

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PB LIFE AND ANNUITY CO. LTD. f/k/a
PRIVATE BANKERS LIFE AND
ANNUITY CO., LTD.,

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Case No.: _____

Plaintiff,

COMPLAINT

-against-

UNIVERSAL LIFE INSURANCE COMPANY,

Defendant.

Plaintiff, PB LIFE AND ANNUITY CO. LTD. f/k/a PRIVATE BANKERS LIFE AND ANNUITY CO. LTD. (“PBLA”) for its Complaint against Defendant, UNIVERSAL LIFE INSURANCE COMPANY (“ULICO”), states as follows:

PARTIES

1. PBLA is an insurance company organized under the laws of Bermuda with its principal place of business in Bermuda.

2. ULICO is an insurance company organized under the laws of Puerto Rico with its principal place of business in Puerto Rico. It may be served by delivering a copy of the summons with this complaint to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive service of process, at its home office located at #33 Calle Bolivia, Piso #6, San Juan, Puerto Rico 00917-2011.

JURISDICTION & VENUE

3. Subject matter jurisdiction is founded on diversity of citizenship under 28 U.S.C. § 1332. The parties are completely diverse. PBLA is a citizen of Bermuda because it is an insurance company domiciled in Bermuda with its principal office in Bermuda. ULICO is a citizen of Puerto Rico because it is an insurance company domiciled in Puerto Rico with its principal place of business in Puerto Rico.

4. The amount in controversy exceeds the minimal jurisdictional requirements of this Court because PBLA seeks declaratory relief and the value of the object of this litigation exceeds \$75,000. Specifically, this lawsuit concerns assets in a reinsurance trust account, the value of which exceeds \$75,000.

5. The Court has personal jurisdiction over ULICO because ULICO contractually waived any right to contest this Court's jurisdiction.

6. Venue is proper in this district under 28 U.S.C. § 1391 because PBLA and ULICO agreed to venue in this Court.

BACKGROUND

A. The Reinsurance Agreement

7. ULICO and PBLA are both licensed stock life insurance companies.

8. On or about June 30, 2017, the parties executed a certain Coinsurance Reinsurance Agreement (“Reinsurance Agreement”), whereby PBLA agreed to reinsure liabilities with respect to certain insurance policies issued by ULICO, as set forth in the agreement. A true and correct copy of the Reinsurance Agreement is attached as **Exhibit 1** and incorporated into this complaint for all purposes.

9. Section 4.2 of the Reinsurance Agreement requires the parties to enter into a second agreement – a Reinsurance Trust Agreement – for the establishment of a Reinsurance Trust Account. That section goes on to identify specific requirements for the collateral and assets to be deposited into the Reinsurance Trust Account, which are to provide security to ULICO for payments due by PBLA under the Reinsurance Agreement.

10. Section 10.1 of the Reinsurance Agreement provides generally that “all disputes or differences between the Parties arising under or relating to this Reinsurance Agreement upon which an amicable understanding cannot be reached shall be decided by arbitration pursuant to the terms of this Section.”

B. The Trust Agreement

11. Effective February 16, 2018, the parties entered into a Reinsurance Trust Agreement (“Trust Agreement”), just as provided in Section 4.2 of the Reinsurance Agreement. A true and correct copy of the Reinsurance Trust Agreement is attached as **Exhibit 2** and incorporated into this complaint for all purposes.

12. The Trust Agreement establishes the Reinsurance Trust Account and governs the assets in that account along with the procedures for maintaining the account. *See Ex. 2* at Art. II-III.

13. Like the Reinsurance Agreement, the Trust Agreement details requirements for the assets to be held in the Reinsurance Trust Agreement. *See Ex. 2* at Art. I (defining “Qualifying Assets) and § 2.2(a).

14. Section 6.3 of the Trust Agreement provides, “This Reinsurance Trust Agreement supersedes all prior agreements, whether written or oral, among the Parties with respect to its subject matter and constitutes (along with the attached exhibit(s)) a complete and exclusive statement of the terms of the agreement among the Parties with respect to its subject matter.”

15. The Trust Agreement contains no alternative dispute resolution provision.

16. Rather, Section 6.5 of the Trust Agreement provides, “Each Party consents to the jurisdiction of any state or federal court situated in New York City, New York in connection with any dispute arising hereunder.” It further provides, “Each of the Parties hereby submits to the personal jurisdiction of and each agrees that all proceedings relating hereto shall be brought in courts located within the City and State of New York or elsewhere as the Trustee may select.”

C. ULICO’s Demand for Arbitration

17. On January 16, 2020, ULICO sent PBLA a written “Notice of Breach,” alleging that “the assets held in the Reinsurance Trust Account” are not compliant with Section 4.2 of the Reinsurance Agreement. A true and correct copy of ULICO’s January 16th letter is attached as

Exhibit 3 and incorporated into this complaint for all purposes.

