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*Goldberg Segalla's Reinsurance Review* provides timely summaries of and access to the latest reinsurance law developments worldwide, and is published monthly. Cases are organized by court and date. In addition, we provide the latest information regarding news in the insurance and reinsurance industries. If others in your organization are interested in receiving the publication, or if you do not wish to receive future issues, please contact Jeffrey L. Kingsley. Goldberg Segalla's Global Insurance Services team encourages you to check out the additional resources below.



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## DISTRICT COURT DECISIONS

### DISTRICT OF MINNESOTA

#### **Breach of Reinsurance Agreement Suit Against Producer-Owned Reinsurance Companies Survives Motion to Dismiss**

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*Security Life Ins. Co. of America v.  
Southwest Reinsure, Inc.*  
(Civil No. 11-1358 (MJD/JJK), Dec. 20,  
2011)

Southwest Reinsure, Inc. (SRI) is a company that specializes in establishing offshore reinsurance companies incorporated in the Turks and Caicos Islands. These companies are referred to as producer-owned reinsurance companies or PORCs. Family Heritage Reinsurance Company (FHRC), Ideal Insurance Co. (Ideal), Sierra Family Life Reinsurance Co. (Sierra), and Libre Insurance Co. (Libre) are PORCs located in the Turks and Caicos Islands, administered and operated by SRI.

In 1994 and again in 1997, Security Life Insurance Company of America (Security Life) entered into a reinsurance agreement with Family Heritage Reinsurance Co. (FHRC) whereby FHRC agreed to reinsure a portion of Security Life's exposure to claims and losses resulting from issues of life insurance policies in return for receiving a portion of the premiums collected by Security Life on such policies. Security Life entered into a similar reinsurance agreement with Sierra in 1997. At the same time as the 1994 agreement with FHRC, Security Life entered into an administration agreement with SRI whereby SRI agreed to provide the comprehensive services necessary

to administer insurance covered by the agreement including reviewing applications for insurance, preparing and mailing bills to policy holders, receiving and paying claims, and regularly reporting to Security Life.

Security Life alleges that it treated the 1994 and 1997 reinsurance agreements with FHRC and Sierra collectively as a single program under the administration agreement with SRI, that it never communicated with FHRC or Sierra, and that SRI made all decisions about allocation of policies between the reinsurance agreements. Security Life believed that SRI owned or operated all of the PORCs involved with the reinsurance agreements.

To provide security for the liability incurred by FHRC, Security Life and FHRC entered into a funds withheld and investments management agreement under which FHRC would place into a funds withheld account an amount equal to the reserves required by the reinsurance agreements. Although on its face, this funds agreement pertained only to the 1997 reinsurance agreement with FHRC, SRI treated it as covering all of the reinsurance agreements and deposited funds relating to all the reinsurance agreements in the account. In 1999, Security Life notified FHRC that the amount of funds in the funds account were insufficient. To rectify this, SRI arranged for Libre to provide a letter of credit which was renewed for several years. In 2005, at SRI's suggestion, the letter of credit was replaced with a trust account at INA in which Security Life was named the beneficiary. The trust account was funded by Ideal, as grantor under a trust agreement, because FHRC did not have sufficient funds to fund the account.

Security Life received trust account statements from INA until April 2006. Security Life then contacted INA who informed Security Life that the trust account had been closed and all funds transferred to Fifth Third Bank. Security Life ultimately learned that it was not named as a beneficiary on the Fifth Third Bank trust account. Eventually, Security Life was informed by Fifth Third Bank that the account assets had been distributed to another SRI affiliate. As a result, Security Life was unable to meet its statutory capital requirements.

Security Life then initiated a 12-count complaint against SRI, its affiliated PORCs, INA, and others alleging, among other things, breach of each of the reinsurance agreements, the funds agreement, and administration agreement: breach of fiduciary duties; conversion; unjust enrichment; common law fraud; and related claims. Security Life sought to pierce the corporate veil with respect to SRI and the various PORCs.

The defendants filed various motions to dismiss numerous of the claims. The court granted certain motions to dismiss, in part, but allowed the majority of the claims to proceed, ruling that the majority of the claims sufficiently alleged facts which, if proven true, could support the requested relief. The defendants argued, for example, that the 1997 reinsurance agreement explicitly set for the plaintiff's remedy in the event of a potential breach and that the plaintiff failed to take advantage of such remedy. The plaintiff countered that the parties had altered the terms of the agreements by their course of dealing and that the interrelated entities, as alter egos of each other, breached the respective agreements. The court explained that the plaintiff's alter ego and course of

dealing theories were viable at the pleading stage.

