SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. RICHARD B. LOWE, III Justice

PART 56

M. Diane Koken

- v -

Certain Underwriters

INDEX NO. 603130/06

MOTION DATE 12/18/06

MOTION SEQ. NO. 002

MOTION CAL. NO. ____

The following papers, numbered 1 to ____ were read on this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

UNFILED JUDGMENT
No judgment has not been entered by the County Clerk
Notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM D

HON. RICHARD B. LOWE, III

Dated: 3/20/07

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 56

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M. DIANE KOKEN, INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA, IN HER OFFICIAL CAPACITY AS LIQUIDATOR OF LEGION INSURANCE COMPANY (IN LIQUIDATION) and G.E. FRANKONA REINSURANCE LIMITED (as successor to EAGLE STAR REINSURANCE COMPANY, LIMITED),

Petitioners,

-against-

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, SYNDICATE NOS. 227 (ROS), 566 (STN), 780 (BFC), 1007 (RCV), 1206 (CAP), 1141 (JEM) AND 1415 (CLM), ST. PAUL REINSURANCE COMPANY, LTD., IMPERIAL FIRE AND MARINE REINSURANCE COMPANY LTD. (n/k/a ALEA LONDON LIMITED), GAN INSURANCE COMPANY LIMITED, TIG REINSURANCE COMPANY (ODYSSEY AMERICA), and GIO INSURANCE LIMITED,

Respondents.

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MOTION FILED UNDER [illegible]

Index No. 603130/06

LOWE, J.:

Motion sequence numbers 002, 003 and 004 are herewith consolidated for disposition.

By Petition, dated September 5, 2006 (the Petition), petitioners M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as Liquidator of Legion Insurance Company (in Liquidation) and G.E. Frankona Reinsurance Limited (as successor to Eagle Star Reinsurance Company, Limited), move for an order, pursuant to CPLR 7511 (b) and Section 10 of the Federal Arbitration Act, 9 USC § 1, et seq. (FAA): (a) vacating the order issued on March 6, 2006, and the Clarification of the March 6, 2006 Panel Order and Final Award issued on May 3, 2006 (together, the Arbitration Award) in the arbitration entitled

Continental Casualty Company, on its own behalf, and in representative capacity on behalf of all reinsureds, against Lloyd's Syndicates Nos. 227 (ROS), 566 (STN), 780 (BFC), 1007 (RCV), 1206 (CAP), 1141 (JEM) AND 1415 (CLM), St. Paul Reinsurance Company, Ltd., Imperial Fire and Marine Reinsurance Company Ltd. (n/k/a Alea London Limited), GAN Insurance Company Ltd., TIG Reinsurance Company (Odyssey America), and GIO Insurance Ltd.; and (b) directing that a new arbitration be conducted before a new arbitration panel (motion 002).

Respondents Certain Underwriters at Lloyd's of London, Syndicates Nos. 227 (ROS), 566 (STN), 780 (BFC), 1007 (RCV), 1206 (CAP), 1141 (JEM) AND 1415 (CLM), St. Paul Reinsurance Company, Ltd., Imperial Fire and Marine Reinsurance Company Ltd. (n/k/a Alea London Limited), GAN Insurance Company Ltd., TIG Reinsurance Company (Odyssey America), and GIO Insurance Ltd. (together, the XOL Reinsurers or respondents), contend that the Arbitration Award was proper, and by Answer and Counter-Petition, dated October 13, 2006 (Counter-Petition),[1] cross-move, pursuant to CPLR 7510 and section 9 of the FAA, for an order confirming the Arbitration Award (motion 004).

Additionally, certain non-parties, Certain Underwriters at Lloyd's, London identified as Syndicate Nos. 510 (Kiln), 47 (JRR), 990 (BAR), 1241 (CAR), 529 (MHE), and Markel Intl., Inc. (f/k/a Terra Nova Ins. Co., Ltd.), move for an order, pursuant to CPLR 1012 and 1013, granting them leave to intervene as additional party-petitioners in this proceeding, and to file their petition in the form attached to their moving papers (motion 003).

For the reasons set forth herein: (a) the motion to confirm the Arbitration Award is granted; (b) the motion to vacate the Arbitration Award is denied; and (c) the motion for leave

[1] The Counter-Petition contains 708 paragraphs, and is 199 pages in length.

to intervene is denied as moot.

