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Litigators of the Week: Using Newly Uncovered Evidence to Knock Out a Nearly $50M Arbitration Award for OptumRx

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Our Litigators of the Week [PDF] are Gibson, Dunn & Crutcher partner Michael Holecek, of counsel Zachary Kady and associate Nadia Alhadi.

They persuaded a federal judge in Florida to take what he described as an "exceptional" step: wiping out a $48.36 million arbitration award against their client, pharmacy benefit manager OptumRx, in its entirety.

After a seven-year arbitration over commissions connected to prescription-drug discount cards, documents surfaced in separate litigation that told a much different story about the relationship at the heart of the arbitration than the one United Networks of America had presented there.

The Gibson Dunn team built its challenge around those documents and convinced U.S. District Judge Timothy Corrigan in Jacksonville that Optum met all three requirements to establish that an award was procured by fraud. Corrigan found that UNA had withheld incriminating evidence and lied under oath and that the misconduct went to the heart of the arbitration. He also rejected UNA's bid to preserve roughly $17 million of the award, finding the fraud "infected the entire arbitration proceeding."

Lit Daily: What was at stake here for your client?

Michael Holecek: Of course the amount at issue was important-UNA held an award of $48,362,033 against OptumRx. But that was only part of it. As the Court found, UNA "initiated the arbitration under false pretenses, then withheld incriminating documents and lied under oath about the nature of UNA's and NBBI's relationship," and it did so across seven years of proceedings. OptumRx had been the target of a fraud, and for a moment the fraud had worked. What was at stake was whether a party could obtain a $48 million award that way and keep it. OptumRx wanted that wrong righted, and it was willing to spend three more years to do it.

How did this case come to you and your team at Gibson Dunn, and what was your initial reaction when Optum asked you to pursue an effort to overturn an arbitration award of nearly $50 million?

Holecek: UnitedHealth, OptumRx's parent company, is a great and long-standing firm client. This matter came to us out of that relationship and the client's familiarity with our firm's capabilities in both arbitration and post-arbitral proceedings. Our initial reaction was cautious optimism. We and the client came to this fully aware that vacatur petitions rarely

Related People

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succeed, and the Federal Arbitration Act is written that way on purpose, but two things set this case apart. The first was the award itself. The arbitrator wrote that the original documents about the UNA-NBBI relationship were 'perhaps the key pieces of evidence" but they had never been produced. The second was the client. They believed the record the arbitrator relied on was incomplete, and they were committed to finding out. But they are also sophisticated and understood the difficulty of vacating an arbitration award. They knew we would have to be laser-focused on what UNA concealed from the arbitrator and avoid any suggestion that were just trying to relitigate the arbitration. An award that names its own missing evidence, and a sophisticated client that is committed to proving fraud, made this a different kind of case.

Who was on your team and how have you divided the work? And how did you work with your client's team at Husch Blackwell, who handled the arbitration below and related litigation in federal court in Colorado?

Holecek: I led the case and argued the March 2026 hearing. Zach Kady, who was the principal lawyer on every filing, and Nadia Alhadi coordinated the strategy from the outset. We also benefited from my partner Geoff Sigler's strategic guidance and tremendous work from Nancy Ding, a junior associate on the team. Zach, Nadia and Nancy worked the arbitration record page by page, researched the narrow questions on which vacatur turns and kept the case focused on the arguments we believed would carry the day. They turned out to be right.

Husch Blackwell-Jim Monafo, Tanya Maerz and Sam Thomas-had tried the arbitration, and one of their colleagues, Erica Baines, served as our local counsel in Florida. Their knowledge of the record was indispensable. Working from it, our team mapped the discovery OptumRx requested in the arbitration, what the arbitrator ordered UNA to produce and what UNA had actually handed over. So, when new evidence surfaced, we knew immediately which gap it filled and how material that gap was. That analysis also prepared us to explain to Judge Corrigan how UNA prevented OptumRx from discovering the new evidence during the arbitration, despite diligent efforts to do so. Husch Blackwell also pursued a separate action in Colorado asserting claims against NBBI arising from the same conduct. It was in discovery in the Colorado action that NBBI's lawyers located and produced documents maintained by NBBI's former deal counsel and sent a copy to UNA's lawyers in our vacatur case. When UNA produced those documents to us in Florida, we knew it was a game changer.

