IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

REPUBLIC WESTERN INSURANCE COMPANY	:	JULY TERM, 2000
Petitioner	:	No. 3342
v.	:	
LEGION INSURANCE COMPANY,	:	
Respondent	:	Control No. 072033

O R D E R

AND NOW, this 25th day of January, 2001, upon consideration of the Petition of Republic Western Insurance Company ("RWIC") to vacate the final order and arbitration award granted in favor of respondent, Legion Insurance Company ("Legion"), Legion's opposition to it and Legion's Cross-Motion to Confirm the Award, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that the RWIC's Petition to Vacate the Award of the Arbitrators is **Denied** and Legion's Cross-Motion to Confirm the Award is **Granted**.

BY THE COURT,

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ALBERT W. SHEPPARD, JR., J.

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.....

MEMORANDUM OPINION

ALBERT W. SHEPPARD, JR., J. ..... January 25, 2001

Presently before this court is the Petition of Republic Western Insurance Company ("RWIC") to vacate the final order and arbitration award ("Petition") granted in favor of respondent, Legion Insurance Company ("Legion"), and Legion's opposition to it. In its Petition, RWIC asserts essentially that it was denied a fair and impartial hearing since the neutral arbitrator refused to hear material evidence, improperly conducted the hearing and made manifest errors of law and fact. Legion, in turn, argues that RWIC has failed to demonstrate that material evidence was improperly excluded and that mistakes of law or fact are not grounds for overturning an arbitration award under Pennsylvania law.

For the reasons set forth, this court concludes that RWIC was not denied a full and fair hearing by the arbitration panel, and that RWIC did not present other reasons which warrant vacating the arbitration award. This court, thus, denies the Petition to Vacate the Arbitration Award and grants Legion's request to confirm the Award.

FACTUAL AND PROCEDURAL BACKGROUND

In March 1997, a reinsurance intermediary[1], acting on behalf of Legion, approached RWIC and offered it the opportunity to participate as a reinsurer of Legion in a program involving weather insurance policies which were produced and underwritten by Customized Worldwide Weather Insurance Agency, Inc. ("CWW"), as Legion's agent.[2] In its cover letter, the intermediary advised RWIC that "[t]he majority of the weather insurance book of business is related to special event business which consists of Television and Film Productions, Fairs, Festivals, Concerts, etc. [and that] [t]his is an exceedingly short-tail business with special events predominately being one-day events covered by a 'Stated Value At' Commercial Inland Marine Weather Insurance Policy Form." (Friedman Aff., Exhibit 2, at 2). Further, before agreeing to participate in the program, RWIC received and reviewed "Placement Information" concerning the weather insurance program and CWW's underwriting guidelines and historical statistics for weather insurance, along with sample policy forms and applications. Id., (Exhibits 2-4; and 4/20/00; N.T. 808-809; 882).

[1]The original intermediary was Andrew Edwards & Company, Inc., but the account was later moved to Towers Perrin Reinsurance. (Pet'r. Mem. of Law, at 6; Resp't. Mem. of Law, at 8 n. 7). See also (4/20/00; N.T. 803; Friedman Aff., Exhibit 2).

[2]CWW had been in the business of selling customized weather insurance since 1988. (4/17/00; N.T. 56). Prior to March, 1997, CWW had entered into a management agreement with Legion, an admitted carrier in reinsurance, under which CWW was authorized to underwrite weather insurance business on behalf of Legion. Id. at 65-67; 79.

On May 1, 1997, RWIC and Legion entered into a written contract, referred to as the Weather Insurance Quota Share Treaty ("Reinsurance Agreement" or "Agreement"),[3] which was set to terminate on May 1, 1998. See Petition, Exhibit 1. Under the Reinsurance Agreement, the "reinsurers" agreed to be liable for their proportionate share of the actual loss incurred by the reinsured, under the policies covered, in exchange for a proportion of the premiums paid by the reinsured. Id. at Art. 15. See also, Resp't. Mem. of Law, Exhibit 1. RWIC, as one of the reinsurers, had assumed 25% of the losses ceded up to a maximum of $3,000,000 per day, per peril and was liable for its proportionate share of loss adjustment expenses. Id. at Art. 3; Resp't. Mem. of Law, Exhibit 1; and 4/20/00; N.T. 836.

The subject matter of the Agreement is described by the "Business Covered" clause which states the following:

> All business classified by [Legion] as Commercial Inland Marine Weather Insurance including coverage for Event Business (indoor & outdoor events), Promotions & Weather Indemnifications, Agriculture, Transmission and Distribution Lines/Hydros, Property, Business Interruption, Municipal Snow Programs & Heating Degree Day/Temperature Programs against excess or minimum of rainfall, snow, wind including tornado and hurricane, steam flows, temperature, reasonable photographic conditions, adverse weather, sunshine, fog and lightning produced and underwritten by Customized Worldwide Weather Insurance Agency, Manhasset, New York.

Id. at Art. 1 (emphasis added). The Reinsurance Agreement covered insureds that were domiciled in the

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[3]A reinsurance agreement is one between two or more insurance companies entered into for the purpose of spreading and sharing risks arising under certain specified types of insurance policies. Typically, when reinsurance occurs, the reinsured, or ceding company, cedes to the reinsurer all or a portion of its risks for a stipulated portion of the premium, as well as, maintaining all contact with the original insured and handling all matters prior to and subsequent to the loss. 14 Summ. of Pa.Jurisprudence 2d, § 25:1. Here, Legion represents the company that issues the policies being reinsured, as the "ceding" or policy issuing company. RWIC represents one of reinsurers or "assuming" insurers that agreed to share in the risk of loss arising under the policies. (Petitioner's Mem. of Law, at 2).

United States and excluded all business not covered under Article 1, as well as Surety Credit and Financial Guarantee Insurance.[4] Id. at Arts. 5 & 9. In addition, CWW had to underwrite all of the business ceded under the Agreement. (Pet'r. Mem. of Law, at 4-5; Resp't. Mem. of Law, at 8; 4/18/00; N.T. 297).

Further, the Reinsurance Agreement had an arbitration clause which provided, in pertinent part, that:

> Article 24: Arbitration
>
> A. As a condition precedent to any right of action hereunder, any dispute or difference between [Legion] and [RWIC] relating to the interpretation or performance of this Contract, including its formation or validity, or any transaction under this Contract, whether arising before or after termination, shall be submitted to binding arbitration.
> . . .
> D. The arbitrators shall have the power to determine all procedural rules for the holding of the arbitration including but not limited to inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration. The arbitrators shall interpret this Contract as an honorable engagement and not merely as a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law. The arbitrators may award interests and costs excluding punitive and exemplary damages. Each party shall bear the expense of its own arbitrator and share equally with the other party the expense of the third arbitrator and of the arbitration.
>
> E. Arbitration hereunder shall take place in Philadelphia, Pennsylvania unless both parties otherwise agree. Except as hereinabove provided, the arbitration shall be in accordance with the rules and procedures established by the Uniform Arbitration Act as enacted in Pennsylvania.

Petition, Exhibit 1, at Art. 24 (emphasis added).

[4]Article 9 of the Reinsurance Agreement listed a total of nine (9) exclusions. The exclusions pertinent to this case are: (1) all business not covered under Article 1 and (2) Surety Credit and Financial Guarantee. (Petition, Exhibit 1, at Art. 9(A) & (H)).

