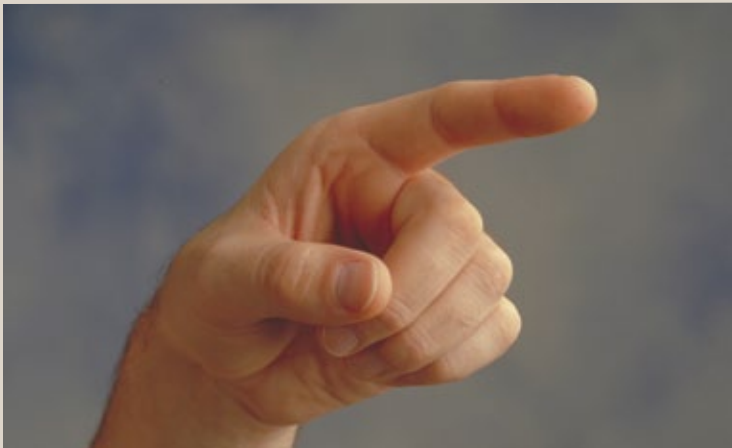


## Challenging an Arbitrator Appointment Actual Bias vs. Potential Future Bias

BY JOHN PITBLADO

In two recent Illinois federal district court cases, Trustmark Insurance Company challenged, with mixed success, the impartiality of a counterparty's selected arbitrator for reinsurance proceedings. In the first case, involving an arbitration between Trustmark and John Hancock Life, Trustmark brought suit to enjoin from service on the arbitration panel the same arbitrator John Hancock had selected in a previously concluded arbitration between the parties. Trustmark asserted that John Hancock's arbitrator breached a confidentiality agreement by discussing the earlier arbitration with the other arbitrators selected in the subsequent proceeding. The court agreed with Trustmark and enjoined the arbitration from proceeding with John Hancock's selected arbitrator.



*Calling out arbitrator's bias gets mixed results*

In the second case, Trustmark made a similar argument against Clarendon National Insurance Company, with which Trustmark also commenced a second arbitration. Here, however, there was no showing that Clarendon's selected arbitrator breached a confidentiality agreement relating to the previous arbitration. Trustmark argued instead that it would be impossible for Clarendon's arbitrator not to breach the previous confidentiality agreement at some point by discussing the first arbitration case with the other arbitrators. The court in this instance rejected Trustmark's argument, finding that a potential future breach of the confidentiality agreement was not sufficient grounds for a preliminary injunction barring the arbitration from proceeding.

Both decisions have been appealed to the Seventh Circuit.

## Reinsurance Litigants Denied In Bids For Home Cooking

BY ANTHONY CICHETTI

In a dispute concerning payment obligations under a "builders risk" reinsurance slip, the U.S. District Court for the Western District of Missouri held in *Continental Casualty Co. v. AXA Global Risks (UK) Ltd.* that related cases filed therein and in London should both proceed. The reinsurers were first in initiating a declaratory judgment action in the Commercial Court of London. The cedent responded five weeks later with the U.S. federal court action. Arguing that the reinsurers were seeking to avoid the application of Missouri law and to secure instead potentially more favorable English law, the cedent sought a preliminary injunction preventing the London action. (Apparently, the slip did not definitively address choice of law or venue.) The reinsurers, in turn, argued for a dismissal or stay of the U.S. suit based upon the first-filed London action.

The court applied what it explained to be the "conservative" view adopted by the Eighth Circuit, which accords greater weight to considerations of international comity when a foreign anti-suit injunction is at issue. The court concluded that both actions should proceed because the case before it, based upon contract law issues, "simply [did] not rise to the level of a 'vital American interest' sufficient to outweigh concerns of international comity." Addressing the reinsurers' claim that the later U.S. action should be dismissed or stayed, the court reasoned that "[w]hen related cases are before two different sovereigns, the appropriate procedure is to permit both jurisdictions to proceed, with any decision of one becoming *res judicata* on the other." Thus, the court placed a premium on prosecuting an action to a speedy and favorable conclusion.



*For these litigants, no home-cooked meal*