UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASSOCIATED INDUSTRIES INSURANCE COMPANY, INC.,

Petitioner,

-against-

13 Civ. 8239 (CM)

EXCALIBUR REINSURANCE CORPORATION (f/k/a/ PMA CAPITAL INSURANCE COMPANY),

Respondent.

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DECISION AND ORDER CONFIRMING ARBITRATION AWARD

McMahon, J.:

Petitioner invokes the jurisdiction of this court to confirm in part and vacate in part an arbitration award; Respondent cross-moves to confirm the award; it also urges that the petition should be dismissed as time-barred.

The powers of a federal court post-arbitration are limited. A court's review of an arbitrator's decision is "one of the narrowest standards of judicial review in all of American jurisprudence." *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 429 F. 3d 640, 643 (6th Cir. 2005). Under the Federal Arbitration Act, 9 U.S.C. §1, a court must "confirm an arbitration award....unless one of the statutory bases for vacating or modifying the award is established." Those bases, set out in Section 10(a) of the Federal Arbitration Act, effectively insure that a court will only vacate an arbitrator's award when one party was denied a "fundamentally fair hearing" or where the award is completely irrational. *Glencore Ltd. v. Agrogen, S.A. de C.V.*, 36 Fed. App'x 28, 29 (2d Cir. 2002).

None of the forms of misconduct specifically mentioned in Section 10(a) – corruption, fraud, undue means, evident partiality or refusal to postpone a hearing or hear pertinent evidence – is assigned as the reason for setting aside the challenged portion of the instant award. Instead, Petitioner argues that the award can be vacated in part because the panel majority was guilty of "other misbehavior by which the rights of any party have been prejudiced," and "exceeded their powers" -- specifically by engaging in "manifest disregard of the law" applicable to the matter.

"Manifest disregard of the law" is nowhere mentioned in Section 10(a) of the FAA, and its continuing viability as a ground for vacating an award is of dubious legal validity in view of recent Supreme Court jurisprudence, *see Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 583-84 (2008)(Sections 10 and 11 of the FAA "provide the FAA's exclusive grounds for expedited vacatur and modification"). However, the doctrine remains available in this Circuit as a basis upon which to vacate an arbitration award. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l. Corp.*, 548 F. 3d 85, 91 (2d Cir. 2008).[1] In this case, Petitioner claims that the arbitrators manifestly disregarded the "follow the fortunes" doctrine that, in most cases, compels a reinsurer to pay its share of claims settled by a reinsured in good faith, even though the reinsurer might not have reached the same settlement. *North River Ins. Co. v. Ace Am. Reinsurance Co.*, 361 F. 3d 134, 139-40 (2d Cir. 2004).

Because Petitioner's argument is manifestly wrong, its motion for partial vacatur is denied, and Respondent's cross-motion for full confirmation is granted.

BACKGROUND FACTS

The Parties and the Treaties

Petitioner is the primary insurer in this case; Respondent is a reinsurer.

The arbitration in question involved two treaties of reinsurance: the First Workers' Compensation and Employers' Liability Excess of Loss Reinsurances Agreement (Treaty No. A-204/03((referred to by the parties as the "Excess of Loss Treaty") and the Workers' Compensation and Employers Liability Quota Share Reinsurance Agreement (Treaty No. A-188/01) (the "Quota Share Agreement"). Both treaties reinsure workers' compensation claims that arose in 2003.

The Excess of Loss Treaty provides per insurance coverage limits of $4.5 million excess of $500,000. Excalibur's participation was 65%, meaning it agreed to pay 65% of each loss between $500,000 and $5 million – a maximum of $2,925,000 per occurrence.