The four (4) policies, at issue in this case, were underwritten by CWW in late 1997 and ceded to the Reinsurance Agreement. They are purportedly "heating degree day" ("HDD")[5] policies designed to protect against business interruption or contractual liability losses in the fuel oil industry, resulting from a heating degree day peril. (Resp't. Mem. of Law, at 9-10). In particular, the four policies involve three named insureds with "loss payees" and are all "valued at"[6] policies, requiring payment in the event that the weather during a specified period of time was warmer than normal. Specifically, policy IM1 0293017 and policy IM1 0293065 were issued to Worldwide Weather Trading Company ("WWT"), as the named insured, and the loss payee was Koch Supply & Trading or Koch Industries, Inc ("Koch").[7] (Resp't. Mem. of Law, Exhibit 7). Policy IM1 0293098 was issued to Scandinavian Re c/o Holborn Corporation ("Scandinavian Re") and its loss payee was Enron Capital & Trade Resources ("Enron"),[8] and policy IM1 0293071 was issued to El Paso Energy Marketing Company ("El Paso"). Id.

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[5]The term "heating degree day" refers to a measurement of temperature for determining the usage (of energy or fuel) based on the temperature people feel it would be to heat their house to 65 degrees Fahrenheit. It operates by taking the average of the maximum and the minimum temperatures on a particular day at a particular location and then subtracting it from 65 degrees. For example, if the maximum is 60 degrees and the minimum is 50 degrees, the average is 55 and it would be 10 heating degree days for that day. (4/17/00; N.T. 70-71; 157).

[6]The term "valued at" refers to a mechanism for determining the loss based on a previously agreed upon value resulting from the happening of a weather peril that is covered by the policy(ies). (4/17/00; N.T. 75-76; 124).

[7]On policy IM1 0293017, which was issued on November 1, 1997, the original loss payee was Koch Industries, Inc. and was changed to Koch Supply & Trading. On policy IM1 02965, which was issued on December 1, 1997, the original loss payee was Koch Supply & Trading. (Resp't. Mem. of Law, Exhibit 7).

[8]While Enron's interest does not appear on the policy itself, Scandinavian Re and Legion were contractually obligated to pay Enron upon the happening of the weather peril as shown by the insurance binder. (4/17/00; N.T. 185-187).

According to the testimony of Harold Mollin ("Mollin"), the lead underwriter for CWW, El Paso, Enron and Koch are energy companies in the fuel oil or utility business. (4/17/00; N.T. 107; 111-112; 196). See also, Friedman Aff., Exhibit 21, at 5. Under the El Paso policy, Legion was obligated to pay El Paso directly for business interruption losses resulting from heating degree day perils. (4/17/00; N.T. 110). With respect to the other three policies involving Scandinavian Re and WWT, Legion did not directly insure the fuel oil companies, Koch and Enron, but issued insurance, as an indemnity, to those entities who were contractually obligated to their respective loss payees or real parties in interest to pay upon the happening of a weather peril. Id. at 115-118; 119. Mollin explained the unique structure of these three policies when he testified that:

> [The energy companies] weren't used to this structure to take an insurance policy. What they were used to was entering into a contract, which is what they did, with the newly formed trading company, but knowing that this contract is backed. So they could enter into the contract, but they also know it was backed by insurance, that they know if those people in the trading company were not paid, they would find a way that the insurer would pay because they have a closer access and they were more used to dealing and they also knew that I had, you know, access because of what I do -- was doing for Legion. I mean it was us issuing the policy.

Id. at 114-115; . . .

> That was the reason for this structure, is that they [the loss payees or energy companies] couldn't accept nor wanted to accept an insurance policy, but they were comfortable in accepting a contract between, I guess, the newly formed trading company [WWT], which really had no assets, but knowing that they were really backed by this insurance and that they would be, I think, a loss payee.

Id. at 116. See also, Id. at 194 (relating that both Enron & Koch wanted an entity more substantial to sit in between them and the insurance company).

On April 8, 1998, RWIC received a "cash call" or request for payment, from the insurance intermediary, Towers Perrin, in the amount of $1,438,875.00 for its share of the losses allegedly arising under these four Legion policies. (Pet'r. Mem. of Law, at 4; Resp't. Mem. of Law, at 13; 4/18/00; N.T. 347). In response, RWIC requested detailed information on the losses in order to check the numbers and found certain discrepancies that Legion was purportedly trying to correct. (4/20/00; N.T. 762-764). Pursuant to RWIC's questions, Mr. Walsh, Legion's general counsel, conducted a review of the four policies, the underwriting submission, the placement slips and the Reinsurance Agreement's terms to determine if Legion's payment under these policies was appropriate. He determined that the claims were properly payable. (4/18/00; N.T. 359-360).[9] On cross-examination, Walsh testified that he "believed that [Legion] had an obligation to pay regardless of what happened underneath this policy via the trading, the option or whatever." (4/19/00; N.T. 499). In fact, Legion's other two reinsurers, Transatlantic Re and Hanover Re, had paid the four claims shortly after they were submitted. Id. at 696.

On May 4, 1998, Legion filed its demand for arbitration against RWIC claiming that RWIC was obligated to pay the losses under the Reinsurance Agreement. RWIC ultimately paid three of the claims under a reservation of rights, but it refused to pay the fourth which related to the Scandinavian Re policy and filed a counter-demand for rescission of the Reinsurance Agreement. Id. at 741; 749.

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[9]Specifically, Walsh was questioned about various aspects of the Scandinavian Re policy. He responded that: (1) it was not a problem that the insured had to be a domestic insured since he saw that the Reinsurance Agreement "applied not only to risks domiciled in the U.S. but to policies wherever issued by Legion"; (2) it was not a problem that Scandinavian Re is a reinsurance company; and (3) it was not a problem that Scandinavian Re had issued a trading contract to Enron since it had an insurable interest because of the potential weather peril to Enron and Scandinavian Re's contractual liability to Enron. 4/18/00 N.T. 360-364. Walsh also testified that Enron had the right to make a claim against Legion if Legion failed to pay, and that Legion ultimately paid Enron directly. Id. at 367.

In accordance with sub-section B of Article 24 of the Reinsurance Agreement, RWIC and Legion each selected an arbitrator, respectively, Peter M. Black ("Black") and Caleb L. Fowler, Esq. ("Fowler"), who then selected a neutral, third arbitrator/umpire, Paul D. Hawksworth ("Hawksworth"). The three arbitrators comprised the entire Panel. On May 3, 1999, an organization meeting was held in Philadelphia. (Resp't. Mem. of Law, at 13). Between May 1999 and March 2000, the parties engaged in discovery whereby they exchanged documents and deposed party and non-party witnesses. In particular, RWIC deposed Mr. Harold Mollin, the owner and president of CWW, and Ms. Patricia Sleicher, CWW's Director of Special Events, both of whom were involved in the transactions at issue in this case. (4/17/00; N.T. 131; 139; and 6/22/00; N.T. 4-5).

