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NEWSLETTER

Arbitration Panel Has Authority to Award Policyholder Amount in Excess of Arbitration Claim

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The United States District Court for the Northern District of Illinois, applying federal and Illinois law, has held that an arbitration panel did not exceed its authority when it awarded a policyholder a greater amount than it had requested in its Statement of Claim. *Robertson-Ceco Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 2003 WL 22757755 (N.D. Ill. Nov. 19, 2003).

The policyholder company was insured under a D&O policy. After the policyholder's majority shareholder, a second company, sought to purchase the outstanding shares of the policyholder, several shareholder suits were filed against the policyholder. The policyholder settled the lawsuits by agreeing to pay a premium for the shares. It then submitted a claim to the D&O insurer for $4.2 million, which it asserted was the difference between what it paid for the shares and what it would have paid in the absence of litigation. The insurer refused to pay on the ground that the claim was outside the scope of the policy. The policyholder then submitted the claim to arbitration as required in the policy.

In its Statement of Claim filed in the arbitration, the policyholder claimed $4.2 million in damages, but noted that it might have cost as much as $6.75 million (the difference between the initial tender offer and the amount actually paid per share) to obtain releases from the plaintiff-shareholders. After full arbitration proceedings, the arbitration panel awarded the policyholder $7,446,103.

The insurer then challenged the award under Section 10(d) of the Federal Arbitration Act, which provides for the review and vacation of an arbitration award where "the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." The insurer argued that the company's Statement of Claim placed "a cap" on the amount the arbitration panel could award.

The district court disagreed with the insurer, holding that "[a]rbitrators are free to fashion any award that is just, equitable, and within the scope of the agreement of the parties.... [I]mposing a cap on an arbitration award based on the initial pleadings runs counter to the rules establishing arbitrator discretion in fashioning a remedy [such as the American Arbitration Association's Commercial Arbitration Rule § R-45]. Such a cap is

also counter to practice in the federal courts, where damages may exceed the amount in the initial pleading." As no transcript of the arbitration proceeding existed, the court "assumed" that the award was supported by evidence presented in the hearings.

The district court also found that the panel had not deprived the insurer of the ability to defend itself against a larger, "re-computated" award because such an award had been "put forth as a possibility" at the time when the company described the potential size of its damages in its Statement of Claim. In addition, the court found that the panel had not gone "outside the arbitration agreement to add new categories of damages," but had merely "recalculated the amount for the same claim of damages." The district court also held that the policyholder could maintain its count for "vexatious and unreasonable conduct" based on its allegation that the insurer had refused to pay covered losses without a legitimate basis and had attempted to delay payment "for as long as possible."

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