

Arbitration Panel Did Not Exceed Authority By Reconsidering Initial Determination, Says New York Court Of Appeals

05.27.20



(Article from *Insurance Law Alert*, May 2020)

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Last year, a New York appellate court vacated an arbitration award issued in an insurance dispute on the basis that the arbitration panel exceeded its authority when it reconsidered a final liability award it had previously rendered. *American Int’l Specialty Lines Ins. Co. v. Allied Capital Corp.*, 2018 WL 5285241 (N.Y. App. Div. 1st Dep’t Oct. 25, 2018). See [November 2018 Alert](#). Last month, the New York Court of Appeals reversed, ruling that the panel acted within the bounds of its authority in reconsidering the “Partial Final Award.” *American Int’l Specialty Lines Ins. Co. v. Allied Capital Corp.*, 2020 WL 2066743 (N.Y. Apr. 30, 2020).

Allied sought defense and indemnity from American International Specialty Lines Insurance Company (“AISLIC”) for an underlying False Claims Act suit that it had settled for approximately \$10 million. When AISLIC denied coverage, Allied filed for arbitration. During the arbitration proceeding, the arbitration panel issued a determination as to AISLIC’s liability but stated that a separate hearing would be held as to the amount of defenses costs, if any, to which Allied was entitled. In its “Partial Final Award,” the arbitration panel held that the \$10 million settlement payment was not covered, but that Allied was entitled to reimbursement of defense costs.

Thereafter, but prior to the evidentiary hearing on the amount of expenses, the panel issued a “Corrected Partial Final Award,” which deviated from the original Partial Final Award by holding that the underlying settlement was a covered loss. After conducting an evidentiary hearing regarding the amount of covered defense costs, the panel issued a Final Award awarding Allied more than \$11 million in damages and interest. A New York trial court denied AISLIC’s motion to vacate the Corrected Partial Final Award and the Final Award. The appellate court reversed, ruling that the arbitration panel exceeded its authority when it reconsidered the Partial Final Award. The appellate court explained that under the doctrine of *functus officio*, an arbitrator may not entertain an application to change a final award, except to correct a deficiency of form or miscalculation.

Reversing the appellate court, the New York Court of Appeals held that the *functus officio* doctrine was inapplicable because no final award had been issued. The court explained that even assuming that parties to an arbitration can agree to the issuance of a partial final award resolving some, but not all, of the disputed issues, no such agreement was reached here. Although counsel had suggested a separate proceeding to determine the amount of defense costs, if recoverable, AISLIC did not consent to bifurcation of the proceedings and “neither the parties nor the arbitrators ever discussed or otherwise demonstrated any mutual understanding regarding whether the proposed severance of

the calculation of defense costs would result in a final partial award.” The court held that absent such express, mutual agreement, there was no final award which would trigger application of the *functus officio* doctrine.

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