurricane Irma. CBIA and the Insurers (the “Parties”) resolved the Hurricane Irma claim with the Insurers paying out the \$32 million limit of coverage. CBIA, however, contends that it suffered a separate \$32 million loss as a result of Hurricane Maria. As the Parties could not agree as to the scope of covered damages arising from Hurricane Maria, if any, the subject

insurance policies' arbitration provision was invoked by CBIA. The election of arbitration triggered a requirement that each party appoint a "competent and disinterested" arbitrator and then the party-appointed arbitrators were to appoint a neutral umpire. Insurers' party appointed arbitrator put forth four competent and disinterested umpire selections, three of which are attorneys and/or retired judges in the U.S. Virgin Islands and all of which have experience with large commercial property insurance disputes. Despite that this insurance dispute is subject to U.S. Virgin Islands law and involves commercial property insurance, CBIA did not select a single potential arbitrator with experience in both U.S. Virgin Islands law and commercial property insurance disputes.

In a good faith effort, Insurers' party-appointed arbitrator was willing to conduct telephone interviews with one or two of CBIA's umpire selections to learn more about their qualifications, if CBIA would do the same. However, CBIA refused to even consider interviewing any of Insurers' first set of umpire selections. Insurers' party-appointed arbitrator then put forth another three competent and disinterested umpire selections. CBIA failed to put forth any additional umpire selections. CBIA's arbitrator then agreed to conduct a phone interview with one selected umpire from each list. Following the phone interview, CBIA's party-appointed arbitrator rejected Insurer's umpire selection. Insurers' party-appointed arbitrator rejected CBIA's selection.

Due to the arbitrators' inability to agree on an umpire that is both competent and disinterested, Insurers now move this Court to appoint an umpire. Specifically, Insurers request the Court appoint Carl Beckstedt as the umpire. Alternatively, Insurers suggest the Court appoint Britain Bryant or Judge Henry Smock as umpire.

II. BACKGROUND FACTS

A. The Policies

Insurers are the subscribers to three policies issued to CBIA as respects its interest in the Caneel Bay Resort and certain other Caneel Bay properties (collectively, the “Caneel Bay Properties”), Policies No. B0391TY1701167, B0391TY1701165, and B0391TY1701166 (the “Policies¹”), attached as Exhibit A. CBIA chose to obtain property and business interruption coverage under the Policies for a total limit of \$32 million per occurrence, despite its own determination that the total insurable value was \$65,413,068. Policies, pp. 1, 7 of 52. Thus, the Caneel Pay Properties were grossly underinsured.

The Policies’ Overseas Jurisdiction Clause states, in relevant part: “this insurance shall be governed by the law of US Virgin Islands whose Courts shall have jurisdiction in any dispute arising hereunder.” *Id.*, p. 22 of 52. The Policies also contain an arbitration provision (the “Arbitration Provision”), which states:

If the Insured and the Underwriters fail to agree in whole or in part regarding any aspect of this Policy, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two chosen shall before commencing the arbitration select a competent and disinterested umpire. The arbitrators together shall determine such matters in which the Insured and the Underwriters shall so fail to agree and shall make an award thereon, and if they fail to agree, they will submit their differences to the umpire and the award in writing of any two, duly verified, shall determine the same.

The Parties to such arbitration shall pay the arbitrators respectively appointed by them and bear equally the expenses of the arbitration and the charges of the umpire.

Id., p. 17 of 52.

¹ In the relevant parts, the three policies generally mirror each other, and therefore, we refer to the policies, generally, as the “Policies” and cite to Policy No. B0391TY1701167.

B. The Loss and the Claims

On September 6, 2017, Hurricane Irma hit St. John on the U.S. Virgin Islands. Hurricane Irma caused extensive damage to the Caneel Bay Properties, and the business personal property located therein, from high winds, driving rain, storm surge, and flooding. On or around September 19 and 20, 2017, Hurricane Maria also passed nearby St. John.

CBIA noticed a claim under the Policies for damage to the Caneel Bay Properties purportedly arising from both Hurricane Irma and Hurricane Maria. Insurers proceeded to adjust the claim and tendered the full limits under the Policies of \$32 million to CBIA for the Hurricane Irma claim. *See* March 7, 2018 Letter, attached as Exhibit B.

