

***In the Matter of the Arbitration between
Baltic Reinsurance Co., Ltd.
-and-
The Atlantic & Pacific Assurance Co.***

DRAMATIS PERSONAE

Ceding Company	The Atlantic & Pacific Assurance Co.
Reinsurer	Baltic Reinsurance Co. Ltd.
Broker	Parklynn (“Park”) Place of Parrkerr Bros.
Ceding Co. -- VP Claims	Virginia St. Charles
Reinsurer--Underwriter	Scotty Dice (pronounced Dish-shay)
Reinsurer--VP Claims	Marvin Gardens
Counsel for Ceding Company	Iron, Thimble & Shoo
Counsel for Reinsurer	Bee & Ogh LLP

TIMELINE OF KEY EVENTS

- **11/15/2016** Well known reinsurance broker, **Parrkerr Bros.** sends a placing package to **Baltic Re.** (00001-2) The package offers **Baltic Re** a 50% participation in an expiring 24 month, Property All Risk XL Treaty reinsuring **Atlantic & Pacific Assurance Co.**;
 - The package includes 100% loss statistics for the layer (40 XS 10) “as at 3/31/2016” (00002) plus expiring Treaty wording (00027-40);
 - **Baltic Re** already reinsures **Atlantic & Pacific** for “standalone Business Interruption coverage” written as such but does not currently reinsure its Property All Risk portfolio;
- **11/17/2016** **Baltic Re** asks a question about the notice language in the expiring wording and asks for more updated loss statistics (00003);
- **11/24/2016** **Parrkerr Bros.** provides an interpretation of the Treaty’s notice language (00004) along with a large loss report “current as of 9/30/2016” (00005) **NOTE** the report shows only one 2016 loss and does not include a second loss which occurred on 8/1/2016 (*Compare later renewal statistics-- 00015 & 00017*);
- **12/1/2016** **Baltic Re’s** VP of Reinsurance does a pricing analysis (00006-7);
- **12/2/2016** **Baltic Re** offers to take a 50% share of the Treaty as expiring but requests an increase in the 100% 24 month premium (from \$35M to \$40M) and **Atlantic & Pacific** accepts (00008-9);
- **1/1/17** Initial 24 month Treaty term commences;

- **8/14/2017** Flooding causes property damage and business interruption losses to the **Fried Parking Garage**. **Atlantic & Pacific** erroneously reports the business interruption loss to the Standalone Business Interruption Treaty and reports nothing to the All Risk Treaty. **Atlantic & Pacific** does not correct the error until January 15, 2019.
- **8/28/2017** Fire destroys the abandoned **Boardwalk Palace Hotel & Casino** (insured by **Atlantic & Pacific** for \$35M).
- **8/29/2017** The owner of the **Boardwalk Palace** is arrested and charged with 3 counts of Arson and **Atlantic & Pacific** denies the claim. **(00010-11)** **Atlantic & Pacific** does not report the loss to **Baltic Re** until March 31, 2020;
- **3/29/2018** An explosion causes extensive damage to the **Hasbro Water Works** but due to safety concerns, engineering experts and loss inspectors are prohibited from entering the facility until August 2018;
- **6/1/2018** **Atlantic & Pacific** establishes an incurred FGU loss reserve for **Hasbro Water Works** of \$4M (\$1M less than 50% of the Treaty's \$10M attachment point). **(00012)** **Atlantic & Pacific** does not report the loss **Baltic Re** until January 15, 2019;
- **11/8/2018** **Baltic Re's** VP of Reinsurance asks claims to forward the most recent large loss report for the Treaty in anticipation of pricing the renewal **(00013)**;
- **11/13/2018** **Baltic Re's** head of claims forwards a large loss report received on September 28, 2018 showing large losses incurred "thru 6/30/18." **(00014-15)** The Report does not include the **Fried Parking Garage, Boardwalk Palace** or **Hasbro Water Works losses** but includes a previously unreported 2016 loss.
- **11/18/2018** **Parrkerr Bros.** sends a renewal package to **Baltic Re**. **(00016-17)** As with the original placing package, the renewal statistics are only current through the end of Q1 2018;
- **12/10/2018** **Baltic Re's** VP of Reinsurance does a pricing analysis for the renewal in which he specifically notes the increase in losses for 2016 **(00018-19)**;
- **12/14/2018** **Baltic Re** offers to renew but citing "the updated losses provided for this account in September" requests an increase in the 100% 24 month premium (from \$40M to \$45M). **(00020)** **Atlantic & Pacific** accepts **(00021)**;
- **1/1/2019** Second 24 month Treaty term commences;
- **1/15/2019** **Atlantic & Pacific** issues a "Corrected & Updated Large Loss Report" notifying **Baltic Re** of the **Fried Parking Garage** and **Hasbro Water Works** claims **(00022)**;
- **12/1/2019** **Atlantic & Pacific** issues a Large Loss Report" notifying **Baltic Re** of three new claims arising out of a massive storm on Halloween of 2019 **(00023)**;

