

Judge upholds arbitration award in business dispute

China-based plaintiff has Kansas City office

A federal judge in Kansas City 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.

At one point during the five-day arbitration hearing in March in Kansas City, witnesses from India teleconferencing in (at 4 a.m. their time) appeared on a split screen beside a mediator watching from Florida.

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.

Amendments to an agreement the companies signed in 2000 used a mix of Missouri, Delaware and Indian laws, but in the end the arbitrator used American laws when he found in favor of Integrated Sales. The March 29, 2010, 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 June 16, 2010, 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 that \$1,380 in interest would accrue every day of nonpayment after May 1, 2010.

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

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.

\$7 million arbitration award

BREACH OF BUSINESS AGREEMENT

■ **Court:** U.S. District Court for the Western District of Missouri

■ **Case Number/Date:** 4:10-CV-333/June 16, 2010

■ **Judge:** Greg Kays

■ **Caption:** Integrated Sales Services, Ltd. v. DMC Management Consultants, Ltd., DMC Global, Inc., Arun Dev Upadhyaya, Gemini Bay Consulting, Ltd. and Gemini Bay Transcription Private Ltd.

■ **Plaintiff's Attorneys:** Paul Herbers, Jim Glover, Cooling & Herbers, Kansas City

■ **Defendants' Attorneys:** James Lawrence, Seema Chawla, Bryan Cave, Kansas City

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

Herbers said a key challenge of the case was that different people, including Upadhyaya's wife, served as directors for all of the companies, making it hard to pierce the corporate veil.

"The real key of the deal was that he controlled whatever happened in all of these companies," Herbers said in an interview.

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. DMC Management in July 2008 terminated its contracts with those customers, who then became customers of the Gemini Bay corporations Upadhyaya had created, the plaintiff claimed.

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. And since only DMC Management signed off on the original representation agreement with Integrated Sales in 2000, DMC Global, a subsidiary, and the Gemini Bay corporations couldn't be held accountable to it, the corporation argued.

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 — a main triumph in the case, Herbers said.

While pleased at the federal judge's decision, Herbers said collection still will be difficult, as a parallel action exists in the Indian courts.

— Alyson E. Raletz