The record reveals that Excalibur also participated on the treaty layer above the Excess of Loss Treaty, the so-called High Excess Treaty (Treaty A-218/03), which provided coverage

[1] *Stolt-Nielsen's* reaffirmation of the continuing validity of the "manifest disregard of the law" doctrine has been questioned on more than one occasion by panels of the Second Circuit, *see, e.g.*, *STMicroelectronics, N.V. v. Credit Suisse Sec. (USA) LLC*, 648 F. 3d 68, 78 (2d Cir. 2011); *GMAC Real Estate, LLC v. Fialkiewicz*, 506 Fed. App'x. 91, 92-93 (2d Cir. 2012), but has not yet been overturned. The United States Supreme Court expressly declined to address whether "manifest disregard" survived *Hall Street* when it reviewed (and reversed on other grounds) the Second Circuit's decision in *Stolt-Nielsen*. 559 U.S. at 672 n.3. This court must, therefore, proceed on the assumption that manifest disregard for the law remains a way in which an arbitrator can exceed his powers or engage in misconduct prejudicial to the interests of the parties.

limits of $5 million excess of $5 million. Although this Treaty was apparently not the subject of the arbitration, it was introduced into evidence at the arbitration and Petitioner's Treasurer testified that Respondent had paid one of the claims challenged here (the "Landrian claim") under this treaty. *See* Hargraves Ex. 22 at 213-214 and 236-238.

The Quota Share Agreement related to losses incurred during the year 2001, and requires reinsurers whose A.M. Best rating drops below an "A" to post a Letter of Credit to secure amounts owed under the agreement.

The Hearing

The parties agreed to arbitrate "Any dispute or other matter in question between the Company and the Reinsurers arising out of or relating to the....performance or breach of this Agreement." The arbitration clause in the Excess of Loss Treaty specifically provides that, "The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence. They shall make their decisions according to the practice, customs and usage of the insurance and reinsurance businesses." (Hargraves Dec. Ex. 1 at Article 24(K)). It also makes any award "final and binding on both parties." (*Id.* at Article 24(L)).

The arbitration in this case concerned Excalibur's obligation to reinsure certain settlements entered into by AIIC with Florida workers' comp claimants, as well as its obligation to post a letter of credit pursuant to the Quota Share Agreement.

Each party appointed an arbitrator, and the two party arbitrators selected the neutral arbitrator. All three arbitrators are experienced participants in the insurance and reinsurance industries. The parties stipulated that the panel was properly constituted and waived any objections to the members.

Significant discovery was taken in advance of the hearing, and both sides submitted voluminous pre-hearing briefs and reply briefs, which are in the record before this court. In its briefs, AIIC urged that Excalibur was liable for all amounts billed to it under the "follow the fortunes" doctrine, which generally obligates a reinsurer to cover settlements made by its cedent. Excalibur argued that it was not liable for certain amounts that AIIC had agreed to pay in settlement of claims, because AIIC had handled those claims in a grossly negligent manner – thereby rendering the follow the fortunes doctrine inapplicable – and/or because it had in two instances (the Ford and Zaiour claims) made payments *ex gratia* (gratuitously) when it had no legal obligation to do so.

The panel conducted a five day hearing from June 24-28, 2013. In its opening statement and closing argument, Excalibur made the same arguments for why it was not obligated to follow AIIC's settlements of the Ford and Zaiour claims (they had been paid *ex gratia*) and certain other settlements as well (due to gross negligence in the investigation and settlement of those claims). AIIC argued to the contrary.

On August 19, 2013, the panel issued an award giving AIIC substantially all the relief it had requested. The panel required Excalibur to pay over $2.7 million on claims submitted to it under the Excess of Loss Treaty, with interest, and to pay AIIC future amounts billed in connection with the Excess of Loss and Quota Share Treaties in accordance with the terms of those treaties and in the normal course of business. The panel also ordered Excalibur to post a letter of credit in the amount of $42,205.63 to secure its share of case reserves and IBNR relating to the Quota Share Treaty.

The panel awarded Excalibur some modest relief as respects the amounts billed. It declared that Excalibur did not owe anything on the Zaiour claim. It awarded discounts on the Ford, Landrian, Medina and Conway claims.

The arbitrators, as is frequently the case, did not explain the reasons for their award. Nor were they required to, since the parties' arbitration agreement provides that "the conduct of the arbitration shall be based upon the procedures of the Commercial Arbitration Rules of the American Arbitration Association, unless otherwise agreed by the parties," (Hargraves Dec. Ex. 1 at Article 24(N)), and AAA Commercial Arbitration Rule R-42(b) provides, "The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to the appointment of the arbitrator, or unless the arbitrator determines that a reasoned award is appropriate."