Insurers could not identify any additional damage caused by Hurricane Maria that was not considered in the scope of damages from Hurricane Irma. On September 7, 2018, Insurers advised CBIA that they did not identify any covered damage under the Policy from Hurricane Maria. *See* September 7, 2018 Letter, attached as Exhibit C. CBIA submitted a proof of loss for purported Hurricane Maria caused property damage on September 7, 2018 and a proof of loss for purported business interruption claim caused by Hurricane Maria on October 22, 2018. *See* Proofs of Loss, attached collectively as Exhibit D. Insurers rejected CBIA's property damage proof of loss on November 2, 2018 and CBIA's business interruption proof of loss on December 21, 2018, as they found no evidence available supporting additional damage caused by Hurricane Maria that was not considered in the scope of damages from Hurricane Irma. *See* November 2, 2018 Letter and December 21, 2018 Letter, attached as Exhibits E and F, respectively.

C. Invocation of Arbitration

As the Parties disagreed as to coverage under the Policies for the purported Hurricane Maria damage, CBIA invoked the Arbitration Provision under the Policies. Pursuant to the

Arbitration Provision, the Parties appointed their selected arbitrators. CBIA appointed Eric Eisenberg as its appointed arbitrator. Mr. Eisenberg is partner at Hinckley Allen in Boston, Massachusetts. Insurers appointed Robert Robinson as their arbitrator. Mr. Robinson was a former partner at Lord, Bissell and Brook, and then worked as General Counsel for two managing agents in the Lloyd's of London insurance market. Mr. Robinson is now retired and doing consulting and arbitration work. Neither CBIA nor Insurers objected to the other party's selected arbitrator.

D. Selection of an Umpire

Pursuant to the Arbitration Provision in the Policies, Mr. Eisenberg and Mr. Robinson each exchanged their selections for appointment of a competent and disinterested umpire.

1. Insurers' Selections

Mr. Robinson, on behalf of Insurers, put forth the following individuals as umpire: (1) Carl Beckstedt, a practicing attorney in the U.S. Virgin Islands who has experience in insurance coverage, specifically commercial property disputes, on behalf of brokers; (2) Britain Bryant, a practicing U.S. Virgin Islands attorney who is a current arbitrator and mediator with experience in civil litigation and insurance matters; (3) Judge Henry Smock, a former Judge for the Territorial Court of the U.S. Virgin Islands and current arbitrator and mediator with experience in insurance disputes; and (4) Lawrence Pollack, a neutral arbitrator and mediator specializing in insurance disputes. Insurers' umpire selections are all competent in the area of insurance coverage and especially large commercial property disputes. Further, three out of the four of Insurers' umpire selections have vast knowledge of U.S. Virgin Islands law, which is the law to be applied in this action. Additionally, all of Insurers' umpire selections are disinterested, as they have no personal, professional, or economic interest in the instant case.

Specifically, Mr. Beckstedt is uniquely qualified to serve as umpire in this case. Mr. Beckstedt is the founding partner of Beckstedt & Associates located on St. Croix in the U.S. Virgin Islands and has served in various capacities for the U.S. Virgin Islands Bar. *See* Beckstedt Law, <http://www.beckstedtlaw.com/pages/staff> (last visited Feb. 23, 2019). Mr. Beckstedt is not only competent with respect to the applicable law at issue, but also has experience with insurance disputes and has experience serving as an arbitrator. *Id.* Further, Mr. Beckstedt represents a wide array of clients, including insurance brokers. Mr. Beckstedt's practice does not focus on simply defending insurers or representing insurers. Rather, Mr. Beckstedt has a unique perspective on insurance issues from the perspective of the intermediary between an insurer and insured.

Mr. Bryant is also a practicing attorney in the U.S. Virgin Islands with experience and understanding of the laws to be applied in this case. Virgin Islands Bar Association, <https://vibar.org/members/Default.asp?id=26508381> (last visited Feb. 23, 2019). Mr. Bryant is an experienced arbitrator and mediator and has experience handling insurance disputes. *Id.* Further, Judge Smock is a former Judge of the Territorial Court of the U.S. Virgin Islands, with immense experience in U.S. Virgin Islands law. Judge Smock is currently an arbitrator and mediator and has experience handling insurance disputes. Virgin Islands Bar Association, <https://vibar.org/members/Default.asp?id=26508841> (last visited Feb. 23, 2019). Outside of U.S. Virgin Islands attorneys and retired judges, Insurers also put forth Mr. Pollack who serves as a neutral arbitrator and mediator with JAMS in New York. *See* Pollack Biography, attached as Exhibit G. Mr. Pollack has significant experience handling insurance disputes, including first party claims and interpretation of policy language. *Id.* Legal 500 has observed that Mr. Pollack is described by both policyholders and their insurers as "personal and thoroughly commercial, perfect for insurance litigation." *Id.*

