Highmark Inc. and Keystone Health Plan West, Inc. v. UPMC, UPMC Bedford d/b/a UPMC Bedford Memorial, UPMC East, UPMC Horizon, UPMC McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presbyterian-Shadyside, UPMC St. Margaret, Magee Womens-Hospital of UPMC, UPMC Altoona, UPMC Hamot, UPMC Mercy and Children's Hospital of Pittsburgh of UPMC

Statutory Arbitration

Lack of global arbitration clause and conflicting provisions in agreements preclude consolidation of multiple disputes in single binding arbitration.

No. GD-14-018481. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
Ward, J.—February 18, 2015.

OPINION

This is a Petition to Stay Arbitration brought pursuant to the Pennsylvania Arbitration Act, 42 Pa.C.S.A. § 7304(b). Plaintiffs, Highmark Inc. and Keystone Health Plan West, Inc. (hereinafter "Highmark"), seek an order staying an amended demand for arbitration submitted by Defendants UPMC, UPMC Bedford d/b/a UPMC Bedford Memorial, UPMC East, UPMC Horizon, UPMC McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presbyterian-Shadyside, UPMC St. Margaret, Magee Womens-Hospital of UPMC, UPMC Altoona, UPMC Hamot, UPMC Mercy and the Children's Hospital of Pittsburgh of UPMC ("Children's") to the American Health Lawyers Association ("AHLA"). For the reasons set forth below, the we stay the arbitration.

FACTS

The arbitration provisions upon which the amended demand for arbitration is based are set forth below. In light of the fact the parties' intent can be determined based solely upon the contractual terms at issue, the Court did not interpret any extrinsic evidence, such as the Consent Decree entered into by the parties and the Commonwealth of Pennsylvania.

UPMC, UPMC Altoona, UPMC Hamot and UPMC Mercy each entered into a "Facility Agreement." with Highmark. The terms of the arbitration provisions of these agreements do not differ materially from each other. The Facility Agreements first provide for an informal dispute resolution process. Second, If that informal process fails to resolve the dispute, the Facility Agreements provide for binding arbitration before the AHLA, pursuant to the AHLA rules and with the use of AHLA arbitrators. Specifically, Section 10.5.2 provides that: "If the parties fail to resolve a dispute in accordance with the process outlined in Section 10.5.1, then any or all of the parties may submit the dispute to binding arbitration, such as arbitration to be conducted under the auspices and rules of the American Health Lawyers Association, before a mutually agreed-upon panel of three (3) arbitrators, such arbitrators to be chosen in accordance with the rules of the American Health Lawyers Association." These dispute resolution procedures are intended to "apply to all disputes" between the parties.

The Facility Agreements further prohibit combining individual disputes among the parties together or combining disputes with third parties in one proceeding. Specifically, Section 10.5.3 provides that the "arbitrator shall have no power or authority to....otherwise combine any individual dispute with other disputes between the parties or between a party hereto and one or more third parties without the prior written consent of all affected parties hereto."

In addition, Highmark, UPMC and Children's entered into a Managed Care Hospital Agreement and a Hospital Agreement ("Children's Agreements"). The terms of the arbitration provisions of these agreements, and their amendments, do not differ materially. Specifically, these agreements also provided for binding arbitration before the AHLA of any dispute arising out of the agreement which was not resolved by an informal process. In contrast to the Facilities Agreement, they do not, however, require use of the AHLA rules or arbitrators. Rather, the contracts have provisions governing arbitration which differ from both the AHLA rules and the Facility Agreements.