- **12/31/2019** Photographic evidence emerges indicating the **Boardwalk Palace** fire was caused by lightning, not arson **(00024)**;
- **1/30/2020** The state drops all arson charges against the owner of the **Boardwalk Palace**;
- **2/28/2020** **Atlantic & Pacific** rescinds its denial of the **Boardwalk Palace** claim and establishes a full limits reserve of \$35M (\$25M to the layer);
- **3/31/2020** **Atlantic & Pacific** reports the **Boardwalk Palace** claim to **Baltic Re**.
- **3/31/2020** With the notification of the three previously unreported losses plus the new Halloween 2019 storm losses, the incurred loss ratios for the 2017/2018 and 2019/2020 Treaty periods stand at **182.50%** and **111.11%** (respectively);
- **4/15/2020** **Baltic Re** cancels its participation in the Treaty effective December 31, 2020 and accuses **Atlantic & Pacific** of failing to provide timely notice of losses in accordance with the Treaty and **Atlantic & Pacific's** duty of utmost good faith **(00025)**;
- **4/18/2020** **Atlantic & Pacific** responds to **Baltic Re**, rejecting all accusations of wrongdoing and reminding **Baltic Re** of its continuing obligation to immediately pay claims as they come due **(00026)**;
- **1/3/2022** **Baltic Re** demands arbitration seeking rescission and/or money damages.
- **2/25/2022** **Atlantic & Pacific** files a counter demand seeking payment of \$21.5M in unpaid indemnity, interest and attorneys' fees.

Initial Placement

In November of 2016, The Atlantic & Pacific Assurance Co. ("A&P"), acting through its broker, Parrkerr Brothers LLC. ("Parrkerr Bros."), approached Baltic Reinsurance Co., Ltd. ("Baltic Re") about replacing one of the reinsurers on A&P's expiring Property All Risk Excess of Loss treaty (Oriental Fire and Casualty). Earlier in the year, A&P (along with many other US based companies) had unilaterally cancelled their relationships with Oriental after that company had publicly denounced calls to change its name and A&P needed to replace Oriental's share of the treaty on a going forward basis.

On November 15, 2016, Parklynn ("Park") Place of Parrkerr Bros. sent a letter and placing package to Baltic Re's Vice President of Reinsurance, Scotty Dice (pronounced, "*Dish-shay*"). In his cover letter, Place stated that Baltic Re was "being given the rare opportunity" to take over an expiring 50% share of A&P's "long running and highly profitable Property All Risk Treaty." The letter outlined the basic terms of the deal as follows:

- **Term:** 24 months effective January 1, 2017;
- **Treaty limits:** \$40M XS \$10M each and every loss subject to a \$160M aggregate limit as respects any one Loss Occurrence;
- **Scope:** All business inforce and written by A&P and classified as Homeowners and Commercial Property;
- **Territory:** North America and the Caribbean
- **100% 24 Mo. Premium:** \$35M flat (pd. in 2 annual installments)

In making his pitch, Place noted that Baltic Re already participated on A&P’s standalone Business Interruption treaty and observed that “providing this additional and synchronistic coverage to A&P” would allow the parties “to build upon their existing, profitable partnership.” Place further noted that “the continuing market reinsurers [were] inclined to renew at the expiring rate owing to the excellent history produced by this treaty year on year.” (00001)

Along with the letter, Place provided the following five years of 100% loss statistics for the layer “as at March 31, 2016.” (00002) Those statistics showed:

