

Vacating an Appraisal Award Based on Umpire Bias

Most appraisal awards result from the umpire siding with either the insurer's appraiser or the insured's appraiser. For this reason, both parties to the appraisal seek an umpire that they believe will be fair and impartial (or at least only partial to their side).

In order for each party to be fully informed, a prospective umpire has a duty to disclose information that might demonstrate bias. But what information is this?

Dickey v. Alterra America Insurance Company, 2017 WL 3013405 (C.D. Cal.) recently discussed the general rules governing disclosure:

- 1) To establish partiality, the party moving to vacate must set forth specific facts showing that the umpire was actually biased against the moving party, or that the umpire **failed to disclose information that creates a reasonable impression of bias**.
- 2) An umpire's previous work for a party may provide the impression of bias required to vacate an award.
- 3) Courts generally vacate an award based on an impression of bias only if the previous work was substantial and ongoing.

In *Dickey*, the umpire—McCarthy—disclosed to the parties that five years earlier he had worked on a claim with the insured's named appraiser, Twarowski. In that prior claim, Twarowski was involved as a public adjuster and McCarthy served as Allstate's appraiser.

However, McCarthy failed to disclose that the law firm that represented Allstate in this prior claim was the same firm representing Alterra American Insurance Company in the subject appraisal. Apparently, Twarowski never knew that this law firm was working for Allstate in the earlier appraisal.

The court held that this single previous engagement, completed five years earlier, was insufficient to create an impression of bias that would justify vacating the appraisal award. The court found the connection "too distant, too attenuated, and too insubstantial" to create the necessary impression of bias.

Takeaway: If the appraisers, especially the umpire, have some undisclosed relationship with one of the appraisers, one of the parties, or one of the lawyers representing the parties, then the appraisal award may be on shaky ground. For example, trying to slip past the insurer an umpire who is an old high school buddy of the insured's appraiser, may open the door to a motion to vacate and the very litigation that an appraisal is intended to replace.

The best practice is for each appraiser to make a full written disclosure of all connections that they have to any party or lawyer involved in the claim as well as to the prospective umpire. The parties are likely to assent to their respective appraisers having some connection to the party naming them as this is not uncommon. But umpires are another matter because they usually are the ones making the final call. Prospective umpires—and each side's relationship to the prospective umpire—should be subject to greater scrutiny so the final award is not the result of undisclosed gamesmanship or of personal, "behind the scenes," relationships.