SIMPSON THACHER

INSURANCE LAW ALERT

FEBRUARY 2013

This Alert reports on recent decisions relating to coverage for recall-related claims, enforcement of voluntary payments and notice provisions to bar coverage, and pro rata allocation of insurers' defense costs. We also highlight arbitration-related rulings that address reverse preemption under the McCarran-Ferguson Act and the timing for judicial review of an arbitrator's discovery ruling. Finally, we summarize decisions that address the scope of documents protected by attorney-client privilege. Please "click through" to view articles of interest.

- ***Minnesota Court Rules That General Liability Policy Covers Recall-Related Claims***

  A Minnesota district court ruled that a general liability insurer owed defense and indemnity for damages arising out of a milk recall, reasoning that the recall constituted a covered "occurrence" resulting in "property damage" and that the policy's recall exclusion did not apply. *Netherlands Ins. Co. v. Main Street Ingredients, LLC*, 2013 WL 101876 (D. Minn. Jan. 8, 2013). *Click here for full article*

- ***Seventh Circuit Holds That Insured Forfeited Coverage by Settling Without Insurer Consent***

  The Seventh Circuit ruled that under Indiana law, a general liability insurer owed no indemnification where an additional insured settled with the underlying claimant without the insurer's consent, regardless of prejudice to the insurer. *West Bend Mutual Ins. Co. v. Arbor Homes LLC*, 2013 WL 68995 (7th Cir. Jan. 8, 2013). *Click here for full article*

- ***New York Court Rules That Insurer Prejudiced by Late Notice Has No Duty to Defend or Indemnify***

  A New York federal district court ruled that a six-month delay in providing notice under a general liability policy was unreasonable and prejudicial to the insurer and relieved the insurer of its defense and indemnity obligations. *Atlantic Cas. Ins. Co. v. Value Waterproofing, Inc.*, 2013 WL 152854 (S.D.N.Y. Jan. 15, 2013). *Click here for full article*

- ***Prompt Notice a Condition Precedent to Coverage under E&O Policy, Says Eleventh Circuit***

  The Eleventh Circuit held that coverage under an Errors & Omissions policy was precluded by untimely notice of claims. *Sharp Realty & Mgmt., LLC v. Capitol Specialty Ins. Corp.*, 2013 WL 56701 (11th Cir. Jan. 4, 2013). *Click here for full article*

- ***Kentucky Court Adopts Pro Rata Time-on-the-Risk Method for Allocating Defense Costs***

  A Kentucky district court ruled that defense costs arising out of a continuous injury claim should be allocated among insurers on a pro rata time-on-the-risk basis. *Kentucky League of Cities Ins. Svs. Assoc. v. Argonaut Great Central Ins. Co.*, 2013 WL 120013 (W.D. Ky. Jan. 8, 2013). *Click here for full article*

- ***New York Appellate Court Rules That Fictitious Madoff Profits Are Not Covered "Losses" Under Fidelity Bond***

  A New York appellate court ruled that the loss of fictitious Madoff profits did not constitute a "loss" under fidelity bonds. *Jacobson Family Investments, Inc. v. National Union Fire Ins. Co.*, 955 N.Y.S.2d 338 (N.Y. App. Div. 1st Dep't 2012). *Click here for full article*

- ***Communications Between Title Insurer and Lawyers Prosecuting Claims on Insured's Behalf Protected by Attorney-Client Privilege, Says California Appellate Court***

  A California appellate court ruled that the same tripartite attorney-client relationship that arises when a liability insurer retains counsel to defend its policyholder exists when a title insurer hires counsel to prosecute an action on behalf of the insured pursuant to the title policy. *Bank of America, N.A. v. Superior Court*, 2013 WL 151153 (4th Dist. Jan. 15, 2013). *Click here for full article*

- ***Bad Faith Claim Does Not Justify Access to Insurer's Privileged Documents, Says Louisiana Court***

  A Louisiana district court denied policyholders' motion to compel the production of privileged documents, holding that they had failed to demonstrate a compelling need for the material in support of their bad faith claim. *Miller v. Favre*, 2012 WL 6475612 (M.D. La. Dec. 13, 2012). *Click here for full article*