UW Yr.	Loss to Layer \$M	No. of losses above \$10M	Total losses incurred \$M	OGP \$M
2011	15	2	65	90
2012	10	1	55	95
2013	5	1	45	85
2014	39	4	150	125
2015	10	2	90	115

Place also attached a copy of the wording for the expiring Treaty which was being renewed “without amendment.” (00027-40) The proposed wording included the following provisions:

- “All Neutral”/Honorable Engagement arbitration clause (00037);
- “Access to Records” clause (00035-36);
- Loss Settlements clause requiring A&P to promptly notify reinsurers of any UNLs “which, in the opinion of the Company, have the potential to result in a claim” under the contract. (00034)

Two days later (November 17, 2016), Scotty Dice responded to Place, noting that Baltic Re was “intrigued at the prospect of winning more of A&P’s business” but had “some questions and concerns.” On the wording, Dice specifically asked about the loss notification provision. Dice stated that in his experience, it was “more usual to require large loss reports once reserves reach a particular level (such as 50% of the retention or attachment point) and noted that the proffered wording appeared “somewhat looser” than that. (00003)

Turning to the placing information and in particular, the 5 years of loss statistics provided by A&P, Dice told Place that he would “need to see updated loss statistics” before committing his company to “such a large proportion of A&P’s exposure at this layer,” adding that the numbers (current only as of Q1 2016) were “a bit too stale.” Dice also told Place Baltic Re “likely” could not “accept the somewhat aggressive rate quoted for the expiring treaty term” but promised to “keep an open mind and reserve final judgment” until after he had reviewed the “updated loss figures.”

Place responded on November 24, 2016. He stated first that the “in the opinion of the Company” language was Parrkerr Bros.’ “standard form, large loss reporting provision,” that Parrkerr Bros. had been using that language for “decades” (including in A&P’s standalone Business Interruption Treaty to which Baltic was a signatory). Place then went on to explain that the language was intended to convey that the ceding company would notify its reinsurers of losses “where reserves meet the standard 50% threshold **or in other appropriate cases** where the ceding company believes the layer will ultimately be breached.” Place stated that in his view, this wording “provided reinsurers with greater protection than other clauses since it means that a loss will not be withheld from notice merely because a nominal reserve trigger has not yet been met.” (00004)

In response to Dice's request for updated loss statistics for the layer, Place stated he did not have an updated experience report "immediately at hand" but did have a copy of "the most recent large loss report" he had sent out to the expiring treaty reinsurers" and "was happy to share that report with Baltic Re." (00005) That report (which was current as of September 30, 2016) provided the following information:

Large Losses Inc'd Thru 9.30.16					
UW Yr.	Loss	DOL	FGU Pd \$M	FGU Inc'd \$M	Inc'd to Layer \$M
2011	Ice Storm	2.16.11	18	18	8
	Fire at factory	8.2.11	5	17	7
TOTAL			23	35	15
2012	Explosion at oil refinery	7.13.12	20	22	12
TOTAL			20	22	12
2013	Flood at shopping center	9.2.13	14	15	5
TOTAL			14	15	5
2014	Winter storm damage to hotel	1.15.14	10	13	3
	Winter storm damage to factory	1.15.14	12	22	12
	Fire at oil refinery	4.22.14	8	18	8
	Fire at apartment complex	7.8.14	20	25	15
	Storm damage at leisure complex	10.19.14	2	7	0
TOTAL			52	85	38
2015	Fire at hotel	8.31.15	20	25	15
	Building collapse	10.3.15	0	11	1
TOTAL			20	36	16
2016	Earthquake damage to sports stadium	6.6.16	5	20	10

Using these updated numbers and adding 10% to the incomplete figures for 2016, Dice estimated that even with a flat two year premium of \$35M, the Treaty had, indeed been very profitable for 4 out of the last 5 years. In a pricing memorandum which he placed in the file, Dice noted "it would be unrealistic to expect every year of an excess property treaty to run loss free" and noted further that the winter storms that swept North America in 2014 (and were responsible for approximately 40% of the losses to the layer for that underwriting year) had "negatively impacted everyone in the industry" and that A&P "either by skill or luck appear[ed] to have escaped some of the biggest losses like the Ventnor Avenue Stadium roof collapse." That said, Dice wrote that he did not believe the expiring 100% premium of \$35M provided sufficient "cushion" against another bad year and resolved to quote based on 50% of a 100% rate of \$40M. (00006)