The defendants also moved to dismiss the breach of fiduciary duty claim, arguing that the reinsurance agreements did not create any fiduciary duties on the defendants, relying upon numerous cases which held that arm's length reinsurance agreements between sophisticated insurance companies do not create fiduciary duties. The court disagreed, instead holding that the alleged complex relationships between Security Life, SRI, and its affiliated PORCs created live factual issues as to whether fiduciary duties were created under the reinsurance agreements. The court explained that SRI, by taking on a broad role of being the exclusive provider of information to Security Life, by communicating with the PORCs on its behalf, and by otherwise leading Security Life into believing SRI was acting on its behalf, may have created fiduciary obligations that otherwise did not exist.

The court granted the defendants' motion to dismiss the plaintiff's conversion claim with respect to the funds in the INA trust account. The court ruled that a conversion claim may only stand where a plaintiff has a present possessory interest into the allegedly converted property. The plaintiff did not allege, nor did the agreements support a finding, that the plaintiff had any immediate right to possess those funds. Thus, the conversion claim failed as a matter of law. The defendants' motion to dismiss a claim for a mandatory injunction was granted after the plaintiff withdrew its request that the defendants be required to cooperate with the termination of the agreements. The plaintiff had decided not to terminate the agreements but nonetheless asserted that it might be

entitled to some form of limited injunctive relief to remedy the harm caused by the defendants as alleged in the complaint. The court dismissed this claim without prejudice because the plaintiff failed to articulate a specific request for injunctive relief or a particular injury that it might address.

**IMPACT – REINSURANCE:** This decision lends support to the potential for imposing fiduciary obligations on reinsurers based on conduct that may create such obligations where none originally existed. Further, the case illustrates the possibility of corporate veil-piercing where multiple affiliated entities operate collectively in fulfilling contractual reinsurance-related obligations.

## SOUTHERN DISTRICT OF NEW YORK

### Reinsurer's Counsel Disqualified in Arbitration Due to Improperly Obtaining and Reviewing "For Panel Eyes Only" Emails

*Northwestern National Insurance Co. v. INSCO, Ltd.*  
(11 Civ. 1124 (SAS), Dec. 6, 2011)

On Dec. 5, 2011, the United States District Court for the Southern District of New York issued an order denying the defendant InSCO, Ltd.'s (InSCO) motion to stay the court's Oct. 3, 2011 Opinion and Order (the Opinion) pending appeal. The Opinion had granted the plaintiff Northwestern National Insurance Company's (NNIC) motion to disqualify Freeborn & Peters LLP (Freeborn) from further representing InSCO in a pending reinsurance arbitration action. InSCO moved to stay the Opinion on the

grounds that it would likely be reversed on appeal and that disqualification of InSCO's counsel constituted a severe hardship.

The conflict arose out of a June 2009 arbitration regarding a reinsurance agreement. Pursuant to the agreement, a panel was made up of InSCO's selection of Dale Diamond, NNIC's selection of Diane Nergaard, and a randomly selected umpire, Martin Haber. On Feb. 11, 2011, while the arbitration was ongoing, Diamond shared 182 pages of private emails between panel members with Freeborn in an attempt to show Freeborn that Nergaard was biased. Freeborn reviewed all of the emails and sent a letter to the panel and NNIC demanding that the panel members resign immediately. As a result of the letter, Diamond resigned, but Nergaard and Haber did not. NNIC became suspicious that InSCO possessed intrapanel emails, and when it demanded that InSCO produce the documents, InSCO refused. Following InSCO's appointment of a replacement arbitrator, NNIC complained of InSCO's possession of the emails. On June 20, 2011, the panel issued an interim order noting that Diamond's release of intrapanel emails was highly inappropriate, but that the panel would continue to decide the case.

NNIC moved in the Southern District Court to disqualify Freeborn on the basis that it had inappropriately obtained the intrapanel emails. The court recognized that it was the proper forum for attorney disqualification and held that Freeborn's actions warranted disqualification. InSCO then moved to stay the order disqualifying Freeborn as its counsel, claiming that the order was likely to be reversed on appeal and that attorney disqualification was a burdensome remedy.

