UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In re: MF GLOBAL HOLDINGS LTD., *et al.*, Debtors.[1]	Chapter 11 Case No. 11-15059 (MG) (Jointly Administered)
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC, Plaintiffs, -against- ALLIED WORLD ASSURANCE COMPANY LTD., IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY, Defendants.	S.D.N.Y. Civ. Action No. 1:17-cv-00742-UA Related: S.D.N.Y. Civ. Action Nos. 1:17-cv-00106-RWS 1:17-cv-00113-RWS 1:17-cv-00780-UA Adv. Proc. No. 16-01251 (MG)

DECLARATION OF DANIEL SLIFKIN IN FURTHER SUPPORT OF DEFENDANT ALLIED WORLD ASSURANCE COMPANY, LTD'S MOTION FOR LEAVE TO APPEAL THE BANKRUPTCY COURT'S JANUARY 12, 2017 PRELIMINARY INJUNCTION AND ORDER HOLDING THE BERMUDA INSURERS IN CONTEMPT

I, Daniel Slifkin, declare as follows:

1. I am an attorney admitted to practice in the State of New York and in this Court. I am a member of the firm of Cravath, Swaine & Moore LLP, which is counsel to Allied World Assurance Company, Ltd in the above-captioned action.

[1] The debtors in the chapter 11 cases (the "Chapter 11 Cases") are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC and MF Global Market Services LLC on February 11, 2016.

2. I respectfully submit this declaration in further support of Defendant Allied World Assurance Company, Ltd's Motion for Leave to Appeal the Bankruptcy Court's January 12, 2017 Preliminary Injunction and Order Holding the Bermuda Insurers in Contempt.

3. Attached hereto as Exhibit A is a true and correct copy of excerpts from the Memorandum of Law in Support of Defendant Allied World Assurance Company, Ltd's Opposition to Memorandum Opinion and Temporary Restraining Order filed in the above-captioned adversary proceeding at Docket No. 37 on December 28, 2016.

4. Attached hereto as Exhibit B is a true and correct copy of a letter from Charles S. Witmann-Todd of Jones Day to Vito Genna, Clerk of Court for the U.S. Bankruptcy Court for the Southern District of New York, filed in the above-captioned adversary proceeding at Docket No. 3 on November 1, 2016.

5. Attached hereto as Exhibit C is a true and correct copy of excerpts from the Omnibus Response Memorandum of Law on the Bermuda Defendants' Continued Violation of this Court's Bar Order, filed in the above-captioned adversary proceeding at Docket No. 68 on January 18, 2017.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 7, 2017.

/s/ Daniel Slifkin
Daniel Slifkin

CERTIFICATE OF SERVICE

I, Daniel Slifkin, certify that on February 7, 2017, I caused the foregoing Declaration of Daniel Slifkin in Further Support of Defendant Allied World Assurance Company, Ltd's Motion for Leave to Appeal the Bankruptcy Court's January 12, 2017 Preliminary Injunction and Order Holding the Bermuda Insurers in Contempt to be filed with the Clerk of the Court and served upon all counsel of record via the Court's CM/ECF system.

/s/ Daniel Slifkin
Daniel Slifkin

Exhibit A

WHITE AND WILLIAMS LLP
Erica Kerstein, Esq.
Steven Ostrow, Esq.
7 Times Square
New York, New York 10036
(212) 868-4837

Attorneys for Defendant
Allied World Assurance Company, Ltd

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., et al.,	:	**Case No. 11-15059 (MG)**
Debtors	:	**(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC, Plaintiffs, v. ALLIED WORLD ASSURANCE COMPANY, LTD, IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY, Defendants.	:	**Adv. Proc. No. 16-01251 (MG)**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
ALLIED WORLD ASSURANCE COMPANY, LTD'S OPPOSITION
TO MEMORANDUM OPINION AND TEMPORARY RESTRAINING ORDER

made against an insured anywhere, and not limited to New York.[12] Moreover, the Allied World Policy insures MFGH, as well MFGH affiliates located throughout the world.[13] For these reasons, cases seeking to compare the Allied World Policy with first-party insurance are wholly irrelevant here. See, e.g., Great N. Ins. Co. v. Mount Vernon Fire Ins. Co., 92 N.Y.2d 682, 687-88 (1999) ("wholly different interests are protected by first-party coverage and third-party coverage").

- In Blau, the defendant had not undertaken any precautions to avoid being haled into court in New York. Id. at 180. Here, Allied World took specific steps to avoid being haled into court in New York—through its international arbitration provision, to which Plaintiffs agreed when they entered the contract, and by initiating arbitration, in which Plaintiffs actively participated (while generally reserving their rights). Moreover, in Blau, the choice was whether to litigate in New York or New Jersey. Here, there is an international arbitration clause, and the choice is whether to litigate in New York or arbitrate in Bermuda. The due process analysis in Blau is therefore wholly inapplicable.

