

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ISHWAR KRUPA, LLC

v.

INDEPENDENT SPECIALTY INSURANCE
COMPANY and CERTAIN
UNDERWRITERS AT LLOYDS AND
OTHER INSURERS SUBSCRIBING TO
BINDING AUTHORITY
B604510568622021

Case No. 2:22-cv-03240

Judge Eldon E. Fallon

Magistrate Judge Dana M. Douglas

ORDER AND REASONS

The Court has before it Plaintiff's Motion for Certification of Interlocutory Appeal, R. Doc. 25, from this Court's Order, R. Doc. 24, granting Defendants' Motion to Compel Arbitration, R. Doc. 13. Defendants have responded in opposition. R. Doc. 27. Having considered the briefing and the applicable law, the Court rules as follows.

I. BACKGROUND

This case arises out of alleged damage to property owned by Plaintiff Ishwar Krupa, LLC, which had an insurance policy ("the Policy") with Defendant Independent Specialty Insurance Company ("Independent"). R. Doc. 1-2 at 1-2. Plaintiff alleges that, on August 29, 2021, Hurricane Ida caused significant damage to its property. *Id.* Plaintiff alleges that Independent conducted an inspection which constituted "satisfactory proof of loss," but that Independent failed to adjust the claim or provide compensation to Plaintiff following the inspection. *Id.*

Plaintiff brought suit against Defendant, asserting: (1) breach of insurance contract; (2) violation of La. R.S. § 22:1892 for failing to meet statutory payment deadlines; (3) violation of La. R.S. § 22:1973 for, *inter alia*, breach of a duty of good faith and fair dealing; (4) negligence. *Id.* at 3-5.

Plaintiff seeks damages including, but not limited to: (1) repair and remediation expenses; (2) structural damages; (3) inability to make appropriate repairs due to inadequate insurance payments; (4) any and all other applicable damages arising under any of the policy's sub-coverage limits, including but not limited to debris removal and increased cost of construction; (5) diminution in value of property; (6) loss of business income; (7) actual damages related to the increased cost of repairs; (8) attorney's fees and penalties; and (9) costs of this litigation and any pre-litigation costs related to the insurer's failure to make adequate insurance payments. *Id.* at 6.

Defendants generally deny Plaintiff's allegations and assert a number of affirmative defenses, including: (1) Defendants are entitled to a set off in an amount equal to any and all payments or benefits that Plaintiff received or is entitled to receive from any collateral sources; (2) damages limited by the Policy; (3) Defendants did not act in bad faith; (4) Defendants are not in violation of La. R. S. §§ 22:1893; 1973; (5) Defendants have satisfied their obligations under the Policy by investigating and adjusting Plaintiff's claims in accordance with the applicable statutes, rules, and regulations, and in accordance with the prevailing standards for the industry. R. Doc. 7 at 7-16.

This case was originally filed in Civil District Court for the Parish of St. Charles, State of Louisiana. Defendants removed it to Federal Court citing a binding arbitration agreement falling under the New York Convention. R. Doc. 1 at 6. Subsequently, Defendants moved this Court to compel arbitration in this matter under that arbitration agreement. This Court granted

Defendants’ motion to compel arbitration under binding Fifth Circuit precedent in *Sphere Drake Ins. PLC v. Marine Towing, Inc.*, 16 F.3d 666 (5th Cir. 1994),

II. DISCUSSION

Plaintiff now moves this Court to certify its order compelling arbitration for immediate appeal to the Fifth Circuit pursuant to 28 U.S.C. 1292(b). to certify an appeal under §1292(b), the Court must find that: (1) there is a controlling question of law; (2) for which there is “substantial ground for difference of opinion”; and (3) immediate appeal would materially advance the termination of the litigation. All three criteria must be met before a district court may certify an interlocutory order for appeal.

Here, Plaintiff argues that there is a controlling question of law for which there is a substantial ground for difference of opinion because precedents in four other circuits, the Second, Third, Ninth, and Eleventh, conflict with the Fifth Circuit’s opinion in *Sphere Drake* which this Court found to be controlling and to require arbitration in this matter. *See Kahn Lucas Lancaster, Inc. v. Lark Intern. Ltd.*, 186 F.3d 210 (2d Cir. 1999), *abrogation on other grounds recognized by Marks on Behalf of SM v. Hochhauser*, 876 F.3d 416 (2d Cir. 2017); *Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440 (3d Cir. 2003); *Czarina, LLC v. W.F. Poe Syndicate*, 358 F.3d 1286, 1290–91 (11th Cir. 2004); and *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996, 999-1001 (9th Cir. 2017), *abrogated on other grounds by GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1642 (2020).

However, a substantial ground for difference of opinion exists if “the circuits are in dispute on the question *and the Court of Appeals of the circuit [encompassing the district court] has not*

*spoken on the point ... or if novel and difficult questions of first impression are presented.*¹” *Fairfield Royalty Co. v. Island Operating Co.*, 2011 WL 6140665, at *2 (E.D. La. Dec. 9, 2011) (emphasis added) (quoting *In re Chinese–Manufactured Drywall Prods. Liab. Litig.*, 2011 WL 2443693 (E.D. La. 2011); see also *Upper Room Bible Church, Inc. v. Sedgwick Delegated Auth.*, 2023 WL 2989463, at *2 (E.D. La. Apr. 18, 2023) (explaining same). Here, although Plaintiff is correct that other circuits have declined to follow the Fifth Circuit’s holding in *Sphere Drake*, leaving the circuits in dispute, the Fifth Circuit has nonetheless spoken directly on the contested issue in *Sphere Drake*. Accordingly, there is no substantial ground for difference of opinion that would satisfy that requirement for interlocutory certification under §1292(b)

Because Plaintiff cannot show that their motion involves a controlling question of law for which there is a substantial ground for difference of opinion, the Court need not address the other criteria required for interlocutory certification under §1292(b).

III. CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Certification of Interlocutory Appeal, R. Doc. 25, is hereby **DENIED**.

New Orleans, Louisiana, this 17th day of May, 2023.

A handwritten signature in black ink, reading "Eldon C. Fallon". The signature is written in a cursive, flowing style. The first name "Eldon" is written with a large, stylized "E". The middle initial "C." is written in a smaller, more compact cursive. The last name "Fallon" is written with a large, stylized "F" and a long, sweeping tail that extends to the right.

United States District Judge

¹ Neither party argues that any novel and difficult questions of first impression are presented here.