

DOCKET NO.: CV 11-6018055-S : SUPERIOR COURT
ARROWOOD INDEMNITY CO. : J. D. OF HARTFORD
V. : AT HARTFORD
CLEARWATER INSURANCE CO. : JULY 26, 2010

**RULING ON MOTION TO DISMISS BASED ON LACK OF
SUBJECT MATTER JURISDICTION #104**

The plaintiff, Arrowood Indemnity Co., has brought this action pursuant to General Statutes §§ 52-411 and 52-410. The gravamen of the complaint is that the defendant, Clearwater Insurance Co., has failed to name three neutral umpire candidates in accordance with the arbitration agreement between the parties. The plaintiff requests that the court issue orders which will facilitate the naming of a neutral umpire to the three member arbitration panel. The

plaintiff also requests any other relief, legal or equitable, as this court deems to be just and proper.

The defendant maintains that the court does not have subject matter jurisdiction. It argues that these proceedings are governed by the Federal Arbitration Act (FAA), which does not permit pre-award challenges to the arbitration panel. Consequently, the defendant maintains that the court is without subject matter jurisdiction to act upon the plaintiff's request.

Although the agreement does not expressly provide that it is governed by the FAA, the parties do not dispute that arbitration agreements involving interstate commerce, as the instant agreement does, are governed by the FAA. The application of the FAA, however, does not preclude state court involvement in procedural pre-arbitration matters. See *Hottle v. BDO Seidman, LLP*, 74 Conn. App. 271, 274 n.4, 815 A.2d 745 (2002) (The [Federal] [A]rbitration [A]ct has not been held to supersede state procedural laws. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 477 n.6, 109 S. Ct. 1248,

C: Pullman + Comley LLC
PHU Bruce M. Friedman
Hurd + Wudert
MS 7/26/11
CFK

103 L. Ed. 2d 488 (1989).”), aff’d, 268 Conn. 694, 846 A.2d 862 (2004). See also *Metropolitan Property & Casualty Ins. Co. v. J. C. Penney Casualty Ins. Co. et al.*, 780 F. Supp. 885 (D. Conn. 1991) (pre-arbitration review of suitability of arbitrator permitted in case involving FAA; matter remanded to state court).

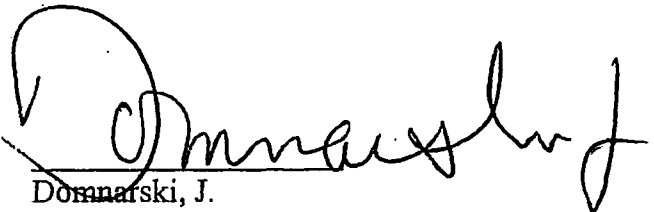
It is undisputed that the parties’ agreement does not contain a choice of law provision and the defendant does not argue that the parties should be in a different court. It is not contested that the court has personal jurisdiction over the parties.

This court is guided by the recent case of *Metropolitan District Commission v. Connecticut Resources Recovery Authority*, 130 Conn. App. 132, 144, — A.3d — (2011), wherein the Appellate Court stated: “[A]lthough an arbitrator in tripartite arbitration proceeding may be non-neutral, a trial court may intervene in an arbitration proceeding pursuant to its equitable powers and disqualify an arbitrator when the arbitrator cannot observe his or her ethical duties or cannot participate in the arbitration proceeding in a fair, honest and good faith manner. By allowing court intervention in these circumstances, we seek to protect the integrity of the arbitration process itself, which our courts have recognized as a central concern when reviewing the validity of arbitration awards.”

The *Metropolitan* court allowed intervention upon a claim that the non-neutral arbitrator could not carry out his ethical duties and participate in a fair, honest and good faith manner. Applying the same reasoning, a court should be able to intervene where the arbitration process calls for the selection of a neutral arbitrator and it is claimed that the neutral candidates named by one party are not neutral. Such intervention also serves to protect the integrity of the arbitration process.

The plaintiff has sustained its burden of establishing that this court has subject matter jurisdiction and the defendant has not provided any persuasive authority to compel a contrary conclusion. The motion to dismiss is denied.

The plaintiff has requested an evidentiary hearing upon its requested relief. For purposes of judicial economy, the court will assign the evidentiary hearing to itself. Arbitration is designed to secure a prompt settlement of disputes. See *Gaer Bros., Inc. v. Mott*, 144 Conn. 303, 307, 130 A.2d 804 (1957). Counsel are directed to contact case-flow within 10 days to schedule a hearing, which is to be held within 60 days of this ruling. At the hearing, the defendant may also make any challenges it deems appropriate to the slate of neutral candidates proposed by the plaintiff. Counsel may submit memoranda, five days prior to the hearing, regarding the standard to be applied on the issue of neutrality. For a discussion of the issues pertaining to arbitration and arbitrators, see *Borst v. Allstate Ins. Co.*, 291 Wis. 2d 316, 717 N.W.2d 42 (2006).

A handwritten signature in black ink, appearing to read "J. Domnarski". The signature is written in a cursive style with a large initial "J" and a long, sweeping tail.

Domnarski, J.