BACKGROUND

In 1997, Legion Insurance Company (Legion) agreed to act as a fronting insurance company for a commercial property insurance/reinsurance program known as the "Global Program," underwritten by a managing general agency named Global Managers, Inc. (Global Managers). Legion appointed Smyth, Sanford & Gerard Reinsurance Intermediaries, Inc. (SS&G) as the reinsurance intermediary of the Global Program. Thereafter, Legion entered into a Property Quota Share Reinsurance Contract with its quota share reinsurers, led by Eagle Star Reinsurance Company Ltd. (Eagle Star) and Continental Casualty Company (Continental).

Subsequently, Legion and/or the quota share reinsurers decided to obtain common account per risk "excess of loss" reinsurance for the Global Program.[2] The respondents are foreign insurers, including syndicates at Lloyd's of London, and insurance companies from London and Australia, that agreed to participate as XOL reinsurers for property and technical risk business written by Global Managers, on behalf of Legion, from January 1, 1998 through December 31, 1998 (the 1998 XOL Contract) and from January 1, 1999 through December 31, 1999 (the 1999 XOL Contract). Each of the placement slips that comprise the XOL Contracts contains an arbitration provision.

Prior to entering into the XOL Contracts, respondents were provided with certain placement materials providing information pertaining to the Global Program and the excess of

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[2] Excess of loss reinsurance, also referred to as "XOL" reinsurance is defined as "[a] generic term describing reinsurance which, subject to a specified limit, indemnifies the reinsured company against all or a portion of the amount of loss in excess of the reinsured's specific loss retention" (Strain, Robert W., Reinsurance 761 [Rev ed 1997]).

loss reinsurance program and the risks covered (the 1998 Placement Materials and the 1999 Placement Materials). According to petitioners, the 1999 Placement Materials also disclosed the nature and character of the risks that were bound by Global Managers during the 1998 year, and that, based on said disclosures, respondents were aware, at the time of receipt of the 1999 Placement Materials and issuance of the 1999 XOL Contract, that several claims had already been filed with respect to losses falling under the Global Program.

In October 1999, Legion terminated the Global Program.

On August 15, 2003, respondents informed petitioners that they were avoiding the XOL Contracts based on petitioners' alleged breaches of the duty of utmost good faith and material misrepresentations. Petitioners deny any such wrongdoing, and assert that, prior to August 2003, respondents never challenged the Global Program or the risks ceded thereunder, but instead acted in a manner showing their continuous approval and affirmance of the program.

On August 20, 2003, Continental, on its own behalf, and on behalf of all quota share insurers, commenced an arbitration against the XOL Reinsurers seeking to enforce the XOL Contracts, and to recover in excess of $26 million, representing unpaid losses.

The tripartite arbitration panel was comprised of two party-appointed arbitrators, and one neutral arbitrator. Respondents chose Dale A. Diamond, Esq., and petitioners chose Ronald S. Gass, respectively, as their party-appointed arbitrators, and the parties jointly selected Edmond F. Rondpierre as the third arbitrator. An organizational meeting was conducted on June 18, 2004, where the panel members disclosed, inter alia, potential conflicts of interest.

Over the course of 12 days, between May 2005 and January 2006, the parties engaged in arbitration hearings. Petitioners and respondents offered witness testimony,

documentary evidence, and legal memoranda in support of their respective positions. Primarily, respondents argued that the XOL Contracts should be rescinded based upon alleged misrepresentations and nondisclosures. Petitioners countered that there were no material misrepresentations or nondisclosures which would justify rescission, or, alternatively, that respondents, by their conduct, waived the right to object to any such alleged misrepresentations.

The panel thereafter issued the Arbitration Award wherein the panel ruled in respondents' favor and rescinded the XOL Contracts as against petitioners. The Arbitration Award also determined that, as between respondents and petitioners, petitioners should bear the burden of loss with respect to certain monies paid by respondents, and defalcated by petitioners' agent, SS&G.

THE COMMENCEMENT OF THIS PROCEEDING

In the Petition, petitioners assert that the Arbitration Award should be vacated and a new hearing before a new panel should be ordered on the grounds of "manifest disregard of the law," and "evident partiality" of one of the arbitrators.

With respect to their claim that the Arbitration Award was in manifest disregard of the law, petitioners maintain that the panel failed to properly consider two established areas of applicable law, to wit, the law of waiver and ratification, and the law of contract rescission. Petitioners additionally contend that the panel's failure to issue a "detailed" or "reasoned" opinion constitutes manifest disregard of the law.

