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Federal Circuit Patent Bulletin: *CEATS, Inc. v. Continental Airlines, Inc.*

June 24, 2014

"Because parties arguably have a more intimate relationship with mediators than with judges, it is critical that potential mediators not project any reasonable hint of bias or partiality."

On June 24, 2014, *CEATS, Inc. v. Continental Airlines, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Prost, Rader, O'Malley*) affirmed the district court's denial of CEAT's Federal Rule of Civil Procedure 60(b) motion for relief from judgment based on an alleged relationship between the court-appointed mediator (former Magistrate Judge Robert Faulkner) and the law firm representing most of the defendants accused of infringing U.S. Patents No. 7,454,361, No. 7,548,866, No. 7,660,728, and No. 7,548,869, which related to electronic means by which people can select over the internet the exact seat or seats they want for events, venues, or on airplanes. The Federal Circuit stated:

Rule 60(b)(6) gives federal courts authority to relieve a party from a final judgment "upon such terms as are just." . . . Although we recognize that mediators perform different functions than judges and arbitrators, mediators still serve a vital role in our litigation process. Courts depend heavily on the availability of the mediation process to help resolve disputes. Courts must feel confident that they are referring parties to a fair and effective process when they refer parties to mediation. And parties must be confident in the mediation process if they are to be willing to participate openly in it. Because parties arguably have a more intimate relationship with mediators than with judges, it is critical that potential mediators not project any reasonable hint of bias or partiality. Indeed, all mediation standards require the mediator to disclose any facts or circumstances that even reasonably create a presumption of bias. This duty to disclose is similar to the recusal requirements imposed on judges. . . . While mediators do not have the power to issue judgments or awards, because parties are encouraged to share confidential information with mediators, those parties must have absolute trust that their confidential disclosures will be preserved. Indeed, mediation is not effective unless parties are completely honest with the mediator.

[H]ere, we first consider whether Faulkner should have disclosed the facts surrounding the [unrelated] Karlseng litigation. The district court decided that a reasonable observer would not have questioned Faulkner's impartiality because . . . Faulkner: (1) had no fiduciary interest in Karlseng; (2) was not compelled to disqualify himself by statute; and (3) did not act as the presiding judge and final fact-finder. Based on these distinctions, the district court refused to find that a reasonably objective person would have expected Faulkner to disclose the facts surrounding the Karlseng litigation. On this ground, the district court ruled that Faulkner did not violate his disclosure duty as a mediator. . . .

We find that the district court erred in finding that a reasonably objective person would not have wanted to consider circumstances surrounding the Karlseng litigation when deciding whether to object to Faulkner's appointment as mediator in this case. . . . Mediators are required to disclose not only financial interests, but all potential conflicts of interests as well. Furthermore, Faulkner does not have to be "compelled by statute to disqualify himself" for disclosure to be necessary. To the extent the district court seems to imply a different disclosure requirement for mediators and judges because Faulkner "had no authority to make or influence legal or factual rulings in this case," we reject that implication. . . .

Faulkner's failure to disclose does not automatically entitle CEATS to relief from judgment under Rule 60(b)(6), however. . . . CEATS argues that the first factor [under Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847 (1988)]—the risk of injustice in this case—supports relief because mediators are required to disclose any potential conflicts of interest that could reasonably be seen as raising a question about the mediator's impartiality. . . . We agree with Continental that CEATS has failed to show a meaningful risk of injustice in this case. Although we conclude that Faulkner should have disclosed the circumstances surrounding the Karlseng litigation and his relationship with [Fish & Richardson P.C.] relating thereto, we find that CEATS ultimately was able to fully and fairly present its case before an impartial judge and jury. . . .

Turning to the second Liljeberg factor—the risk of injustice in other cases—CEATS argues that, by failing to provide a remedy for Faulkner's non-disclosure of the Karlseng litigation, mediators in future cases will have less incentive to disclose potential conflicts of interest and parties will lose faith in the mediation process. . . . We too have concerns about failing to provide a remedy for a mediator's non-compliance with his or her disclosure obligations. We certainly do not want to encourage similar non-disclosures. On this record, however, we do not believe there is a sufficient threat of injustice in other cases to justify the extraordinary step of setting aside a jury verdict. We find it unlikely that mediators will simply ignore their disclosure obligations if we deny relief here. To the contrary, our decision serves to reinforce the broad disclosure rules for mediators by holding that Faulkner had a duty to disclose in this case. The mere fact that the final judgment after a full jury trial will not be overturned every time a mediator fails to disclose a potential conflict is not likely to affect

the disclosure decisions of other mediators. Beyond his failure to disclose, moreover, there is no evidence that Faulkner acted inappropriately or ineffectively when mediating this case. We therefore find that the denial of relief in the circumstances of this case will not risk injustice in other cases.

Regarding the third Liljeberg factor—the risk of undermining public confidence—CEATS asserts that Faulkner's non-disclosure undermines public confidence in the neutrality of court-appointed mediators. . . . While we find that public confidence in the mediation process will be undermined to some extent by our failure to put greater teeth in the mediators' disclosure obligations, we do not find that fact justifies the extraordinary relief CEATS seeks. Because CEATS had the opportunity to present its case to a neutral judge and jury, we do not believe that refusing to grant the relief CEATS seeks will undermine public confidence in the judicial process as a whole.