During the discovery process, RWIC repeatedly sought information, through Mr. Mollin's deposition, broadly relating to the operations of WWT, which was seeking to enter the business of weather derivatives/hedges. Mr. Mollin was a substantial shareholder of WWT. See Resp't. Mem. of Law, Exhibit 3; and Friedman Aff., Exhibits 15-18. The Panel accepted written requests from RWIC, outlining the basis of its claim which asserted that such broad discovery was appropriate, along with Legion's responses, and it granted RWIC the right to discovery from WWT so long as it was related to its activities in connection with the four policies at issue. See Resp't. Mem. of Law, Exhibit 4.

On March 17, 2000, one month prior to the arbitration hearing, the parties exchanged witness lists as agreed. (Resp't. Mem. of Law, Exhibit 5). While RWIC's list included a potential expert witness "to testify generally concerning inland marine, business interruption and financial guarantee insurance in relation to the weather hedges involved here," it did not identify who that witness (or witnesses) would be. Id. On April 1, 2000, RWIC identified Mr. Michael Satz as a possible expert

witness. See Exhibit 7, attached to Resp't. Mem. of Law. However, RWIC did not describe the proposed subject matter of Mr. Satz's testimony, which would purportedly relate to differentiating between financial insurance and traditional insurance products. Further, RWIC did not forward Satz's curriculum vitae until April 10, 2000. See Resp't. Mem. of Law, Exhibit 6. In response, on April 11, 2000, Legion sent the Panel a letter, opposing this witness, arguing that RWIC refused to allow Legion the opportunity to depose Satz, and that Legion would be prejudiced if he testified. (Resp't. Mem. of Law, Exhibit 7). On April 12, 2000, the Panel ruled that expert testimony was not necessary at the present time, but it would give the issue consideration if subsequent developments at the hearing showed that it was necessary. (Friedman Aff., Exhibit 9).

The arbitration hearing commenced in Philadelphia on April 17, 2000 and adjourned midday on April 20, 2000. Sometime prior to the hearing, both parties had submitted substantial briefs and reply briefs, supporting their respective positions. (Friedman Aff., Exhibits 10-13). At the hearing, Mollin was the first witness after opening statements, who announced that he would have to leave at 3:45 p.m. to catch a flight. (4/17/00; N.T. 55). Legion's counsel questioned Mollin for approximately two (2) hours. Id. at 56-130; Resp't. Mem. of Law, at 15. Thereafter, RWIC's counsel cross-examined him for a certain period of time. (4/17/00; N.T. 131-196). When questioned by Umpire Hawksworth on his availability for questioning after his trip, Mollin responded in the affirmative. Id. at 128; 182. The remaining witnesses were examined and the hearing was suspended, on April 20, 2000, to await Mollin's return. Thereafter, Legion learned that Mollin would not be returning to the country in the near future and Legion communicated that information to the Panel and RWIC's counsel, by letters dated April 28, 2000 and May 9, 2000. (Resp't. Mem. of Law, Exhibit 8). RWIC repeatedly sought an explanation for Mollin's

departure, but Umpire Hawksworth refused to hold Legion accountable for Mollin's absence. (Friedman Aff., Exhibits 27, 29, 30 & 41). The Panel also refused to strike Mollin's direct testimony, despite RWIC's written protests and the fact that Mollin would not be returning for continued cross-examination. (Friedman Aff., Exhibits 21, 27 & 41).

Moreover, in order to compensate for Mollin's absence, RWIC, by letter dated May 18, 2000, sought to introduce additional documentary and testimonial evidence including: (1) an offer of proof as to what RWIC would have been able to establish during its continued cross-examination of Mollin, (2) a sworn statement by a representative of Castle Oil Corporation concerning a derivative transaction with WWT which did not involve the four Legion policies but was a purportedly similar transaction, (3) testimony from Vincent Laurenzano, a former chief of the New York State Department of Insurance, (4) information, including affidavits and Internet material, purportedly indicating that Enron Capital & Trade Resources and Koch Supply & Trading (the loss payees) were merely trading affiliates of energy companies, and (5) testimony or a declaration from Michael Satz, whom the arbitrators had already declined to hear. (Friedman Aff., Exhibit 21). In response, Legion opposed these requests as an untimely effort to submit immaterial evidence unrelated to the four policies and upon which the Panel had already ruled to be irrelevant or unnecessary. (Resp't. Mem. of Law, Exhibit 9).

By letter dated May 26, 2000, Umpire Hawksworth ruled that the additional evidence would not be allowed, but the Panel would consider RWIC's offer of proof if Mollin remained absent. (Friedman Aff., Exhibit 41). Hawksworth explicitly stated the following:

> The Panel regards both Parties['] evidentiary portion of the arbitration as having been concluded except for the completion of the cross examination (and possible re-direct, etc.) of Mr. Mollin or his substitute Ms. Sleicher. It now seems likely Mr. Mollin will not

> appear as a live witness. In such case the Panel will permit Counsel for Republic Western Insurance Company (RWIC) to pursue the arguments he would have made had Mr. Mollin appeared personally but is restricted to those areas not covered in the initial part of his cross examination or that of Ms. Sleicher. In the event that Ms. Sleicher does not appear or should her testimony be unresponsive, the Panel will consider, at that time, the offer of proof by RWIC's Counsel or other actions, if any, which may be appropriate.

Id. at 1. In addition, the Panel would permit the testimony of Messrs. Laurenzano and Satz to the extent that they can provide testimony as fact witnesses in matters directly related to the four Legion policies but not as expert witnesses. Id. at 2.

The arbitration hearing was resumed and completed on June 22, 2000. In response to RWIC's subpoena, Ms. Sleicher appeared for three hours of cross-examination by RWIC's counsel and the Panel. (6/22/00; N.T. 4-149). Following her testimony, RWIC's counsel made an offer of proof referring to the letters RWIC had previously submitted concerning certain Castle Oil witnesses, the nature of Koch and Enron and other sources. The Panel accepted the offer for the record. Id. at 150-151. Afterwards, RWIC's counsel presented his closing which included areas which had never been formally admitted by the Panel. See id. at 173-174; 186-187; 191; 196 (comparing Sphere Drake policies to Legion policies); 195-196 (discussing Castle Oil derivative transaction versus insurance transaction); 192-193; 207-208 (referring to flowcharts of purported risk transfer from the trading affiliates of Koch and Enron to their energy companies to WWT or Scandinavian Re and then to Legion).

Following closing arguments, the arbitrators retired to deliberate and did not permit the parties to file closing briefs, despite having previously ruled that the parties would have the option to do so. See Friedman Aff., Exhibit 40. In addition, the Panel did not accept RWIC's outline, referring to exhibits and transcript pages to support its position, concluding that the summations and closing statements are a

sufficient blueprint for examining the exhibits and the record. (6/22/00; N.T. 214-216).

On June 27, 2000, by a 2-1 decision, with Black dissenting, the Panel issued its award in favor of Legion. (Petition, Exhibit 2). Specifically, the Panel ruled that:

> (1) the four heating degree day policies, IM1 0293098, IM1 0293065, IM1 0293017 and IM1 0293071 were properly ceded to the treaty which is the subject of this arbitration (Weather Insurance Quota Share Treaty Contract Number 97-409).
>
> (2) [RWIC] has already paid the claims submitted under each of these policies, except for policy IM1 0293098 [the Scandinavian Re policy] and therefore [Legion] is not obligated to refund such payments under the reservation of rights expressed by [RWIC].
>
> (3) [RWIC] is hereby ordered to pay [Legion] the sum of $250,000.00, representing the outstanding balance due under the claim submitted under the policy IM1 0293098, such payment to be made within thirty (30) days of the date of this order.