Highmark, UPMC and UPMC Bedford, UPMC East, UPMC Horizon, UPMC McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presbyterian Shadyside, UPMC St. Margaret, and Magee Women's Hospital of UPMC also entered into a series of agreements. These agreements included a Managed Care Hospital Agreement, a Hospital Agreement and a Medicare Acute Care Provider Agreement. The terms of the arbitration provisions of these agreements do not differ materially from each other. Pursuant to these terms, if a dispute involves the hospital seeking a interpretation of a specific provision of the agreement, the hospital and UPMC are required to discuss the matter with the Highmark department involved. If this does not resolve the matter, UPMC and the hospital are required to request a meeting with a senior representative of Highmark. If that meeting does not resolve the dispute, then either party may make a demand for non-binding arbitration. Under the Hospital Agreements, only certain matters are subject to binding arbitration, if agreed to by the parties. Hospital Agreements, Part IV, § F.4(c) & (d). These agreements do not provide for arbitration before the AHLA nor do they reference AHLA procedures. Instead the agreements provide that the parties can agree on one arbitrator. If they fail to do so, the Hospital and Highmark will each select an arbitrator, with the third arbitrator chosen by those two, unless the parties otherwise agree.

In addition to the agreements above, all Hospitals at issue, with the exception of Children's, also entered into Medicare Acute Care Provider Agreements with Highmark. The Medicare Acute Care Provider Agreements only provide for binding arbitration if the parties agree, in writing, to binding arbitration. The Medicare Agreements do not require arbitration before the AHLA. Rather, the Medicare Agreements provide that "[a]rbitration will only be binding if the parties agree in writing that the arbitration will be binding." Medicare Agreements §§ 18.2 and 18.3.

On June 13, 2014, UPMC and UPMC Altoona, UPMC Hamot, UPMC Mercy, and Children's Hospital of Pittsburgh of UPMC filed a Statement of Claims to be Arbitrated with the AHLA requesting a single arbitration proceeding on behalf of each of the four named hospitals and UPMC. This binding arbitration demand was brought pursuant to Section 10.5.2 of the Facility Agreements and Part IV, Section F of the Children's Agreement. Thereafter, on August 8, 2014, UPMC filed an Amended Demand with the AHLA. The Amended Demand added UPMC Bedford, UPMC East, UPMC Horizon, UPMC

McKeesport, UPMC Northwest, UPMC Passavant, UPMC Presbyterian Shadyside, UPMC St. Margaret, and Magee Women's Hospital of UPMC as parties. The Amended Claim did not otherwise materially differ from the Statement of Claims, and requested a single arbitration proceeding on behalf of each of the moving parties. On October 8, 2014, Highmark filed the Verified Petition to Stay Arbitration which is before the Court. The Court held a hearing on November 3, 2014, and granted the Petition on November 7, 2014. The Court specifically did not interpret the Consent Decree in reaching its decision to stay the arbitration.

STATEMENT OF ERRORS ON APPEAL

1. The Court erred in issuing the November 7, 2014 Order without considering the parties' Consent Decrees. UPMC and Highmark agreed in the Consent Decrees to arbitrate all of the claims contained in the Amended Demand that was subject of the November 7, 2014 Order. Through references to, inter alia, the "Highmark" and "UPMC" systems, the parties' singular "current arbitration," and how to implement any "arbitral award," those agreements tied into one comprehensive arbitration all of the claims and parties in this action. It was error for the Court to stay an arbitration without considering the terms or scope of the underlying agreement to arbitrate contained in the Consent Decrees.

2. The Court erred by not deferring to the jurisdiction of the Commonwealth Court. It was undisputed that the Commonwealth Court, which entered the Consent Decrees, has exclusive jurisdiction to interpret and enforce the terms of those agreements. This Court thus erred in granting Highmark's Petition because Highmark was required to file any petition to stay with the Commonwealth Court.

3. The Court erred by allowing Highmark to circumvent its obligations under the Consent Decrees, which required Highmark to undertake "best efforts" to conclude "the current arbitration" before 2015. Highmark itself conceded that the Consent Decrees' reference to "the current arbitration" between the parties encompassed at least those claims in UPMC's June 13, 2014 Statement of Claims to the AHLA and at a minimum, it was error to stay that Statement of Claims.

4. The Court erred by granting the Petition without considering the undisputed evidence regarding the parties' agreements and the intent of those agreements, and/or without holding an evidentiary hearing to address any disputed issues of fact.

5. The Court erred in granting Highmark's petition because each of Highmark's objections to arbitration was procedural in nature, and not substantive. Procedural objections are not for Pennsylvania courts to decide, but for the arbitrators to decide themselves.

