UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 21-82186-CIV-CANNON/Reinhart

CHRISTINA COOK,

Plaintiff,

v.

XL SPECIALTY INSURANCE COMPANY,

Defendant.
_____/

ORDER GRANTING IN PART PLAINTIFF'S MOTION TO CONFIRM ARBITRATION AWARD AND ENTER PARTIAL FINAL JUDGMENT THEREON

THIS CAUSE comes before the Court upon Plaintiff's Motion to Confirm Arbitration Award and Enter Judgment Theron (the "Motion") [ECF No. 48], filed on August 5, 2024. The Court has reviewed the Motion, Defendant's Response in Opposition [ECF No. 49], Plaintiff's Reply [ECF No. 50], and the complete record. The Court also heard argument on the Motion on October 17, 2024, and received post-hearing proposed partial final judgments [ECF Nos. 53–55]. For the reasons set forth below, the Motion is **GRANTED IN PART**, consistent with this Order and a Partial Final Judgment to follow.

RELEVANT BACKGROUND

This action stems from a 2017 boating accident where Plaintiff was struck by propellers and sustained severe injuries [ECF No. 1 ¶ 16]. The boat, owned by Deep Obsession LLC ("Obsession"), "is a diving vessel that provides scuba, swimming and snorkeling services" [ECF No. 1 ¶ 13]. At the time of the accident, Obsession had a Commercial Wet Marine Insurance Policy (No. XLY0000355) (the "Policy") issued by Defendant with liability limits of

$1,000,000.00 per occurrence [ECF No. 1 ¶¶ 15, 16]. Plaintiff ultimately entered into a Settlement Agreement, Assignment and Covenant Not to Execute, with Obsession, dated September 16, 2021 (the "*Coblentz* Agreement")[1] [ECF No. 1-4]. Pursuant to the *Coblentz* Agreement, Obsession consented to the entry of a Final Judgment against it for the sum of $3,000,000 [ECF No. 1 ¶ 26]. Plaintiff agreed not to execute on the judgment in exchange for an assignment of Obsession's rights under the Policy [ECF No. 1 ¶ 26].

On December 7, 2021, Plaintiff filed the present lawsuit, asserting claims for Declaratory Judgment (Count I), Breach of Contract (Count II), and Bad Faith (Count III) [ECF No. 1]. The Complaint alleges that Plaintiff is an assignee under Obsession's insurance policy with Defendant and seeks to recover $3,000,000—the amount of the consent judgment in the *Coblentz* agreement from Defendant [ECF No. 1]. Defendant filed a Motion to Dismiss, or alternatively, a Motion to Compel Arbitration [ECF No. 14]. The Court denied the Motion to Dismiss but granted the Motion to Compel Arbitration [ECF No. 28]. The Court stayed the case pending arbitration, and in accordance with Florida law, also abated Plaintiff's bad faith claim pending the resolution of her coverage claims [ECF No. 25 pp. 11–12; ECF No. 28].

Following an arbitration hearing, the arbitrators (the "Panel") denied Defendant's motion for dispositive relief, concluded that Defendant breached its duty to defend Obsession under the

[1] The term "Coblentz agreement" comes from the case *Coblentz v. Am. Sur. Co. of N.Y.*, 416 F.2d 1059 (5th Cir. 1969). A *Coblentz* agreement is an agreement for entry of a consent judgment against an insured in situations where the insurer declines to defend or offers to defend under a reservation of rights. 416 F.2d at 1059. In return for a stipulated judgment, the claimant agrees not to execute against the insured. *Id*. "Florida courts will uphold a *Coblentz* agreement provided that there is coverage, the insurer wrongfully refused to defend the underlying suit, and the agreement is reasonable and entered in good faith." *Allstate Ins. Co. v. Andrews Florist on 4th St., Inc*., No. 8:08-CV-2253, 2011 WL 672349, at *1 n.2 (M.D. Fla. Feb. 17, 2011) (citation omitted); *see also Davis v. Great N. Ins. Co*., 650 F. Supp. 3d 1332, 1340 (S.D. Fla. 2023), *aff'd*, No. 23-10137, 2024 WL 2815135 (11th Cir. June 3, 2024).