Id. RWIC filed its to Petition to Vacate the Award on July 26, 2000, and it filed a corrected version on August 1, 2000. Legion filed its Answer on August 31, 2000.

This court must now review the procedures followed by the arbitrators and the merits of their award.

DISCUSSION

I. RWIC DID NOT DEMONSTRATE BY CLEAR, PRECISE AND INDUBITABLE EVIDENCE THAT IT WAS DENIED A FULL AND FAIR HEARING SO AS TO JUSTIFY VACATING THE ARBITRATION AWARD RENDERED AGAINST IT.

A. Standard of Review

The threshold issue is what standard must this court apply in reviewing an arbitration award under the facts presented. Chapter 73 of the Pennsylvania Judicial Code governs statutory and common law arbitration. 42 Pa.C.S.A. §§ 7301-7342. Sections 7301-7320 of Subchapter A governs statutory arbitration proceedings and are known collectively as the Pennsylvania Uniform Arbitration Act ("UAA").

Sections 7341 and 7342 of Subchapter B apply to common law arbitration proceedings. Determining whether the arbitration agreement is subject to the broader statutory arbitration principles or to the narrower standard under the common law depends on whether the agreement is in writing and expressly provides for arbitration under the UAA. 42 Pa.C.S.A. § 7302(a). The UAA clearly delineates its scope in § 7302(a) which states:

> (a) General rule.--An agreement to arbitrate a controversy on a judicial basis shall be conclusively presumed to be an agreement to arbitrate pursuant to Subchapter B (relating to common law arbitration) unless the agreement to arbitrate is in writing and expressly provides for arbitration pursuant to this subchapter or any similar statute, in which case the arbitration shall be governed by this subchapter.

Id. See also, Lowther v. Roxborough Memorial Hosp., 738 A.2d 480, 483-84 (Pa.Super.Ct. 1999)(UAA applies to agreement to arbitrate if agreement is in writing and expressly provides for arbitration under the Act); Cigna Ins. Co. v. Squires, 427 Pa.Super. 206, 209, 628 A.2d 899, 900 (1993); Dearry v. Aetna Life & Cas. Ins. Co., 415 Pa.Super. 634, 637, 610 A.2d 469 , 471 (1992).

Here, the parties' written Reinsurance Agreement, which was executed in 1997, explicitly provided that the arbitration shall be conducted in accordance with the Pennsylvania Uniform Arbitration Act ("UAA"). (Petition, Exhibit 1, at Art. 24).[10] Therefore, this court will the review the

[10]Article 24 of the Reinsurance Agreement also provides, in pertinent part, that "[t]he arbitrators shall have the power to determine all procedural rules for the holding of the arbitration including but not limited to inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration. The arbitrators shall interpret this Contract as an honorable engagement and not merely as a legal obligation; they are relieved of all judicial formalities and may abstain from following the strict rules of law." (Petition, Exhibit 1, at Art. 24(d)). Notwithstanding this provision, this court finds that Agreement's arbitration provision fell within the UAA, which sets forth the standards for vacating an award rendered pursuant thereto.

Petition to Vacate the Arbitration Award according to the broader standard for reviewing an award under the UAA.

The UAA provides for two standards under which a court may review an arbitration panel's award, found in § 7302(d)(2) and in § 7314. Section 7302(d) of the UAA states:

> (d) Special Application.--
>
> (1) Paragraph 2 shall be applicable where:
>
> (i) The Commonwealth government submits a controversy to arbitration.
>
> (ii) A political subdivision submits a controversy with an employee or a representative of employees to arbitration.
>
> (iii) Any person has been required by law to submit or to agree to submit a controversy to arbitration pursuant to this subchapter.
>
> (2) Where this paragraph is applicable a court in reviewing an arbitration award pursuant to this subchapter shall, notwithstanding any other provision of this subchapter, modify or correct the award where the award is *contrary to law* and is such that had it been a verdict of a jury the court would have entered a different judgment or a judgment notwithstanding the verdict.

42 Pa.C.S.A. § 7302(d) (emphasis added). The Pennsylvania legislature, when implementing the 1980 UAA, anticipated difficulties in implementing the "contrary to law" standard since the 1927 Uniform Arbitration Act (now repealed) had allowed for a broad "error of law" standard of review. Therefore, the legislature added a historical note regarding the applicability of §7302(d)(2). The note states:

> The provisions of 42 Pa.C.S. § 7302(d)(2) (relating to special application) shall be applicable to any nonjudicial arbitration pursuant to:
>
> (1) An agreement made prior to the effective date of this act which expressly provides that it shall be interpreted pursuant to the law of this Commonwealth and which expressly provides for statutory arbitration.

> (2) An agreement heretofore or hereafter made which expressly provides for arbitration pursuant to the former provision of Act 25, 1927 (P.L. 381 No. 248), relating to statutory arbitration.

Section 501(b) of Act 1980, Oct. 5, P.L. 693, No. 142. Upon review of the Reinsurance Agreement in the instant matter, it is clear that neither of the above two conditions exist since the Agreement was issued in 1997, after the effective date of the 1980 UAA and it does not explicitly require arbitration to occur under the provisions of the 1927 Act.[11] See Squires, 427 Pa.Super. at 211, 628 A.2d at 901.

In contrast, section 7314 of the UAA is relevant for reviewing the arbitration award rendered in the present case. Section 7314 of the UAA states, in pertinent part, that:

> (1) On application of a party, the court shall vacate an award where:
>
> (i) the court would vacate the award under section 7341(relating to common law arbitration) if this subchapter were not applicable;
> (ii) there was evident partiality by an arbitrator appointed as a neutral or corruption or misconduct in any of the arbitrators prejudicing the rights of any party;
> (iii) the arbitrators exceeded their powers;
> (iv) the arbitrators refused to postpone the hearing upon good cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 7307 (relating to hearing before arbitrators), as to prejudice substantially the rights of a party . . . .

42 Pa.C.S.A. § 7314. In addition, the relevant passage of section 7307, which proscribes the procedures to be followed at the arbitration hearing, states that "[t]he parties and their attorneys have the right to be

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[11]Though neither party asserts that the standard in § 7302(d)(2) applies in the present case, RWIC does assert that the neutral arbitrator "manifestly disregarded the law and ignored the facts." (Pet'r. Mem. of Law, at 40-43). This court seeks to clarify that § 7302(d)(2), which provides the "contrary to law" standard, is not applicable to this case in any event. Further, the court will address RWIC's argument as to a manifest disregard of the law later in this Opinion.

heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing." 42 Pa.C.S.A. § 7307 (a)(4).