2. CBIA's Selections

Mr. Eisenberg, on behalf of CBIA, put forth the following individuals as umpire: (1) Ty Laurie; (2) Justice Anthony Carpinello; (3) Judge Robert Holzberg; and (4) Lee Shidlofsky. Mr. Laurie is a partner at Laurie & Brennan in Chicago, Illinois who specializes in construction law. CMS Neutrals, <http://cmsneutrals.com/ty-d-laurie/> (last visited Feb. 23, 2019). While Mr. Laurie is a well-respected attorney, his experience tends to concern almost exclusively construction law issues. *Id.* While Mr. Laurie is a recognized mediator and arbitrator, Mr. Laurie does not appear to have any significant experience in insurance coverage disputes. Indeed, the only mention of insurance in his biography states that he “assists in the procurement of insurance.” Laurie & Brennan, <http://lauriebrennan.com/Attorneys/ty-d-laurie/> (last visited Feb. 23, 2019). Further, there is no indication that he has any significant insurance experience under the laws of the U.S. Virgin Islands.

Justice Carpinello is a retired judge that served as an Associate Justice on the Appellate Division of the New York State Supreme Court from 1996 to 2008, dealing with civil, criminal, and family law matters. *See* Carpinello Biography, attached as Exhibit H. Prior to joining the bench, Justice Carpinello specialized in commercial litigation, banking, and corporate law. *Id.* Justice Carpinello is now an arbitrator at JAMS in New York City. While he lists insurance as one of his practice areas in his biography, the only highlight concerning insurance litigation in the same biography states, “Berry v. Lazaro(250 AD2d 63). Prevented intervention by health insurers in a medical malpractice action brought by their own insureds.” *Id.* Judge Robert Holzberg is a retired Connecticut Superior Court Judge and head of the Alternative Dispute Resolution practice at Pullman & Comley, located in Hartford, Connecticut. Pullman & Comley, <http://www.pullcom.com/attorneys-robertholzberg.html> (last visited Feb. 23, 2019). Similar to

Justice Carpinello, Judge Holzberg's biography lists insurance, but does not set forth any specific experience with commercial first-party property insurance disputes. *Id.*

The last selection put forth by CBIA is Mr. Shidlofsky, a policyholder lawyer in Texas. This selection appears to be designed to make the other options appear reasonable by contrast. Mr. Shidlofsky's practice "has a particular emphasis on insurance coverage issues arising from construction defect and product liability claims." Shidlofsky Law Firm, <http://www.shidlofskylaw.com/attorneys.html> (last visited Feb. 23, 2019). While Mr. Shidlofsky has some experience mediating, this does not support that Mr. Shidlofsky has experience being a neutral in an arbitration. *Id.* Mr. Shidlofsky also has a clear bias towards insureds. Mr. Shidlofsky's practice is "devoted to representing and counseling corporate policyholders in insurance coverage, insurance-related litigation, and risk management." *Id.* Importantly, Mr. Shidlofsky "provides advice to plaintiffs in complex litigation on how best to maximize an insurance recovery..." Shidlofsky Law Firm, <http://www.shidlofskylaw.com/practice-areas.html> (Feb. 23, 2019). Mr. Shidlofsky's opinions on insurers are made even clearer based on his various blogs, titled "Bad Faith – Alive and Well in Texas" and making reference to "victory for insureds" and "the good guys win" when referring to favorable court decisions for insureds. *See* Shidlofsky Law Firm, <http://www.shidlofskylaw.com/blogs/blog18.html>, <http://www.shidlofskylaw.com/blogs/blog11.html>, <http://www.shidlofskylaw.com/blogs/blog2.html> (last visited Feb. 23, 2019).

3. Insurers' Second Set of Selections

While misgivings about CBIA's selections are readily apparent due to the complete lack of U.S. Virgin Islands experience, Mr. Robinson was willing to reach an agreement with Mr. Eisenberg to hold joint telephone interviews for one or two umpire selections from each list.

