UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RIVERSIDE ACADEMY, INC.	**CIVIL ACTION**
VERSUS	**NO. 22-4395**
CERTAIN UNDERWRITERS AT LLOYD'S LONDON, ET AL.	**SECTION: D(1)**

ORDER AND REASONS

Before the Court is a Motion to Reopen Proceedings, Lift Stay, and Reconsider/Set Aside Prior Order Granting Motion to Stay Proceedings and to Compel Arbitration filed by Plaintiff Riverside Academy, Inc.[1] ("Plaintiff"). Defendants[2] oppose the Motion,[3] and Riverside filed a reply.[4] After careful consideration of the parties' memoranda, the record, and the applicable law, the Motion is **GRANTED IN PART and DENIED IN PART**.

I. FACTUAL BACKGROUND

Plaintiff owns and operates a grade school located at 332 Railroad Avenue, Reserve, Louisiana (the "Property").[5] Defendants, two foreign insurers and nine domestic insurers, issued Plaintiff a surplus lines commercial policy insuring the Property.[6] On August 29, 2021, the Property sustained extensive damage due to

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[1] R. Doc. 30.
[2] Defendants are Certain Underwriters at Lloyd's, London, Indian Harbor Insurance Co., QBE Specialty Insurance Co., Steadfast Insurance Co., General Security Indemnity Co. of Arizona, United Specialty Insurance Co., Lexington Insurance Co., HDI Global Specialty SE, Old Republic Union Insurance Co., GeoVera Specialty Insurance Co., and Transverse Specialty Insurance Co.
[3] R. Doc. 32.
[4] R. Doc. 33.
[5] R. Doc. 1-2 at ¶ 5.
[6] *Id.* at ¶ 6.

Hurricane Ida.[7] Plaintiff subsequently made a claim against the policy, and Defendants paid Plaintiff what Plaintiff deems an "inadequate" sum of money to cover the cost of repairs.[8] Plaintiff filed this action against Defendants on August 26, 2022, seeking coverage for the property damage caused by Hurricane Ida, as well as extra-contractual penalties pursuant to Louisiana law.[9]

On December 12, 2022, Defendants filed a Motion to Compel Arbitration and Stay the Proceedings;[10] Plaintiff opposed the Motion.[11] On March 16, 2023, the Court granted Defendants' Motion, finding that arbitration was appropriate under the Convention of the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention").[12] The Court found that although the Convention applies only to the foreign insurers, the domestic insurers could properly be compelled to arbitrate through equitable estoppel.[13]

Now, Plaintiff asks that the Court lift the stay and vacate its arbitration order based on the Louisiana Supreme Court's 2024 decision in *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.*, which Plaintiff argues constitutes an intervening change in the law.[14] Defendants oppose the motion, arguing that Louisiana law has no role to play in this dispute which "continues to be governed

[7] *Id.* at ¶ 8.
[8] *Id.*
[9] *Id.*
[10] R. Doc. 13.
[11] R. Doc. 14.
[12] R. Doc. 29.
[13] *Id.* at 9-12.
[14] R. Doc. 30.

entirely by the Convention on the Recognition and Enforcement of Arbitral Awards of June 10, 1958 (the convention) and federal equitable estoppel principles."[15]

II. LAW AND ANALYSIS

A. The Standard for Reconsideration

Plaintiffs originally brought this case in the 40th Judicial District Court in St. John the Baptist Parish, and Defendants removed this case to this Court on November 4, 2022, based on this Court's jurisdiction over diversity cases pursuant to 28 U.S.C. 1332.[16] In a diversity case, this Court applies federal procedural rules and state substantive law.[17]

As Plaintiff correctly points out, Plaintiff seeks reconsideration of an order that did not end this action, and thus, Plaintiff seeks relief under Federal Rule of Civil Procedure 54(b).[18] Under Rule 54(b), "the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law."[19] "The power to reconsider or modify interlocutory rulings is committed to the discretion of the district court, and that discretion is not cabined by the heightened standard for reconsideration governing final orders."[20]

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[15] R. Doc. 32.
[16] R. Doc. 1.
[17] *Weatherly v. Pershing, L.L.C.*, 945 F.3d 915, 925 (5th Cir. 2019) (*citing Hanna v. Plumer*, 380 U.S. 460, 465, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965)).
[18] *See Austin v. Kroger Tex., LP*, 864 F.3d 326, 336 (5th Cir. 2017).
[19] *Id.* (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990)).
[20] *Id.* at 337 (*quoting Saint Annes Dev. Co. v. Trabich*, 443 F. App'x 829, 831-32 (4th Cir. 2011)) (citation modified).