The court outlined the four factors to consider when determining whether to grant a stay: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. The court determined that Insko would suffer some harm, since it will be required to proceed in the arbitration without its counsel of choice, but that the balance of the factors weighed against the stay.

Firstly, the court determined that Insko was not likely to succeed on the merits. Responding to Insko's argument that the Federal Arbitration Act does not independently confer subject matter jurisdiction on the federal courts, the court noted that jurisdiction was proper because this was a diversity of citizenship case and the amount at stake in the underlying arbitration well over \$75,000. The court further stated that it could not agree with the assertion that a district court's disqualification of counsel in an arbitration for unethical conduct presented a legal novelty warranting a stay. The court reflected on its inherent authority to disqualify attorneys for unethical behavior.

The court acknowledged that the second factor, a showing of irreparable harm, weighed in favor of the stay, since disqualification of a party's attorney has the immediate adverse effect of separating a client from his counsel of choice. This hardship, however, could not outweigh the other three factors, particularly since it was Freeborn's failure to exercise caution upon receipt of the emails that led to

his disqualification, and if Freeborn was permitted to continue representing Insko in the arbitration while the appeal was pending, the sanction in the Opinion would be effectively nullified.

The third factor weighed against the grant of a stay, as it would prejudice NNIC, both because if NNIC requested a stay it would be unable to proceed with the arbitration that it initiated, and a stay would force NNIC to continue participation in the arbitration with the participation of Freeborn, denying NNIC the relief it sought under the motion for disqualification.

The court summarily rejected Insko's argument that the fourth factor, the public interest, warranted the grant of a stay. The court stated that the public interest factor must address the consequences that an order has above and beyond the hardship it immediately imposes on the parties before the court. After considering Insko's argument that the Opinion would make bad precedent, the court found that it would not negatively affect public policy. The court also rejected Insko's argument that the public interest favored a stay due to the difficulty in familiarizing new counsel with the arbitration, finding that this argument simply reiterated the burden of disqualification under the second factor. Recognizing that this case presented an unusual set of facts, the court found that Insko failed to show a strong likelihood of reversal on appeal, and the court could not stay the order without effectively nullifying the relief granted by the Opinion.

**IMPACT – REINSURANCE:** This decision illustrates that a federal court may disqualify a party's counsel in a pending arbitration for conduct in the arbitration that may prejudice the

fairness of the arbitration proceeding. Parties to arbitration and their counsel should be cautious in ex parte communication with arbitration panels lest they risk disqualification of counsel or other sanctions.

## DISTRICT OF NEW JERSEY

### **Underlying Policy Statutorily Extended Due to Inadequate Notice of Non-Renewal Still Covered by Reinsurance Agreement; Inclusion of Lead Warranty in Reinsurance Agreement Not Mutual Mistake**

*Munich Reinsurance America, Inc. v. Tower Ins. Co. of New York*  
(Civil No. 09-2598 (FLW), Dec. 23, 2011)

Munich Reinsurance American, Inc. (Munich) and Tower Insurance Co. of New York (Tower) asserted various claims against each other pursuant to a series of reinsurance and retrocessional agreements whereby they agreed to indemnify each other against losses sustained under certain insurance policies. Both parties moved for partial summary judgment, each identifying a handful of issues which the court addressed individually.

Munich moved for partial summary judgment on a net balance of \$3,287,597, plus pre-judgment interest, due from Tower on various reinsurance and retrocessional contracts. The court found the issue to be moot because Tower had remitted payment, and directed Munich to set forth the appropriate pre-judgment interest. Munich's additional request for prospective relief based on allegations that Tower routinely withheld payments due to Munich was denied by the court.

Tower moved for partial summary judgment on Munich's claims with respect to certain Quota Share Agreements and on its counterclaim relating to the multiple line excess of loss reinsurance agreement (XOL agreement). For its part, Munich reinsured Tower's underlying insurance obligations under a quota share reinsurance agreement covering the period 1992 through 1993 (92/93 quota agreement), a quota share reinsurance agreement covering the period from 1994 to 2000 (94/00 quota agreement) (collectively, quota agreements), and the XOL agreement. Each of the agreements gave the parties the right to offset any amounts, whether on account of premiums or losses or otherwise, due from such party to another party under either the same agreement or any other reinsurance agreement between them.