- ***Washington Supreme Court Enforces State Statutes Prohibiting Arbitration of Insurance Disputes***

  The Washington Supreme Court declined to enforce an arbitration clause in an insurance agreement, citing state statutory prohibitions on arbitration of insurance disputes. The court ruled that the statutes reverse preempted the Federal Arbitration Act because they regulate the business of insurance pursuant to the McCarran-Ferguson Act. *State of Washington Dep't of Transportation v. James River Ins. Co.*, 2013 WL 174111 (Wash. Jan. 17, 2013). *Click here for full article*

- ***Illinois Appellate Court Rules That Parties May Not Seek Judicial Review of Discovery Ruling Until Arbitration Ends***

  An Illinois appellate court ruled that judicial review of discovery rulings should take place after the arbitration has concluded. *Klehr v. Illinois Farmers Ins. Co.*, 2013 WL 240539 (Ill. App. Ct. Jan. 22, 2013). *Click here for full article*

- ***STB News Alert***

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Recall Alert:

Minnesota Court Rules That General Liability Policy Covers Recall-Related Claims

A Minnesota district court ruled that a general liability insurer owed defense and indemnity for damages arising out of an instant milk recall, reasoning that the recall constituted a covered "occurrence" resulting in "property damage" and that the policy's recall exclusion did not apply. *Netherlands Ins. Co. v. Main Street Ingredients, LLC*, 2013 WL 101876 (D. Minn. Jan. 8, 2013).

The coverage dispute arose out of a Food and Drug Administration recall of instant milk. The recalled milk had been sold by a company known as Main Street Ingredients ("MSI") to a subsidiary of Malt-O-Meal Company ("MOM"). As a result of the recall, MOM initiated a recall of its instant oatmeal product, which included the recalled milk as an ingredient. MOM then sued MSI, seeking damages arising from the recall. MSI notified Netherlands, its general liability insurer, of the suit, which Netherlands agreed to defend under a reservation of rights. The underlying litigation ultimately settled for $1.4 million. Netherlands filed a declaratory judgment action, seeking a ruling that it had no duty to defend or indemnify MSI. Both parties moved for summary judgment. The court ruled in MSI's favor, making several significant recall-related coverage rulings.

Recall as an "Occurrence": The court held that under Minnesota and Wisconsin law, the recall-based claims constituted an "occurrence" under the policy. In so ruling, the court rejected Netherland's argument that the underlying claims were uncovered breach of contract claims based on contractual provisions which assured the quality of the instant milk. The court distinguished between contractual liability claims (which would not constitute an "occurrence") and contractual liabilities arising from accidents (which could constitute an "occurrence") and concluded that the recall-related damages fell within the latter category.

"Property Damage" Absent Actual Contamination: The underlying litigation established that MSI's instant milk never tested positive for contamination. Nonetheless, the court found that for insurance coverage purposes there was "property damage," defined by the policy as "physical injury to tangible property." The court reasoned that the existence of unsanitary conditions during production rendered the milk "adulterated," regardless of whether it was actually harmful. In addition, the court noted that under Minnesota law, the inability to distribute products because of FDA regulations supports a finding of property damage. Notably, in a case involving a different property damage definition ("direct physical loss"), the Eighth Circuit, applying Minnesota law, held that a company's inability to import beef due to a government embargo did not constitute property damage. *See Source Food Tech., Inc. v. United States Fid. & Guar. Co.*, 465 F.3d 834 (8th Cir. 2006). *See also Silgan*

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Containers, LLC v. National Union Fire Ins. Co., 2011 WL 4551467 (N.D. Cal. Oct. 3, 2011) (discussed in our November 2011 Alert) (no "property damage" where recall was based on defect in cans but there was no evidence of physical change to food product).

Economic Harm as Property Damage vs. Economic Harm as a Measure of Damages: The court rejected Netherland's argument that the damages sought in the underlying suit (relating to lost inventory, customer credits and other costs) were purely economic and thus did not constitute property damage. The court reasoned that the economic damages against MSI arose because of property damage, and were thus within the scope of coverage. Although courts have generally held that economic loss *per se* does not constitute damage to tangible property, *Netherlands* follows decisions holding that economic loss may be recoverable as consequential damages from property damage or used as a measure to calculate the loss arising from property damage.