With respect to their claim of evident partiality, petitioners claim that Mr. Diamond, respondents' party-appointed arbitrator, failed to disclose a significant conflict and affirmatively used the knowledge that originated from this conflict to interject facts and theories

into the arbitration. Specifically, petitioners contend that Mr. Diamond, as general counsel for AXA Reinsurance Company (AXA), failed to fully disclose facts pertaining to his involvement in a litigation by AXA against SS&G (the Jamaica Litigation). Petitioners further claim that, Mr. Diamond gained information as a result of his involvement in the Jamaica Litigation, which constituted a material conflict which he was obligated to, but did not, disclose until after he had infected the proceeding with knowledge that he gained from his material conflict.

Respondents oppose the petition, and cross-move in the Counter-Petition to confirm the Arbitration Award. Respondents maintain that there is a rational basis and much more than a colorable justification for the panel's decision in favor of respondents rescinding the XOL Contracts. They contend that the Arbitration Award must be confirmed because they have established that: (a) Mr. Diamond did not act with evident partiality as there is no actual proof of bias, and the situation upon which petitioners base their claim is far too tenuous to constitute evident partiality; (b) petitioners knew of Mr. Diamond's involvement in the Jamaica Litigation in August 2005 (or, in any event, by December 2005), but waited until May 2006 to raise an objection, and therefore waived any claim of evident partiality by failing to timely raise any objections or concerns about Mr. Diamond to the panel; (c) the panel properly considered and correctly applied the relevant law of rescission, waiver and ratification; (d) there is more than a barely colorable justification for the Arbitration Award, including its rescission of the XOL Contracts; and (e) the issuance of a detailed opinion by the panel was not required.

DISCUSSION

A court may vacate an arbitration award only upon very limited grounds. As explained by the First Department:

"Judicial authority to vacate an arbitration award is limited. Unless the arbitration agreement provides otherwise, an arbitrator is not bound by principles of substantive law or by rules of evidence but 'may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be' and his award will not be vacated "unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power" (Matter of Silverman [Benmor Coats], 61 NY2d 299, 308 [1984]). A court is bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies, and 'cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one' (Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York, 94 NY2d 321, 326 [1999]). Even where an arbitrator makes errors of law or fact, a court may not undertake to conform the award 'to [its] sense of justice' (id.). An arbitrator's award will be confirmed 'if any plausible basis exists for the award' (Graniteville Co. v First Natl. Trading Co., 179 AD2d 467, 469 [1st Dept], lv denied 79 NY2d 759 [1992], citing Matter of Silverman, supra)."

(Azrielant v Azrielant, 301 AD2d 269, 275 [1st Dept 2002]; see also Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479-480 [2006]; Matter of Campbell v New York City Transit Auth., 32 AD3d 350, 351-352 [1st Dept 2006]; Matter of Solow Building Co., LLC v Morgan Guaranty Trust Co. of New York, 6 AD3d 356 [1st Dept 2004]).

The parties agree that the FAA applies to this controversy.[3] The FAA mandates

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[3]Section 10 of the FAA provides, in pertinent part:
§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any

the enforcement of arbitration agreements relating to transactions affecting interstate commerce (9 USC § 2; Matter of Diamond Waterproofing Systems, Inc. v 55 Liberty Owners Corp., 4 NY3d 247, 252 [2005]; Morgan Stanley DW Inc. v Afridi, 13 AD3d 248 [1st Dept 2004]).

Petitioners argue that the Arbitration Award was in manifest disregard of the law. The manifest disregard standard exists under federal law only. When applying federal law, New York courts apply the Second Circuit standard: (1) the arbitrators knew of a governing legal principle and ignored or refused to apply it; and (2) the ignored law was well defined, explicit and clearly applicable to the dispute (Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, supra). The manifest disregard standard is "severely limited" and is considered "a doctrine of last resort limited to the rare occurrences of apparent 'egregious impropriety' on the part of the arbitrators, 'where none of the provisions of the FAA apply'" (id., 6 NY3d at 480-481 [citation omitted]). As the Court of Appeals explained in Wien & Malkin LLP :