Policy, and held that Defendant had a duty to indemnify Obsession under the Policy [ECF No. 48-1 pp. 1–2]. The Panel determined, however, that genuine issues of material fact remained as to whether the *Coblentz* Agreement was entered into in good faith and whether Obsession's assignment of its claims to Ms. Cook was valid and legally enforceable [ECF No. 48-1 p. 2]. The Panel thus proceeded to an evidentiary hearing to adjudicate these remaining issues, ultimately rendering its final award on June 17, 2024 [ECF No. 48-2].

In its final award, the Panel made various factual findings pertinent to the instant Motion: (1) that the *Coblentz* Agreement was "entered into in good faith"; (2) that "the assignment of Deep Obsession's claim against XL Specialty Insurance Company in the *Coblentz* agreement to Plaintiff was valid and legally enforceable"; and (3) that "XL Specialty Insurance Company, the insurer, is bound by the terms of the *Coblentz* agreement dated September 16, 2021, and is obligated to pay the Claimant, at least to the full extent of its policy limits" [ECF No. 48-2 p. 2].

Based on the Panel's factual findings, the Panel issued its final award, the text of which is reproduced in full below:

> 1. Claimant Cook's claim for declaratory action is granted to the extent set forth above.
>
> 2. Claimant Cook's claim for breach of contract is granted, and XL Specialty Insurance Company is obligated to pay Claimant, at least to the full extent of its insurance policy limits.
>
> 3. The administrative fees of the American Arbitration Association ("AAA") totaling $16,175.00 and the compensation of the Arbitrators totaling $162,730.00 shall be borne equally by the parties. Therefore, XL Specialty Insurance Company has to pay Christina Cook, an amount of $21,690.00.
>
> 4. The prevailing party in this arbitration proceeding is Claimant.
>
> 5. This Award is in full settlement of all claims submitted to this arbitration.

> 6. Having determined that any claim in excess of the policy limits whether based on bad faith or any other extraordinary theory is beyond the scope of the matters submitted, the Panel makes no determination on this issue.

[ECF No. 48-2 p. 3]. As of this Order, Plaintiff has collected $1,000,000 from Defendant, which is reflected in Plaintiff's Proposed Order [ECF No. 54-1 p. 2].

Plaintiff now brings the instant Motion under the Federal Arbitration Act, 9 U.S.C. §§ 1–16, seeking to confirm the arbitration award and enter partial judgment thereon [ECF No. 48]. Defendant opposes the Motion, arguing that Plaintiff is asking the Court to enter a judgment that goes beyond what the Panel awarded [ECF No. 49]. The Motion is ripe for adjudication.

LEGAL STANDARDS

"The Federal Arbitration Act ["FAA"] presumes that arbitration awards will be confirmed, and judicial review of an arbitration award is narrowly limited." *Rosensweig v. Morgan Stanley & Co.*, 494 F.3d 1328, 1333 (11th Cir. 2007) (citing *B.L. Harbert Int'l, LLC v. Hercules Steel Co.*, 441 F.3d 905, 909 (11th Cir. 2006)). A district court, however, may modify or correct an arbitration award "to effect the intent thereof and promote justice between the parties," but only in the following limited circumstances: "[w]here there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award," "[w]here the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted," or "[w]here the award is imperfect in matter of form not affecting the merits of the controversy." 9 U.S.C. § 11(a)–(c).