Since you weren't counsel in the underlying arbitration, how did you go about getting your arms around the seven years of proceedings you hadn't litigated yourselves to assess what had happened and determine whether there was a viable basis for challenging the award?

Nadia Alhadi: We started with the award and listed every key decision that turned on inference or oral testimony rather than documentary proof, which narrowed our targets for the vacatur claim. Then we went back through the record to see what OptumRx had done to get those documents and what UNA had said in response: the document requests, the motions to compel, the subpoena to NBBI, the representation that "no documents are being withheld," and the testimony about how the purchase agreement was sent in the mail as a take-it-or-leave-it deal and signed without negotiation. By the time UNA produced the first new documents to us in the vacatur action, we had a dated chronology of the arbitration discovery record, so we knew immediately which gaps those new documents filled.

Critical documents surfaced through the separate Colorado litigation against NBBI. When you began reviewing that material, which documents or pieces of evidence most changed your understanding of what had happened, and why did you believe they could support the extraordinary remedy you ended up asking for here?

Zach Kady: As we reviewed the new evidence, we realized the documents touched two

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important themes that gave our case additional firepower. The first was correspondence showing that UNA and NBBI kept negotiating their supposed acquisition agreement long after the date UNA swore it had been signed. That alone allowed the court to conclude that UNA lied under oath in the arbitration. We anticipated, however, that UNA would call backdating immaterial because the arbitrator did not rely on the acquisition agreement UNA held up in the arbitration. We disagreed, but the second category of documents further insulated us from that attack. In late 2013 into early 2014, UNA and NBBI drafted a memorandum of understanding and a network access agreement under which NBBI "shall own all of its [c]laims" and would simply run them through UNA's contract to capture UNA's higher rate from OptumRx. In the award, the arbitrator confirmed that such an arrangement would not be an acquisition at all, but UNA concealed all evidence of this access deal from the arbitrator. With these documents now in hand, the court agreed with us that UNA and NBBI's negotiations were "entirely inconsistent with what [UNA] had represented" in the arbitration. Then there was an email from the day before UNA announced the acquisition: Its chairman sent NBBI an email that began, "This is my proposed story .... " NBBI replied that the story "sounds fine," and the same words went to OptumRx the next day. None of it had been produced in the arbitration and UNA's "story" now became our record: an access deal rather than an acquisition, a backdated agreement and then years of concealment and false testimony to keep it all from our client and the arbitrator.

Michael, at the hearing back in March, Judge Corrigan pressed you on the fact that the arbitrator hadn't ultimately rested his decision on the disputed 2013 purchase agreement but instead relied on the parties' subsequent conduct. How did you make the case that the newly discovered emails were material to the arbitrator's result?

Holecek: First, we disagreed that UNA's backdating fraud was immaterial just because the arbitrator didn't rely on the phony agreement UNA produced. The arbitrator held that the "key question" in the arbitration was whether and when UNA acquired NBBI, and we maintained that UNA's perjury and concealment of evidence going to that "key question" infected the entire proceeding. Second, as Zach mentioned earlier, the arbitrator had already told us what additional evidence would have undercut his conclusion that UNA acquired NBBI based on conduct. In the award, he wrote that if UNA was just providing NBBI access to its network, "then no purchase of the NBBI Book ever occurred and thus UNA would not be entitled to bill for the NBBI [claims]." The concealed documents went to exactly that: a draft providing that NBBI "shall own all of its Claims" and UNA offering to help NBBI move its business elsewhere, which is a strange offer to make about a business you supposedly already own. The court found clear and convincing evidence that UNA had not actually acquired NBBI's business when it said it did. The arbitrator wrote the "if." The withheld documents supplied the "then."

The court also pressed you on whether Optum could have uncovered the evidence during the arbitration. How did you address that reasonable-diligence hurdle while avoiding what many courts might view as an attempt to sidestep an unfavorable arbitration result?

Holecek: OptumRx asked for these documents in discovery, moved to compel them, and subpoenaed NBBI directly. UNA certified in writing that nothing was being withheld. As the Third Circuit has put it, reasonable diligence doesn't require a party to assume the other side is lying.

