Disputes Over Arbitrator Qualifications: The Northern District of California Offers Some Guidance

Justin K. Fortescue
Reinsurance Alert
7.14.21

The selection of an arbitration panel can often lead to disputes between the parties regarding things like whether a particular candidate is qualified, whether a challenge to an arbitrator's qualifications can be addressed pre-award and whether a party that names an unqualified arbitrator should lose the opportunity to name a replacement. In *Public Risk Innovations v. Amtrust Financial Services*, No. 21-cv-03573, 2021 U.S. Dist. LEXIS 129464 (N.D. Ca. July 12, 2021), the court provided answers on all three of these issues.

In *Amtrust*, the parties filed cross-motions to compel arbitration. Although both parties agreed the dispute was arbitrable, they disagreed about whether Public Risk Innovations, Solutions and Management's (PRISM) arbitrator was qualified under the terms of the applicable contract. In seeking to have PRISM's arbitrator disqualified, Amtrust argued that he: (1) was not a "current or former official of an insurance or reinsurance company"; and (2) was not "disinterested." Amtrust also argued that because PRISM named an unqualified arbitrator (and presumably the time to appoint had passed), PRISM should be deemed to have failed to select an arbitrator as required by the contract and that Amtrust had the right to select a second arbitrator of its choice.

In evaluating the issues, the court first recognized the general proposition that a court cannot entertain an attack on an arbitrator's qualifications until after a final award has been issued. However, because the parties both agreed that the court should decide the issue upfront, rather than waiting until after the arbitration, the court proceeded to evaluate the qualifications of PRISM's arbitrator.

With respect to Amtrust's first argument, that the arbitrator was not a "current or former official of an insurance or reinsurance company," the court noted that the arbitrator had been "general counsel to numerous joint powers authorities and self-insurance joint powers authorities and risk pools."[1] While recognizing that some courts have held that self-insurance does not mean the same thing as insurance, the court held the arbitrator's experience at JPAs satisfied the requirement of the contract at issue. In support, the court noted that the parties' contract indicated the word "insurance" should be interpreted broadly since the contract referred to PRISM as a company even though it was a public entity. The court also noted that "a more generous interpretation of insurance" would be consistent with the specific process that the parties agreed to for selection of the arbitration panel – *i.e.*, that the whole point of the selection process was to allow each side to pick an arbitrator representative of its general interests and then have those arbitrators pick the third neutral.

As to Amtrust's second argument, that PRISM's arbitrator was not disinterested, the court agreed and held that he was not qualified to serve. In finding the arbitrator was not disinterested, the court held that the arbitrator "could feel some pressure to take positions favorable to PRISM" since he was currently an official for: (1) entities that have members who are also members of PRISM; and (2) entities that are members of PRISM itself. Notably, the court reached its conclusion despite the fact that there was no indication that the other entities or their members had any direct financial interest in how the parties' dispute was resolved.

Lastly, although the court found PRISM's arbitrator was not qualified, the court rejected Amtrust's argument that PRISM had forfeited its right to name a replacement. In holding Amtrust's argument was "meritless," the court noted that PRISM did not fail to appoint an arbitrator and the fact that PRISM's arbitrator turned out to be unqualified did not mean PRISM failed to act.

This case is important as it demonstrates that at least some courts will be willing to address disputes over the qualification of arbitrators pre-award, at least where the parties agree the court should do so. The case also provides some insight into how courts will interpret an arbitration provision that requires arbitrators to be a "current or former official of an insurance or reinsurance company."

If you have questions or would like additional information, please contact Justin K. Fortescue (fortescuej@whiteandwilliams.com; 215.864.6823) or another member of our Reinsurance Group.

---

[1] Joint powers authorities (JPAs) are legal entities that allow two or more public agencies to jointly exercise common powers.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.