"Because arbitration is an alternative to litigation, judicial review of arbitration decisions is 'among the narrowest known to the law.'" *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc.*, 508 F.3d 995, 1001 (11th Cir. 2007) (quoting *Del Casal v. E. Airlines, Inc.*, 634 F.2d

295, 298 (5th Cir. Unit B Jan. 1981)). Thus, the FAA creates a heavy presumption in favor of confirming arbitration awards. *See Garcia v. Church of Scientology Flag Serv. Org., Inc*., No. 18-13452, 2021 WL 5074465, at *10 (11th Cir. Nov. 2, 2021) (citation omitted). As the presumption implies, "a court's confirmation of an arbitration award is usually routine or summary[,]" *Riccard v. Prudential Ins. Co*., 307 F.3d 1277, 1288–89 (11th Cir. 2002) (citation omitted), and "federal courts should defer to the arbitrator's resolution of the dispute whenever possible[,]" *Garcia*, 2021 WL 5074465, at *10 (quotation marks and citation omitted).

DISCUSSION

The parties disagree about how the Court should effectuate the Panel's decision in a partial final judgment. There are two primary issues. First, Defendant objects to including the $3,000,000 figure of the *Coblentz* Agreement in the partial final judgment. And second, the parties dispute whether Plaintiff is entitled to prejudgment interest. The Court addresses each issue in turn.[2] [3]

I. The $3,000,000 Figure

The parties agree that Plaintiff is entitled to $1,000,000 immediately following the Panel's Final Award, and in fact, Defendant already transmitted that sum to Plaintiff (as confirmed by the parties). The parties also agree that Plaintiff has no basis to collect $3,000,000 today, because any award beyond the $1 million policy limits first would require Plaintiff to prevail on her bad faith claim. *See* Fla. Stat. § 624.155; *see also Fridman v. Safeco Ins. Co. of Ill.*, 185 So. 3d 1214 (Fla.

[2] Plaintiff's Reply in support of the Motion also seeks attorneys' fees, but as the Court previously explained, "Plaintiff shall defer filing of any motion for attorneys' fees until resolution of Plaintiff's Motion" [ECF No. 53].

[3] Defendant's Opposition to the Motion does not contest that Plaintiff is entitled to $21,690.00 in arbitration administrative fees [ECF No. 49]. And during oral argument, Defendant conceded the point [ECF No. 53]. The Court therefore includes the $21,690.00 in administrative fees in the partial final judgment.

2016). Where the parties part ways, however, is on the issue of whether the $3,000,000 consent judgment stipulated in the *Coblentz* Agreement [ECF No. 1-4 p. 2] should be explicitly included (that is, noted, not awarded) in the Court's present entry of partial final judgment following arbitration. According to Plaintiff, express reference to the $3 million *Coblentz* judgment in the partial final judgment is warranted because the arbitration panel determined in the final award that the *Coblentz* agreement was entered into in good faith; is valid and legally enforceable; and binds Defendant [ECF No. 48-2 p. 2; ECF No. 50 pp. 1–4]. This conclusion, Plaintiff submits, accords with Florida Supreme Court precedent approving of the practice "in which execution issues only for the policy limits but the total amount of the damages is included in the final judgment." *Fridman*, 185 So. 3d at 1229. Defendant, for its part, objects to inclusion of the $3 million figure in the partial final judgment to follow, arguing that the Panel did not consider any claim beyond the $1,000,000 policy limit, and characterizing Plaintiff's request as impermissibly seeking an award in excess of what Defendant submits is the extent of the panel's award [ECF No. 49 p. 2].

Upon review of the parties' arguments and the full record, and applying the Florida Supreme Court's decision in *Fridman*, the Court agrees with Plaintiff that the Panel's award constitutes a "determination of liability" and an adjudication of "the full extent of [] her damages," which in this case constitutes the stipulated $3 million *Coblentz* judgment to be paid in the event that Plaintiff prevails in her bad faith claim. *Fridman*, 185 So. 3d at 1222–25 (holding that the full extent of damages as determined in the coverage litigation becomes "a binding element of damages in the subsequent bad faith litigation against the same insurer").