However, the award was not unanimously agreed, and AIIC's party arbitrator filed a stinging dissent, in which he accused his colleagues of disregarding the "follow the fortunes" doctrine. The dissent set up an appeal to this court to overturn the portions of the award with which the party arbitrator disagreed on the ground that the rest of the panel manifestly disregarded that legal doctrine.

Excalibur has paid in full the amount awarded by the panel, including interest. It has not posted the letter of credit, as required by the Quota Share Treaty. Its excuse for not doing so is that it does not have a Letter of Credit facility – which is no excuse at all. Excalibur has instead invented its own form of alternate relief, in the form of a cash advance to AIIC.

DISCUSSION

1. The Petition Will Not Be Dismissed As Time-Barred

Excalibur first argues that the petition should be dismissed as time-barred because, while the petition was both filed in this court and served on petitioner within the statutory period, a summons was apparently not served along with the petition. Its argument is unconvincing.

Under the Federal Arbitration Act, a "Notice of a motion to vacate…an award must be served upon the adverse party…within three months after the award is…delivered." 9 U.S.C. §12. Service must also be made within a three month period.

In this case, the award was delivered to the parties by email on August 19, 2013. On November 18, 2013, AIIC filed a Petition to Vacate with supporting affidavits and a memorandum of law (Docket #2). On November 19, 2013 – the last possible day under the statute – a copy of the Petition and supporting documents were delivered to Excalibur's offices. They were not accompanied by a summons; indeed, the docket sheet reveals that no summons was ever issued by the Clerk of Court.

The Second Circuit has never ruled whether a summons needs to accompany a Notice of Petition (which is really a Notice of Motion in federal parlance) to vacate an arbitration award. My colleague Judge Kaplan long ago concluded that Section 9 of the FAA "contemplates only that 'notice of the application' to confirm the award be served, not a summons." *Home Ins. Co. v. RHA/Pennsylvania Nursing Homes, Inc.*, 113 F. Supp. 2d 633, 635 n. 10 (S.D.N.Y. 2000); my colleague Judge Scheindlin ruled the same way in the context of an application to vacate an award. *Scandinavian Reinsurance Co. Ltd. v. St. Paul Fire & Marine Ins. Co.*, 732 F. Supp. 2d 293, 305 (S.D.N.Y. 2010), *rev'd on other grounds*, 668 F. 3d 60 (2d Cir. 2012). Judge Scheindlin specifically noted that a summons was not necessary to obtain jurisdiction over the respondent (as would typically be required in other cases) because "when the parties enter into an agreement to arbitrate in a particular forum, they consent to personal jurisdiction in the courts of that forum." *Scandinavian*, supra., 732 F. Supp. 2d at 305. Here, the arbitration provisions of Article 24 of the Excess of Loss Treaty include a consent to jurisdiction "in any court having jurisdiction thereof." (Hargreaves Ex. 1, Article 24, Sec. L)

It would be useful for the Second Circuit to clear up any lingering uncertainty on this highly technical point. However, in the absence of controlling authority, I am persuaded by the reasoning of *Home Ins. Co.* and *Scandinavian* that the service of a summons was not required to commence this proceeding.

Furthermore, I note that the docket does not indicate the issuance of a summons to Excalibur, either, which means that Respondent did not serve AIIC with a summons in support of its cross-motion to confirm the arbitration award in its entirety. Eitehr Respondent does not believe in its own argument or it waived any defect in service in order to get its own motion before the court without the need to pay a filing fee. Either way, it would be unjust not to consider AIIC's arguments on the merits.

2. *The Scope of Review*

A party seeking to overturn all or part of an arbitration award faces a "high hurdle." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010). On review of an arbitration award, a court is not permitted to engage in plenary review of the record, as would a court of

appeals following a trial. *Matter of Andros Compania Maritima, S.A. (Marc Rich & Co., A.G.)*, 579 F. 2d 691, 703 (2d Cir. 1978). Instead, this court must give substantial deference to the arbitrators, overturning their award only if one of the statutory bases for vacatur is established. The burden of convincing the court that the award is defective rests on the party challenging it – in this case, on AIIC.

Where, as here, an award does not include the arbitrators' reasoning, this court "will uphold it if [it] can discern any valid ground for it." *STMicroelectronics, N.V. v. Credit Suisse Sec. (USA) LLC*, 648 F. 3d 68, 78 (2d Cir. 2011).

