

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

ONEBEACON INSURANCE GROUP, INC., and	:	AUGUST TERM, 2004
ONEBEACON INSURANCE CO.,	:	
	:	No. 02670
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control Nos. 061745, 061760
LIBERTY MUTUAL INSURANCE CO., and	:	
PEERLESS INSURANCE CO.,	:	
	:	
Defendants.	:	

ORDER

AND NOW this 1st day of August, 2005, upon consideration of plaintiffs' Motion to Disqualify Arbitrator, defendants' Motion to Enforce Prior Orders, the respective responses thereto, the briefs in support and opposition, and all other matters of record, and in accordance with the Opinion issued simultaneously herewith, it is hereby **ORDERED** that plaintiffs' Motion is **DENIED** and defendants' Motion is **GRANTED** in part and **DENIED** in part. The parties shall proceed with their arbitration promptly in accordance with the agreement between them.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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	:	
Defendants.	:	

OPINION

Plaintiffs OneBeacon Insurance Company and OneBeacon Insurance Group, LLC (collectively, “OneBeacon”) filed a motion to disqualify Richard E. Marrs, the proposed neutral third arbitrator for the parties’ matter that is currently pending in arbitration. In response to OneBeacon’s Motion, defendant Liberty Mutual Insurance Company (“Liberty”) filed a motion to enforce this court’s prior Orders of March 22, 2005 and April 19, 2005, in which the court ordered the parties to proceed with arbitration pursuant to the agreement between them.

OneBeacon argues that Mr. Marrs is not qualified to serve as an arbitrator because he once previously served as an expert witness for Liberty in a case unrelated to this one, and, therefore, he does not meet the terms of the parties’ arbitration agreement, which requires that the third arbitrator be disinterested and unaffiliated with either party. Before reaching the merits of the motion, the court must first determine whether it has jurisdiction to review Mr. Marrs’ appointment at this juncture.

Generally, an arbitration proceeding can be challenged only after it is finished and an award has been made. *See* 9 U.S.C. § 10 (setting forth grounds for vacating an award including

“evident partiality” of the arbitrators). Where, as here, the parties have contractually agreed to let their arbitrators choose a third arbitrator based on certain criteria, the parties may not ask the court to second guess the arbitrators’ decision regarding the neutral’s qualifications until the arbitration has concluded. *See Aviall, Inc. v. Ryder Sys., Inc.*, 110 F.3d 892, 895 (2d Cir. 1997) (“it is well established that a district court cannot entertain an attack upon the qualifications or partiality of arbitrators until after the conclusion of the arbitration and the rendition of an award.”).

In the instant case, Liberty and OneBeacon have yet to commence, let alone complete, arbitration, so the court has no jurisdiction to oust Mr. Marrs as third arbitrator. Instead, the arbitrators must decide whether Mr. Marrs is biased and therefore ineligible to serve. *See Florasynth, Inc. v. Pickholz*, 750 F.2d 171 (2d Cir. 1984) (an arbitrator who feels he is unable to be neutral must recuse himself, but if he believes he can be neutral, he is not subject to removal by a court.)

CONCLUSION

For all the foregoing reasons, plaintiffs’ Motion to Disqualify is denied and defendants’ Motion to Enforce Prior Orders is granted in part and denied in part.

BY THE COURT,

HOWLAND W. ABRAMSON, J.