To start, the *Coblentz* agreement provides as follows:

> Cook and Obsession, having conducted discovery, exchanged documents, and conferred with a retired judge; and having carefully considered all the available evidence, having further exercised all necessary due diligence . . . agree that a Final

> Judgment will be entered in favor of Cook and against Obsession in the sum of Three Million Dollars

[ECF No. 1-4 p. 2]. Under Florida law, a Coblentz agreement "may not be enforced against the [insurer] if it is unreasonable in amount or tainted by bad faith." *Steil v. Fla. Physicians' Ins. Reciprocal*, 448 So. 2d 589, 592 (Fla. Dist. Ct. App. 1984). A determination of reasonableness of the settlement agreement is made in view of the "of the degree of probability of the insured's success and the size of the possible recovery." *Indep. Fire Ins. Co. v. Paulekas*, 633 So. 2d 1111, 1114 (Fla. Dist. Ct. App. 1994).

Here, the Panel squarely addressed the question of whether the *Coblentz* agreement could be enforced against Defendant—setting the matter for resolution at a separate hearing on the issue [ECF No. 48-1 p. 2; ECF No. 48-2]. Indeed, the parties contested this issue, took discovery, and offered documents along with fact and expert witnesses over a two-day hearing [ECF No. 48-1 p. 2; ECF No. 48 ¶¶ 11–12]. At the conclusion of the hearing, the Panel expressly determined that the *Coblentz* agreement was "entered into in good faith" and was "valid and legally enforceable"—necessarily determining that the $3 million consent judgment constitutes a reasonable representation of the full extent of Plaintiff's damages [ECF No. 48-2 p. 2]. *See Steil*, 448 So. 2d at 592; *Travelers Indem. Co. of Connecticut v. Richard Mckenzie & Sons, Inc.*, 10 F.4th 1255, 1260 (11th Cir. 2021); *Nat'l Tr. Ins. Co. v. Savoy Hotel Partners, LLC*, 702 F. Supp. 3d 1288, 1292 (S.D. Fla. 2023), *reconsideration denied*, No. 23-20860-CIV, 2024 WL 1908955 (S.D. Fla. Apr. 30, 2024). The Panel memorialized this conclusion in the Final Award, stating that "XL Specialty Insurance Company, the insurer, is bound by the terms of the *Coblentz* agreement"—again, an agreement that explicitly provides for a $3 million consent judgment [ECF No. 48-2 p. 2; ECF No. 1-4 p. 2]. Against this backdrop, the Court agrees with Plaintiff that the Panel's award

fixed the full extent of her damages at $3,000,000, the full collection of which depends upon her prevailing in the forthcoming bad faith action [*see* ECF No. 50 p. 2].

The Panel's evaluation of the *Coblentz* agreement and Plaintiff's current request for confirmation of the Panel's award accords with the Florida Supreme Court's decision in *Fridman*. In that case, an uninsured motorist ("UM") action, the jury awarded $1,000,000 in damages and the trial court entered final judgment against the insurance company in the amount of the policy limit—$50,0000. 185 So. 3d at 1216–17. The trial court's final judgment also included the following language:

> The Court reserves jurisdiction to determine the Plaintiff's right to Amend his Complaint to seek and litigate bad faith damages from the Defendant as a result of such jury verdict in excess of policy limits. If the Plaintiff should ultimately prevail in his action for bad faith damages against Defendant, then the Plaintiff will be entitled to a judgment, in accordance with the jury's verdict, for his damages in the amount of $980,072.91 plus interest, fees and costs.

Id. at 1218. On appeal, the Florida Supreme Court approved of this procedure and held that an insured "is entitled to a determination of liability and the full extent of his or her damages before litigating the first-party bad faith claim." *Id.* at 1222.[4] The Court further observed that "the full extent of damages in the UM action . . . is binding in the subsequent bad faith action against the same insurer." *Id.* at 1225. A contrary conclusion, the Court explained, "would force the parties to relitigate the issue of damages a second time prior to the bad faith trial[,] [which] would be an obvious waste of judicial and litigant resources." *Id.* Moreover, "if the amount of the UM verdict is not binding as an element of damages in the bad faith litigation, it would allow the insurer—or the insured, if the verdict were less than anticipated—a second bite at the proverbial apple." *Id.* And finally, the Florida Supreme Court approved of the trial court's approach "in which execution

[4] As the Florida Supreme Court explained in *Fridman*, the analysis for first- versus third-party bad faith claims is identical. *Id.*

issues only for the policy limits but the total amount of the damages is included in the final judgment." *Id.* at 1229.

