

CELEBRATING OUR 25TH YEAR IN BUSINESS

Seeking Clarification of an Ambiguous Arbitration Award

Parties often favor arbitration because it usually brings an immediate end to the litigation as the arbitrator lacks the authority to reconsider the award by reason of the "functus officio" doctrine.

But if the meaning or intent of the award is disputed by the parties, what must be considered in determining whether and how the award may be modified?

These issues were faced recently by a federal district court in Connecticut in a complex dispute between insurance companies involving the proper methodology for calculating recapture payments under the final award in *General Re Life v. Lincoln National Life Insurance*, No. 15-cv-1860, (VAB), 2017 U.S. Dist. Lexis 48860, 2017 WL 1230844 (March 31, 2017).

As a result, *Lincoln National* asked the arbitrators to reconsider and resolve how the recapture payments should be calculated. *General Re* objected that this was beyond the arbitrators' authority as reconsideration would fundamentally change the unambiguous recapture methodology set forth in the final award.

A majority of the arbitration panel concluded that the interpretations of the final award by both parties were incorrect, and that a "clarification award" was necessary to explain how payments were to be made. *General Re* and *Lincoln National* filed cross-petitions, one seeking confirmation of the original final award and the other confirmation of the final award as clarified. The court held that clarification was warranted and confirmed the final award as clarified. [READ MORE](#)

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Judge Abraham J. Gafni
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