B. The Effect of *Police Jury*

In the Order and Reasons ordering arbitration, this Court found that the domestic insurers that are parties to this case may be compelled to arbitrate under the Convention through equitable estoppel.[21] One year later, the United States Court of Appeals for the Fifth Circuit confirmed in *Bufkin v. Enterprises, LLC v. Indian Harbor Insurance* that "equitable estoppel is appropriate to compel arbitration [of domestic insurers] under the Convention" when the plaintiff "raises allegations of substantially interdependent and concerted misconduct by both a non-signatory (the domestic insurers) and one or more signatories to the contract (the foreign one)."[22] The *Bufkin* court noted that "this conclusion does not run 'against Louisiana public policy'" because "[t]he Convention is an exception to Louisiana's general bar on policy terms that deprive its state courts of jurisdiction and venue in actions against insurers."[23]

Subsequently, in *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.*, the Louisiana Supreme Court addressed questions certified from the United States District court for the Western District of Louisiana and expressly disagreed with the *Bufkin* court.[24] Relevant to this Motion, the *Police Jury* court held that "a domestic insurer may not resort to equitable estoppel under Louisiana law to enforce an arbitration clause in another insurer's policy in contravention of the positive law

[21] R. Doc. 29 at 9-12.
[22] 96 F.4th 726, 732 (5th Cir. 2024).
[23] *Id.* (citing LA. R.S. § 22:868).
[24] 395 So.3d 717 (La. 2024).

prohibiting arbitration in La. R.S. 22:868(A)(2)."[25] In addressing *Bufkin*, the Louisiana Supreme Court explained that:

> We find this conclusion flawed and not supported by Louisiana law. Notably, domestic insurers do not fall under the rules of the Convention. The *Bufkin* court did correctly recognize that the Convention is an international treaty enacted to encourage "the recognition and enforcement of commercial arbitration agreements in international contracts." The *Bufkin* court failed to acknowledge that Louisiana has positive law on this issue. Indeed, La. R.S. 22:868 precludes domestic insurers' use of estoppel to compel arbitration. Defendants' reliance on *Bufkin* is misplaced.[26]

The purported tension between the *Bufkin* and *Police Jury* holdings has led to a split among the different sections of this court. Under one series of cases, courts have held that *Police Jury* and Louisiana law precludes district courts from compelling domestic insurers through equitable estoppel to arbitrate under the Convention.[27] Another series of cases, however, has held that domestic insurers may rely on the *federal* common-law doctrine of equitable estoppel to compel arbitration in cases such as this one.[28] As of the date of this Order and Reasons, there are at least six cases on appeal to the Fifth Circuit which pose the question of whether equitable estoppel in this

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[25] *Id.* at 729.
[26] *Id.* (citations omitted).
[27] *See Certain Underwriters at Lloyd's London v. Belmont Commons*, No. 22-CV-3874, 2025 WL 239087 (E.D. La. Jan. 17, 2025) (Fallon, J.); *Crescent City Surgical Operating Co. v. Certain Underwriters at Lloyd's London*, No. 22-CV-2625, 2025 WL 239404 (E.D. La. Jan. 17, 2025) (Fallon, J.); *3501 N. Causeway Assocs., LLC v. Certain Underwriters at Lloyd's London*, 348 F.R.D. 298 (E.D. La. 2025) Barbier, J.); *Apex Hosp. Grp., LLC v. Indep. Spec. Ins. Co.*, No. 23-CV-2060, 2025 WL 457874 (E.D. La. Feb. 11, 2025) (Milazzo, J.); *Ramsey v. Indep. Spec. Ins. Co.*, No. 23-CV-632, 2025 WL 624031 (E.D. La. Feb. 26, 2025) (Lemelle, J.).
[28] *Par. of Lafourche v. Indian Harbor Ins. Co.*, No. 23-CV-3482, 2025 WL 754333 (E.D. La. Mar. 10, 2025) (Morgan, J.); *Arrive NOLA Hotel, LLC v. Certain Underwriters at Lloyd's London*, No. 24-CV-1585, 2025 WL 871608 (E.D. La. Mar. 20, 2025) (Brown, J.).

