The doctrine of functus officio holds that once an arbitrator renders a decision regarding the issues submitted, he or she lacks any power to reexamine that decision. The rationale behind the rule is a belief that it is necessary to prevent a reexamination of issues by a nonjudicial officer where there might have been further outside communication or undue influence post-hearing.

Exceptions to Functus Officio
But there are exceptions to the functus officio rule. The functus officio doctrine does not prevent an arbitrator from interpreting, amplifying, or correcting his or her award when (1) the award is incomplete or ambiguous, (2) the court resubmits an issue to the arbitrator, (3) a mistake is apparent from the face of the award, or (4) the parties request that an issue be resubmitted to the arbitrator. Recently, the Southern District of New York addressed what happens when a panel retains jurisdiction after issuing the final award and a new dispute that clashes with the final award arises.

The Southern District of New York’s Decision
In Chicago Insurance Co. v. General Reinsurance Corp., No. 18-cv-10450, 2019 WL 5387819 (S.D.N.Y. Oct. 22, 2019), the Southern District of New York was tasked with determining whether the functus officio doctrine barred an arbitration panel from deciding a dispute between parties that arose from a prior dispute adjudicated by that panel.

In Chicago, the parties arbitrated over a billing on a settlement of asbestos-related losses submitted by the cedent and disputed by the reinsurers. The arbitration panel rejected Chicago Insurance’s attempt to bill its losses on the basis that each site where the insured had operated constituted an “occurrence” under the reinsurance agreement, and the panel issued an award for the reinsurers. The award expressly retained the panel’s jurisdiction to “resolve any dispute arising out of [the] Final Award.”

In 2018, Chicago Insurance submitted a new bill to the reinsurers stating that the “loss allocation was prepared in accordance with the Award’s protocols.” The reinsurers rejected the allocation and submitted the issue to the arbitration panel for resolution. A majority of the arbitration panel agreed that the dispute arose out of the 2017 final award, and the panel confirmed that it had retained jurisdiction.

Chicago Insurance then initiated a new separate arbitration. The reinsurers refused to participate. Chicago Insurance then filed a petition to compel the reinsurers’ participation and to stay the original arbitration panel from proceeding. In response, the reinsurers filed a cross-motion to stay the new arbitration, seeking a declaration that the 2017 panel had the requisite jurisdiction to resolve the dispute.
Chicago Insurance argued that the 2017 arbitration panel was functus officio and that, therefore, a new arbitration must take place under the agreement to resolve the dispute concerning the new billing. The court determined that functus officio did not apply because functus officio “is applicable only once the arbitrator’s assigned duties have come to an end,” and the court found that the 2017 arbitration panel’s duties “definitionally” had not ceased because the dispute on the new billing arose out of the 2017 final award and because of “Chicago’s own repeated statements that the final bill arose from the ‘protocols’ set forth” by the 2017 arbitration panel.

The court concluded that that the 2017 arbitration panel retained jurisdiction to adjudicate whether Chicago Insurance’s new billing comported with the panel’s final award.

Practice Pointers
The Chicago case illustrates the importance of reviewing the final arbitration award and making sure to dispute or seek to vacate an award if there are terms that are objectionable. The Chicago court noted that Chicago Insurance consented to jurisdiction by failing to dispute the award. In addition, the majority of circuits apply the clarification exception to the doctrine of functus officio. For that reason, when drafting arbitration agreements, it may be wise to draft a provision that specifically forbids the panel from altering an award after the award has been rendered.

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