6. The Court erred in sustaining Highmark's objections on their merits without considering or interpreting the parties' Consent Decrees because Highmark agreed in the Consent Decrees to consolidate multiple claims in a single proceeding before the AHLA, including claims under the parties' Medicare contracts, claims under the parties' Hospital Agreements, Managed Care Hospital Agreements, and other commercial contracts and – at the very least – claims under the Facility Agreements and other contracts for the so-called Post 2002 Hospitals.

7. The Court erred in finding that the AHLA was not a proper forum for the parties' arbitration when the underlying contracts did not specify that the parties proceed before any specific arbitration service, and Highmark voluntarily went forward with arbitration before the AHLA.

8. The Court erred in sustaining Highmark's objections on their merits because Highmark voluntarily went forward with the selection of an arbitration panel, waiving its objections to the arbitration, the arbitration panel, and the procedures that the parties had followed.

9. The Court erred in staying arbitration on the Amended Demand in its entirety. It was undisputed that the Consent Decrees' reference to "the current arbitration" between the parties encompassed at least those claims in UPMC's June 13, 2014 Statement of Claim to the AHLA, and that arbitration, at a minimum, should have been allowed to proceed.

10. The Court erred to the extent that it stayed arbitration of the Amended Statement of Claims as a whole without sustaining each one of Highmark's objections because to the extent any of UPMC's claims were arbitrable, the Court should have ordered Highmark to proceed with arbitration.

JURISDICTION and STANDARD OF REVIEW

Pursuant to 42 Pa. C.S.A. Section 7304(b), "[o]n application to a court to stay an arbitration proceeding threatened or commenced the court may stay an arbitration on a showing that there is no agreement to arbitrate." An action under this section may be commenced by petition. Id. Under such circumstances "judicial inquiry is limited to the question of whether an agreement to arbitrate was entered into and whether the dispute falls within the scope of the arbitration provision." Ross Dev. Co. v. Advanced Bldg. Dev., Inc., 803 A.2d 194, 196-97 (Pa. Super. Ct. 2002). The question of "[w]hether or not the company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties." AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 649 (1986). Further, "if the agreement or contract clearly includes or excludes particular issues or remedies from arbitration a court may so hold without submitting these matters to arbitration." PBS Coal. Inc. v. Hardhat Mining, Inc., 632 A.2d 903, 905 (Pa. Super. 1993). When undertaking this analysis, a court may only decide substantive, as opposed to procedural, matters. Ross, at 196-97.

DISCUSSION

As a threshold matter, the Court must determine whether the parties entered into an agreement to arbitrate and, if so, the terms of the arbitration. There is no dispute that arbitration is a matter of contract. Thus, the interpretation of an arbitration agreement is determined by looking at "the rules governing contracts generally." Smay v. E.R. Stuebner, Inc., 864 A.2d 1266, 1273 (Pa. Super. Ct. 2004). As the Pennsylvania Supreme Court has observed "[i]t is well established that the intent of the parties to a written contract is to be regarded as being embodied in the language itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." Steuart v. McChesney, 444 A.2d 659, 661 (Pa. 1982). Accordingly, we "must be careful not to extend an arbitration agreement by implication beyond the clear, express and unequivocal intent of the parties as manifested by the writing itself." Hazelton Area Sch. Dist. v. Bosak, 671 A.2d 277, 282

(Pa. Commw. Ct. 1996).

Here, the parties entered into multiple agreements, each with its own provision regarding arbitration. There is, however, no global arbitration clause which covers the multitude of matters UPMC seeks to combine in a single proceeding before the AHLA. Rather, there are a number of different arbitration clauses with substantive terms which vary significantly with respect to the issues subject to arbitration, the combining of issues in arbitration, the binding nature of the arbitration, the arbitral forum and the selection of arbitrators. Thus, UPMC's Amended Arbitration Demand violates the substantive arbitration clauses at issue and must, therefore, be stayed.