Dice's handwritten pricing analysis (00007) appears below:

A&P 40X10 EEL Pricing Analysis--Used Layer Loss experience Thru 9.30.16 w/ 10% Completion Factor			
UW Yr.	UPDATED LOSS TO LAYER BASED ON LARGE LOSS REPORT \$M	Loss ratio using \$35M for prem.	Loss ratio using \$40M for prem.
2011	15	85.71%	75.00%
2012	12	68.57%	60.00%
2011/2012 TTY YR	27	77.14%	67.50%
2013	5	28.57%	25.00%
2014	38	217.14%	190.00%
2013/2014 TTY YR	43	122.86%	107.50%
2015	16	91.43%	80.00%
2016	10	57.14%	50.00%
EXPIRING TTY YR	26	74.29%	65.00%
ULTIMATE EXPIRING (10% FUTURE DEV.)	28.6	81.71%	71.50%

On December 2, 2016, Dice emailed Place, stating that he was pleased “Baltic Re and A&P ha[d] the same understanding of how the notice provision [was] intended to operate” and offered to take 50% of the \$40M XS \$10M layer for a flat, annual premium of \$20M (i.e., 50% of \$40M). (00008)

Place responded by return email that the parties were “indeed of like mind regarding the notice provision” and advised that A&P had accepted Baltic Re’s offer. (00009) A&P (through Place/Parrkerr Bros.) reinsured the remaining 50% of the layer via a separate (though identical) Treaty with the three reinsurers who had made up the remaining 50% of the security for this Treaty for over a decade.

Renewal

On November 18, 2018, A&P (through Place) approached Dice about renewing Baltic Re’s 50% participation on the Treaty for another 24 month term (1/1/2019-12/31/2020). (00016) As with the original placement, Place provided Dice with 5 years of statistics for the layer “as of” the end of the first quarter of 2018. (00017) Those statistics looked like this:

Layer Loss Experience at 3.31.18				
UW Yr.	Loss to Layer \$M	No. of losses above \$10M	Total losses incurred \$M	OGP \$M
2013	8	1	50	85
2014	35	4	140	125
2015	16	2	100	115
2016	20	2	95	130
2017	15	1	100	110
2018	2	1	18	50

Place’s covering letter noted that the figures for “everyone’s favorite punching bag—the 2014 underwriting year” were now “mostly complete” and observed that A&P had actually

beaten its incurred reserve by several million dollars. Place noted further that in light of the Treaty’s “continued positive performance, A&P [were] insisting that Baltic Re hold the line on the existing 100% premium of \$40M for the next two years.” (00016)

Ten days prior to this, Dice had reached out to Marvin Gardens, Baltic Re’s Sr. Vice President for Claims, to obtain a copy of “the most recent large loss report” Baltic Re had received from Parrkerr for the A&P Property All Risk Treaty. (00013) On November 13, 2023, Gardens responded by forwarding the large loss report Parrkerr Bros. had “sent through on September 28, 2018” showing incurred losses through June 30, 2018.” (00014-15) That report contained the following information:

UW Yr.	Loss	DOL	FGU Pd \$M	FGU Inc'd \$M	Inc'd to Layer \$M
2011	Ice Storm	2.16.11	18	18	8
	Fire at factory	8.2.11	15	15	5
TOTAL			33	33	13
2012	Explosion at oil refinery	7.13.12	21	21	11
TOTAL			21	21	11
2013	Flood at shopping center	9.2.13	18	18	8
TOTAL			18	18	8
2014	Winter storm damage to hotel	1.15.14	15	15	5
	Winter storm damage to factory	1.15.14	17	24	14
	Fire at oil refinery	4.22.14	17	17	7
	Fire at apartment complex	7.8.14	21	22	12
	Storm damage to sports complex	10.19.14	2	7	0
TOTAL			72	85	38
2015	Fire at hotel	8.31.15	21	22	12
	Building collapse	10.3.15	10	14	4
TOTAL			31	36	16
2016	Earthquake damage to sports stadium	6.6.16	12	18	8
	Storm damage to pier complex	8.1.16	4	21	11
TOTAL			16	39	19
2017	Flood damage to office tower	4.1.17	10	25	15
TOTAL			10	25	15
2018	Shopping center collapse	1.15.18	1	13	3
TOTAL			1	13	3

Gardens’ email also advised Dice that his department had conducted an on- site claims audit of both the Property All Risk Treaty and the Business Interruption Treaty and that while the final written report was not yet complete, the results had been “highly favorable.” (00014) Dice did not ask any questions regarding the audit.