Under the common law standard, which is incorporated in reviewing a statutory arbitration, a court may also vacate an arbitration award if "it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award." 42 Pa.C.S.A. § 7341. RWIC, as petitioner, "bears the burden to establish both the underlying irregularity and the resulting inequity by 'clear, precise, and indubitable' evidence." McKenna v. Sosso, 745 A.2d 1, 4 (Pa.Super.Ct. 1999); Chervenak, Keane & Co., Inc. v. Hotel Rittenhouse Assocs., Inc., 328 Pa.Super. 357, 361, 477 A.2d 482, 485 (1984). Under section 7341, "irregularity" refers to the process employed in reaching the result of the arbitration, not in the result itself. Chervanak, 328 Pa.Super. at 361, 477 A.2d at 485. However, "arbitrators are the final judges of both law and fact, and an arbitration award is not subject to reversal for a mistake of either." McKenna, 742 A.2d at 4 (citing Prudential Property and Cas. Ins. Co. v. Stein, 453 Pa.Super. 227, 230, 683 A.2d 683, 685 (1994)). See also, Runewicz v. Keystone Ins. Co., 476 Pa. 456, 461, 383 A.2d 189, 191-92 (1978). As such, the court may not retry the issues addressed by the arbitration panel, nor inquire into the panel's disposition of the merits of the case. Id. "Were the rule otherwise, the judgment of the court would be substituted in the place of the arbitrators' award, and arbitration instead of being a substitute for legal process and procedure would become but the first step in the course of litigation." Wark & Co. v. Twelfth & Samson Corp., 378 Pa. 578, 586, 107 A.2d 856, 860 (1954).

Moreover, Pennsylvania law maintains that lay arbitrators should not be held to the same standard of procedural correctness as their judicial counterparts. Reisman v. Ranoel Realty Co., 224

Pa.Super. 220, 223, 303 A.2d 511, 513 (1973)(citing Scholler Bros. v. Hagen Corp., 158 Pa.Super. 170, 173, 44 A.2d 321, 322 (1945)) . Nonetheless, arbitrations are in the 'nature of judicial inquires' and the basic principles and minimum standards of a hearing must be observed to secure a fair and impartial disposition of the merits of a controversy in order that the arbitration process is upheld as valid. Id. at 223, 303 A.2d at 513. As stated recently by the Pennsylvania Superior Court, "a litigant is not denied a fair hearing so long as the arbitrators allow the aggrieved party to complete the record and then enter an award on the basis of all the evidence." McKenna, 745 A.2d at 11.

The issue, here, turns on whether RWIC was deprived a full and impartial hearing such that the Panel's arbitration award must be vacated under either subsection 7314 (a)(1)(i) or (a)(1)(iv).[12] Though the court must limit its scrutiny to the process implemented by the Panel and not comment on the merits of its award, it is important to recall the issues in front of the Panel in order to determine whether material evidence was excluded, whether RWIC was substantially prejudiced by not being able to fully cross-examine a key witness or whether the Panel committed a manifest error of law. The overall dispute in this case concerns whether the losses under the four HDD policies were properly ceded to the Reinsurance Agreement, thus, obligating RWIC to pay Legion for its proportionate share of the liability under these policies. In support of its position that the policies are not covered by the Agreement, RWIC raised three arguments: (1) the policies do not fall within the business covered section or are specifically

[12]Though RWIC does not explicitly contend that subsections 7314(a)(ii) and (a)(iii) apply to the present case, its argument may implicate these sections implicitly. However, for the reasons delineated in this Opinion, this court also finds that RWIC did not demonstrate that there was evident partiality by the neutral arbitrator, Hawksworth, or that the arbitrators exceeded their powers throughout the arbitration proceeding.

excluded from the Reinsurance Agreement; (2) the policies are not insurance but are really weather derivatives; and (3) the failure of CWW on behalf of Legion to properly disclose to RWIC the nature of the business ceded to the Reinsurance Agreement. (Pet'r. Mem. of Law, at 8-9, 11-14). In contrast, Legion frames the overall issue as involving two components: (1) whether the broker for Legion misrepresented the nature and scope of the business to be reinsured under the Reinsurance Agreement and (2) whether Legion reasonably determined that the claims were arguably covered by the Reinsurance Agreement. (Resp't. Mem. of Law, at 2).

RWIC sets forth a series of arguments for vacating the award under these standards; none of which sufficiently set forth evidence that it was denied a full and fair hearing.

B. The Neutral Arbitrator Did Not Refuse Nor Improperly Exclude Material Evidence

It is true that the exclusion of material evidence is one of the grounds for vacating an arbitration award. 42 Pa.C.S.A. § 7314(a)(1)(iv). However, all procedural matters which grow out of a dispute and bear on its final disposition should be left to the arbitrators. Kardon v. Portare, 466 Pa. 306, 310, 353 A.2d 368, 370 (1976)(quoting Wiley & Sons v. Livingston, 376 U.S. 543, 557 (1964)). As the finders of fact, arbitrators are charged with the duty of determining what evidence is relevant and material, whether evidence is admissible and competent, and whether expert witnesses are qualified to testify and the weight to be given such testimony or other evidence. See, e.g., Ratti v. Wheeling Pittsburgh Steel Corp., 758 A.2d 695, 707-08 (Pa.Super.Ct. 2000) (admission or exclusion of [rebuttal] evidence

is within trial court's discretion and will not be disturbed except for abuse of its discretion or error of law);[13] Zak v. Prudential Property & Cas. Ins. Co., 713 A.2d 681, 689 (Pa.Super.Ct. 1998)(noting that trier of fact determines the weight of expert testimony); Derry Township Mun. Auth. v. Solomon and Davis, Inc., 372 Pa.Super. 213, 226, 539 A.2d 405, 411 (1988) (reviewing common law arbitration award) (holding that the record demonstrated that arbitrators had ample evidence to reach their ultimate conclusions even if they relied on hearsay evidence and given weight to certain evidence, and court will not disturb those findings). See also, Maiocco v. Greenway Capital Corp., 1998 WL 48557, at * 7 (E.D.Pa. Feb. 2, 1998)(concluding that arbitrators are charged with the duty of determining what evidence is relevant and every failure to receive relevant evidence is not necessarily misconduct under the Federal Arbitration Act so as to require the vacation of the award. The inquiry falls on whether an aggrieved party is deprived of a fair hearing.).[14] Under these general principles, this court must now decide whether the Panel, or more specifically, Umpire Hawksworth, excluded "material" evidence so as to deprive RWIC of a full and fair hearing.

RWIC asserts that Hawskworth improperly excluded and refused to receive RWIC's evidence in the following five instances:

(1) the restriction of the cross-examination of Patricia Sleicher to the 4 Legion "heating degree day" policies and exclusion of comparison to the Sphere Drake policies;

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[13]Though Ratti does not involve an arbitration matter, the case is persuasive for general principles of reviewing a lower tribunal's ruling on the admissibility of evidence.

[14]Though Maiocco addressed a petition to vacate an arbitration award under the Federal Arbitration Act and not the Pennsylvania UAA, this court finds its reasoning to be persuasive in analyzing the Petition presently before the court.

(2) refusing testimony from an executive of Castle Oil Corporation to show that it was sold a weather derivative despite having filled out the same insurance application as the four Legion policies;

(3) refusing documentary evidence that Koch Supply & Trading, the "loss payee" on two policies was really a commodities trading company;

(4) refusing testimony from Vincent Laurenzano, a recently retired chief examiner of the New York State Department of Insurance who would purportedly confirm that the four policies were weather derivatives and rebut the testimony of a Legion witness who had authenticated a document establishing that the New York Insurance Department had approved the form of the four Legion policies;

and

(5) refusing expert testimony from Michael Satz who would testify that the four policies constituted financial guarantee business and only allowing Mr. Satz to testify as a fact witness to the four policies.