Despite that Insurers' umpire selections contained three U.S. Virgin Islands attorneys and/or a former judge and all selections have significant property insurance experience, CBIA refused to even agree to have preliminary telephone calls with any of Insurers' initial selections.

In an effort to come to an agreement as to an umpire, Mr. Robinson, on behalf of Insurers, put forth another three individuals for umpire. Insurers put forth Timothy Howe, Queen's Counsel of Fountain Court Chambers in London, who is an experienced commercial barrister who has acted for and against insurers in a number of complex cases eliminating any concern over bias. Fountain Court Chambers, <https://www.fountaincourt.co.uk/people/timothy-howe/> (last visited Feb. 23, 2019). In addition, Insurers also suggested Justice Raoul Cantero, a former Justice of the Florida Supreme Court. *See* Cantero Biography, attached as Exhibit I. Justice Cantero is currently a practicing attorney at White & Case, and specializes in complex litigation and appellate practice. *Id.* Justice Cantero is well-versed in insurance coverage issues due to his time on the Florida Supreme Court. *Id.* Lastly, Insurers nominated Judge Victoria Platzer, a former Circuit Court Judge on the 11th Judicial Circuit in Florida. Platzer Biography, attached as Exhibit J. Judge Platzer is now exclusively a neutral handling commercial matters, employment, insurance, family, real estate, medical malpractice, and personal injury law. *Id.*

CBIA failed to put forth any additional umpire selections. Mr. Eisenberg then agreed to conduct a phone interview with one selected umpire from each list. Mr. Eisenberg and Mr. Robinson conducted a phone interview with Judge Platzer and Justice Carpinello. Following the phone interview, Mr. Eisenberg rejected Judge Platzer without reason. Mr. Robinson rejected Justice Carpinello.

Due to inability of the party-appointed arbitrators to come to an agreement, Insurers filed this instant action petitioning the Court to appoint an umpire.

III. ARGUMENT

A. The Court has Jurisdiction to Appoint an Umpire

This Court has authority to appoint an umpire pursuant to the Policies' Overseas Jurisdiction Clause and the Federal Arbitration Act ("FAA"). This case falls under the Federal Arbitration Act ("FAA"), specifically 9 U.S.C. § 203, which confers federal court jurisdiction to actions falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). That is the case here, as this lawsuit concerns CBIA's claim for insurance coverage for property located in the U.S. Virgin Islands against the Policies containing broad arbitration clauses subscribed to by insurers located in the United Kingdom and Germany, respectively. The FAA governs the appointment of arbitrators. It provides that,

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

9 U.S.C.A. § 5. Therefore, this Court has jurisdiction to appoint an umpire as the Arbitration Provision does not provide a method for appointment of an umpire if the arbitrators cannot agree, and there is a lapse in the naming of an umpire. *See Vento v. Crithfield*, No. CIVIL NO. 2009-174, 2012 WL 3758432, at *2-3 (D.V.I. Aug. 29, 2012).

The Policies' Arbitration Provision states:

If the Insured and the Underwriters fail to agree in whole or in part regarding any aspect of this Policy, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two chosen shall before commencing the arbitration select a competent and disinterested

umpire. The arbitrators together shall determine such matters in which the Insured and the Underwriters shall so fail to agree and shall make an award thereon, and if they fail to agree, they will submit their differences to the umpire and the award in writing of any two, duly verified, shall determine the same.

The Parties to such arbitration shall pay the arbitrators respectively appointed by them and bear equally the expenses of the arbitration and the charges of the umpire.

Policies, p. 17 of 52. The Arbitration Provision is clear and unambiguous and, thus, should be enforced as it was plainly drafted. *Certain Underwriters at Lloyds Subscribing To Policy No. CPG-1264 v. Robert Ellis Brown, Inc.*, No. 2010-61, 2013 WL 132530, at *4 (D.V.I. Jan. 10, 2013).