> "The FAA permits vacatur of an arbitration award on four grounds which all involve fraud, corruption or misconduct on the part of arbitrators, grounds which are inapplicable to the present matter. In addition to these four grounds, an award may be vacated under federal law if it exhibits a 'manifest disregard of law' (Duferco Intl. Steel Trading v T. Klaveness Shipping A/S, 333 F3d 383, 388 [2d Cir 2003]; Goldman v Architectural Iron Co., 306 F3d 1214, 1216 [2d Cir 2002], citing DiRussa v Dean Witter Reynolds Inc., 121 F3d 818, 821 [2d Cir 1997]). But manifest disregard of law is a 'severely limited' doctrine (Matter of Arbitration No. AAA13-161-0511- 85 Under Grain Arbitration Rules, 867 F2d 130, 133 [2d Cir 1989]). It is a doctrine of last resort limited to the rare occurrences of apparent 'egregious impropriety' on the part of the arbitrators, 'where none of the provisions of the FAA apply' (Duferco, 333 F3d at 481). The doctrine of manifest disregard, therefore, 'gives extreme deference to arbitrators'

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party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

> (DiRussa, 121 F3d at 821). The Second Circuit has also indicated that the doctrine requires 'more than a simple error in law or a failure by the arbitrators to understand or apply it; and, it is more than an erroneous interpretation of the law' (Duferco, 333 F3d at 389). We agree with that premise. To modify or vacate an award on the ground of manifest disregard of the law, a court must find 'both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case' (Wallace v Buttar, 378 F3d 182, 189 [2d Cir 2004], quoting Banco de Seguros del Estado v Mutual Mar. Off., Inc., 344 F3d 255, 263 [2d Cir 2003])."

(footnotes omitted; id.; see also Matter of RSG Caulking & Waterproofing, Inc. v J.P. Morgan Chase & Co., NY Slip Op. 51902[U], 13 Misc 3d 1218 A) [Sup Ct, NY County 2006]); Matter of Siemens Transportation Partnership Puerto Rico, S.E. v Redondo Perini Joint Venture, NY Slip Op. 51730 [U], 13 Misc 3d 1208[A] [Sup Ct, NY County 2006]).

The party seeking vacatur bears the burden of proving manifest disregard of the law (Westerbeke Corp. v Daihatsu Motor Co. Ltd, 304 F3d 200, 209 [2d Cir 2002]). Here, petitioners have not shown that the panel manifestly disregarded the applicable law pertaining to material misrepresentation, nondisclosure, utmost good faith, rescission, reliance, waiver and ratification when it ruled in respondents' favor. Stated otherwise, petitioners have not shown that the panel knew of a governing legal principle, and refused to apply it or ignored it (Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, supra).

Nor is there any showing that the panel's failure to issue a "reasoned" opinion was improper or constituted manifest disregard of the law in any respect. The lack of a reasoned opinion is not a basis to vacate, as arbitrators are not required to give reasons for their determinations (Folkways Music Publishers, Inc. v Weiss, 989 F2d 108, 112 [2d Cir 1993]; Koken v Cologne Reinsurance (Barbados) Ltd., 98 CV 0678 [MD Pa, Aug 23, 2006]). Indeed,

here respondents originally requested a reasoned opinion, but later withdrew that request, and petitioners agreed to follow respondents' preference with respect thereto. Thereafter, the parties wrote to the panel and left the question of a reasoned award to them. As such, petitioners' present complaint that the lack of a reasoned award constitutes grounds for vacatur is incongruous at best.

Accordingly, petitioners have failed to demonstrate that the Arbitration Award was issued in manifest disregard of the law (see Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, supra; see also Larsen & Toubro Ltd. v Millenium Mgt., Inc., __ AD3d __, 827 NYS2d 866 [1st Dept 2007] [the panel's interpretation of the subject contractual provision was not in manifest disregard of the law, nor totally irrational, and nor did the arbitrators exceed their power]; Matter of Merrill Lynch, Pierce, Fenner & Smith Inc. v Graef, 34 AD3d 220 [1st Dept 2006] [having failed to establish that the award was in manifest disregard of applicable law, the award must be confirmed since it is well settled that such an award may not be vacated for errors of law or fact committed by the arbitrators]).

Petitioners next claim that respondents' arbitrator acted with evident partiality, under Section 10 of the FAA, when he failed to disclose his knowledge and conflict of interest pertaining to SS&G, based on his involvement in the Jamaica Litigation, and furthermore, that such undisclosed conflict of interest materially prejudiced petitioners. This argument, however, is conclusory and not supported by the evidence.