(Pet'r. Mem. of Law, at 33-37). RWIC argues that it was substantially prejudiced in the presentation of its case by Hawksworth's narrow focus on the four policies and the exclusion of comparative evidence from a disinterested source in order to ascertain contractual intent. Id. at 37. RWIC relies primarily on Smaligo v. Fireman's Fund Ins. Co., 432 Pa. 133, 247 A.2d 577 (1968). However, this court disagrees with RWIC's position and finds that Smaligo is distinguishable from the present case.

In Smaligo v. Fireman's Fund Ins. Co., 432 Pa. 133, 247 A.2d 577 (1968), the Pennsylvania Supreme Court examined a petition to vacate a common law arbitration award, rendered in a wrongful death suit, on the grounds that the arbitrators had refused to postpone the hearing to obtain the expert testimony of the decedent's attending physician who would testify as to decedent's future work expectancy. Id. at 135, 247 A.2d 578. The court held that the testimony was relevant and of great import in determining the loss of future earnings of the decedent. Id. at 137, 247 at 579. It stated that "[t]he

arbitrator's failure to regard Dr. Parsons' testimony of any import resulted in Smaligos being denied a full and fair hearing." Id. at 138, 247 at 580.

Smaligo clearly involved the denial of factual evidence on a crucial factual issue, i.e., the plaintiffs' potential damages. Allstate Ins. Co. v. Fioravanti, 451 Pa. 108, 113, 299 A.2d 585, 588 (1973)(distinguishing Smaligo). In Fioravanti, the dispute involved a personal injury action and Allstate's refusal to pay under the uninsured motorists clause of the policy. Id. at 110-11, 299 A.2d at 586-87. The Fioavanti court examined allegations from Allstate that it was denied a full and fair hearing where the arbitrators refused Allstate's counsel from submitting a memorandum of law on the controlling legal issue of the case which involved a question of estoppel. Id. at 111, 299 A.2d at 587. Upon examination of the record, the court concluded that, unlike Smaligo, there was no complete omission of critical factual evidence, but that the issue was a legal one. Id. at 113, 299 A.2d at 588. The court stated that "[a]t most, one form of argument was closed off by the arbitrators, [but] [t]he argument itself was not." Id. at 113, 299 A.2d at 588. Therefore, the court held that the arbitration hearing had all the necessary essentials of due process, affording all parties notice and opportunity to be heard. Id. In addition, the court stated the following:

> By its disposition the lower court was not vouching for the wisdom of this award, nor are we, for plainly it is bereft of that quality. But as the decisions of this Court have reiterated, mistakes of judgment and mistakes of either fact or law are among the contingencies parties assume when they submit disputes to arbitrators. We decline to speculate about how the arbitrators reached the instant decision. It should be noted, however, that such a cavalier approach runs the risk of jeopardizing the use of the arbitration process, a system designed to provide an expeditious and inexpensive method of resolving disputes with the further winning attribute of helping to ease congested court calendars, by creating widespread disrepute. It is possible to hypothecate an arbitration award which imports such bad faith, ignorance of the law and indifference to the justice of the result as to cause us to give content to the phrase 'other irregularity' since it is the most definitionally elastic

> of the grounds for vacatur. While we do not feel the present case achieves that dubious distinction, we are not without power to act should such a case arise.

Id. at 116, 299 A.2d at 589. Though Fioravanti applied the standard for common law arbitration, this court finds its language instructive for the present case.

First, RWIC's argument with regard to the cross-examination of Patricia Sleicher and the exclusion of evidence regarding the Sphere Drake Policies has no merit. RWIC contends that it sought to prove that the four Legion policies did not qualify as "heating degree day" policies by comparing the language in the Sphere Drake policies. (Pet'r. Mem. of Law, at 33). It is true that during the cross-examination of Ms. Sleicher, who was a substituted witness for Harold Mollin, Umpire Hawksworth refused to allow RWIC's counsel to question Ms. Sleicher on the Sphere Drake policies. (6/22/00; N.T. 113-114). However, copies of the Sphere Drake policies had been presented to the Panel; RWIC's counsel had cross-examined Mr. Mollin on these policies and their comparison with the Legion policies; and RWIC presented this same comparison in its closing argument. (4/17/00; N.T. 141-49, 158-161, 166-174; and 6/22/00; N.T. 173-74, 186-187, 191, 196). Therefore, RWIC was not prevented from presenting its evidence or argument but was merely precluded in the form or mode of its argument regarding the difference in the language of the Sphere Drake policies and the Legion policies. Fioravanti. 451 Pa. at 114, 299 A.2d at 588; Giant Markets, Inc. v. Sigma Marketing Systems, Inc., 313 Pa.Super. 115, 126-27, 459 A.2d 765, 771 (1983)(noting that party was not denied a hearing on the theory that it was unable to present testimony where there was no evidence that party requested to present such evidence, nor evidence that arbitrator denied such evidence, and party availed itself of the opportunity to argue the merits of its objection prior to the arbitrator's ruling).

In addition, unlike the evidence sought in Smaligo, the Panel could have reasonably concluded that the Sphere Drake policies did not rise to the level of critical factual evidence and was not necessary for resolving the controversy. Rather, this evidence purportedly related to the contractual intent of the four Legion policies. By the implications of its ruling, the Panel did not consider the Sphere Drake policies necessary for determining the intent of the Legion policies. In addition, the Sphere Drake policies were extrinsic evidence and RWIC was not precluded from arguing its interpretation of the intent of the Legion policies from the four corners of the policies themselves. Therefore, this court cannot find that RWIC was denied a full and fair hearing simply because it could not elicit additional testimony regarding policies that had nothing to do with the parties or the controversy between them.

Likewise, the Panel's refusal to permit testimony from a Castle Oil executive did not deprive RWIC of a full and fair hearing. This evidence would purportedly have shown that Mr. Mollin through CWW had sold Castle Oil a weather derivative, though Castle Oil had filled out the same insurance application that was filled out on the four Legion policies. (Pet'r. Mem. of Law, at 34). By letter dated May 26, 2000, the Panel ruled that evidence with regard to Castle Oil could not be introduced. (Friedman Aff., Exhibit 41). This same letter, however, allowed RWIC to pursue arguments it would have made if Mollin remained absent from the proceedings, but it restricted those arguments to areas not covered in the initial cross-examination of Mollin or Ms. Sleicher. Id. Therefore, as with the Sphere Drake policies, RWIC's counsel referred to Castle Oil in his closing argument. (6/22/00; N.T. 195-96). Nonetheless, Castle Oil had no relationship with RWIC or with Legion. The only evident commonality between Castle Oil and the controversy before the Panel was that Castle Oil had Legion's same underwriter -- Mr. Mollin.

Castle Oil's connection to this case is tenuous, at best, and the Panel could reasonably have found that it was not material to the controversy.