context implicates state or federal estoppel principles.[29] Plaintiff acknowledges the cases pending before the Fifth Circuit on this issue, and contends "presumably the United States Fifth Circuit, pursuant to *Erie*, will follow the now-final decision of the Louisiana Supreme Court and hold that the doctrine of equitable estoppel does not apply."[30] The Defendant insurers counter this argument and, instead, argues that the Louisiana Supreme Court's *Police Jury* decision is inapposite, arguing

> the relevant equitable estoppel principles in Convention cases are provided by federal common law, not state law. . .Unless and until there is a statutory amendment, a contrary U.S. Supreme Court decision, or a contrary opinion from the Fifth Circuit *en banc*, the Fifth Circuit's rule of orderliness and the binding precedent set forth in *Bufkin* not only supports but necessitates this court's orders staying and compelling all matters in dispute to arbitration.

The Court notes that it is not contested that the policy in this matter was issued by domestic and foreign insurers covered under the Convention. The Louisiana Supreme Court in *Policy Jury* emphasized that the certified questions "concern the validity of arbitration clauses in insurance policies issued to Calcasieu; specifically surplus lines policies between domestic insurers and Louisiana political subdivisions."[31] Plaintiff also relies on the Fifth Circuit decision in *S.K.A.V., L.L.C. v. Indep. Specialty Ins. Co.*[32] That case, too, did not involve foreign insurers. Such is not the case here as there are foreign insurers involved. However, it is possible for the Court to bifurcate its ruling such that *Police Jury* would be applied to the domestic insurers while

[29] *Police Jury v. Indian Harbor*, 24-CV-30696; *Town of Vinton v. Indian Harbor*, 24-CV-30035; *Indian Harbor v. Belmont Commons*, 25-CV-30047; *Crescent City Surg. v. Interstate Fire*, 25-CV-30044; *N. Causeway v. Certain Underwriters*, 25-CV-30117; *Apex Hosp. v. Indep. Spec.*, 25-CV-30107.
[30] R. Doc. 30-2.
[31] 395 So.3d 717 (La. 2024).
[32] 103 F. 4th 1121 (5th Cir. 2024).

leaving the stay in place as to the foreign insurers, whose contracts are still governed by the Convention.

This Court finds that federal common law is inapplicable to this case because the Fifth Circuit has required the application of state law when considering the principle of equitable estoppel both broadly and specifically in the arbitration context. Broadly speaking, the Fifth Circuit has held that equitable estoppel is governed by state law, not federal common law. In *Cure & Assocs., P.C. v. LPL Fin. LLC*, 118 F.4th 663 (5th Cir. 2024), the Court looked to Texas and California law to determine whether the principle of equitable estoppel can compel nonsignatory parties to arbitration. The Court eschewed federal common law in favor of state law when applying this equitable principle. Because this Court is bound to examine state law when determining the applicability of equitable estoppel, Louisiana law controls in this case. More specifically, the Fifth Circuit has held that a non-signatory to an arbitration agreement may compel a signatory to arbitrate based on equitable estoppel only "if the relevant state contract law so permits."[33] If state contract law does not permit the usage of equitable estoppel to compel arbitration, the principle cannot and does not apply.

The Louisiana Supreme Court was clear in *Police Jury*: equitable estoppel is not available to domestic insurers because it is in direct conflict with L.A. R.S. 22:868(A)(2).[34] The Court unambiguously held that state law prevents domestic insurers from using equitable estoppel to invoke the compulsion of arbitration via the

[33] *Crawford Pro. Drugs, Inc. v. CVS Caremark Corp.*, 748 F.3d 249, 261 (5th Cir. 2014).
[34] *Police Jury of Calcasieu Par.*, 395 So. 3d at 729.