Under the Arbitration Provision, the Parties must appoint an umpire who is both “competent and disinterested.” Although the terms “competent and disinterested” have not been interpreted with respect to an arbitration provision, courts have found that the terms should be given their normal interpretation. Disinterested has been interpreted to mean “fair and unprejudiced ... is in no sense ... the agent of the party nominating him.” *Guardian Gen. Ins. Ltd. v. Caribbean Food Servs., Inc.*, No. ST-15-CV-253, 2016 WL 9224992, at *10 (V.I. Super. Oct. 24, 2016) (internal citations omitted). While the Court in *Guardian Gen.*, found that the plain meaning of competence in an appraisal clause is “a basic or minimal ability to do something,” the Court subsequently found that resolving an insurance dispute by appraisal is not the same as arbitration.” *Id.*, at *11-12. Appraisals are different than arbitrations, as the standard for whether an arbitrator qualifies as impartial, neutral, disinterested, or unbiased is much higher than the lower standard that typically applies to appraisers. The definition of competence is “a basic or minimal ability to do something; adequate qualification...” Blacks Law Dictionary (10th ed. 2014); *see also, State ex rel. Marchiano v. Sch. Emps. Ret. Sys.*, 2009-Ohio-307, ¶ 28, 121 Ohio St. 3d 139, 144, 902 N.E.2d 953, 959 (“the ordinary meaning of competent is possessed of or characterized

by marked or sufficient aptitude, skill, strength, or knowledge, and disinterested means free from bias, prejudice, or partiality”) (internal citations omitted).

Here, Insurers have put forth multiple options for competent and disinterested umpires with significant experience in both U.S. Virgin Islands law and first-party commercial insurance disputes. By contrast, CBIA appears to have suggested umpires, which do not appear to have any significant background in U.S. Virgin Islands law and less first-party insurance experience. Further, CBIA has failed to reasonably consider any of Insurers’ selections.

As the party appointed arbitrators cannot agree as to a competent and disinterested umpire and as the Policies’ Arbitration Provision does not set forth a procedure to resolve such disagreement, Insurers now seek a declaration from the Court to appoint an umpire. Specifically, Insurers move this Court to appoint Mr. Beckstedt or, in the alternative, Mr. Bryant or Judge Smock. In the alternative, Insurers request this Court appoint one of the remaining umpire selections set forth by Insurers.

B. The Court Should Select One of Insurers’ Nominated Umpires

The Policies’ Arbitration Provision specifically requires that the two party chosen arbitrators select a “competent and disinterested” umpire. Mr. Robinson, on behalf of Insurers, did just that. Insurers’ umpire selections are all competent in the area of insurance coverage issues, especially large commercial property disputes. Further, three out of the four of Insurers’ original umpire selections have vast knowledge of U.S. Virgin Islands law, which is the law to be applied in this action. Additionally, all of Insurers’ umpire selections are disinterested, as they have no professional, or economic interest in the instant case. As explained further below, all of the individuals on Insurers’ list of potential umpires are qualified to act as an umpire in this case. Despite this, however, CBIA has rejected every name offered and nominated a list of potential

umpires with little, if any, connection to the U.S. Virgin Islands. As such, Insurers move this Court to appoint Mr. Beckstedt as umpire or, in the alternative, to appoint Mr. Bryant or Judge Smock as the umpire.

Insurers originally put forth the following individuals as umpire: (1) Mr. Beckstedt, a practicing attorney in the U.S. Virgin Islands who has experience in insurance coverage, specifically commercial property disputes, on behalf of brokers; (2) Mr. Bryant, a practicing U.S. Virgin Islands attorney who is a current arbitrator and mediator with experience in civil litigation and insurance defense; (3) Judge Smock, a former Judge of the Territorial Court of the U.S. Virgin Islands and current arbitrator and mediator with experience in insurance disputes; and (4) Mr. Pollack, a neutral arbitrator and mediator specializing in insurance disputes. After CBIA refused to consider any of Insurers' selections, Mr. Robinson then put forth another three potential umpires: (1) Mr. Howe, Queen's Counsel of Fountain Court Chambers in London, who is an experienced commercial barrister who has acted for and against insurers in a number of complex cases; (2) Justice Cantero, a former Justice of the Florida Supreme Court who is currently a practicing attorney at White & Case in Miami; and (3) Judge Platzner, a former Circuit Court Judge for the 11th Judicial District of Florida, who is now a neutral. All seven of Insurers' umpire selections are both competent and disinterested to serve as umpire in this case.