With regard to the evidence from Koch Supply & Trading, the "loss payee" in two policies issued to WWT, this court again finds no merit in RWIC's argument. RWIC desired to show that the Koch entity was really a commodities trading company which wanted to hedge its trading risks rather than a fuel oil company whose business revenues would be adversely affected by a warmer than normal winter. (Pet'r. Mem. of Law, at 35). RWIC maintains that it was prevented from presenting news articles indicating that Koch and Enron had their own weather hedge trading companies. Id at n. 23. Despite RWIC's argument, the record shows that the Panel had received testimonial and documentary evidence regarding Koch Supply & Trading, as well as Enron. (4/17/00; N.T. 115-119, 194; 4/18/00 N.T. 368-369; 396-412; Friedman Aff., Exhibit 34). As testified by Mr. Walsh on Legion's behalf, Koch and Enron were subsidiaries of energy or utility companies, but that Koch was still protected against the risk of loss associated with the four HDD policies. (4/18/00; N.T. 403-04). Moreover, additional testimonial and documentary evidence, along with argument, regarding the relationship of Koch Supply & Trading and its corporate parent, were presented at the continued hearing on June 22, 2000. (6/22/00; N.T. 24-31, 86, 192-93, 207-08). Therefore, this court finds no evidence that RWIC was precluded from presenting its argument regarding Koch Supply & Trading but was merely precluded from presenting an additional form of evidence.

Finally, the rulings regarding expert testimony from Messrs. Laurenzano and Satz were proper. First, Laurenzano was purported to testify that the four policies were weather derivatives and did not qualify as "insurance" in order to rebut testimony of a Legion witness who authenticated a document

which purported to show that the New York Insurance Department had approved the form of the four Legion policies. (Pet'r. Mem. of Law, at 36). Further, Satz would purportedly testify that the four policies constituted financial guarantee business which was excluded from the Reinsurance Agreement. Id. However, Messrs. Laurenzano and Satz were not identified on RWIC's final witness list which was exchanged on March 17, 2000. (Resp't. Mem. of Law, Exhibit 5). Mr. Satz was not identified until March 31, 2000 and the subject matter of his testimony was not revealed until April 10, 2000, one week before the hearing. (Resp't. Mem. of Law, Exhibits 6-7). Legion had opposed Satz's testimony on the grounds that it would be prejudiced because it was denied the opportunity to depose him. Id. The Panel could reasonably have agreed with Legion's position when it denied RWIC the right to present expert testimony in the initial hearing. (4/18/00; N.T. 344). See Mckenna, 745 A.2d at 4 (noting that *ex parte* submission of evidence to arbitration panel after the hearings are closed may impair the fairness of the arbitration process and require *vacatur*). In addition, the Panel, in its own right, had extensive experience in the insurance industry; thus obviating the need for expert testimony. (Resp't. Mem. of Law, Exhibit 11).[15] Moreover, in the letter of May 26, 2000, the Panel reasonably concluded that expert testimony was not necessary, but it would allow testimony from Messrs. Laurenzano and Satz to the extent they could provide testimony as fact witnesses in matters directly related to the four policies subject to the arbitration. (Friedman Aff., Exhibit 41). This ruling seemingly followed Smaligo's reasoning.

[15]Specifically, Hawksworth stated: "I think the reason that the panel exists is to evaluate everybody's testimony and opinion and the evidence presented in this matter and to arrive at a decision. We don't feel that there is such mystery associated with any of the terms in the contracts of the items submitted so far to require us to go seek expert opinions outside of what resides in this panel. (4/18/00; N.T. 344).

Having reviewed the extensive record which was before the Panel, this court now concludes that RWIC was not substantially prejudiced in the presentation of its case and the only evidence which may have been excluded was not material to resolving the controversy.

C. RWIC Was Not Denied a Full and Fair Hearing Because It Could Not Finish Its Cross-Examination of Harold Mollin

RWIC also asserts that it was denied its right to cross-examine Mollin, a key witness and principal of both CWW and WWT, through whom Legion had attempted to establish the legitimacy of the four HDD policies. (Pet'r. Mem. of Law, at 37-38). Admittedly, RWIC was not able to finish its cross-examination of Mollin on April 17, 2000 when Mollin had to leave for the day, though Mollin had assured the Panel that he would return and he never did. See 4/17/00; N.T. 128, 182. Umpire Hawksworth refused to hold Legion accountable for Mollin's absence. (Friedman Aff., Exhibits 27, 29, 30 & 41). Further, the Panel refused to strike Mollin's direct testimony, despite RWIC's protests. Id., Exhibits 21, 27 & 41. For these reasons, RWIC contends that it was denied a full and fair hearing. This court disagrees.

It is true that, under 42 Pa.C.S.A. § 7314(a)(iv), a court must vacate an arbitration award if the arbitrators conducted the hearing contrary to the provisions of section 7307. It is also true that the parties and their attorneys have the right to be heard, including the right to cross-examine witnesses appearing at the hearing. 42 Pa.C.S.A. § 7307(a)(1)(4). In addition, in Reisman v. Ranoel Realty Co., 224 Pa.Super. 220, 303 A.2d 511 (1973), the case relied upon by RWIC, certain principles of the conduct of a fair hearing were reiterated. In Reisman, the arbitration hearing was conducted pursuant to the Pennsylvania Arbitration Act of 1927, in a breach of contract action seeking to recover the unpaid

balance of a construction contract. Id. at 221, 303 A.2d at 512. The parties in that case had agreed to narrow the issues to oral argument after brief testimony was taken. Id. at 222, 303 A.2d at 512. After briefs were presented, with the appellant corporation asserting a counterclaim, the hearing was reconvened and appellee was allowed to file a rebuttal brief to appellant's counterclaim. Id. at 222, 303 A.2d at 513. Then, counsel for appellant requested further hearing in order to cross-examine the appellee, to question an unnamed accountant and to present witnesses in its defense and in support of its counterclaim. This request was refused. Id. Appellant sought to have the arbitration award vacated on the grounds that it was denied a fair hearing in precluding the presentation of its witnesses and its right to cross-examine appellee's witnesses, but the trial court confirmed the award. Id. The Pennsylvania Superior Court, in reviewing this ruling, held that the evidence did not show that appellant had waived its right to further hearings, nor was there a record of the subsequent hearing. Id. at 226, 303 A.2d at 514. It reasoned that participants in arbitrations are entitled to a full hearing with the opportunity to be hear and to present evidence, despite the fact that arbitrations are not held to the same standard of procedural requirements as their judicial counterparts. Id. at 224, 303 A.2d at 513-14. It also stated that "[a]s the right to cross-examination is crucial to the conduct of a 'full and fair hearing', appellant would, at first blush, appear to be entitled to a further hearing, as the arbitrators' action denied it the opportunity to cross examine or to present its own witnesses in rebuttal." Id. at 225, 303 A.2d 514.

Contrary to RWIC's contentions, the facts in Reisman are inapposite to the present case. Here, RWIC did have the opportunity to cross-examine Mollin to a certain extent, even if its examination was not as long as Legion's on direct. (4/17/00; N.T. 131-196). In addition, Patricia Sleicher was provided as a substitute for Mollin. As testified by Ms. Sleicher, she was the director of special events at

CWW at the time the Reinsurance Agreement was enacted. (6/22/00; N.T. 7). She also testified that she did not have an understanding of the terms -- "weather hedge" or "weather trade" when she typed some of the policies at issue in this case. Id. at 12-13, 20. Moreover, RWIC was permitted to make an offer of proof as to what it would have shown had Mollin been present. (Friedman Aff., Exhibit 41). Counsel for RWIC presented its offer and argued various items of new evidence in its closing. (6/22/00; N.T. 150-51, 173-74, 192-96, 207-208). This court is also persuaded by Legion's argument that RWIC had Mollin's deposition transcript which it could have used in the continued hearing. (Resp't. Mem. of Law, at 4). Finally, the Panel did not commit an egregious error in not holding Legion accountable for Mollin's absence, since Mollin did not work for Legion but was simply the underwriter at CWW and a principle of WWT, one of the insureds on two of the four policies.