Convention.[35] The Court adopts that the astute legal analysis of another section of this court in *Certain Underwriters at Lloyd's London et al. v. Belmont Commons LLC et al.*[36] Following the Fifth Circuit's holding in *Crawford*, because equitable estoppel is not available for domestic insurers according to relevant state contract law, it may not be used by domestic insurers of surplus lines policies to compel arbitration. Instead of an *Erie* guess, now we have an *Erie* answer.

C. Analysis of a Discretionary Stay

The Court now turns to whether maintaining or lifting the stay is appropriate. The Court has broad discretion to stay proceedings both in the interest of justice and in control of its docket.[37] The Court's discretion is not boundless. Rather, when considering whether to stay litigation pending arbitration, the Court considers whether 1) the arbitrated and litigated disputes must involve the same operative facts; 2) the claims asserted in the arbitration and litigation must be "inherently inseparable"; and 3) the litigation must have a "critical impact" on the arbitration.[38] Neither party addressed these factors. Defendants, who here seek to maintain the stay, bear the burden of justifying such delay. Finally, "before granting a stay pending the resolution of another case, the court must carefully consider the time reasonably expected for resolution of the other case" in light of the principle that "stay orders will be reversed when they are found to be immoderate or of an indefinite duration."[39]

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[35] *Id.*
[36] No. 22-CV-3874, 2025 WL 239087 (E.D. La. Jan. 17, 2025) (Fallon, J.).
[37] *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983).
[38] *Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 343 (5th Cir. 2004).
[39] *Wedgeworth*, 706 F.2d at 545 (*quoting McKnight v. Blanchard,* 667 F. 2d 477, 479 (5th Cir. 1982)).

The analysis of a stay pending arbitration does not focus on the potential harm to the non-signatories, in this case, the domestic insurers. Rather, the Court must examine "whether proceeding with litigation will destroy the signatories' right to a meaningful arbitration."[40] The foreign insurers in the present case have not argued that proceeding to litigate the claims against the domestic insurers would hinder or destroy their right to a meaningful arbitration to which they are entitled under the Convention. Furthermore, a stay would still be in force as it applies to the foreign insurers to ensure their right to meaningful arbitration.

It is "[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both."[41] The present case was filed in state court three years ago and has been pending in this Court since being removed here in December 2022. The Court finds that requiring the plaintiffs to wait for an indefinite period of time until such arbitration has been completed or the Fifth Circuit has issued a holding adopting *Police Jury* would hinder the plaintiff's right to seek a remedy from the domestic insurers.[42] To stay these proceedings as it relates to the domestic insurers would infringe upon the plaintiff's constitutional rights under the Louisiana constitution to "adequate remedy by due process of law and justice…without…unreasonable delay."[43] As such, the Court finds the balance of equities to weigh in favor of denying a stay as it relates to the domestic insurers.

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[40] *Waste Mgmt.*, 372 F.3d at 343 (*citing Adams v. Georgia Gulf Corp.*, 237 F.3d 538, 541 (5th Cir. 2001)).
[41] *Landis v. North Am. Co.*, 299 U.S. 248, 255, 57 S. Ct. 163, 166, 81 L. Ed. 153 (1936)
[42] *See McKnight*, 667 F.2d at 479.
[43] LA. CONST. art. I, §22.

III. CONCLUSION

For the foregoing reasons,

IT IS ORDERED that Plaintiff Riverside Academy, Inc.'s Motion to Reopen Proceedings, Lift Stay, and Reconsider/Set Aside Order Granting Motion to Stay Proceedings and to Compel Arbitration[44] is **GRANTED in part** and **DENIED in part**. The motion is **GRANTED** only as it applies to domestic insurer Defendants. Because the Convention applies to the arbitration agreement with the foreign insurers, the motion is **DENIED** as it applies to the foreign insurer Defendants.

New Orleans, Louisiana, August 19, 2025.

WENDY B. VITTER
United States District Judge

[44] R. Doc. 30.