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Highmark Can't Shake \$3.5M Judgment In Fee Dispute

By **Kelly Knaub**

Law360, New York (December 13, 2013, 7:06 PM ET) -- A Pennsylvania state judge denied Highmark Life Insurance Co.'s bid to vacate a \$3.6 million arbitration award in favor of Elite Underwriting Services LLC, saying that the exclusion of testimony by the parties' reinsurance broker did not warrant a vacatur.

Highmark filed a petition to vacate the award, arguing that the arbitrator made an erroneous legal ruling that resulted in the exclusion of reinsurance broker Denis Arizin's testimony, which the company claimed was crucial evidence to prove that its contract with Elite was the result of a mutual mistake.

Elite, which underwrote medical stop loss insurance on behalf of Highmark for self-funded employer benefit plans from 2005 until 2011, sought reimbursement from Highmark after it discovered that it had miscalculated its fees.

But Judge R. Stanton Wettick Jr. ruled that Highmark could not support its position that a mistake of law should warrant vacation of the award when the mistake resulted in the exclusion of testimony. He also said that the exclusion of Arizin's testimony was not an error and could not, on its own, prove Highmark's defense.

"Since Mr. Arizin played no role in negotiating or drafting the terms of the MGU Agreement between the parties and did not identify any evidence in support of his personal understanding of the MGU, the panel did not make any erroneous rulings in precluding Mr. Arizin's testimony as to his understanding of the parties' agreement," the ruling said.

"What was not in dispute was that Mr. Arizin and HM Life had the same understanding of the MGU fee," it added. "This testimony, by itself, would not support a finding of a mutual mistake."

The judge also found that the exclusion of Arizin's testimony constituted "harmless error" because the arbitrators had concluded there was no meaningful difference between the language in the contract at issue and the reinsurance cover note to which Arizin would have testified.

Furthermore, Judge Wettick said it was not clear what Arizin's testimony would have added to the testimony of Michael Sullivan, Highmark's president and chief operating officer, since Sullivan testified that he led the negotiations.

"Judge Wettick's decision was welcomed inasmuch as he conclusively established, once again, that a losing party in an arbitration has very limited bases on which to seek to vacate an award," Robert Tomilson, an attorney for Elite, told Law360.

"The very well reasoned award at issue was the result of an arbitration that included a 100,000-page production, nearly a dozen depositions, and a weeklong hearing before a three member panel of industry experts," he said. "Yet the petitioner claimed to have been denied a 'full and fair' hearing. The judge, not surprisingly, found that claim unpersuasive."

A representative for Highmark did not immediately respond to a request for comment.

Highmark is represented by Huhnsik Chung of Edwards Wildman, Brian Must and Joshua Broudy.

Elite is represented by Robert Tomilson and Matthew Klebanoff of Cozen O'Connor and Kevin Allen.

The case is Highmark Life Insurance Co. v. Elite Underwriting Services, case number 13-013031, in the Pennsylvania Court of Common Pleas, Allegheny County.

--Editing by Andrew Park.

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