18. On January 24, 2020, PBLA responded to ULICO in writing, denying ULICO's allegations of breach. A true and correct copy of PBLA's January 24th letter is attached as **Exhibit 4** and incorporated into this complaint for all purposes.

19. On January 27, 2020, ULICO sent PBLA a "Written Demand for Arbitration," citing the arbitration provision in the Reinsurance Agreement. The sole dispute identified by ULICO was PBLA's alleged failure to maintain compliant assets in the Reinsurance Trust Account. A true and correct copy of ULICO's January 27th letter is attached as **Exhibit 5** and incorporated into this complaint for all purposes

20. On February 25, 2020, PBLA responded to ULICO's demand for arbitration by rejecting it and reminding ULICO that any dispute concerning the assets held in the Reinsurance Trust Account is governed by the Trust Agreement as the "complete and exclusive statement" of the parties' agreement. A true and correct copy of PBLA's February 25th letter is attached as **Exhibit 6** and incorporated into this complaint for all purposes

21. Despite the lack of any agreement to arbitrate, ULICO, on March 4, 2020, initiated a case with the American Arbitration Association ("AAA"), requesting AAA to appoint an arbitrator in accordance the arbitration provision of the Reinsurance Agreement. A true and correct copy of ULICO's March 4th letter to AAA is attached as **Exhibit 7** and incorporated into this complaint for all purposes.

22. On March 10, 2020, AAA notified the parties of its intent to select an arbitrator. A true and correct copy of AAA's March 10th letter is attached as **Exhibit 8** and incorporated into this complaint for all purposes.

23. On March 13, 2020, PBLA notified AAA and ULICO of its continued objection to arbitration. A true and correct copy of PBLA's March 13th letter is attached as **Exhibit 9** and incorporated into this complaint for all purposes.

24. The assets in the Reinsurance Trust Account that ULICO alleges are non-compliant have a combined value in excess of \$75,000.

CLAIMS FOR RELIEF

**Declaratory Judgment
(Fed. R. Civ. P. 57 & 28 U.S.C. §§ 2201, 2202)**

25. PBLA incorporates all preceding paragraphs for all purposes.

26. There is an actual, substantial, and justiciable controversy between PBLA and ULICO of sufficient immediacy and reality. Specifically, ULICO has demanded and initiated arbitration in reliance on a provision of the Reinsurance Agreement that has been superseded under these circumstances by the Trust Agreement. ULICO's attempt to arbitrate in the absence of an agreement likewise defies its agreement that "all proceedings" related to the Trust Agreement "shall be brought in courts located within the City and State of New York."

27. PBLA seeks a judgment declaring that the dispute alleged by ULICO in its "Notice of Breach" and "Written Demand for Arbitration" shall not, under the parties' agreements, be subject to arbitration, but instead that any proceeding related to ULICO's alleged dispute must be brought in the courts of New York City, NY.

28. A declaratory judgment will serve a useful purpose in clarifying the parties' rights under the Reinsurance Agreement and Trust Agreement as it relates to arbitrating the dispute alleged by ULICO. In addition, it will provide relief from the uncertainty of whether the arbitration ULICO initiated is proper.

WHEREFORE, PBLA prays that it have judgment as follows:

1. for a judgment declaring that the dispute alleged by ULICO in its "Notice of Breach" and "Written Demand for Arbitration" shall not be subject to arbitration, but instead that any proceeding related to ULICO's alleged dispute must be brought in the courts of New York City, NY;

2. against ULICO for pre- and post-judgment interest as allowed by law;

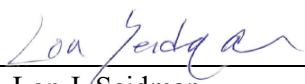
3. against ULICO for attorney fees as allowed by law;
4. against ULICO for costs of court;
5. all other relief, both general and special, in law or in equity, to which PBLA may

be entitled.

Dated: New York, New York
March 13, 2020

Respectfully Submitted,

DIAMOND MCCARTHY LLP

By: 

Lon J. Seidman
295 Madison Avenue, 27th Floor
New York, New York 10017
Tel.: (212) 430-5400
Fax: (212) 430-5499
lseidman@diamondmccarthy

CONDON TOBIN SLADEK THORNTON PLLC
8080 Park Lane, Suite 700
Dallas, Texas 75231
Tel.: 214-265.3800; Fax: 214-691-6311
Aaron Z. Tobin (*pro hac vice application to be filed*)
atobin@ctstlaw.com
Jared T.S. Pace (*pro hac vice application to be filed*)
jp pace@ctstlaw.com

***Co-Counsel for PB Life and Annuity Co. Ltd.
f/k/a Private Bankers Life and Annuity Co., Ltd***