- In Blau, the insurer engaged in a wide range of activities in New York. Here, Allied World intentionally did not conduct any activities in New York.

- Blau is not a bankruptcy case and therefore does not address whether jurisdiction may properly be found in bankruptcy court based on New York's long-arm statutes.[14]

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[12] In fact, a number of the customer lawsuits eventually consolidated in the MDL were initially filed outside New York. See, e.g., Henning-Carey Proprietary Trading, LLC et al. v. Corzine, No. 11-08717, United States District Court for the Northern District of Illinois; Klinker at al. v. JP Morgan Chase & Co. et al., No. 12-00005, United States District Court for the District of Montana.

[13] MFGH was a public company listed on the New York Stock Exchange, trading through more than seventy exchanges globally, including through affiliates in the United Kingdom, Australia, Singapore, India, Canada, Hong Kong and Japan. See SIPA D.I. 1865. The risk insured by the Allied World Policy is global in nature, and not limited to New York risks or exposure. In fact, the customer lawsuits were the result of billions of dollars of assets that flowed through not just MFGI, but globally through counterparties, such as MF Global Canada MF Global UK. See, SIPA D.I. 1865, Trustee's Report at 155-56, 160. Moreover, the Allied World Policy insures MFGH's "subsidiaries" (see Adv. Dkt. 1-5, Primary Policy at Section 2.16), which, as of April 7, 2011, included 46 entities, incorporated under the laws of Delaware, Bermuda, Taiwan, United Kingdom, New York, Mauritius, Japan, Australia, Ireland, Hong Kong, Canada, India, Dubia, Singapore, Switzerland and Hungary. See MF Global Holdings, Ltd. Form 10-K, Exhibit 21.1, "Subsidiaries of the Registrant," filed May 20, 2011, available at: https://www.sec.gov/Archives/edgar/data/1401106/000119312511145663/dex211.htm.

[14] Although the Court did not rely on the following cases, Allied World explains why they are also materially dissimilar to this case. Danaher Corp. v. Travelers Indem. Co., 2014 U.S. Dist. LEXIS 172285, *7, *12 (S.D.N.Y. Dec. 11, 2014), which found personal jurisdiction over a foreign insurer under New York's long-arm statutes, is distinguishable for at least the following reasons: (1) it is not a bankruptcy case so jurisdiction could properly be found based on New York's long-arm statutes; (2) N.Y.I.L. § 1213 cannot apply here in any event because the Allied World Policy was not issued or delivered in New York; (3) there was a duty to defend which is not the case here; (4) the court analyzed personal jurisdiction over a captive insurer that was created for the sole purpose of insuring its parent company; (5) the court did not address the long line of New York cases finding that an insurance contract does not constitute "supplying goods or services" or "transacting business" in New York within the meaning of CPLR § 302(a)(1); (6) Danaher did not involve an international arbitration provision; and (7) Danaher does not comport with Walden, which is not even mentioned in the opinion. Accordingly, Danaher does not apply.

Dated: New York, New York
December 28, 2016

WHITE AND WILLIAMS LLP

By: */s/Erica Kerstein*
Erica Kerstein
Steven Ostrow
White and Williams LLP
7 Times Square
New York, New York 10036-6524
(212) 868-4837

Attorneys for Defendant Allied World Assurance Company, Ltd

Exhibit B

JONES DAY

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TELEPHONE: +1.212.326.3939 • FACSIMILE: +1.212.755.7306

Direct Number: (212) 326-3439
cwittmanntodd@JonesDay.com

November 1, 2016

2016 NOV -1 P 2:50

VIA HAND DELIVERY

Vito Genna
Clerk of Court
US Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *In re MF Global Holdings, Ltd.*, No. 11-15059 (MG) (Bankr. S.D.N.Y.)
MF Global Holdings, Ltd. v. Allied World Assurance Company Ltd. et al, Adv. Proc. No. 16-01251 (MG) (Bankr. S.D.N.Y.)

Dear Vito Genna, Clerk of Court:

We represent MF Global Holdings, Ltd. and MF Global Assigned Assets LLC (the "Plaintiffs") in the above-captioned adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(a)(1) incorporates Rule 4 of the Federal Rules of Civil Procedure, with certain exceptions not applicable here. Rule 4(h)(2) permits, in relevant part, a corporation to be served "at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual."[1] Rule 4(f)(2)(c)(ii) in turn service on someone "in a foreign country . . . using any form of mail that the clerk addresses and sends to the [corporation] and that requires a signed receipt."