Dice concluded from the updated loss information forwarded by Gardens that the 2014 underwriting year “was something of an aberration” but that losses had “crept up for 2015/16” proving he had been “correct to demand a higher rate for 2017/18.” Applying the

same pricing methodology he had used for the initial placement, Dice projected 2017/18 would finish up better than 2015/16 (which he predicted would only break even at the higher \$40M rate he had insisted on for 2017/18) but he resolved that he would only renew if he could get an increase in the 100% premium to \$45M (\$22.5M for Baltic Re's share). (00018)

Dice's handwritten pricing calculations appear below (00019):

RENEWAL 2019/20 A&P 40X10 EEL Pricing Analysis--Used Losses Reported thru 9.28.18 w/ 10% Completion Factor			
UW Yr.	UPDATED LOSS TO LAYER BASED ON LARGE LOSS REPORT \$M	Loss ratio using \$40M for prem.	Loss ratio using \$45M for prem.
2011	13	65.00%	57.78%
2012	11	55.00%	48.89%
2011/2012 TTY YR	24	60.00%	53.33%
2013	8	40.00%	35.56%
2014	38	190.00%	168.89%
2013/2014 TTY YR	46	115.00%	102.22%
2015	16	80.00%	71.11%
2016	19	95.00%	84.44%
2015/2016 TTY YR	35	87.50%	77.78%
2017	15	75.00%	67%
2018	3	15.00%	13.33%
Current TTY YR	18	45.00%	40.00%
ULTIMATE CURRENT (10% FUTURE DEV.)	19.8	49.50%	44.00%

96.25% or 85.56% (if add
10% completion factor)

On December 14, 2018, Dice sent an email to Place, offering to renew Baltic Re's expiring 50% share of the layer for a 24 month flat premium of \$22.5M. (00020) Place responded by email later that afternoon expressing A&P's disappointment in the increase "given the "positive performance of the Treaty overall" but advising that A&P had nevertheless accepted the offer "on the strict condition that no other changes or amendments" would be required by Baltic Re. (00021)

Three Unreported Large Losses

Unbeknownst to Dice, the large loss report A&P provided to Baltic Re in September of 2018 did not include three large claims (all of which had been reported to A&P before the June 30, 2018 "as of" date for that report.

- **Freid Parking Garage, Ft. Lauderdale, FL.** Flood damage to the lowest two parking decks (the "Red" and "Blue" levels) of a 10 story parking structure located at the intersection of States Avenue and Freid St. in downtown Ft. Lauderdale. The flood was caused by a massive named storm on August 14, 2017 which shut down much of South Florida's coastal area for weeks.

As of June 30, 2018, A&P had established a \$30M reserve for the claims split equally between the property damage and business interruption elements. Due to a coding error, however, A&P had **only** reported a \$15M incurred BI loss under the Standalone

Business Interruption Treaty (on which Baltic Re also participated). A&P had not reported a \$30M combined incurred loss (or even a \$15M PD loss) to the All Risk Treaty.

This was an error. The entirety of the loss was covered under the All Risk Treaty and as such, the full incurred amount (Business Interruption and Property Damage) should have been reported to the Property All Risk Reinsurers in September of 2018 (if not sooner). No loss should have been reported to the Standalone Treaty as the Fried Parking policy was an all risk policy, not a standalone BI policy.