Recall Exclusion: Netherland's policy excluded from coverage damages incurred in connection with the recall of a product due to defects or deficiencies. The court deemed the exclusion inapplicable because MSI was seeking indemnity for damages arising out the recall of MOM's oatmeal, rather than MSI's milk recall. Employing similar reasoning, the court held that a "your product" exclusion, which barred coverage for property damage to goods or products "manufactured, sold, handled, distributed or disposed of [by MSI]," did not apply because the underlying claims were based on damage to a third-party's product – namely, MOM's oatmeal, not MSI's own adulterated instant milk.

Voluntary Payments Alert:
Seventh Circuit Holds That Insured Forfeited Coverage by Settling Without Insurer Consent

The Seventh Circuit ruled that under Indiana law, a general liability insurer owed no indemnification where an additional insured settled with the underlying claimant without the insurer's consent, regardless of prejudice to the insurer. *West Bend Mutual Ins. Co. v. Arbor Homes LLC*, 2013 WL 68995 (7th Cir. Jan. 8, 2013).

The coverage dispute arose out of a plumber's negligent workmanship in the construction of a home. When the homeowners discovered significant damage, they sought remediation from the builder. The builder was covered under the plumber's policy as an additional insured. During settlement negotiations, the builder directed the plumber to notify its insurer of the claim. The plumber represented that it had forwarded a letter detailing the terms of the proposed settlement to insurer West Bend Mutual Insurance Company. Hearing no response, the builder assumed that West Bend did not object to the proposed settlement and proceeded to finalize it. Thereafter, the builder sued the plumber and sent a copy of the complaint to West Bend. West Bend filed a declaratory judgment action seeking a ruling that it had no duty to defend or indemnify the builder with respect to the homeowners' claims. An Indiana federal district court granted summary judgment to West Bend, finding that it was relieved

of any duty to defend or indemnify by virtue of the voluntary payments provision of the policy. The Seventh Circuit affirmed.

The voluntary payments provision precludes any insured from making payment or assuming any obligation without the insurer's consent. Because West Bend had not consented to the settlement with the homeowners, the court concluded that coverage was forfeited. The court explained that an insurer's silence in face of purported notice of a settlement should not be construed as consent, particularly where, as here, there is no evidence that the insurer received notice of the intent to settle.

In excusing the insurer from providing coverage on the basis of the voluntary payments provision, the court rejected several arguments frequently asserted by policyholders in this context. First, the court held that the question of prejudice was irrelevant. Although some jurisdictions have required a prejudice showing in order to deny coverage on the basis of a voluntary payments provision, Indiana law distinguishes between notice provisions, which require a showing of prejudice, and consent provisions, which are enforced without regard to prejudice. Second, the court rejected the argument that because West Bend had initially disclaimed additional insured coverage to the builder, notice of the settlement would have been futile and would not have resulted in any action on West Bend's part. The court noted that an insurer does not waive its rights under the voluntary payments provision by disclaiming coverage on other bases.

Notice Alerts:

New York Court Rules That Insurer Prejudiced by Late Notice Has No Duty to Defend or Indemnify

A New York federal district court ruled that a six-month delay in providing notice under a general liability policy was unreasonable and prejudicial to the insurer and relieved the insurer of its defense and indemnity obligations. *Atlantic Cas. Ins. Co. v. Value Waterproofing, Inc.*, 2013 WL 152854 (S.D.N.Y. Jan. 15, 2013).

Atlantic issued a general liability policy to Value, a construction company. Value performed roof work for a commercial building in New York. A few days after the work was completed, a snow storm hit the region, leaving approximately 20 inches of snow on the roof, causing the roof to collapse. Immediately notified of the collapse, Value provided the building's owner with a certificate of insurance identifying Atlantic as an insurer. The building owner also notified its insurer, Greenwich Insurance Company, which retained an adjuster to inspect the property. Following Greenwich's inspection, the building was demolished for safety reasons. Approximately six months later, Value notified Atlantic of the collapse. After learning that the building was no longer available for inspection, Atlantic denied coverage, but nonetheless defended Value in a subrogation action brought by Greenwich. Atlantic then sought a declaration that it had no duty to defend or indemnify Value because, among other

things, it was prejudiced by Value's untimely notice. The court granted Atlantic's motion.