Accordingly, pursuant to Rule 4(f)(2)(c)(ii), the Plaintiffs request that the Clerk send the following documents to the Bermuda addresses listed on Appendix A to this letter:

1. "Adversary Complaint for Declaratory Judgment and Breach of Contract Against Dissenting E&O Insurers" [Docket No. 1] and

2. "Summons and Notice of Pretrial Conference in an Adversary Proceeding" [Docket No. 2].

[1] The Plaintiffs believe that they have already properly served the defendants in this adversary proceeding in accordance with Rule 4(f)(1). However, out of an abundance of caution, the Plaintiffs also request the Clerk to provide service as described herein.

Case 1:17-cv-05742-LAK Document 11-2 Filed 02/16/2017 Page 3 of 4

JONES DAY

Clerk of the Court
November 1, 2016
Page 2

Enclosed with this letter are unsealed DHL envelopes, which are a "form of mail . . . that require[] a signed receipt," containing copies of the Summons and Complaint addressed to each party listed on Appendix A.

Very truly yours,

Charles S. Wittmann-Todd

JONES DAY

Clerk of the Court
November 1, 2016
Page 3

Appendix A

Allied World Assurance Company Ltd.
Attn: Mike McCrimmon
Senior Vice President, North American Property &
Bermuda Branch Manager
27 Richmond Rd.
Pembroke HM 08
Bermuda

Allied World Assurance Company Ltd.
Attn: Faye Cook
Senior Vice President, Marketing and Communications
27 Richmond Rd.
Pembroke HM 08
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Allied World Assurance Company Ltd.
Attn: General Counsel
27 Richmond Rd.
Pembroke HM 08
Bermuda

Iron-Starr Excess Agency Ltd.
Attn: Mitchell Blaser
Chief Executive Officer
141 Front Street
Hamilton, HM 19
Bermuda

Iron-Starr Excess Agency Ltd.
Attn: Larry Engrissei
Senior Vice President, Claims Manager
141 Front Street, Fl 7
Hamilton, HM 19
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Iron-Starr Excess Agency Ltd.
Attn: General Counsel
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Hamilton, HM 19
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Ironshore Insurance Ltd.
Attn: General Counsel
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Ironshore Insurance Ltd.
Attn: Mitchell E. Blaser
Chief Executive Officer
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Bermuda

Starr Insurance & Reinsurance Limited
Attn: General Counsel
19 Par-la-Ville Road 5th Floor
Hamilton HM 11,
Bermuda

Starr Insurance & Reinsurance Limited
Attn: Charles Dangelo
Vice Chairman
Bermuda Commercial Bank Building
19 Par-la-Ville Road, 5th Floor
Hamilton, Bermuda

Starr Insurance & Reinsurance Limited
Attn: James Dowd
Chief Underwriting Officer
Bermuda Commercial Bank Building
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Hamilton, Bermuda

Exhibit C

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-and-
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Counsel for MF Global Holdings Ltd.,
as Plan Administrator, and
MF Global Assigned Assets LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re MF GLOBAL HOLDINGS LTD., et al., Debtors.[1]	:	**Chapter 11** **Case No. 11-15059 (MG)** **(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC, Plaintiffs, vs. ALLIED WORLD ASSURANCE COMPANY LTD., IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY, Defendants.	:	**Adv. Proc. No. 16-01251 (MG)**

OMNIBUS RESPONSE MEMORANDUM OF LAW ON THE BERMUDA DEFENDANTS' CONTINUED VIOLATION OF THIS COURT'S BAR ORDER

[1] The debtors in the chapter 11 cases are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

ARGUMENT

I. TO PROTECT THE NEW YORK INSUREDS, THIS COURT SHOULD REQUIRE THE BERMUDA DEFENDANTS TO POST A BOND, AS REQUIRED BY NEW YORK LAW

The MFG Parties' opening brief[3] (TRO Br. at 19–22) established that, where, as here, an unauthorized insurer[4] appears in a New York court for any purpose other than to contest personal jurisdiction and service of process, it is required to post a bond in an amount "sufficient to secure payment of any final judgment which may be rendered in the proceeding." N.Y. Ins. L. § 1213(c).[5] The Bermuda Defendants have filed multiple "responsive pleadings" here, including their Motions to Compel Arbitration and their Motion to Dismiss for Lack of Subject Matter Jurisdiction. In this briefing, they reincorporate the arguments made in their prior filings in this Court, including their challenges to this Court's subject matter jurisdiction. Iron-Starr Opp. Br. at 1 nn. 1-2 (Adv. D.I. 64); AWAC Opp. Br. at 1 nn. 1-2 (Adv. D.I. 62). Given that this insurance statute has been routinely applied to require foreign insurers to deposit funds to remain in escrow through the entire pendency of the insurance dispute, including during any referred arbitration,[6] this Court should require the Bermuda Defendants to post a $60 million bond pursuant to Insurance Law § 1213. See, e.g., Marsh & McLennan Cos. Inc. v. GIO Ins. Ltd., 2013 WL 4007555, at *5 (S.D.N.Y. Aug. 6, 2013)

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[3] MFG Parties' December 28, 2016 Memorandum of Law on the Bermuda Defendants' Continued Violation of This Court's Bar Order (filed under seal) (the "TRO Br.").