Munich and Tower entered into a preliminary or slip agreement for the 92/92 quota agreement and later replaced that slip with a written contract. The 1992 slip did not contain a warranty requiring Tower to attach a lead exclusion to the policies it issued. The 1992 slip was superseded by a 1993 slip, which also did not require the lead exclusion. During those years, the reinsurance relationship between the parties was governed by those two slips. The 92/92 quota agreement, drafted and executed in 2000, did contain a lead warranty provision which required Tower to include a lead exclusion endorsement in every commercial general liability policy (CGL) it issued.

Around 1993, Tower began reporting lead claims to Munich. However, Munich took the position that its reinsurance contracts generally did not provide coverage for lead claims and pointed to a long-standing policy against reinsuring

an insurer's exposure for lead claims. Tower agreed that going forward it would include the lead exclusion in every CGL policy it issued, but denied that it had ever knowingly warranted that it had attached and/or would continue to attach the exclusion to CGL policies issued prior to Oct. 27, 1992. Thus, the issue for the court was whether the inclusion of the lead warranty provision in the 92/93 quota agreement was the result of a mutual mistake.

To support its position that a mutual mistake was made, Tower argued that the 1992 and 1993 slips, which governed the parties' reinsurance relationship for eight years until the 92/93 quota agreement was executed in Aug. 2000, did not contain the lead warranty. The court took the position that the slips themselves did not provide a basis to find that the parties intended the provisions of the 92/93 quota agreement to reflect the same terms contained in the slips. According to the court, in the reinsurance world the purpose of a slip is to outline the terms of the agreed upon reinsurance with the expectation that the slip will ultimately be replaced by a more comprehensive contract. Thus, it is to be expected that the contract's final terms will vary from the terms outlined in the slip. Additionally, the fact that Tower began reporting lead claims in 1993, Munich took issue, and Tower thereafter agreed to include a lead exclusion in all CGL policies going forward, lent support to the position that the inclusion of the lead warranty provision in the subsequently prepared 92/93 quota agreement was intended by the parties.

In 1994 the parties had also established the so called 94/00 agreement, which was in effect from 1994 until 2000. This agreement included a lead warranty. Munich claimed that Tower breached

this provision by issuing a policy that provided lead coverage to Freddy and Zeneda Baez in 1999 (the Baez policy). Tower defended on the grounds that the Baez policy was a commercial package peril policy (CPP), not a CGL policy and that the lead warranty provision of the 94/00 agreement did not preclude coverage on CPP policies. Relying on testimony that Tower, and other insurers like it, utilize the same forms to create both CPP and CGL policies, the court determined that the ultimate issue – whether or not the Baez Policy included any CGL coverage – could not be summarily resolved based on the record before the court.

In the early 1990s, Munich agreed to pay its proportionate share of Tower's loss adjustment expenses (LAE). Both the 92/93 and 94/00 quota agreements contained provisions to this effect. In 1996 Tower's parent company, Tower Group, Inc. (Tower Group), formed Tower Risk Management (TRM) to write insurance policies on behalf of certain companies (the Front Companies) and to handle claims arising out of Tower policies that were reinsured under the quota agreements. The same claims adjusters and attorneys who handled the claims under the Front Companies policies also handled claims under the Tower policies. Furthermore, because Munich reinsured the Front Companies with respect to the business underwritten by TRM, the TRM billings for insurance claims associated with that business were passed through to Munich. In the aggregate, the TRM billings, which included the LAE that TRM handled for Tower and the Front Companies, purportedly represented the total claim expenses of Tower Group.

Consistent with the LAE agreement, Munich paid the LAE billings as they

came due. However, during the course of discovery in this case, documents were revealed which Munich claims demonstrate that TRM billings exceeded Tower Group's actual expenses from 2000-2007. These LAE billings included both claim expenses to the Front Companies and to Tower. Munich contended that it never agreed to pay any LAE in excess of its proportionate share of Tower's actual expenses. The court agreed that under the unambiguous language of the LAE endorsement Munich had agreed to bear only its proportion of claim expenses incurred by Tower. However, the evidence before the court was not sufficient to differentiate the claim expenses incurred by Tower from those expenses incurred by the Front Companies.

Finally, one of Tower's counterclaims alleged that Munich refused to reimburse Tower for \$41,507.56 under the XOL agreement for a property claim. The policy at issue was in effect from Jan. 1, 2004 to Aug. 1, 2004. At the time of renewal, Tower determined that it would not renew the policy, but failed to send a timely notice of non-renewal. Tower was required by the insurance laws of New York to continue coverage under the policy until August 12, 2004. As luck would have it, on Aug. 9, 2004, there was a fire at the insured's premises. Tower argued that the resulting claim triggered an excess of loss reinsurance under the XOL agreement.

