

\$7M arbitration award upheld

Medical transcription business dispute spans India, Hong Kong, United States

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A federal judge in Kansas City last week upheld a roughly \$7 million arbitration award in a global dispute between corporations in Hong Kong, India and the Virgin Islands.

The case spanning the continental medical transcription business involved attorneys wading through roughly 30,000 pages of records — many of them in languages other than English.

Plaintiff's attorney Paul Herbers, of Cooling & Herbers in Kansas City, said his firm is used to dealing with international mediation.

"But I've never had one that went in this many directions," he said.

The China-based plaintiff, Integrated Sales Services, which has a Kansas City office, went after DMC Management Consultants when its Indian chairman reportedly used an alter ego to create, new entities to

avoid paying the plaintiff certain commissions. Integrated Sales, a sales agent, had been commissioned to obtain clients for DMC Management's medical transcriptions business.

"Was Indian law to be involved or as we claimed, American law?" Herbers described as a major sticking point in the case.

In the end, the arbitrator used American laws when he found in favor of Integrated Sales. The March 29 award came as a result of mediation through the American Arbitration Association and its International Centre for Dispute Resolution in Kansas City, but the defendants didn't pay it.

U.S. District Judge Greg Kays on Wednesday signed an order confirming the arbitration award of nearly \$6.95 million in damages, an additional \$892,000 in interest and nearly \$64,000 in arbitration costs against the Indian corporation. Kays also ordered

ARBITRATION: Parallel lawsuit is in Indian courts

■ continued from Page 1

that \$1,380.10 in interest would accrue every day of non-payment after May 1.

Defense attorneys James Lawrence and Seema Chawla, of Bryan Cave's Kansas City office, didn't immediately return phone calls Friday.

Other defendants included: DMC Global, which does business in India; Gemini Bay Consulting Limited in the Virgin Islands; Gemini Bay Transcription Private Limited in India; and Arun Dev Upadhyaya, of India.

Upadhyaya and his family own all or the majority of stock in DMC Management, DMC Global, Gemini Bay Consulting and Gemini Bay Transcription.

Integrated Sales, which earned between 10 percent and 20 percent of sales from

prospective customers it secured for DMC Management, accused Upadhyaya of creating the Gemini Bay corporations to get out of the deal.

The plaintiffs contended they were due \$100,000 per month, beginning Oct. 22, 2008. DMC Management's position was that it had nixed its business dealings with the customers, so it didn't owe any money to Integrated Sales.

Ultimately, DMC Management was the only entity with a representative's signature on the agreement, but the affirmed arbitration still requires all five parties to pay the \$7 million. Herbers said collection still will be difficult, as a parallel action exists in the Indian courts.

The case is *Integrated Sales Services, Ltd. v. DMC Management Consultants, Ltd. et al.*, 4:10-cv-333.

■ See Arbitration, Page 5