[4] An "authorized insurer" is "an insurer authorized as such to do an insurance business in this state in compliance with this chapter, by reason of a license so to do issued and in force pursuant to the laws of this state or of a corporate charter granted and in force pursuant to the laws of this state." N.Y. Ins. Law § 107(a)(10).

[5] The MFG Parties note that under the McCarron-Ferguson Act, this New York insurance law is "not invalidated or impaired by the provisions of the Federal Arbitration Act." Corcoran v. Ardra Ins. Co., 156 A.D.2d 70, 73 (N.Y. App. Div. 1990). Thus, federal courts in New York routinely require insurers to post a bond pursuant to Insurance Law § 1213 even where, as here, the Federal Arbitration Act is being invoked. See, e.g., Marsh & McLennan Cos., Inc. v. GIO Ins. Ltd., 2013 WL 4007555, at *5 (S.D.N.Y. Aug. 6, 2013).

[6] Even if this Court compels arbitration, it must retain jurisdiction and merely stay this adversary proceeding. See Drennen v. Certain Underwriters at Lloyd's of London (In re Res. Cap., LLC), 2016 WL 6155925, at *1 n.3 (Bankr. S.D.N.Y. Oct. 21, 2016) (granting motions to compel arbitration and staying adversary proceeding); Katz v. Cellco P'ship, 794 F.3d 341, 345 (2d Cir. 2015) (holding FAA requires a stay, rather than dismissal of a proceeding sent to arbitration).

(explaining that "in deference to New York's public policy regarding unauthorized foreign insurers . . . the Court will not release [an insurer's] security pending the arbitration.").[7]

The Bermuda Defendants offer no response to this requirement. Rather, the Bermuda Defendants misstated to the District Court in their recent motions for leave to appeal that this Court had already rejected the applicability of the New York Insurance Law. Adv. D.I. 53 at 13 n.9. The Bermuda Defendants also threatened when they first served the anti-suit injunctions on the MFG Parties that they would seek to prevent the enforcement of any favorable U.S. judgment. Dec. 27 Letter, at Exh. D-1 at p. 2 and Exh. E-1 at p. 2. Thus, conditioning any further participation by the Bermuda Defendants in this Court on posting the bond required by the New York Insurance Law is especially critical at this time.[8]

II. THE BERMUDA DEFENDANTS HAVE CLEARLY VIOLATED THE BAR ORDER

A. The Bermuda Defendants Have Not Refuted The Fact That Their *Ex Parte* Injunction Applications Impermissibly Assert "Claims" Against The MFG Parties Related To The MF Global Actions

The Bermuda Defendants strenuously argued that the term "claim" within the Bar Order must be given its Bankruptcy Code definition (Adv. D.I. 28 at pp. 7, 9; Adv. D.I. 32 at pp. 9–10), and yet did not and could not dispute the well-established law that demands for costs and attorneys' fees constitute "claims" under § 105(5) of the Bankruptcy Code. See Matter of Southmark Corp., 88 F.3d 311, 317 (5th Cir. 1996) ("judicial demands for costs and attorneys' fees were 'claims' within the intendment of [§ 101(5)] of the bankruptcy code"); In re Benalcazar, 283 B.R. 514, 536

[7] The Bermuda Defendants' pending motions to compel arbitration will require this Court to determine, in the first instance, the particular individuals and entities subject to the Policies' arbitration clauses. For example, and as explained in the MFG Parties' opening brief, the AWAC Policy unambiguously provides that the Policy's arbitration provision is limited to MF Global Holdings Ltd. (and those deriving rights through, or asserting rights on behalf of, MF Global Holdings Ltd.) and not persons (like the Individual Insureds) who seek recovery under the policies directly, and in whose shoes the MFG Parties stand under the irrevocable assignment of the Individual Insureds' rights, which was a cornerstone of the MDL Settlement. TRO Br. at 17.

[8] As noted in the MFG Parties' opening brief, the Bermuda Defendants were almost certainly aware that this bonding requirement would apply given that here, unlike in Drennen, the policyholder was provided with the relevant excess E&O policies at its Fifth Avenue address to cover risks for an enterprise with its principal place of business in New York. TRO Br. at 20 n.16.

Case 1:17-cv-00742-UA Document 11-3 Filed 02/07/17 Page 5 of 5

Dated: January 18, 2017
New York, New York

Respectfully submitted,

/s/ Bruce Bennett

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- and-

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MF Global Assigned Assets LLC