UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ARROWOOD INDEMNITY COMPANY, as Successor to FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT, Plaintiff,	:	
v.	:	Case No. 3:03-CV-1000 (PCD)
TRUSTMARK INSURANCE COMPANY, Defendant.	:	

ORDER ON PENDING MOTIONS

On October 9, 2009, the Court granted Plaintiff Arrowood's motion for reconsideration and remanded three questions to the arbitration panel to resolve an ambiguity in the Arbitration Award [Doc. No. 84]. On October 30, 2009, the Court denied Defendant Trustmark's motion for reconsideration of the October 9, 2009 Order and upheld its decision to remand to the arbitration panel.

Defendant Trustmark has since moved to stay the remand [Doc. No. **89**] and to vacate the Court's Order admitting Plaintiff's counsel *pro hac vice* [Doc. No. **93**]. Trustmark also filed an emergency motion for reconsideration re: the Court's order to remand [Doc. No. **99**]. For the reasons stated herein, all three motions are **denied.**

Defendant Trustmark moved to stay the remand and for expedited discovery, arguing that the arbitration panel's Umpire works as an advocate for Plaintiff in other matters. Defendant argues that because this work generates income for the Umpire, he is "on Plaintiff's payroll" and therefore biased. The arbitration panel in question is comprised of three arbitrators, a "party-appointed arbitrator" from each party and a neutral arbitrator, the "Umpire." In 2003, at the

outset of the arbitration, the Umpire's disclosures showed no relationship with Plaintiff or its attorneys. However, disclosure now shows that between 2003 and the Court's Order of Remand, Plaintiff selected the Umpire at least six times as its party-appointed arbitrator in non-related arbitrations. Over the last three years, Plaintiff's appointments of the Umpire have resulted in between 12 and 17.5% of his income. The Umpire is currently serving as Plaintiff's party-appointed arbitrator in three unrelated proceedings. (Def.'s Mot. to Stay at 3.) Defendant also argues that the Umpire has a relationship with Strook & Strook, Plaintiff's new counsel, because he has worked with and been vetted by the firm during these arbitrations.

Defendant argues that the Umpire's appointment as a party arbitrator by Plaintiff has lead to a "significant financial relationship" between the two and therefore the Umpire cannot serve as a neutral arbitrator. Defendant also seeks to conduct discovery relating to the Umpire's relationship with Plaintiff and Strook & Strook. Because it will be the subject of discovery, Defendant argues that Strook & Strook cannot be admitted *pro hac vice*.

However, the Court finds Defendant's arguments unconvincing. The Umpire is neither an advocate for Plaintiff, nor on its payroll. Plaintiff's choice of the Umpire as a party-appointed arbitrator in unrelated cases does not show bias or evidence an improper relationship between a party and an arbitrator in this proceeding. Service as a party-appointed arbitrator is not in and of itself evidence of partiality. According to the Practical Guide to Reinsurance Arbitration Procedure, an arbitrator, even a party-appointed arbitrator, is to remain disinterested and may not have a financial interest in the outcome of the proceeding. (Pl.'s Ex. 2.) Once appointed, the party has no control over the arbitrator. Furthermore, payment for service as an arbitrator is not akin to employment by a party. Were that the case, no arbitrator could ever be impartial.

As arbitrators are often selected due to experience with a specialized industry, it is not surprising that an Umpire in one proceeding may be selected by a party in another. Experienced arbitrators often have professional relationships with the parties. "Moreover, a principal attraction of arbitration is the expertise of those who decide the controversy. Expertise in an industry is accompanied by exposure, in ways large and small, to those engaged in it." Matter of Andros Compania Maritima, S.A. (Marc Rich & Co., A.G.), 579 F.2d 691, 701 (2d Cir. 1978).

Defendant relies on Commonwealth Coatings Corp. v. Continental Cas. Co., 393 U.S. 145 (1968), where the Supreme Court vacated an award due to an undisclosed and significant business relationship between an arbitrator and the prevailing party. Here, however, the Umpire has disclosed his relationship and the evidence shows that his relationship with Plaintiff's parent company and Plaintiff's counsel is "a professional one, growing out of [his] service as [an] arbitrator." Such a professional relationship does not constitute "evident partiality" under the Federal Arbitration Act, 9 U.S.C. § 10. See Andros, 579 F.2d at 701.

Furthermore, as the motion for discovery is denied, Defendant's motion to vacate the order admitting Strook & Strook's attorneys *pro hac vice* is also denied. Its lawyers will not be the target of Court ordered discovery and Defendant's other arguments are without merit, as just discussed above. Finally, Defendant's emergency motion is denied as it presents the same requests and arguments discussed and dismissed above. The Court reiterates that the arbitration panel is the most appropriate body to clarify the Award and upholds its remand of the questions previously certified to the panel.

SO ORDERED.

Dated at New Haven, Connecticut, this 2nd Day of February, 2010.

/s/

Peter C. Dorsey, U.S. District Judge
United States District Court