

ACANDS ASKS COURT TO VACATE INSURANCE ARBITRATION AWARD

Philadelphia

November 11, 2003

ACandS Inc. on Oct. 30 asked a Pennsylvania federal court to vacate a July 30 arbitration award concerning an insurance coverage dispute with Travelers Casualty & Surety Co. (ACandS Inc. v. Travelers Casualty & Surety Co., No. 2:03-mc-222, E.D. Pa.).

ACandS contends that the arbitrators exceeded their authority by ruling on an issue that was not properly before them and impairing the company's rights to future coverage.

According to the parties, an arbitration panel on July 31 issued a confidential, binding award that entitles ACandS to recover 45 percent of all asbestos claim-related payment obligations incurred before July 31, while also ruling that claims paid after the decision date are subject to Travelers' aggregate policy limits, which have been exhausted.

I. Allocation Agreement

In 1988, ACandS and Travelers negotiated a letter agreement under which 55 percent of ACandS's liabilities would be allocated to products/completed operations coverage subject to aggregate limits and 45 percent to non-products coverage not subject to aggregate limits, ACandS says.

Travelers and ACandS complied with the allocation scheme for more than 10 years. In 2001, pursuant to a condition of the agreement, ACandS requested an adjustment to the percentages. The matter went to arbitration.

II. In a Nov. 3 press release about the petition to vacate the award, ACandS President and General Counsel James E. Hipolit says the arbitrators improperly accepted one of Travelers' "new" theories to deny coverage that the insurer took up as asbestos-related liabilities increased in the late 1990s.

According to the statement, the arbitration decision was not unanimous, with a dissenting arbitrator issuing a "strong" opinion in favor of ACandS.

III. ACandS also asserts that the award goes against the Bankruptcy Code's automatic stay because Travelers never obtained an order lifting the stay.

IV. Breach Of Contract Suit

In August, two weeks after the award was issued, ACandS sued Travelers for breach of contract for denying payment of more than \$1 billion pursuant to the arbitration award (ACandS Inc. v. Travelers Casualty & Surety Co., No. 03-4722, E.D. Pa.). It asserts that Travelers has refused to pay, claiming that all asbestos claims arise from only one or two occurrences and that the per-occurrence limits of the policies have been exhausted. At issue is coverage under primary liability policies issued from 1976 to 1980.

The motion was filed by Jan Fink Call and Elliot C. Fertik of Hoyle, Fickler, Herschel & Mathes in Philadelphia and Jerome C. Randolph, David B. Killalea, Stephen A. Weisbrod and Marla H. Kanemitsu of Gilbert Heintz & Randolph in Washington, D.C.