The XOL agreement provided for termination on a run-off basis, meaning that reinsurance remained in effect for policies in force on the date of termination through their cancellation or natural expiration. Accordingly, since the policy at issue took effect on Jan.

1, 2004, the XOL agreement provided reinsurance coverage for said policy until that policy was cancelled or until it expired. Munich pointed out that Tower had attempted to prevent the policy from extending beyond its natural expiration, but had failed to take timely action. As a consequence, Tower had to extend the policy beyond the period of its actual expiration. In Munich's view, the loss therefore occurred outside the period of natural expiration and associated reinsurance coverage. The Court disagreed, finding that additional and unambiguous language in the XOL agreement obligated Munich to pay losses arising after the natural expiration of the policy where Tower was required by statute or regulation to continue the policy.

**IMPACT – REINSURANCE:** This decision reaffirms the understanding that insurance contracts control over slips written in advance of such contracts. Further, the court's handling of the multiple issues involved reiterate the long-standing proposition that unambiguous contract language controls obligations between a cedent and reinsurer, just as it does between and insured and its insurer.

## SUPREME COURT OF HAWAII

### **Insured Need Not Prove Economic or Physical Loss to Recover for Emotional Distress in First-Party Insurer Bad Faith Claim**

*Miller v. Hartford Life Inc. Co*  
(No. SCCQ-11-0000329, Dec. 28, 2011)

The Supreme Court of Hawai'i addressed a certified question presented by the District of Hawai'i in a bad faith action against an insurer by the personal representatives of a deceased insured whose long-term care benefits were terminated, then retroactively reinstated. The certified question, one of first impression in Hawai'i, was: if a first-party insurer commits bad faith, must an insured prove the insured suffered economic or physical loss caused by the bad faith in order to recover emotional distress damages caused by the bad faith.

The lawsuit arose from an insurance contract between Ms. Spiller, the insured, and defendants Hartford Life Insurance Company (Hartford) and MedAmerica Insurance Company (MedAmerica). In 2001, Ms. Spiller purchased a Hartford long-term care insurance policy through her employer. Hartford and MedAmerica subsequently entered into an indemnity and assumption reinsurance agreement (the agreement) by which Hartford transferred certain policy liabilities and administrative functions to MedAmerica. The agreement provided that, if certain policyholders did not consent to the novation, they would be deemed non-consenting policyholders. MedAmerica, as the assumption reinsurer, accepted all of Hartford's policy liabilities, except those of non-consenting policyholders.

MedAmerica became the indemnity reinsurer and a co-insurer with Hartford as to these non-consenting policyholders. Ms. Spiller did not agree to the novation and was thus a non-consenting policyholder.

In Jan. 2007, Ms. Spiller suffered a grand mal seizure and was diagnosed with lung cancer that had metastasized to her brain. Hartford and MedAmerica provided benefits to Ms. Spiller for nearly a year but terminated her benefits in Aug. 2008, based on the results of a Benefit Determination Assessment. Defendants eventually reinstated her benefits in Jan. 2009, effective retroactively to the prior benefit termination date. Ms. Spiller nonetheless sued both Hartford and MedAmerica for bad faith in the administration of her health benefits and sought damages for emotional distress and punitive damages. In her complaint, Ms. Spiller alleged economic loss and physical injury but she did not seek damages for these losses. Rather, she sought damages for the emotional distress she suffered during the time her benefits were denied by defendants. Ms. Spiller died from her cancer on Dec. 21, 2010.

The defendants filed motions for summary judgment against Ms. Spiller's claim for emotional distress, arguing that such damages were not recoverable when the plaintiff did not also seek damages for economic loss or physical injury. The district court certified the question to the Supreme Court of Hawai'i as to the recoverability for emotional distress on a bad faith claim in the absence of a claim for economic loss or physical injury. The Supreme Court of Hawai'i turned to the rationale for allowing a bad faith claim espoused in *Best Place, Inc. v. Penn America Insurance Co.*, 82 Hawai'i 120 (1996) in

which the court first recognized the tort of bad faith in Hawai'i:

The court's rationale for recognizing the tort of bad faith with its potential liability for all damages incurred as a result of the insurer's misconduct, including emotional distress damages, was two-fold: (1) bad faith conduct by an insurer damages the very protection or security which the insured sought to gain by buying insurance, and (2) in the absence of the threat of a bad faith action, insurers would have little incentive to promptly pay benefits owing to their insured as they would stand to lose very little by delaying payment if the insured was limited to contractual remedies.