(3) The Award is Confirmed in All Respects Because The Panel Majority Did Not "Manifestly" Disregard the Follow the Fortunes Doctrine or Exceed Its Authority

AIIC contends that the arbitrators could not have rendered the award they made without manifestly disregarding the "follow the fortunes" doctrine that is one of the cornerstones of reinsurance law.

But the only party that is manifestly disregarding anything in this case is AIIC. Petitioner is disregarding two things: the fact that the "follow the fortunes" doctrine is not without limits, and the fact that arbitrators, unlike courts of law, are not obligated to get the law right to apply it slavishly. The self-serving dissenter's report notwithstanding, there is absolutely no evidence from the Award itself that the arbitrators disregarded (that is, refused to consider) the law. And once the limits on the "follow the fortunes" doctrine are considered in light of the evidence introduced and arguments made before the panel, the Award makes perfect sense.

Since an arbitration award comprising the "honest decision" of arbitrators after a full and fair hearing "will not [be] set [] aside for error, either in law or fact," *Burchel v. Marsh*, 58 U.S. 344, 349 (1855), the Second Circuit's "manifest disregard of the law" standard for vacatur of an arbitration award is "by design, exceedingly difficult to satisfy." *Goldman Sachs Execution & Clearing, L.P. v. Official Unsecured Creditors' Comm. of Bayou Group LLC*, 491 Fed. App'x. 201, 204 (2d Cir. 2012). Review of an arbitration decision under the manifest disregard standard is "severely limited, highly deferential, and contained to those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent." *Stolt-Nielsen S.A.*, *supra.*, 548 F. 3d at 91-92. The Circuit itself noted that it has found the standard met in only a handful of cases since 1960. *Wallace v. Buttar*, 378 F. 3d 182, 191 (2d Cir. 2004).

Here, there can be no question that the members of the arbitration panel – all of whom are experienced industry professionals – were aware of the follow the fortunes doctrine. In the highly unlikely event that they were not thoroughly familiar with it prior to the commencement of this arbitration, the parties argued and briefed it extensively. Therefore, the only question is whether the modest discounts awarded by the arbitrators resulted from some "egregious

impropriety" on their part, such that they in effect exceeded the authority conferred on them by the parties in making their award.[2]

They did not.

The follow the fortunes doctrine compels a reinsurer to follow the litigation/settlement decisions of its cedent -- provided that the cedent (in this case, AIIC) acts in accordance with the doctrine of good faith and conducts a reasonable and businesslike investigation before making decisions. *Aetna Cas. & Sur. Co. v. Home Ins. Co.*, 882 F. Supp. 1328, 1346 (S.D.N.Y. 1995).

The doctrine is not, however, an absolute shield against any challenge to the cedent's conduct. It does not apply, for example, when the cedent makes an *ex gratia* payment — one that falls outside the scope of coverage afforded by the reinsured policy. *Id.*; *see also Christiana Gen. Ins. Corp. of New York v. Great Am. Ins. Co.*, 745 F. Supp. 150 (S.D.N.Y. 1990); *North River Ins. Co. v. Cigna Reinsurance Co.*, 52 F. 3d 1194, 1199 (3d Cir. 1995).

Nor is it applicable where the cedent fails in its duty of good faith, which requires it to protect its reinsurers' interests as if they were the cedent's own. Reinsurers "are protected…by a large area of common interest with ceding insurers and by the tradition of utmost good faith, particularly in the sharing of information." *Unigard Sec. Ins. Co., Inc. v. North River Ins. Co.*, 4 F. 3d 1049, 1054 (2d Cir. 1993). Cedents must make good faith coverage decisions after reasonable and businesslike investigations of the underlying claims. Graydon S. Staring, *Law of Reinsurance* §18.9, "Good Faith, Reasonableness, Skill and Diligence" (April 2012). A reinsurer is not obligated to "follow the fortunes" of its ceding insurer where the cedent fails to handle the claim in the appropriate manner. *Suter v. Gen. Accident Ins. Co. of Am.*, No. 01-CV-2686, 2006 WL 2000881, at *22-23 (D.N.J. 2006), *vacated pursuant to settlement*, No. 201-CV-02686, 2007 WL 2781935 (D.N.J. 2007); *see Christiana Gen. Ins. Corp. of New York v. Great Am. Ins. Co.*, 979 F. 2d 268, 280 (2d Cir. 1992); *Global Reinsurance Corp. of Am. v. Argonaut Ins. Co.*, 634 F. Supp. 2d 342, 350 (S.D.N.Y. 2009).