First, the court concluded that Value's notice was untimely and unreasonable as a matter of law. In so ruling, the court rejected two arguments frequently asserted by policyholders in this context: (1) that notice was timely because there was a reasonable belief of non-liability; and (2) that prompt notice was "impractical" under the circumstances. Second, the court ruled that Atlantic was prejudiced by the delay. The court held that because the delay "materially impaired its ability to investigate the claim and defend against it," Atlantic had established prejudice. In particular, the court noted that Atlantic was unable to "independently ascertain potential causes of the collapse" and instead had to rely on its adversary's (Greenwich's) investigation. Under New York statutory law enacted in 2008, an insurer cannot disclaim coverage on late notice grounds absent a showing of prejudice in certain circumstances. N.Y. Ins. Law § 3420(a)(5).

The prejudice analysis in *Atlantic Casualty* is significant in several respects. It rejects the proposition that an insurer must demonstrate precisely how its defense was impaired in order to establish prejudice because placing such a burden on an insurer would be unreasonable. Similarly, the decision illustrates that under New York law, an insurer's inability to investigate a claim may constitute prejudice even where documentary evidence obtained by other sources is available.

Prompt Notice a Condition Precedent to Coverage under E&O Policy, Says Eleventh Circuit

Affirming an Alabama district court opinion, the Eleventh Circuit held that coverage under an Errors & Omissions policy was precluded by untimely notice of claims. *Sharp Realty & Mgmt., LLC v. Capitol Specialty Ins. Corp.*, 2013 WL 56701 (11th Cir. Jan. 4, 2013).

Sharp Realty was named in a lawsuit alleging mismanagement of properties. Allied World Assurance Company, one of Sharp's errors and omissions insurers, agreed to defend the suit under a reservation of rights. Sharp sued Allied and another E&O carrier, alleging, among other things, breach of contract and bad faith. The trial court, by summary judgment, found that Sharp had forfeited coverage by failing to comply with the notice provision in the Allied policy. The court also dismissed the bad faith claim, citing a lack of evidence and noting Allied's defense of the underlying action. The Eleventh Circuit affirmed.

Under Alabama law, a policyholder's failure to comply with a condition precedent notice provision relieves the insurer of its duties regardless of whether the insurer was prejudiced by the timing of the notice. The Eleventh Circuit concluded that although the policy did not contain specific "condition precedent" verbiage, timely notice was a condition precedent because the policy provided that "[n]o action may be brought against the Company unless the Insured has fully complied with all terms and conditions of this Policy." The court further concluded that an unexplained eight-month delay in notice was unreasonable as a matter of law. The court also upheld the trial court's dismissal of the bad faith claim, noting that Allied had defended Sharp.

ALLOCATION ALERT:

Kentucky Court Adopts Pro Rata Time-on-the-Risk Method for Allocating Defense Costs

Ruling on a matter of first impression, a Kentucky district court ruled that defense costs arising out of a continuous injury claim should be allocated among insurers on a pro rata time-on-the-risk basis. *Kentucky League of Cities Ins. Svs. Assoc. v. Argonaut Great Central Ins. Co.*, 2013 WL 120013 (W.D. Ky. Jan. 8, 2013).

The underlying lawsuit involved injuries suffered by a family over an eight-year period as a result of contaminated water. During this time frame, the water company was insured by Argonaut Insurance Company and Kentucky League of Cities Insurance Services ("KLC") in a series of back-to-back one-year policies, none of which overlapped. KLC defended the claims under a reservation of rights, and Argonaut agreed to pay a portion of the defense costs. The insurers' dispute centered on how the defense costs should be allocated between them. KLC argued that the costs should be split equally (the so-called "equal shares" method) whereas Argonaut reasoned that it should contribute twenty-five percent of the defense costs because it was "on the risk" for twenty-five percent of the period of injury.