The insurers argued that Hawai'i should follow California in imposing an economic loss requirement for recovery of emotional distress, whereas plaintiff argued the court should follow Colorado in refusing to impose such a requirement. The court considered both states' law and ultimately agreed that Colorado's approach, allowing recovery in a first party insurer bad faith claim of emotional distress damages without the requirement of economic loss or physical injury, more appropriately furthered the purpose of the tort of bad faith in compensating an insured for the harm she suffers from an insurer's bad faith.

**IMPACT – REINSURANCE:** Reinsurers occasionally take on the role of a first-party insurer and, therefore, become subject to potential bad faith claim by policyholders relating to the handling and administration of claims. This decision supports broadening the recoverable damages on a bad faith claim to include emotional distress and should serve to remind first party insurers to be diligent in handling claims in good faith.

## SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

### National Union's Reinsurance Suit Against Everest Re Over PCB Claims Reinstated

*6430 - American Home Assurance  
Company v. Everest Reinsurance  
Company*

(Case No. 602485/06, 6431; Dec. 27,  
2011)

The first department vacated an order of the trial court thereby reinstating a complaint filed by National Union Fire Insurance Company of Pittsburgh, Pa. (National Union) against Everest Reinsurance Company (Everest) which the trial court had dismissed. In 1993, National Union settled massive coverage litigation arising from the underlying insured's manufacture of PCB from 1929 to 1971 at 80 sites around the country (the settlement). Several years after the settlement the insured became subject to claims for bodily injury allegedly arising from PCB contamination in the vicinity of its manufacturing facility in Anniston, Alabama. The insured settled the Aniston litigation for \$600 million then presented a claim to National Union for \$150 million. National Union paid the loss and turned to its reinsurers, including Everest, for reimbursement. National Union commenced suit after Everest refused to pay.

The appellate court explained that a reinsurer is bound by a settlement agreement agreed to by a ceding company if it is reasonably within the terms of the original policy, even if not technically covered by the policy. This rule prevents a reinsurer from second-guessing the settlement decisions of

a cedent and imposes a contractual obligation on the reinsurer to indemnify the cedent for payments it makes pursuant to a loss settlement under its own policy, provided that such settlement is not fraudulent, collusive, or otherwise made in bad faith, and provided further that the settlement is not an ex gratia payment, i.e., one made by a party that recognizes no legal obligation to pay, but makes payment to avoid a greater expense, as in the case of a settlement by an insurance company to avoid the cost of a suit.

The court explained that there was no evidence that at the time of the settlement, National Union acted other than in good faith. The evidence indicated that National Union settled the coverage litigation on favorable terms and that a pollution exclusion, at the time, was both litigated and negotiated. The court noted, however, that mere months after the settlement, a Delaware court ruled that National Union's pollution exclusion barred coverage in the matter. This circumstance presented a question of whether National Union settled in good faith. There were also questions of fact as to whether waiver and estoppel applied to Everest. Consequently, the court vacated the trial court's dismissal order, reinstating National Union's complaint against Everest.

**IMPACT – REINSURANCE:** Reinsurers are generally bound by the loss settlement decisions of their cedents absent bad faith or collusion on the part of the cedent. This decision follows the rule but also provides authority indicating a cedent who pays losses in spite of a potentially applicable pollution exclusion may not have done so in good faith.

## NEWS AND NOTES

### **Munich Re and Swiss Re Project Their Respective Losses From 2011 Thailand Flooding of \$600 Million or More**

Munich Re projects its share of losses from flooding in Thailand in October and November 2011, the costliest national disaster in the country's history, will be approximately \$666 million net before tax. Swiss Re estimates its share of the loss to be \$600 million. The worst flooding to hit Thailand in 50 years caused extensive damage to buildings and, more importantly, the expensive manufacturing facilities housed within.

### **Everest Re: Thailand Flooding May Cost it \$125 Million**

Reinsurer Everest Re Group Ltd. estimates claims stemming from massive flooding in Thailand in 2011 may cost it \$100 million to \$125 million. The flooding which began in July 2011 and which continue to affect the nation, has to date resulted in \$45 billion in damages.