During the arbitration, Excalibur took the position before the arbitrators that AIIC both made *ex gratia* payments (in connection with the Ford and Zaiour claims) and was grossly negligent in its handling of those and three other claims -- all in violation of a cedent's duty of utmost good faith to its reinsurers. AIIC insists that the record contains no evidence of any such violations; indeed, it argues in conclusory fashion to this court that there could be no question of its good faith. But in so arguing, AIIC asks this court to do what it cannot do – review the award for correctness. Both issues, good faith and *ex gratia* payments, were placed squarely before the panel. Considerable evidence and argument were introduced on both sides of those issues. Two of the three members obviously concluded that AIIC was less diligent and less protective of its reinsurer's interests than Petitioner would have this court believe.

[2] I agree with Respondent that the "exceeding authority" and "manifest disregard" arguments conflate – petitioner is arguing that the arbitrators exceeded their authority by manifestly disregarding the law.

Perhaps Petitioner's view of the evidence is the better view. Or perhaps a court of law, knowing that errors of law in litigation (as opposed to arbitration) will lead to reversal, would have reached a different result than the panel majority did. But the parties elected, of their own free will, to put this matter before arbitrators – who, unlike courts, are entitled to reach equitable compromise solutions as long as they do not entirely disregard the law. This court lacks the power to retry the case, or to substitute its view of the evidence for that of the arbitrators. So the 30-page factual summary in AIIC's moving brief, which is based on the evidence as recounted from its point of view and reads like a closing argument, is simply wasted paper. AIIC must convince this court, not that the arbitrators reached the wrong result, but that the arbitrators simply chose to disregard the "follow the fortunes" doctrine entirely. Unless it can do that, the arbitrators' award must be confirmed as long as it has even "barely colorable justification" under the law, *Westerbeke Corp. v. Daihatsu Motor Co., Ltd.*, 304 F. 3d 200, 222 (2d Cir. 2002).

AIIC does not even come close to meeting its burden.

Petitioner challenges the panel's allowance of discounts (and, in one case, its disallowance) of five separate settlements. Two of them are easily justified.

(1) The panel completely disallowed the Zaiour claim, requiring Excalibur to pay nothing on it. That result is consistent with acceptance by a majority of the arbitrators of Respondent's argument that the payment to Zaiour was *ex gratia* because the insured's late notice to the insurer voided coverage. The evidence in the record shows that the insured did indeed give late notice. Whether, as AIIC here argues, that would not have excused its failure to honor the claim (because Florida is highly protective of workers' compensation claimants and would overlook the default) is really of no moment. In fact, petitioner is out of bounds in directing that argument to this court. AIIC chose to settle the Zaiour claim and give up the argument that late notice voided coverage. Excalibur challenged AIIC's determination as gratuitous. It was up to the arbitrators to decide whether Excalibur was correct. If they found that the payment was gratuitous, then the follow the fortunes doctrine did not apply. The arbitrators were not required to follow "judicial formalities" in making their decision (which means, inter alia, that they were not required to predict what a Florida court would hold), and there is at least some basis in the evidence to support the conclusion that coverage was provided when it should not have been. Disallowance of the claim thus does not necessarily demonstrate any manifest disregard of the "follow the fortunes" doctrine.

(2) The panel allowed only a portion of the Ford claim, which Excalibur also contended was *ex gratia* due to late notice. Obviously, the panel could not have accepted the late notice argument, or it would have had to disallow the claim entirely, as it did with Zaiour. However, Excalibur also argued that the payment was *ex gratia* because the claim "arose" in 2004, not in 2003, which is the year covered by the Excess of Loss Treaty. Ford suffered a repetitive injury; under Florida law the claimant suffers a new injury each time he is exposed to the injury-causing trauma. The evidence in the record supports the view that Ford was exposed in both 2003 – the year covered by the Excess of Loss Treaty at issue – and in 2004. AIIC

argued that as Ford was first exposed, the entire amount of the claim was covered by the policy in effect during that year; Excalibur argued that the injury did not "arise" until the date of last exposure, which was June 1, 2004, so the entire amount of the injury should have fallen on the 2004 policy.[3] Since Ford was indisputably exposed to the injurious trauma during *both* years, it is entirely possible that the panel concluded that the 2003 Excess of Loss Treaty was answerable for only a portion of Ford's compensation coverage, rather than all of it. That is entirely consistent with the panel's decision to discount the total amount paid by 50%.

