Four Joint Insurers—Does an Arbitration Clause Appearing in Only One Policy Control?

Judge Abraham J. Gafni (Ret.)
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Risk for particular losses are often shared among several insurers. But what happens if following an insured's claim against four insurers, only one of the four insurance policies contains a mandatory arbitration clause? Will the entire claim be resolved through arbitration or in court? Or, perhaps, will the percentage claim against each insurer be resolved through the process set forth in its individual policy?

This issue was faced recently by a federal district court in *Signal Ridge Owners Association v. Landmark American Insurance,* (N.D Texas 2023).

Signal Ridge is a homeowners association for a condominium complex. Four insurers together insured the property pursuant to an insurance program. Liability was to be apportioned in the following percentages: Landmark (45%), Lexington (30%), National (15%) and Hudson (10%).

Each insurer furnished its own standard policy language and riders; these were then "affixed to one another, accompanied by one overarching shared limits/shared capacity dispute protocol, and delivered to Signal Ridge."

Only one of the four policies, that of Hudson the 10% insurer, contained an arbitration clause. It provided:

"If there is any dispute or disagreement as to the interpretation of the terms and conditions of this policy or the development, adjustment and payment of any claim, they shall be submitted to the decision of a joint arbitrator that the insured and company shall appoint jointly."

By reason of property damage disagreements, Signal Ridge sued all four insurers. Invoking the arbitration clause in the Hudson policy, the insurers all moved to compel arbitration and dismiss the suit.

The court recognized that it must determine whether, under Texas contract law, there was a valid agreement to arbitrate among all parties.

The first issue to be resolved was whether there was a binding arbitration agreement between Hudson and Signal Ridge. As the Hudson arbitration provision was attached to the Hudson policy, the court had little difficulty finding that it was part of the Hudson policy; and as Hudson and Signal Ridge had each signed this agreement, both were obligated to arbitrate the Signal Ridge claims against Hudson.

But did the Horizon arbitration provision apply to the other three insurers whose insurance policies did not have an arbitration agreement?

The court recognized that it must give effect to the parties' intent expressed in the text as well as the facts and circumstances surrounding the contracts' execution. Thus," instruments pertaining to the same transactions may be read together to ascertain the parties' intent even if the parties executed the documents at different times and the instruments do not expressly refer to each other. This general rule applies even if the agreements are not between the same parties." Considerations for the court might be whether the instruments were part of the same transaction and

would be incomplete without any one of them. Also, did each instrument have a distinct purpose, establish separate obligations, and apply to different parties?

The court in its opinion acknowledged that evidence in the record supported the positions of both Signal Ridge and the insurers.

In support of the insurers, the court noted that the four contracts related to the same transaction, insured the same property, and had coterminous coverage periods. Further, each policy could be understood to refer to the existence of the other policies, and that as each policy only accounted for a portion of the total insurance coverage, the policy coverage would not be whole without all four. Moreover, where "multiple insurer providers agree to insure the same property and cover a portion of any loss, it would be odd indeed for the insured to agree to arbitrate disputes with one insurer but not the other three." Finally, "while this scenario could suggest that that Signal Ridge was actually unaware that it had agreed to arbitrate with any of the insurers" it is presumed that it read and knew of the arbitration endorsement as it was attached to the delivered policy. "It is more likely the case that Signal Ridge and the insurers understood that the arbitration endorsement applies to the four policies viewed as a whole."

The court further noted, however, that several facts supported Signal Ridge's position that the four policies were separate insurance contracts involving the same insured but different insurers. Thus, each of the policies contained a different policy number. Moreover, many policy terms—such as service of suit endorsements, exclusions for acts of terrorism, and the removal of debris—were repeated in more than one policy. These would be redundant if only one policy were involved. In addition, while each policy included a schedule of attachments or endorsements, there was no master schedule of attachments that listed all four policies and endorsements. Finally, the arbitration clause itself in the Hudson policy dictated that the arbitrator is to be selected by the insured and the "company," a term used elsewhere in the Hudson policy to refer to Hudson alone.

Signal Ridge further contended that the policies are inconsistent in that the Landmark and National policies' consent-to-suit provisions conflict directly with Hudson's arbitration clause.

The court did not give much weight to this argument; it concluded that the arbitration clauses and consent-to-suit clauses could be read together to give effect to both (such as the court retaining the authority to determine arbitrability with arbitration to resolve the matter itself).

Ultimately, the court determined that the insurance policies constituted one contract between Signal Ridge and all four insurers. It concluded that "multiple documents that are executed contemporaneously, that pertain to the same transaction, and that represent necessary parts of one whole agreement can be construed as one agreement;" and, accordingly, that all parties to the lawsuit were obligated to arbitrate any dispute covered by the arbitration agreement in the Hudson policy.

Although the court relied primarily on basic contract principles, it noted that the "intertwined-claims theory of equitable estoppel" would also permit the three other insurers—even as purported "nonsignatories" to the arbitration agreement in the Hudson policy—to compel Signal Ridge to arbitrate the claims. It pointed out that Signal Ridge had treated the four insurers as one unit throughout this litigation, which was reasonable given the extent to which the insurers were bound up with each other under the terms of the policy. Moreover, the court determined that it would be logical to assume that Signal Ridge, as a diligent insured, which had read the entire policy, would have concluded that the arbitration provision was binding on all parties.

One might well find reason to disagree with the ultimate conclusion of the court—that an arbitration provision appearing only in the policy of the 10% insurer is binding upon the insured and its claims against those 90% insurers whose policies contain no arbitration provision. Logic perhaps suggests that the arbitration provision in the Horizon policy should apply when the only claims remaining or being

considered were against Horizon. Conversely, if Horizon independently settled the claim against it, should the other three insurers remain entitled to insist on arbitration based upon a provision, appearing in Horizon's policy alone, of which they surely had been aware and chose not to include their own policies?

Whether this particular case will be the subject of an appeal is not clear. What is clear is that whenever there are multiple parties and documents involved in creating a contractual relationship, care should be taken to assure that the dispute resolution provisions in them are consistent. Otherwise, parties may find themselves subject to procedures that they did not believe applied to them.

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