For these reasons, this court concludes that RWIC was not denied its right to a full and fair hearing, nor was it denied the right to cross-examine Legion's witnesses.

II. RWIC FAILED TO DEMONSTRATE THAT THE NEUTRAL ARBITRATOR MANIFESTLY DISREGARDED THE LAW AND IGNORED THE FACTS.

RWIC's final argument is that Umpire Hawksworth manifestly disregarded the law and ignored the clear language of the Reinsurance Agreement when he disregarded evidence that the four policies did not qualify as "insurance" but were really "weather derivatives." (Pet'r. Mem. of Law, at 40-43). RWIC also asserts that Hawksworth acted irrationally or was grossly unfair where he limited RWIC's questioning to the four policies at issue and refused other evidence. Id. at 40. As noted implicitly in the above analysis, Hawksworth's exclusion of certain evidence was not irrational and did not substantially prejudice RWIC even though Mollin could not be fully cross-examined. Therefore, RWIC's latter point

has no merit. In addition, this court is not persuaded that Hawksworth manifestly disregarded the law, or that such error is grounds for vacating an award under Pennsylvania law.

As noted in the scope section of this Opinion, the "contrary to law" standard of 42 Pa.C.S.A. § 7302(d)(2) is not applicable to the present case. In addition, section 7314(a)(2) expressly states that "[t]he fact that the relief by the arbitrators was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award." 42 Pa.C.S.A. § 7314(a)(2). Therefore, the standards listed under the Pennsylvania UAA do not afford the relief sought by RWIC. Pennsylvania law further maintains that an arbitration award, rendered pursuant to common law arbitration, will not be vacated for a mistake of fact or error of law. Runewicz v. Keystone Ins. Co., 476 Pa. at 461, 383 A.2d at 191-92 (holding that arbitration award is conclusive even if it has the effect of varying the terms of the contract); McKenna, 742 A.2d at 4 (citations omitted).

Moreover, none of the cases, cited in RWIC's brief in support of this point, address the Pennsylvania UAA; rather they all apply the standard listed under the Federal Arbitration Act ("FAA"), codified at 9 U.S.C. §§ 10, 11 (1982). See Wilko v. Swan, 346 U.S. 427, 436 (1953), overruled o.g. sub nom, Rodriguez de Quijas v. Shearson/American Exp., Inc., 490 U.S. 477 (1989); St. Lawrence Explosives Corp. v. Worthy Bros. Pipeline Corp., 916 F.Supp. 187, 192 (N.D.N.Y .1996); McLaughlin, Piven, Vogel, Inc. v. Gross, 699 F.Supp. 55, 57-58 (E.D.Pa. 1988), aff'd. 862 F.2d 308 (3d Cir. 1988); Sidarma Societa Italiana Di Armaneto Spa v. Holt Marine Industries, Inc., 515 F.Supp. 1302, 1306 (S.D.N.Y.), aff'd. 681 F.2d 802 (2d Cir. 1981).[16] This court is skeptical of the proposition that

[16]Further, RWIC also referred to Sun Oil Co. of Pennsylvania v. Local 8-901, Oil, Chemical, and Atomic Workers' Int'l Union, AFL-CIO, 421 F.Supp. 1376, 1384 (E.D.Pa. 1976), which

Pennsylvania law recognizes "manifest disregard of the law" as a ground for vacating an arbitration award. However, the dicta in Fioravanti, may allow this distinction where the court states: "[i]t is possible to hypothecate an arbitration award which imports such bad faith, ignorance of the law and indifference to the justice of the result as to cause us to give content to the phrase 'other irregularity' since it is the most definitionally elastic of the grounds for vacatur." 451 Pa. at 116, 299 A.2d at 589.

Even assuming *arguendo* that Pennsylvania recognizes this ground for vacating an award, this court does not find that Hawksworth committed such an error. It is not disputed that an insurance policy must be supported by an insurable interest; rather, the present controversy centers on whether the four policies were in fact supported by insurable interests. See Pet'r. Mem. of Law, at 42-43; Resp't. Mem. of Law, at 18. It is further not disputed that the four policies at issue had to be "insurance" to qualify for cession to RWIC under the Reinsurance Agreement. (Pet'r. Mem. of Law, at 42). Further, RWIC maintains that the four policies all contained the following language: "[p]ayment is not contingent upon [the insured/the loss payee] having an insurable loss." Id. at 43. RWIC's counsel questioned Mollin on this point during his cross-examination. Specifically, counsel asked the following:

> Q. Do you know if the policies that were a subject of this arbitration have statements on the face page saying that the insured does [not] have to have an insurable interest?
>
> A. I don't know, but I saw that on one of them.

(4/17/00; N.T. 141-142). Upon examination of the policies themselves, this court did not find the same

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addressed a labor arbitration case which has a different set of rules.

language. (Friedman Aff., Exhibit 7). However, even if this language was in one or all of the policies, it does not mean that Hawksworth committed a manifest error of law.

Rather, as advocated by Legion, Hawksworth could have been applying the "follow the fortunes" doctrine which forecloses relitigation of coverage disputes in the reinsurance context. See North River Ins. Co. v. Cigna Reinsurance Company, 52 F.3d 1194, 1204 (3d Cir. 1995) (applying New York law). Specifically, this doctrine holds that:

> [a] reinsurer is bound to follow its cedent's fortunes in settling claims unless the reinsurer can show that the cedent did not act in good faith or after conducting a reasonable investigation . . . a court or panel, faced with a reinsurer's denial of liability, would ask not whether the underlying claim was covered by the cedent's policy, but whether there is any reasonable basis to conclude there was such coverage. Only if the ceding company pays a claim that is clearly outside the scope of its policy, would the reinsurer's challenge be sustained.

Id. (citing Schoenberg, L'Histoire Ancienne De "Follow the Fortunes", Mealey's Litigation Reports (Reinsurance), May 28, 1992, at 17, 20). Here, Mr. Walsh, Legion's general counsel, reviewed the four policies, investigated the claims, and concluded that the claims were properly payable and they had to be paid regardless of their structure. (4/18/00; N.T. 359-64, 367). RWIC disputed this conclusion. However, the record does not reflect that Hawksworth ignored RWIC's argument. Further, simply stated Hawksworth and Fowler, one of the other three arbitrators on the Panel, agreed with Legion's position.

After a careful review of the record, this court concludes that RWIC did not present sufficient evidence to demonstrate that Hawksworth manifestly disregarded the law or ignored the facts.

CONCLUSION

For the above-stated reasons, this court holds that RWIC was not denied a full and fair hearing and presented no other evidence that would warrant vacating the arbitration award rendered against it. Therefore, this court is entering a contemporaneous Order, denying RWIC's Petition to Vacate and granting Legion's request to confirm the Award.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.