### **Swiss Re Study Finds Premium Growth in Emerging Markets**

A study by Swiss Re, *Insurance in Emerging Markets: Growth Drivers and Profitability*, indicates premium growth in emerging markets has expanded by 11% of the past decade. The study found emerging markets have increased their share of growth domestic product from 21 percent to 34 percent, translating to growth in the insurance industry.

### **Consumer Group Slams Industry for Manufacturing Cycles**

A report by the consumer insurance group Americans for Insurance Reform, entitled *Repeat Offenders: How the Insurance Industry Manufactures Crises and Harms America*, asserts that the insurance industry's little-understood economic cycle has been used to victimize policyholders for more than three decades. The report says a hard market now would be purely to gouge buyers of insurance.

### **Swiss Re: 2011 Second Costliest Year for Insured Catastrophe Losses**

A report by Swiss Re indicates insured manmade and natural catastrophe losses for 2011 will approach \$108 billion, second only to the \$123 billion in losses incurred in 2005. Insured losses in 2010 were \$48 billion. The year 2011 will set a record for economic losses at an estimated \$350 billion, up from \$226 billion in 2010.

### **PNC and Insurers Sued in Alleged Captive Reinsurance Scheme**

A putative class of homeowners sued PNC Financial Services Group, Inc. and several insurers in Pennsylvania federal court alleging a captive reinsurance scheme through which PNC received kickbacks from reinsurance premiums paid by homeowners. The suit alleges violation of the Real Estate Settlement Procedures Act of 1974.

## **Reinsurers Lead the Way in Enterprise Risk Management**

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Enterprise risk management (ERM) continues to be implemented by anxious boards and CEOs who are aware, more than ever, of the need to understand and mitigate existential threats. Reinsurers, who have developed sophisticated ERM systems, can serve as models for any company developing and implementing an ERM system.

## **Axis CEO Charman to Retire, CFO Benchimol to Replace Him**

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John R. Charman, CEO and president of Axis Capital Holdings, Ltd., will retire after a decade with the company. He will be replaced by company CFO Albert Benchimol, effective May 3, 2012. While Charman will remain as chairman of the company's board, a search for a new CFO has begun.

## **Swiss Re CEO Stefan Lippe to Retire**

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Swiss Re CEO Stefan Lippe will retire from the company he helped to stabilize, after three years at the helm. The company's board is disappointed in Lippe's decision to leave after nearly three decades with the company. Lippe's date of departure and his successor are both as-of-yet undetermined.

## **A.M. Best: Bermuda Market May Experience Increase in Demand for Reinsurance Capacity**

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In a special report issued regarding the Bermuda market, A.M. Best opines that recent global catastrophes and revised catastrophe models may reverse a decline in demand for reinsurance capacity. The report concludes that the market appears poised for a meager

bottom-line profit for 2011 or possibly the first underwriting loss since 2005.

## **China's Share of Insurance Market Growing**

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Reinsurance broker Aon Benfield reports that China's share of the world insurance market has quadrupled in the last 10 years and is expected to grow further. With annual life and non-life insurance premiums of \$226 billion, China accounts for nearly 4 percent of the world market, up from 1 percent in 2001.

## **XL Group Approved to Set Up Brazilian Insurance Operation**

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XL Group PLC announced that it has received final approval from the Brazilian re/insurance regulator Superintendencia de Seguros Privados (SUSEP) to set up an insurance operation in Brazil. Expected to begin operations in early 2012, XL Seguros Brasil SA will offer a range of casualty, property, professional, and specialty insurance products.

## **Golden State Re Notes Approved by Bermuda Stock Exchange**

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Effective Dec. 9, 2011, Golden State Re Ltd.'s principal at-risk variable note program has been approved by the Bermuda Stock Exchange's listing committee. Golden State Re, incorporated with limited liability in Bermuda on Oct. 24, 2011 as a special purpose insurer.

Goldberg Segalla LLP is a Best Practices law firm with offices in Philadelphia, New York, Princeton, Hartford, Buffalo, Rochester, Syracuse, Albany, White Plains and on Long Island. The Global Insurance Services Practice Group routinely handles matters of national and international importance for both domestic and foreign insurers, cedents and reinsurers. This includes: comprehensive audits,

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Our Global Insurance Services team consists of the following attorneys:

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