The other three challenged aspects of the award are of a piece – Excalibur argued for disallowance or discounts, and was granted discounts, on the ground that AIIC did not settle the claims in entire good faith. In each case, the evidence could be read either way:

(3) Insofar as the Conway claim is concerned, Excalibur argued that AIC did not conduct a reasonable and sufficient investigation of the claim, failed to pursue subrogation rights, and failed to settle for an amount below the Treaty's retention level. Excalibur asked that the claim (which is ongoing) be disallowed in its entirety. The panel awarded Excalibur a 15% discount, both retrospectively and on a going forward basis, but ordered that AIIC be reimbursed by its reinsurer for the rest. As there is some evidence in the record to support Excalibur's arguments, it cannot be said that there was no colorable basis for a finding that AIIC did less than it should have to meet its good faith obligation to its reinsurer. *See Patterson v. Lehamn Bros., Inc.*, No. 00-CV-1785, 2004 WL 2403562, at *1-2; *see also Fahnestock & Co., Inc. v. Waltman*, 935 F.2d 512, 515-17 (2d Cir. 1991); *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 and 392-93 (2d Cir. 2003)).

(4) As to the Medina claim, Excalibur argued that AIIC had refused to settle the claim at a state when it could have been settled below the treaty retention level. Excalibur won a $35,000 discount from the total amount billed on account of this claim, which was $266,576.97. Again, assuming the arbitrators were persuaded that AIIC's refusal to settle was tinged with bad faith – of which some evidence was presented (*see* Hargraves Decl., Ex. 5 at 61-63, Aldridge Decl., Exs. 39-43) – the discounted award reflects an arbitral decision to allow most, but not quite all, of the claims.

(5) Finally, Excalibur advanced similar arguments in respect of the Landrian claim, asserting that AIIC had driven up the value of the claim by failing to provide Landrian with a van modified for wheelchair operation so he could leave a nursing home and by taking too long to locate a handicapped equipped home for Landrian. There was certainly some support for Excalibur's view that AIIC was grossly negligent in that its handling of Landrian's claim resulted in a higher cost than would otherwise have been the case; in this regard, it is notable that Landrian had to sue AIIC and obtain a court order directing that these benefits be allowed. *See*

[3] The rule cited by Excalibur is not a rule about when injury arises, but rather when the statute of limitations starts running on a repetitive injury claim. *Rose v. Geico*, 90 So. 3d 886, 888 (Fla. 1st Dist. Ct. App. 2012); *Troche v. GEICO*, 966 So. 2d 460, 461 (Fla. 1st Dist. Ct. App. 2007); *Tokyo House, Inc. v. Hsin Chu*, 597 So. 2d . 348, 350-51 (Fla. 1st Dist. Ct. App. 1992).

Hargraves Decl., Ex.5 at 44-49; Aldridge Decl., Exs. 31-36. The panel awarded Excalibur a $150,000 discount on this claim.

All three of these items (3), (4) and (5) can be explained by the panel majority's adopting a view that Excalibur demonstrated some degree of bad faith or gross negligence in the handling of the claim, but not so much as to disallow the claim in its entirety. Even if a court of law could not have awarded AIIC a partial loaf under the "follow the fortunes" doctrine (an issue I need not resolve), arbitrators unconstrained by "judicial formalities" are not so bound. All that is required to get around a "manifest disregard" challenge is that the arbitrators not simply ignore the doctrine. The fact that AIIC's claims were in the main allowed actually suggests that the arbitrators demonstrated a healthy respect for follow the fortunes.

Against all of this, all AIIC says is that the arbitrators must have disregarded the follow the fortunes doctrine because "AIIC had diligently handled those claims for that period in accordance with its obligations as a Florida workers' compensation carrier in Florida." (Br. in Support at 6). That is nothing more than a conclusory and self-serving statement on Petitioner's part. During the arbitration – when it mattered -- Respondent argued to the contrary and a majority of the arbitrators chose to award Respondent some modest relief.