- **Boardwalk Palace Hotel & Casino, Atlantic City, NJ.** Total loss caused by a fire at a vacant resort property on Aug. 28, 2017. The owner of the building, Chance Card, was arrested the same day as the fire and charged with 3 counts of arson and 100 counts of tax evasion. News reports stated that Card was deeply in debt to his foundation, the Community Chest, which held several mortgages on the premises. It was also reported that Card had failed to pay two decades worth of “Luxury Tax” and “Poor Tax” assessments. (00011)

Boardwalk’s policy with A&P excluded loss caused by “deliberate acts” and A&P’s head of Claims, Virginia St. Charles, sent a letter denying the claim directly to the county jail so that Card would receive it on the same day he was arraigned. A&P did not establish any liability reserve for this claim beyond a \$1M expense reserve. That said, a file note written by St. Charles the day after the fire acknowledged that “per inspector’s preliminary review, the building is a total loss so if Card manages to get out of jail free, we could be on the hook for our full \$35 Mil limits.” (00010)

- **Hasbro Water Works, Short Line, PA.** Damage to Hasbro Water Works in Short Line Pennsylvania. The explosion, which occurred on March 29, 2018 caused what, from the outside at least, appeared to be substantial damage to the facility. On-site inspections of the property were delayed until late August 2018, however, due to safety concerns.

On June 1, 2018, St. Charles placed a note in the claim file stating in pertinent part: “who knows? Let’s put up \$4M in reserves but if the roof or support structures have been compromised—this whole thing could have to come down. On the other hand, once remediation is complete, things may turn out to be solid. Need engineers’ report as soon as safe to obtain.” (00012)

A&P Reports Two of the Large Losses to Baltic Re in January 2019

On January 15, 2019 (two weeks after the renewal became effective) A&P provided reinsurers with a “Corrected and Updated Large Loss Report.” (00022) That report showed:

UW Year	Claim	DOL	FGU Pd \$M	FGU Inc'd \$M	Inc'd to Layer \$M
2017	Flood at Freid Parking Garage--PD Element	8.14.17	10	15	Combined
	Flood at Freid Parking Garage--BI Element	8.14.17	13	15	Combined
TOTAL			23	30	20
2018	Explosion at Hasbro Water Works	3.29.18	15	20	10
TOTAL			15	20	10

Affixed to Baltic Re's copy of the report was a handwritten "post it" note from St. Charles apologizing for the fact that the Freid Parking Garage flood had been "mistakenly omitted from the last Large Loss Report due to a coding error." (00022)

2019/2020 Renewal Quickly Goes Negative

On December 1, 2019, A&P provided Baltic Re with a Large Loss Report for three new claims stemming from a rain event which struck the Midwest on Halloween night, 2019. The report (copied below) showed that if A&P's incurred loss estimates were accurate, the renewal term of the Treaty was guaranteed to lose money (even if the 2020 underwriting year remained entirely claim free). (00023)

Large Losses Inc'd 10.31.19					
UW Year	Claim	DOL	FGU Pd \$M	FGU Inc'd \$M	Inc'd to Layer \$M
2019	Structural Damage Mediterranean Opera House	10.31.19	0	35	25
2019	Flood at St. James Infirmary	10.31.19	0	15	5
2019	Roof Collapse Indiana Race Car Museum	10.31.19	13	30	20
TOTAL			13	80	50

A&P Reports Boardwalk Palace Claim to Baltic Re in March 2020

On December 31, 2019 The Press of Atlantic City (a real newspaper) announced the winner of its "Most Iconic Weather Photo of the Decade" contest. First prize went to a mid-shipman (a Mr. Monopleeman) who had been stationed aboard a battleship anchored half a mile off the boardwalk in the early morning hours of August 28, 2017. Mr. Monopleeman's photo captured (in stunning detail) the precise moment lightning struck the Boardwalk Palace Hotel & Casino. Other (time stamped) photos in the series showed the building erupting in flames immediately following the lightning strike. Publication of the photo led Chance Card's defense team to demand a new investigation of the fire. (00024)

The new investigation established that sparks from the lightning strike had ignited a wheel barrow full of empty moneybags the casino managers had left on the roof and that this chain of events, not wrongdoing by Card, had caused the blaze.

On January 30, 2020, the state dropped all charges against Card relating to the fire and on February 28, 2020 A&P rescinded its denial and paid the full limits of its coverage on the building (\$35M). On March 31, 2020 A&P submitted a proof of loss for the Boardwalk Palace Hotel & Casino fire claim, seeking indemnity from the All Risk Treaty reinsurers (including Baltic Re) in the amount of \$25M.