CPLR 7511 (b) provides that an arbitration award may be vacated due to the partiality of an arbitrator appointed as a "neutral." That ground is not applicable to a party-appointed arbitrator such as Mr. Diamond. In Matter of Meehan v Nassau Community College

(243 AD2d 12, 17-18 [2d Dept 1998]), the Second Department explained:

> "The terms of CPLR 7511 (b) (1) (ii), which specify that the 'partiality' of an arbitrator 'appointed as a neutral' may be a basis for vacatur, imply that the 'partiality' of a party-designated member of an arbitral board may not be the basis for vacatur. This provision conforms with the law as it evolved under the Civil Practice Act, pursuant to which an arbitrator was not subject to disqualification 'solely because of a relationship to his nominator or to the subject matter of the controversy' (Matter of Astoria Med. Group [Health Ins. Plan], [11NY2d 128 (1962)], supra, at 137; see also, Matter of Lipschutz [Gutwirth], 304 NY 58 [1952]; Matter of American Eagle Fire Ins. Co. [New Jersey Ins. Co.], 240 NY 398 [1925]). The law recognizes the practical reality that, in a standard tripartite arbitration 'each party's arbitrator 'is not individually expected to be neutral'" (Matter of Astoria Med. Group [Health Ins. Plan], supra, at 134; quoting 2d Preliminary Report of Advisory Comm on Practice and Procedure [1958 NY Legis Doc, No. 13], at 146; see also, Matter of Siegel [Lewis], 40 NY2d 687 [1976]; Matter of State Wide Ins. Co. v Klein, 106 AD2d 390 [2d Dept 1984]; cf., Matter of Excelsior 57th Corp. [Kern], 218 AD2d 528 [1st Dept 1995] [emphasis in original])."

Thus, under CPLR 7511 (b), neither personal knowledge nor partiality by a party-appointed arbitrator constitutes grounds for vacatur, unless the arbitrator's behavior amounts to corruption, fraud or misconduct, none of which are claimed here (id.; see also Matter of Astoria Medical Group (Health Insurance Plan of Greater New York), 11 NY2d 128 [1962]).

Furthermore:

> "[I]n a tripartite arbitration, during the arbitrators' deliberations, those arbitrators with personal knowledge of various facts in dispute would be free to reveal to their colleagues whatever was personally known to them. With this in mind, we would find it incongruous if an arbitrator with knowledge of disputed facts could not also express that knowledge during the arbitration hearing itself."

(Matter of Mcehan v Nassau Community College, 243 AD2d at 18).

In a nondisclosure case, "an award may not be vacated because of a trivial or insubstantial prior relationship between the arbitrator and the parties to the proceeding" (see Positive Software Solutions, Inc. v New Century Mortgage Corp., 476 F3d 278, 283 [5th Cir

2007]). Rather, as described by the Fifth Circuit:

> "On its face, 'evident partiality' conveys a stern standard. Partiality means bias, while 'evident' is defined as 'clear to the vision or understanding' and is synonymous with manifest, obvious, and apparent. Webster's Ninth New Collegiate Dictionary 430 (1985). The statutory language, with which we always begin, seems to require upholding arbitral awards unless bias was clearly evident in the decisionmakers."

(476 F 3d at 281).

The Fifth Circuit, in Positive Software Solutions, Inc. v New Century Mortgage Corp., proceeded to hold that the alleged conflict was indeed trivial and attenuated, and therefore vacatur of the arbitration award was not proper. The federal appeals court concluded that:

> "Neither the FAA nor the Supreme Court, nor predominant case law, nor sound policy countenances vacatur of FAA arbitral awards for nondisclosure by an arbitrator unless it creates a concrete, not speculative impression of bias. Arbitration may have flaws, but this is not one of them. The draconian remedy of vacatur is only warranted upon nondisclosure that involves a significant compromising relationship." (476 F3d at 286).

