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California Court Clarifies Disclosure and Disqualification Rules For Appraisers

By Samuel H. Ruby

A California Court of Appeal has held that appraisers are not subject to the same disclosure and disqualification rules as umpires.

The California Code of Civil Procedure requires "proposed neutral arbitrators" to disclose "all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial." The Code also gives the non-appointing party certain rights to disqualify the proposed neutral arbitrator, without demonstrating cause. Because the California Insurance Code requires that appraisers be "competent and disinterested," it has been unclear whether an appraiser—though appointed unilaterally by one party—is nonetheless a "neutral arbitrator" subject to the Civil Procedure Code's provisions.

In Mahnke v. California FAIR Plan, Case No. B216110 (12/21/09, publication pending), a California appellate court has held that only umpires are "neutral arbitrators" within the meaning of the Civil Procedure Code. Consequently, appraisers are not subject to the same disclosure requirements or the same disqualification rules. However, because appraisers must still be "disinterested," they are subject to disqualification for cause. In the case before it, however, the court found no cause. While the appraiser had disclosed that he was serving as an expert witness in a case being handled by the same lawyer who was representing the insured in the appraisal, the court held that the disclosed relationship would not cause a reasonable person to doubt the appraiser's impartiality.

In addition to resolving what had been a troublesome procedural issue, the decision may also abate skirmishes over the disinterestedness of an appraiser based on prior or ongoing engagements with the appointing party's attorney. Such skirmishes can arise because in the rather small pool of "competent" appraisers, it can be difficult to find one who does *not* have some prior or ongoing relationship with one side or its attorney. The Mahnke decision may allow both insureds and insurers a freer hand in selecting appraisers.