

Reinsurance Group Defeats Reinsurer's Motion for Summary Judgment

May 23, 2011

On May 23, 2011, the United States District Court for the Eastern District of Pennsylvania denied Global Reinsurance Corporation's motion for summary judgment, which sought to escape liability for a reinsurance billing issued by Pacific Employers Insurance Company on grounds that PEIC's notice of the underlying claims was late. The court agreed with PEIC that, under applicable law, Global was required to demonstrate prejudice to maintain its late notice defense, and that Global had not made such a showing. Christine Russell, Ellen Burrows and Brendan McQuiggan represented PEIC. (*Pacific Employers Insurance Co. v. Global Reinsurance Corp. of America*, 2011 WL 2003359 (E. D. Pa. May 23, 2011)).

The case concerned a certificate of facultative reinsurance that Global issued to PEIC in 1980. The one-year certificate reinsured an insurance policy that PEIC issued to the Buffalo Forge Company. In the years after the facultative reinsurance certificate was issued, Buffalo Forge was named as a defendant in numerous asbestos products personal injury lawsuits, which it tendered to its insurers (including PEIC). Once PEIC's payments under the reinsured policy reached the layer of Global's facultative reinsurance certificate, a billing was issued to Global. Global disputed liability for the billing on grounds of late notice. PEIC filed suit for breach of contract and sought a declaratory judgment of its rights under the contract. Global counterclaimed, seeking a declaration that it was not required to pay PEIC's reinsurance billing because PEIC had failed to give prompt notice of the underlying asbestos claims. Notably, though Global's pleading initially contained an allegation that it was prejudiced by the alleged late notice, Global did not produce any evidence that it had been prejudiced as a result of the alleged late notice. PEIC filed, and the court granted, a motion to strike the allegation.

On Global's motion for summary judgment, the court first determined that the facultative reinsurance contract contained a notice provision, and that timely notice was a condition precedent to Global's obligations under the contract. The court never reached the issue of whether PEIC had satisfied the notice provision, however, because it agreed with PEIC's arguments that (1) Pennsylvania law applied to the contract and (2) under Pennsylvania law, Global was required to show that it was prejudiced by late notice even where the reinsurance contract makes notice a condition precedent to performance. Therefore, the court held that Global's failure to demonstrate prejudice was fatal to its defense of late notice and denied Global's motion.

Practice Areas

Reinsurance