Although petitioners suggest that Mr. Diamond improperly failed to disclose that he had a relationship with SS&G, and that this somehow impacted the panel's decision in respondents' favor, there is no proof that this undisclosed relationship was substantial and nontrivial and had any conceivable bearing on the result of the proceeding. Nor, other than speculation, has any meaningful proof of partiality or bias by Mr. Diamond, who had no discernable financial interest in this proceeding, proffered by petitioners (see Matter of Merrill Lynch, Pierce, Fenner & Smith Inc. v Graef, 34 AD3d 220, supra; see also Matter of Weinrott (Carp), 32 NY2d 190, 201 [1973]; Lucent Tech. Inc. v Tatung Co., 379 F3d 24, 28 [2d Cir 2004]), or that this is a case where the arbitrator was "'deaf to the testimony or blind to the evidence presented'" (see Matter of Excelsior 57th Corp.(Kern), 218 AD2d 528 [1st Dept 1995],

quoting Matter of Astoria Medical Group (Health Insurance Plan of Greater New York), 11 NY2d at 137; Positive Software Solutions, Inc. v New Century Mortgage Corp., 476 F3d 278, supra). Accordingly, petitioners' claim of evident partiality is rejected.

Moreover, even if petitioners established evident partiality by the arbitrator, they waived the right to object to the Arbitration Award on that ground. Respondents have submitted proof that petitioners were aware of Mr. Diamond's involvement in the Jamaica Litigation in December 2005, but failed to raise his alleged partiality as an objection until after the Arbitration Award was rendered. It is well settled that a party with knowledge of partiality must raise this objection, or the objection will be deemed waived (see Matter of J. P. Stevens & Co. (Rytex Corp.), 34 NY2d 123, 129 [1974] ["[i]f a party goes forward with arbitration, having actual knowledge of the arbitrator's bias or of facts that reasonably should have prompted further, limited inquiry, it may not later claim bias based upon the failure to disclose such facts"]). Thus, in Matter of Meehan v Nassau Community College, the Second Department stated:

> "Even assuming that the arbitrator's personal knowledge of, or testimony with respect to, the facts in dispute could be considered a form of misconduct rendering the award subject to vacatur, such relief would in any event not be warranted in these cases where the college waived its right to object. In Matter of Crystal City Police Benevolent Assn. (City of Corning) (91 AD2d 843 [4th Dept 1982]), the Court reviewed the award made by a tripartite panel of arbitrators, one of whose members was not only 'partial' (cf., Matter of Astoria Med. Group [Health Ins. Plan], [11 NY2d 128], supra; Matter of Siegel [Lewis], [40 NY2d 687 (1976)], supra), but 'was a real party in interest as one of several claimants' (91 AD2d, at 844). Despite this irregularity, far more fundamental than any alleged in the present case, the Court held that the party aggrieved by the award had waived its objection 'by participating in the arbitration with full knowledge of [the arbitrator's] interest and by failing to object until after the award' (Matter of Crystal City Police Benevolent Assn. [City of Corning], [91 AD2d] at 844, citing Matter of Milliken Woolens [Weber Knit Sportswear], 11 AD2d 166 [1st Dept 1960], affd 9 NY2d 878 [1961]; Matter of Newburger [Rose], 228 App Div 526 [1st Dept], affd 254 NY 546 [1930]; Matter of Cheek v Chubb & Son, 70 AD2d

622 [2d Dept 1979]; West Towns Bus Co. v Division 241 Amalgamated Assn. of St. Elec. Ry. & Motor Coach Empls., 26 Ill App 2d 398, 168 NE2d 473 [1st Dist 1960])."

(243 AD2d at 18-19).

A review of the record confirms that substantial evidence was presented by respondents in support of their claim, and the Arbitration Award rescinding the XOL Contracts. The Arbitration Award is therefore confirmed.

In light of the above, the motion to intervene is denied as moot.

CONCLUSION

It is ORDERED and ADJUDGED that the petition to vacate the Arbitration Award is denied, and the proceeding is dismissed (motion 002); and it is further

ORDERED that the motion by respondents to confirm the Arbitration Award is granted and the Award is confirmed (motion 004); and it is further

ORDERED that the motion by non-parties, Certain Underwriters at Lloyd's, London identified as Syndicate Nos. 510 (Kiln), 47 (JRR), 990 (BAR), 1241 (CAR), 529 (MHE), and Markel Intl., Inc. (f/k/a Terra Nova Ins. Co., Ltd.), for an order granting movants leave to intervene as petitioners in this proceeding, and to file their petition in the form attached to their moving papers, is denied as moot (motion 003).

This constitutes the order and judgment of the court.

Dated: March 30, 2007

ENTER:

J.S.C.