The *Fridman* framework governs the instant Motion. As explained above, the Panel's determination that the *Coblentz* agreement here is valid and legally enforceable is necessarily predicated on a finding that the $3 million figure is reasonable. Accordingly, the $3 million consent judgment in the *Coblentz* agreement here is akin to the $1 million jury award in excess of policy limits awarded in *Fridman*, and like in *Fridman*, that figure is now binding as an element of damages in a subsequent bad faith claim. *Id.* at 1225. Anything less would give Defendant a second bite at the proverbial apple. Indeed, in *Fridman*, the Florida Supreme Court explicitly stated that an "insured is not obligated to obtain the determination of liability and the full extent of his or her damages through a trial and may utilize other means of doing so, such as an agreed settlement, arbitration, or stipulation before initiating a bad faith cause of action." *Id.* at 1224.

Refusing to grapple with *Fridman,* Defendant insists that the "the Arbitrators did not consider or adjudicate any claims beyond the $1,000,000 policy limit" [ECF No. 49 p. 2]. The Court disagrees, for the reasons stated above. Again, the Panel explicitly determined that the *Coblentz* agreement is valid and legally enforceable—and that determination is inextricably intertwined from the Panel's necessary determination that the $3 million sum is a reasonable representation of the full extent of Plaintiff's damages. Though Defendant emphasizes the Panel's "determin[ation] that any claim in excess of the policy limits whether based on bad faith or any other extraordinary theory is beyond the scope of the matters submitted," that statement merely recognizes the legally indisputable notion that (1) Plaintiff cannot enforce any judgment in excess of policy limits without first prevailing on her bad faith action; and (2) the bad faith claim was not

submitted to the Panel. No part of those realities undercuts the Panel's clear conclusion that the *Coblentz* agreement—a $3 million consent judgment—is valid and legally enforceable.

For these reasons, bound by the FAA's command to confirm awards absent limited exceptions such as fraud or mistake not relevant here, *see, e.g.*, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995)—and in accordance with the Florida Supreme Court's decision in *Fridman*, 185 So. 3d at 1228—the Court agrees with Plaintiff that the $3,000,000 figure should be included in the partial final judgment as a proven and fixed element of damages in Plaintiff's forthcoming bad faith action.

II. Prejudgment Interest

Plaintiff also seeks $369,583.56 in prejudgment interest on the $1,000,000, accruing from the date of Defendant's September 5, 2018, coverage denial letter [ECF No. 54-1 p. 2; ECF No. 48 pp. 6–8]. Plaintiff concedes that the Panel did not award prejudgment interest, even though Plaintiff explicitly sought such relief in her demand for arbitration [ECF No. 50 p. 4; ECF No. 50-1 p. 1]. In fact, after the Panel's Final Award neglected any mention of prejudgment interest, Plaintiff moved for clarification, asking the Panel to "clarify the award to expressly state that the Final Award does not address and does not include recoverable interest" [ECF No. 50-2 p. 2]. Because Plaintiff's motion for clarification was untimely under the arbitration rules, however, as Plaintiff does not contest, the Panel did not consider the motion and did not enter any subsequent or amended award [ECF No. 50-4]. Despite that procedural history, Plaintiff submits that the Panel "simply overlooked Plaintiff's claim for prejudgment interest," and that this Court has the discretion "to treat Plaintiff's Motion as one for partial modification of the award pursuant to Federal Arbitration Code 9 U.S.C § 11 or remand the issue to the arbitrators for their consideration" [ECF No. 50 pp. 4–6]. Defendant disagrees in full, emphasizing that the Final Award makes no

mention of prejudgment interest and explicitly states that the award is "in full settlement of all claims submitted this arbitration" [ECF No. 48-2 p. 3].

