

**Great Lakes Reins. (UK) PLC v Verizon  
Communication Inc.**

2008 NY Slip Op 31031(U)

March 3, 2008

Supreme Court, New York County

Docket Number: 0603830/2007

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: \_\_\_\_\_

PART \_\_\_\_\_

Index Number : 603830/2007  
**GREAT LAKES REINSURANCE (UK)**  
 vs.  
**VERIZON COMMUNICATIONS**  
 SEQUENCE NUMBER : # 001  
 STAY PROCEEDING (ARBITRATION)

Justice \_\_\_\_\_

INDEX NO. 603830-07  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. #001  
 MOTION CAL. NO. \_\_\_\_\_

are read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED WITH ACCOMPANING AFFIDAVIT AND MEMORANDUM  
 WITH ACCOMPANING AFFIDAVIT AND MEMORANDUM  
 DECISION IN MOTION TO DISMISS ...**

**FILED**

APR 09 2008

COUNTY CLERK'S OFFICE  
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: \_\_\_\_\_

*Alan Col*

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 49

-----X  
GREAT LAKES REINSURANCE (UK) PLC,

Petitioner, :

-against- :

Index No. 603830/2007

VERIZON COMMUNICATIONS Inc. :

Respondent. :  
-----X

**FILED**

APR 09 2008

COUNTY CLERK'S OFFICE  
NEW YORK

**Herman Cahn, J.**

Petitioner Great Lakes Reinsurance (UK) P.L.C., an insurance company, <sup>has a stay</sup>  
the arbitration commenced by Respondent.

Petitioner issued an Excess Professional Liability Policy, No. 01-UK-PX-000006-01, effective June 30, 2001 through October 1, 2002 (the "Great Lakes Policy") to Respondent Verizon Communications Inc. The Great Lakes Policy, together with a policy issued by Kemper Indemnity Insurance Company, provided second-layer excess coverage of \$25 million in excess of \$50 million; a primary insurance policy issued by American International Speciality Lines Insurance Company (the "Primary Policy") provided the first \$25 million in coverage. A first layer excess policy issued by Gulf Insurance Company provided the next \$25 million.

**The Primary Policy's Arbitration Provisions**

Paragraph VI(P), of the Primary Policy, entitled "Arbitration," states:

No action shall lie against us unless as a condition precedent thereto, any controversy arising out of or relating to this policy or its breach shall first be submitted to arbitration in accordance with the rules of the American Arbitration Association or the Defense Research Institute. The arbitration shall be held in New York, New York unless otherwise agreed to by both parties. Each party shall jointly and equally bear with the other party the expense of the arbitration.

The Insuring Clause of the Great Lakes Policy provides, in relevant part, that:

Except as otherwise provided herein, coverage under this policy shall [ ] apply in conformance with and subject to the warranties, limitations, conditions, provisions, and other terms of the Primary Policy as in effect the first day of the Policy period, together with the warranties and limitations of any other Underlying Insurance.

Great Lakes Policy, Section I, "Insuring Clause."

The Great lakes Policy also contains an Endorsement No. 1, entitled "Service of Suit Clause (USA)," which states:

It is agreed that in the event of the failure of the Underwriter hereon to pay any amount claimed to be due hereunder, the Underwriter hereon, at the request of the Insured will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all the requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

(Emphasis added).

On October 30, 2007, Verizon commenced an arbitration proceeding against Great Lakes, before the American Arbitration association ("AAA"). In the demand for arbitration, Verizon claims that Great Lakes is obligated to pay the full limits of its policy as a result of losses purportedly suffered by Verizon in excess of \$84 million. The demand for arbitration attaches a copy of the arbitration clause in the Primary Policy and states that "the American Arbitration Association has jurisdiction over this action pursuant to an arbitration clause contained, by reference, in the excess insurance policy issued by Great Lakes to Verizon."

On November 19, 2007, Great lakes commenced this proceeding, in which it seeks a declaratory judgement that there is no coverage under the Great Lakes Policy for Verizon's

claimed loss.

Great Lakes now move to stay the arbitration.

### **Prior Actions**

On December 31, 2003, Verizon settled its claims with respect to the Primary Policy. Because Verizon claimed its losses exceeded the limits of the Primary Policy, it demanded coverage from Gulf Underwriters Insurance Company, which provided the first level of excess coverage after the Primary Policy and before the Great Lakes Policy. Verizon and Gulf settled their dispute in September 2007. On October 30, 2007, Verizon commenced the arbitration proceeding against Great Lakes, which provides the next level of excess insurance coverage after Gulf. On November 19, 2007, Great Lakes commenced this declaratory judgement proceeding.

Great Lake's declaratory judgement claim is the mirror image of Verizon's arbitration claim. In the arbitration, Verizon seeks an award ordering Great Lakes to provide coverage under its policy. In the declaratory judgement action, Great Lakes seeks a declaration that it is not required to provide coverage under its policy.

### **Decision**

The arbitration clause in the Primary Policy is clear and controlling. It affords the parties to the policy the ability to have their claim adjudicated in an arbitration proceeding rather than in a plenary action.

The Petitioner argues that a "service of suit" clause contained in its policy effectively abrogates the arbitration clause. However, that is not the case. The "service of suit" clause merely affords the insured an easy way to obtain jurisdiction over the insurer in case of a claim or action; it does not change the rights of the insured to have its claim heard in arbitration.

Counsel cite *Gulf Underwriters Insurance Company v Verizon Communications* 32 AD3d 709 (1<sup>st</sup> Dep't 2006) for the proposition that the instant proceeding should be heard independently of the arbitration, and probably ahead of the arbitration. However, it is clear that there are significant difference between the *Gulf Underwriters* factual situation, and the factual situation here. In *Gulf Underwriters* the insured sought to compel arbitration in the action brought by the insurer against the insured. Here, in contrast, the insured has commenced an arbitration as it is required to do under the terms of the Primary Policy. Only after the arbitration was commenced did the insurer commence this proceeding.

Petitioner's position would effectively give it the ability to do away with the arbitration clause of the Primary Policy, insofar as the Great Lakes Policy is concerned. In the absence of a provision in the policy, such a result is not warranted.

Therefore, the motion to stay this arbitration proceeding, is denied.

Dated: March, 31 2008

**FILED**

APR 09 2008

COUNTY CLERK'S OFFICE  
NEW YORK



J.S.C.