Specifically, Mr. Beckstedt is uniquely qualified to serve as umpire in this case. Mr. Beckstedt is a practicing attorney in the U.S. Virgin Islands. Thus, Mr. Beckstedt has experience with and understands the laws of the U.S. Virgin Islands that will be at issue in this case. Mr. Beckstedt is not only competent with respect to the applicable law at issue, but also has experience with insurance disputes and has experience serving as an arbitrator. Further, Mr. Beckstedt represents a wide array of clients, including insurance brokers. Mr. Beckstedt has a unique

perspective on insurance issues from that of the intermediary between an insurer and insured. In fact, most times, a broker's position is more aligned with an insured. Lastly, Mr. Beckstedt has no personal, professional, or economic interest in the instant case, Insurers, or CBIA. Therefore, given Mr. Beckstedt's unique background and experience practicing law in the U.S. Virgin Islands, his understanding of commercial property insurance disputes, and his perspective of handling insurance issues on behalf of brokers, Mr. Beckstedt is an ideal candidate for umpire. Insurers request this Court appoint Mr. Beckstedt as umpire for this case.

In the alternative, Insurers move this court to appoint Mr. Bryant as umpire. Like Mr. Beckstedt, Mr. Bryant is also a practicing attorney in the U.S. Virgin Islands with experience and understanding of the laws to be applied in this case. Mr. Bryant is an experienced arbitrator and mediator and has experience handling insurance disputes. Mr. Bryant is well qualified, competent, and disinterested. Therefore, Insurers move the Court to appoint Mr. Bryant as umpire, in alternative to Mr. Beckstedt.

In the alternative to Mr. Beckstedt and Mr. Bryant, Insurers request the Court appoint one of the other individuals put forth by Insurers as umpire. Specifically, Judge Smock is a former Judge of the Territorial Court of the U.S. Virgin Islands, with immense experience in U.S. Virgin Islands law. Judge Smock is currently an arbitrator and mediator and has experience handling insurance disputes. Indeed, Judge Smock has built a reputation as a go to neutral, selected by insurers and policy holders in numerous disputes.

Without going through the remaining options in details, all seven of Insurers' umpire nominees are both competent and disinterested. Insurers respectfully request this Court appoint Mr. Beckstedt as umpire. In the alternative, Mr. Bryant and Judge Smock are excellent options.

C. CBIA's Nominated Umpires Have Legitimate Red Flags

Insurers move the Court to appoint an umpire off of their list as CBIA's proposed umpires are not as competent for this particular dispute and questions exist about whether they are disinterested. While a number of CBIA's selections are certainly well-respected attorneys and/or former judges, none of the selections have experience with U.S. Virgin Islands law and large commercial property insurance disputes arising out of natural disasters as Mr. Beckstedt, Mr. Bryant, and Judge Smock.

First, and most importantly, the Policies set forth that U.S. Virgin Islands law applies to any dispute under the Policies, and the FAA dictates that the U.S. Virgin Islands is the proper venue for any dispute. Despite this, CBIA fails to nominate even one umpire from the U.S. Virgin Islands or with U.S. Virgin Islands law experience. Instead, CBIA selected a Justice from New York, where both CBIA's principals and CBIA's counsel's law firm is located, a judge from Connecticut, where CBIA's counsel lives, a construction arbitrator from Illinois, and a policyholder attorney from Texas. As this case involves interpretation of the Policies and allegations of U.S. Virgin Islands' bad faith law, an umpire with experience and understanding of U.S. Virgin Islands law on these subjects is preferable. Further, as the presumptive venue for the arbitration itself is in the Virgin Islands (*see* Policies, p. 22 of 52; *ACE Ins. Co. of Puerto Rico v. Nolasco Commc'ns, Inc.*, No. CV 2015-0052, 2018 WL 1020117, n. 3 (D.V.I. Feb. 22, 2018)), and there are qualified local candidates, selection of an umpire from the mainland seems illogical. For those reasons alone, Insurers move for Mr. Beckstedt, Mr. Bryant, or Judge Smock to be appointed as umpire on this case. If the Court were to consider mainland judges, Justice Cantero and Judge Platzer from Florida have significant experience with multiple hurricanes, something much less common in land-locked Chicago or northeastern states.