Courts are skeptical of petitions to vacate arbitration awards, because many are brought by losing parties relitigating the merits. We never asked the court to second-guess the arbitrator's reasoning. We asked only whether the record he reasoned from was the real one. Every time we were tempted to argue he got something wrong, we cut it.

Even if the court accepted your fraud theory, you still had to persuade it what to do about the award. Why did you push for complete vacatur rather than partial vacatur or another trip back to the arbitrator? What was the key to convincing the court that

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the problems infected the award as a whole?

Kady: The FAA permits a court to vacate an award procured by fraud; it does not require the court to confirm whatever portion it can separate out. The case law leaves it to the court's discretion to decide whether to vacate in part or in full based on the evidence and the grounds for vacatur that have been proven.

In our view, this was a fraud that persisted from the beginning to the end of the arbitration and distorted the entire case, including the credibility of UNA's witnesses. The arbitrator had assessed UNA's credibility on every issue in the case, and he had written that a party who backdated the contract should not benefit from it. To convince the court, we had to demonstrate that UNA's case was based on years of false stories. We also pointed it to a recent Eleventh Circuit decision recognizing that remand may be unable to cure this kind of pervasive misconduct. The court agreed. It found that UNA's fraud "infected the entire arbitration proceeding," that separating out an untainted portion "would therefore be futile" and that a rehearing would be unfair when the failure of the arbitration "was attributable to UNA's misconduct."

Judge Corrigan ultimately called one of your demonstratives "persuasive" and incorporated it into his opinion. How did you develop the side-by-side presentation comparing what had been produced in the arbitration with what emerged later, and when did you realize that might be the clearest way to present such a sprawling record?

Alhadi: The final demonstrative was an iteration of the chronology we developed throughout the case. We included it to highlight to the court the material issues supporting vacatur here, how those issues were different from the fraud alleged in the underlying arbitration, and to do so in a way the court could quickly understand. When we filed the Second Amended Petition, we filed 68 exhibits and a brief that walks through them one by one and asks the reader to build that comparison on their own; the chronology offered the court another way to digest the fraud UNA committed. We also pointed the court to another vacatur decision that relied on a similar "timeline" showing a "side-by-side comparison" of the evidence available in the arbitration against the evidence uncovered afterwards. So we set out to build a timeline of UNA's fraud, working with OptumRx's arbitration counsel at Husch Blackwell to confirm exactly what was produced in the arbitration and what was not. Evidence available at the arbitration went in the left column, evidence that was not went in the right, run chronologically. Once the timeline was complete, the documents told the story on their own. We used it in the briefing and again at the March hearing.

What can others take from what you accomplished here?

Holecek: Be precise about the fraud. OptumRx had alleged fraud in the arbitration-that UNA falsified and backdated its purchase agreement - and lost. If that were all we had argued in federal court, we would have lost again, and UNA tried from the first brief to the last to make the case about relitigating it. We were clear-eyed from day one that every filing had to show the opposite. We were not relitigating what OptumRx lost in the arbitration; we were litigating what UNA concealed from it. The fraud that justifies vacatur was the concealment of documents and the false testimony about them-testimony UNA knew was false whether or not anyone else ever saw the documents. Some of the concealed evidence went to issues OptumRx had lost, but the point was never that it lost; the point was that it could not prove its case because the proof was in UNA's files. And the concealed documents showed that the whole acquisition theory, not just the backdating, was false. We checked every draft, every line, against that framing. It is what made the case straightforward and UNA's conduct plain.

What will you remember most about this matter?

Holecek: The team. Zach, Nadia and Nancy spent months reconstructing a seven-year

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arbitration none of us had litigated. I'll also remember opening the opinion and finding our timeline attached to it as Exhibit 1. You don't expect that.

Kady: The strategy and the client. We knew from the outset that we had to focus on only the best arguments showing UNA's fraud in the arbitration, and avoid the appearance that we were just trying to appeal or relitigate the case. Narrowing your arguments can feel like a risk, but the client bought in from day one, and that gave us the license to pursue the best case we could make, with no distractions for the court. Reading the Final Order, it was clear that our strategy paid off. To say that felt great would be an understatement, and we were lucky to have a client and a team that committed to that strategy throughout the case.

Alhadi: The hearing. We had a fun team and a court that had read every page of a record of some 70 exhibits. A court that engaged with the record that closely was the best thing that could have happened to us.

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