

## Finding Exception To Finality Rule, Second Circuit Rules That Arbitrators Retain Authority To Clarify Ambiguous Award

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The Second Circuit recognized an exception to *functus officio*, ruling that when an arbitration award is ambiguous, the arbitrators retain authority to clarify that award. *General Re Life Corp. v. Lincoln National Life Ins. Co.*, 2018 WL 6186078 (2d Cir. Nov. 28, 2018).

The reinsurance dispute between General Re and Lincoln centered on whether General Re was entitled to increase the premiums on certain life insurance policies. An arbitration panel issued an award holding that the agreement between the parties allowed General Re to increase the premiums and also allowed Lincoln to recapture the policies rather than pay the increased premiums. The award stated that “[a]ll premium and claim transactions paid by one party to the other following the effective date of the recapture (*i.e.*, from April 1, 2014) shall be unwound.” The parties took different positions as to how this language applied to premium payments made prior to April 1, 2014.

Lincoln petitioned the panel for guidance on the issue. General Re objected to the request, arguing that the panel would exceed its authority if it reconsidered or fundamentally changed the final award. Thereafter, the panel issued a “Clarification,” stating that the final award was ambiguous and that both parties were reading it in a manner inconsistent with the parties’ reinsurance agreement. The Clarification explained that General Re was entitled to retain all premiums paid prior to April 1, 2014, including unearned premiums, but that it remained liable for paying claims for all covered deaths, even those that occurred after April 1, 2014. A Connecticut federal district court granted Lincoln’s petition to confirm the Clarification and denied General Re’s petition to confirm the original award. The Second Circuit affirmed.

Under the doctrine of *functus officio*, once an arbitration panel has fully exercised its authority to adjudicate the issues submitted to it, its authority ceases and the panel has no further authority to reconsider those issues. However, the Second Circuit recognized an exception to *functus officio* where, as here, an award is susceptible to more than one interpretation or fails to address a contingency that later arises. The court emphasized the limited nature of the exception, stating that three conditions must be met to justify a clarification: (1) the final award is ambiguous; (2) the clarification clarifies the award rather than substantively modifies it; and (3) the clarification is consistent with the parties’ underlying agreement.

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