Second, it does not appear that Justice Carpinello and Judge Holzberg have significant experience dealing with commercial property insurance disputes. Although there is a dearth of reported cases, we were not able to find any cases showing Justice Carpinello or Judge Holzberg addressing causation of property damage, interpretation of a property policy, or addressing issues concerning insurance claims arising out of hurricanes, all issues that will need to be addressed here. Rather, a majority of the insurance cases concerned workers' compensation, auto insurance, liability, disability, and homeowners' insurance. From available information, it also does not appear that Justice Carpinello or Judge Holzberg gained insurance coverage experience from their time off the bench. Justice Carpinello specialized in commercial litigation, banking, and corporate law. While Justice Caprinello lists insurance as one of his practice areas in his biography, the only highlight concerning insurance litigation in the same biography states, "Berry v. Lazaro(250 AD2d 63). Prevented intervention by health insurers in a medical malpractice action brought by their own insureds." *See* <https://www.jamsadr.com/carpinello/>. This does not involve policy interpretation of first-party property insurance or the issues involved in this case. Similarly, Judge Holzberg's biography lists insurance, but does not set forth any specific experience with commercial first-party property cases. Neither Justice Caprinello nor Judge Holzberg appear to have significant experience with insurance claims arising from hurricanes. While both Justice Caprinello and Judge Holzberg are respected former judges and have experience as neutrals, Mr. Beckstedt, Mr. Bryant, or Judge Smock have the indispensable experience needed as umpire in this case.

Similar to Justice Carpinello and Judge Holzberg, Mr. Laurie is a well-respected attorney. However, Mr. Laurie's experience tends to concern almost exclusively construction law issues. While Mr. Laurie is a recognized mediator and arbitrator, Mr. Laurie does not appear to have any significant experience in insurance coverage disputes. Indeed, the only mention of insurance in his

biography states that he “assists in the procurement of insurance.” *See* <http://lauriebrennan.com/Attorneys/ty-d-laurie/>. While Mr. Laurie may have some secondary insurance experience related to construction, i.e., faulty workmanship, subcontractor liability, and additional insureds, he does not appear to have any first-party property insurance experience. Further, although this case involves property damage, the specific issues focus on whether there is any covered damage under the Policy arising from Hurricane Maria. Insurers have no indication that Mr. Laurie is experienced with hurricane related insurance claims. These issues are separate and substantially different to those surrounding a construction law claim. Thus, while Mr. Laurie is a prominent and well-respected construction law attorney, he does not have the necessary insurance experience needed to be an umpire in this matter.

Lastly, Mr. Shidlofsky would be neither a competent or disinterested umpire. Mr. Shidlofsky is a policy holder lawyer in Texas. While Mr. Shidlofsky may have property insurance experience, he does not appear to have significant experience with first-party property losses. Rather, Mr. Shidlofsky’s practice “has a particular emphasis on insurance coverage issues arising from construction defect and product liability claims.” *See* <http://www.shidlofskylaw.com/attorneys.html>. Additionally, it does not appear that Mr. Shidlofsky has experience as an arbitrator. *See, id.*

Even further, Mr. Shidlofsky would not be a competent and disinterested umpire based on his clear bias towards insureds as evidenced by his writings. Mr. Shidlofsky’s practice is “devoted to representing and counseling corporate policyholders in insurance coverage, insurance-related litigation, and risk management.” *Id.* Importantly, Mr. Shidlofsky “provides advice to plaintiffs in complex litigation on how best to maximize an insurance recovery...” *See* <http://www.shidlofskylaw.com/practice-areas.html>. Therefore, Mr. Shidlofsky has a clear bias

against insurers. Notwithstanding the above, Mr. Shidlofsky's opinions on insurers are made even clearer based on his various blogs titled "Bad Faith – Alive and Well in Texas," and making reference to "victory for insureds" and "the good guys win" when referring to favorable court decisions for insureds. See <http://www.shidlofskylaw.com/blogs/blog18.html>; <http://www.shidlofskylaw.com/blogs/blog11.html>; and <http://www.shidlofskylaw.com/blogs/blog2.html>. Clearly, Mr. Shidlofsky's work shows he is biased toward policyholders. Thus, Mr. Shidlofsky would not be a competent or disinterested umpire.

Therefore, none of CBIA's nominees offer the unique U.S. Virgin Islands, first-party property, hurricane claims handling experience of Insurers' nominees. Insurers respectfully request this Court appoint an umpire from their list of competent and disinterested umpires.

IV. CONCLUSION

Insurers' move this Court to appoint Carl Beckstedt or Britain Bryant, as umpire in the arbitration between Insurers and CBIA. In the alternative, Insurers request the Court appoint Judge Henry Smock or one of the remaining umpire nominees proffered by Insurers.

Respectfully submitted,
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Dated: March 14, 2019

/s/ Paul Neil
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 14, 2019, I caused a true and correct copy of the foregoing to be filed with the Court via the CM/ECF Electronic Filing System, which will send a notification (NEF) to the following counsel of record:

/s/ Paul Neil