This court cannot say that the award contravenes the "practice, custom and usage of the insurance and reinsurance business," which is the standard that governed arbitral decision-making under the literal terms of the parties' arbitration agreement. I am no expert in such matters; but it is not unheard of for reinsurers to challenge cedents' decisions as being extra-contractual, and for courts (which are bound to follow the rule of law) to conclude that the follow the fortunes doctrine does not compel reimbursement on the particular facts of the case. *See, e.g.*, *Am. Ins. Co. v. North Am. Co. for Property and Casualty*, 697 F. 2d 79 (2d Cir. 1982). Since that is the case, I fail to see why an arbitration panel's conclusion that the evidence suggested some degree of bad faith, and so warranted discounts, constitutes misconduct of any sort, let alone "manifest disregard" for the law. I recognize that AIIC cannot conceive of such a verdicts on its efforts, but that was for the arbitrators to determine in view of all the evidence submitted.

There remains the dissent written by AIIC's party arbitrator, in which he accuses his fellow arbitrators of manifestly disregarding the follow the fortunes doctrine. This court takes a dim view of this document. It reflects the view of the arbitrator and his client party that the follow the fortunes doctrine admits of no exceptions – which is simply untrue – and discounts the fact that the other arbitrators (including the neutral) could have taken a different view of AIIC's performance in connection with these claims than AIIC did. Furthermore, it appears likely that the dissent was created simply to serve as an exhibit to the instant petition. It would be poor public policy indeed if disgruntled minority arbitrators could open up awards to the very sort of review from which arbitration is supposed to be insulated, not by pointing to the type of misconduct that is specifically prohibited by Section 10(a), but by in essence re-arguing points of law that arbitrators are by design not required to apply in the same manner a court would. This court will not be party to such an endeavor.

I am utterly unmoved by the suggestion that the fact that the other arbitrators did not respond to and rebut the dissenter's contentions in the text of the award indicates their assent to the charge of manifest disregard. Far more likely it reflects a desire not to get into an irrelevant and inappropriate shouting match with a fellow arbitrator whose partisan behavior went beyond that usually expected from a party's designee.

I want to make it perfectly clear that this court is not endorsing the correctness of any of the results reached by the arbitration panel. Reviewing the evidence for sufficiency and persuasiveness is not my job; ascertaining whether there is any evidence to demonstrate a lack of manifest disregard for the law is.

That said, neither do I consider the award (which was overwhelmingly in Petitioner's favor) to be the panel's "own brand of industrial justice," as AIIC characterizes it. It is entirely consistent with the panel majority's seeing the evidence as containing some questionable behavior on AIIC's part — behavior that, under industry custom and practice, ought not be encouraged.

(4) *Excalibur Must Post a Letter of Credit*

Finally, the arbitrators directed as part of their award that Excalibur post a letter of credit as required by the Quota Share Treaty. Excalibur offers no reason why this court should not confirm that portion of the award. Excalibur's failure to secure a line of credit facility is not a basis to allow it to post alternate security; and any argument that it should be allowed to post alternate security was for the arbitrators, not this court. By signing onto a Treaty that required the posting of a letter of credit in certain circumstances, Excalibur impliedly assumed the duty to place itself in a position to fulfill its contractual obligations. This aspect of the award is confirmed. Excalibur must either do whatever is needed to fulfill the arbitrators' command or reach some settlement with AIIC that is satisfactory to petitioner.

CONCLUSION

If parties want the luxury of judicial review and reasoned results that require strict application of the law, without the sort of compromises that often characterize arbitral awards, they should not agree to arbitration clauses. Having done so, they should not be heard to complain when the arbitrators do what arbitrators so often do – reach compromise verdicts that can easily be justified by taking a particular view of the evidence.

The Petition is denied, and the Cross-Motion to confirm the award is granted. Costs to Respondent.

The Clerk is directed to remove the motions at Dockets # 12 and 20 from the court's list of active motions, to enter an order confirming the award in all respects, and to close this case.

Dated: November 26, 2014

U.S.D.J.

BY ECF TO ALL COUNSEL