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Is Arbitration Confidentiality Lost When an Award is Filed?



Arbitration is often preferred by contesting parties for many reasons. These may include speed, procedural or evidentiary requirements, decisions by arbitrators with special expertise, no public disclosure of the existence of a dispute or information relating to it, and avoidance of the appellate process. Indeed, careful counsel will assure that all of these issues are considered and incorporated into an arbitration agreement.

After the award is issued, however, the successful party will often petition to have it judicially confirmed by entering it in the court records, essentially as it would any other order of a court. When the award has been recorded on the court's docket, however, does the general public then have access to it as it would to any other court document; and will such access undermine the original desire of the parties to keep confidential, information relating to the arbitration including, in particular, the ultimate result?

This issue was considered recently by the U.S. Court of Appeals for the Third Circuit in a nonprecedential opinion in Pennsylvania, National Mutual Casualty Company Insurance Group (Penn National) v. New England Reinsurance, 20-1635 and, No. 20-1872 (3rd Cir. Dec. 24, 2020).

The original arbitration involved insurance claims made by Penn National against two of its reinsurance companies. After an award had been issued in favor of Penn National, it petitioned the district court to confirm the award so that it might reduce the award to judgment under the Federal Arbitration Act (FAA). As part of the confirmation process, it filed the award with the District Court, FAA 9 U.S.C., Section 13.

One day after filing the award, the court granted Penn National's request that the award be sealed. Before the reinsurance companies had responded to the petition to confirm, however, the parties settled the case. Consequently, Penn National sent a letter to the district court withdrawing its petition to confirm. [READ MORE..](#)

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