As to the issues subject to arbitration, the Facility Agreements specifically prohibit the arbitrators from combining "any individual dispute with other disputes between the parties or between a party hereto and one or more third parties without the prior written consent of all affected parties hereto." Facilities Agreement, Section 10.5.3. The other arbitration clauses at issue in the other agreements contain no such prohibition. Accordingly, to allow UPMC to proceed with all its claims in a single, binding arbitration before the AHLA would significantly expand the parties agreement to arbitrate as defined in the arbitration clause of the Facility Agreements.

Whether a contract submits an issue to binding or non-binding arbitration is also a substantive, not procedural, issue. Brown v. D. & P. Willow, Inc., 686 A.2d 14, 17 (Pa. Super. Ct. 1996). The Facility Agreements and the Children's Agreement are the only agreements wherein the parties agreed to submit their disputes to binding arbitration. The other Agreements only provide for binding arbitration where the parties have agreed to binding arbitration, in writing. To subject Highmark to binding arbitration before the AHLA on all the issues contained in the Amended Demand would, effectively, rewrite the arbitration provisions in all the Agreements.

Further, the issue of whether the arbitrators have been selected as required by the contract is a substantive issue to be decided by the Court. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Georgiadis, 903 F.2d 109 (2d Cir. 1990). If the parties have agreed to a method of appointment of arbitrators, that method must be followed by the Court. 42 Pa.C.S.A. § 7305.

The Facility Agreements require the arbitration to be conducted pursuant to AHLA Rules with AHLA arbitrators. Facilities Agreement Section 10.5.2. In contrast, the Children's Agreement provides that, although the arbitration will be binding and conducted in accordance with the AHLA Rules of Procedure for Arbitration, "[e]ach party shall appoint one of such arbitrators, and the two arbitrators so appointed shall appoint the third arbitrator." Children's Agreement Part IV § F.

UPMC appears to contend that the Consent Decree operates as an amendment to the agreements between Highmark and UPMC. UPMC further argues that the Consent Decrees, in addition to amending the parties written agreements, also divest this Court of jurisdiction to interpret the agreements. The Consent Decrees, however, do not purport to amend the parties agreements, nor could they. The Consent Decrees are agreements between UPMC and the Commonwealth of Pennsylvania and Highmark and the Commonwealth of Pennsylvania, respectively. Accordingly, they do not deprive this Court of jurisdiction. To the extent that UPMC chooses to proceed before the Commonwealth Court, it is certainly free to do so.

CONCLUSION

For the reasons set forth above, the Amended Demand for Arbitration was stayed.

BY THE COURT:
/s/Ward, J.

Dated: February 18, 2015

Jeffrey Klotz v.
Moon Township Board of Supervisors

Employment—Evidence—Civil Procedure

Rules of Evidence do not apply to local agency hearings; judicial economy warrants nunc pro tunc appeal.

No. SA 13-001299. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
Della Vecchia, J.—February 23, 2015.

OPINION

This matter comes before the Commonwealth Court on the appeal of Jeffrey Klotz from this Court's Order of October 2, 2014, dismissing Klotz's statutory appeal and the appeal of Moon Township from this Court's Order of December 9, 2014, granting Klotz the right to appeal "Nunc Pro Tunc".

I. BACKROUND

The issues before the Commonwealth Court concern the dismissal of Officer Jeffrey M. Klotz from the Moon Township Police Department. On July 8, 2013, Jeffrey Klotz (hereinafter "Klotz") was charged with Simple Assault for an incident that allegedly took place the previous day.

On July 11, 2013, Klotz appeared before Chief Leo McCarthy and Captain Greg Seaman for a Loudermill hearing. On July 29, 2013, Klotz received a letter from Jeanne Creese, Township Manager, advising him that he had been removed from his position as police officer for the township. At said time, Klotz delivered a letter requesting a Police Tenure Act hearing.

Said hearing was held on September 30, 2013. On November 20, 2013, the Moon Township Board of Supervisors (hereinafter "Township") announced their decision to terminate Klotz. As a result, Klotz then filed a statutory appeal to the Court of Common Pleas of Allegheny County.

II. PROCEDURAL HISTORY

This matter was initiated by the filing of a Statutory Appeal filed by Jeffrey Klotz on December 18, 2013. Said matter was assigned to this writer for disposition on January 6, 2014. The parties were then ordered to appear for a status conference on