

Insurers Who Avoided Arbitration Cannot Challenge Arbitration Award

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Rain II Carbon, L.L.C. v. Recon Eng'g, Inc., No. 2018-CA-0916, 2019 La. App. LEXIS 783 (La. App. 4 Cir. 5/1/19).

This case illustrates the risk that an insurer who declines to participate in arbitration may lack standing to challenge an unfavorable award that impacts it. Rain II Carbon, L.L.C. ("Rain") sought to build a waste heat recovery unit at its facility in southwest Louisiana. It engaged the services of a number of contractors, including Recon Engineering, Inc. ("Recon"), for the project. Rain apparently became dissatisfied with Recon's services and sued Recon in Louisiana state court. Recon compelled Rain into arbitration based on an arbitration clause in the parties' contract.

Rain then asserted claims against Recon's insurers in state court (Louisiana has a "direct action" statute that allows insurers to be sued directly). The insurers, however, successfully argued that the pending arbitration precluded litigating claims against them in state court. Rain then sought to join the insurers in the arbitration proceeding. Taking a "heads I win, tails you lose" position, the insurers successfully argued they could not be required to arbitrate because they had no arbitration agreement with Rain.

Rain proceeded to arbitrate its claims against Recon, and was awarded over \$4.4 million in damages, fees, and costs. Rain then sought to confirm the award in state court. At that point, the insurers sought to intervene in the court proceeding seeking, among other things, to vacate the arbitration award. In response, Rain raised procedural challenges to the insurers' intervention, including a challenge to their procedural capacity. The district court agreed that the insurers lacked procedural capacity. The insurers appealed.

On appeal, the Fourth Circuit affirmed. The court noted the insurers "took a contrary position" by claiming a lack of notice of the arbitration proceeding, after having successfully opposed being joined to that same proceeding. Construing the Louisiana Arbitration Act, the court noted that only a "party" to an arbitration could move to vacate or modify an award. Since the insurers were not parties to the arbitration proceeding by their own choosing, they lacked capacity to challenge the award and their challenge to the award was moot. The arbitration award was confirmed.

In a lengthy dissent, Judge Dysart suggested that the insurers should have prevailed on both procedural and substantive grounds.

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