Loss Development as of March 31, 2020

As of March 31, 2020, the reported loss experience for Baltic Re's four years of participation in the Treaty looked like this:

UW Yr.	Loss to Layer \$M	No. of losses above \$10m	Loss ratio
2017	60	3	300.00%
2018	13	2	65.00%
TOTAL	73	5	182.50%
2019	54	4	240.00%
2020	6	1	26.67%
TOTAL	50	5	133.33%

The Arbitration

On April 15, 2020, Dice sent a cancellation notice to A&P, effective December 31, 2020. In that notice, Dice stated that Baltic Re was reserving its rights to pursue “appropriate relief” against A&P for what Dice described as a failure to timely and completely report losses in accordance with both the Treaty’s terms and A&P’s duty of utmost good faith. (00025)

On April 18, 2020, St. Charles responded to Dice. (00026) In her letter, St. Charles asserted that “with the exception of the miscoded Fried Parking Garage claim (an honest error which [A&P] immediately corrected as soon as [it] discovered the issue) all losses were reported to [Baltic Re] and the other reinsurers in accordance with” the Treaty.

To that point, Baltic had paid approximately \$18M in losses for the 2017 Office Tower flood, (00015) the 2018 Shopping Center collapse (*id.*) and the 2019 Halloween storm losses (00023) but had rejected A&P’s proofs of loss for the Hasbro Water Works, Fried Parking and Boardwalk Palace claims.

The parties made numerous good faith efforts to resolve their dispute but all were unsuccessful.

On January 3, 2022 Baltic Re demanded arbitration under the Treaty seeking, “rescission and/or money damages of sufficient nature and amount as to place Baltic Re in the position it would have occupied had A&P provided prompt notice of losses which clearly ‘ha[d] the potential to impact the Treaty’ in accordance with the bespoke terms of the Treaty and/or provided a true and accurate picture of the Treaty’s incurred loss history.”

A month later, on February 5, 2022, A&P counter demanded arbitration seeking approximately \$21.5M in unpaid indemnity “plus interest, a declaration of liability for future claims, attorney’s fees and such other relief as the Panel may award.”

The Discovery Dispute

Baltic Re's Motion to Compel Production of Documents

In the course of discovery, Baltic Re requested A&P's communications with Parrkerr Bros. and/or any of A&P's other Property All Risk reinsurers which "reference, mention or in any way disclose the nature and amount of any North American Property All Risk losses which A&P reported as incurred from 2011 forward." A&P objected to this request, noting that the material sought was "irrelevant to the dispute at hand."

In meet and confer discussions, Baltic Re has argued that it has a "right to know whether any of the other reinsurers were provided different or additional information than Baltic Re including (but not limited to) information regarding the large losses which were only reported to Baltic Re after A&P had secured Baltic Re's participation in the 2017/2018 and 2019/2020 Treaty years." In this connection, Baltic Re has made clear that in addition to information regarding the "late reported 2017/2018 losses" it is seeking "information provided and/or disclosures that were made to other reinsurers regarding large losses which occurred **prior to** Baltic Re's time on the risk, including but not limited to that certain August 1, 2016 Storm claim which A&P failed to include on the September 30, 2016 large loss report (00005) which A&P provided to Baltic Re as part of the original placement of the Treaty."

A&P's Motion to Compel Production of Documents

For its part, Baltic Re has objected to A&P's attempts to discover its (Baltic Re's) communications with other ceding companies which discuss, mention or identify:

- The Boardwalk Palace Hotel and Casino fire;
- The Freid Parking Garage flood; and/or
- The Hasbro Water Works Explosion

In meet and confer discussions, A&P has argued that since Baltic Re "has made claims of misrepresentation and non-disclosure against A&P regarding these three losses, Baltic Re has placed its actual knowledge regarding their existence (however and wherever evidenced) squarely in issue." A&P maintains it has "an absolute right to know what Baltic Re knew and when it knew it."

Current Status

Fact discovery in the arbitration is complete subject to the resolution of the above-described cross motions to compel. The parties and the Panel have agreed the Merits hearing will be held "as soon as practicable" following the resolution of these cross motions.