The Court agrees with Defendant and concludes that the FAA precludes the Court from awarding prejudgment interest in this case. To start, because Plaintiff sought interest in her arbitration demand and the Panel did not award interest (while explicitly noting that its "Award is in full settlement of all claims submitted to this arbitration"), Plaintiff correctly observes that her Motion seeks "partial modification of the award pursuant to Federal Arbitration Code 9 U.S.C § 11" [ECF No. 50 p. 6]. But as the Eleventh Circuit has observed, "the FAA provides only limited grounds for undoing or modifying an arbitration award, such as fraud, corruption, or an evident miscalculation." *McLaurin v. Terminix Int'l Co., LP*, 13 F.4th 1232, 1238 (11th Cir. 2021) (citing 9 U.S.C §§ 10, 11).[5] None of those circumstance exists in this case, leaving the Court with no basis or authority to modify the Panel's award and award interest.

[5] Section 11 of the FAA provides as follows:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration--
> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.
> The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9 U.S.C § 11.

Plaintiff's reliance on *Zac Smith & Co. v. Moonspinner Condominium Association, Inc.*, 534 So. 2d 739 (Fla. Dist. Ct. App. 1988), to the extent it bears upon the application of the FAA,[6] is misplaced [ECF No. 50 pp. 5–6]. *Zac Smith* involved a party seeking costs after "[t]he chairman of the arbitration panel directed appellees counsel to 'hold' the lists of costs because he was sure they would become important 'later.'" *Id*. at 741 n.2. After appellees were not awarded costs in the arbitration, the *Zac Smith* court relied on Fla. Stat. § 682.13(1)(d), which allows a court to vacate an arbitration award when the arbitrators "refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 682.06, as to prejudice substantially the rights of the party." Fla. Stat. § 682.13(1)(d). The court then concluded that it would treat appellee's timely filed motion as "one seeking partial vacation of the arbitration award on the ground that appellee was not allowed to present evidence material to the issue of the costs claim." *Zac Smith*, 534 So. 2d at 741. Plaintiff does not suggest the Panel prevented her from presenting argument or evidence on the issue of interest, so the principles underlying *Zac Smith*, or 9 U.S.C. § 10(a)(3), do not authorize the Court to award interest here. *See also* 9 U.S.C. § 10(a)(3) (permitting vacatur of arbitration award where arbitrator refused to "hear evidence pertinent and material to a controversy" or engaged in any other "misbehavior by which the rights of the party have been prejudiced").

Finally, as an alternative matter, Plaintiff asks the Court to remand the issue of interest back to the Panel for its consideration [ECF No. 50 p. 6]. But Section 10 of the FAA permits a

[6] *see Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1369 n.9 (11th Cir. 2005) ("The meaning of this statutory language in the FAA involves interpretation of a federal statute and thus is a question of federal law.")

rehearing directive only where the award is vacated in the first instance, which has not happened here, for the reasons stated above. 9 U.S.C § 11.[7]

CONCLUSION

Accordingly, it is **ORDERED and ADJUDGED** as follows:

1. Plaintiff's Motion to Confirm Arbitration Award and Enter Judgment Theron [ECF No. 48] is **GRANTED IN PART**.

2. Partial Final Judgment will follow by separate order.

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 12th day of December 2024.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record

[7] Such a procedural maneuver also would put this Court in a position of effectively undoing the Panel's procedural rules, which the Court declines to do. The Arbitration rules set timetables for filing post-award motions. Plaintiff did not follow those rules, and the Panel expressly declined to excuse that procedural violation when it refused to consider Plaintiff's untimely motion for clarification [ECF No. 50-4].