

New York Court Vacates Reinsurance Award Based On Arbitrator's Evident Partiality

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A New York federal district court vacated an arbitration award in a reinsurance dispute, finding that an arbitrator's failure to disclose his relationship with a party to the dispute reflected evident partiality. *Certain Underwriting Members at Lloyd's of London v. Insurance Co. of the Americas*, No. 16-CV-323 (S.D.N.Y. Mar. 31, 2017).

ICA, an insurance company that provides workers' compensation coverage, entered into reinsurance treaties with certain Lloyd's underwriters. When a dispute over two claims arose, ICA demanded arbitration and designated Alex Campos as its arbitrator. Before arbitration began, each panel member made affirmative disclosures regarding his relationships with the parties and individuals involved in the dispute. In his disclosure, Campos indicated that he had no personal relationship with any party or any business relationship with ICA. At the end of arbitration, the panel issued an award in ICA's favor. The Underwriters moved to vacate the award on several bases, including Campos's evident partiality. The court granted the motion.

Under the Federal Arbitration Act, an award may be vacated based on evident partiality if the moving party establishes by clear and convincing evidence that "a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." The court concluded that this standard was met because Campos failed to disclose his extensive business relationships with ICA and individuals associated with ICA. In particular, the court noted that shortly before arbitration began, Campos hired Ricardo Rios (the Treasurer, Secretary and Director of ICA) to serve as the CFO for Vensure Employee Services (of which Campos was the President and CEO). Noting that Rios was listed as a potential witness and was seated at ICA's table throughout the course of arbitration, the court deemed it "troubling" that the relationship between Campos and Rios was not disclosed. Similarly, other ICA directors were listed on the Vensure website as officers and were revealed to have prior dealings with Campos. Furthermore, Vensure and ICA operated out of the same suite at the same address.

In granting Underwriters' motion to vacate, the court rejected ICA's contentions that partiality was not established because Campos had no financial or personal stake in the outcome of the arbitration and that a more relaxed standard of impartiality applies for "party appointed arbitrators in tripartite industry arbitrations." However, the court cautioned that evident partiality must be analyzed on a case-by-case basis and that a failure to disclose a material relationship does not constitute *per se* partiality.

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