The court ruled that the insurers' defense costs should be allocated on a pro rata time-on-the-risk basis. Relying on Sixth Circuit precedent, *see Ins. Co. of N. Am. v. Forty-Eight Insulations, Inc.*, 633 F.2d 1212 (6th Cir. 1980), the court noted that an insurer's duty to defend exists only "for covered risks occurring during the periods set forth in the policy" and that "an insurer has not contracted to pay defense costs for occurrences which [take] place outside the policy period." Therefore, where, as here, it is possible to distinguish between covered and uncovered claims (*i.e.*, based on each insurer's policy periods), defense costs must be allocated based on each insurer's time on the risk. In rejecting the equal shares method, the court noted that the "division of costs equally among insurers rather than by their time on the risk could extend the duty to defend beyond the policy's temporal boundaries" and is thus "neither logical nor reasonable."

Kentucky League joins the majority of courts in holding that defense costs should be allocated among insurers on a pro rata basis. Although a small number of courts have employed an equal shares method, the *Argonaut* court found these rulings unpersuasive and/or inapposite.

COVERAGE ALERT:

New York Appellate Court Rules That Fictitious Madoff Profits Are Not Covered "Losses" Under Fidelity Bond

Our November 2010 and July/August 2011 Alerts highlighted New York decisions dismissing insurance coverage claims by investors seeking to recover financial losses arising out of Bernard Madoff's Ponzi scheme. *See Horowitz v. American International Group, Inc.*, 2010 WL 3825737 (S.D.N.Y. Sept. 30, 2010), *aff'd*, 2012 WL 3332375 (2d Cir. Aug. 15, 2012); *U.S. Fire Ins. Co. v. Nine Thirty FEF Invs. LLC*, 2011 WL 2552335 (N.Y.

Sup. Ct. June 16, 2011). In a recent decision, a New York appellate court reached the same conclusion, holding that the loss of fictitious Madoff profits did not constitute a "loss" under fidelity bonds. *Jacobson Family Investments, Inc. v. National Union Fire Ins. Co.*, 955 N.Y.S.2d 338 (N.Y. App. Div. 1st Dep't 2012). Citing *Horowitz*, the appellate court held that "no insurance policy can be interpreted to compensate an insured for something that, unbeknownst to the parties, only appeared to exist because of someone else's fraud." The court also rejected the investors' argument that the undefined term "loss" was ambiguous and should be interpreted in light of extrinsic evidence. As noted in our November 2010 Alert, courts in other jurisdictions have likewise held that losses of phantom profits do not qualify as "losses" for insurance coverage purposes.

Privilege Alerts:

Communications Between Title Insurer and Lawyers Prosecuting Claims on Insured's Behalf Protected by Attorney-Client Privilege, Says California Appellate Court

A California appellate court ruled that the same tripartite attorney-client relationship that arises when a liability insurer retains counsel to defend its policyholder exists when a title insurer hires counsel to prosecute an action on behalf of the insured pursuant to the title policy. *Bank of America, N.A. v. Superior Court*, 2013 WL 151153 (4th Dist. Jan. 15, 2013).

Fidelity insured Bank of America under a lender's title policy insuring a deed of trust. When Bank of America made a claim under the policy against another bank, Fidelity retained counsel to prosecute the action. The defendant bank thereafter subpoenaed Fidelity seeking, among other things, communications between the law firm and Fidelity regarding the litigation. Bank of America's motion to quash or modify the subpoenas was denied. Bank of America and Fidelity then petitioned for writ of mandate or prohibition challenging the trial court's order. The appellate court granted the petition and directed the trial court to vacate its order and issue a new order granting the motion to quash.

Applying an abuse of discretion standard, the

appellate court held that the trial court erred as a matter of law in declining to find the communications protected by attorney-client and work product privileges. As a preliminary matter, the court held that Fidelity's retention of the law firm to represent Bank of America sufficed to establish a tripartite attorney-client relationship between Fidelity, Bank of America and the law firm. In this respect, the court noted that it was irrelevant whether a formal retainer agreement existed between Fidelity and the law firm; the entities' "common goal" of protecting Bank of America's interests established the attorney-client relationship. Additionally, the court rejected the contention that the privilege was not applicable because the law firm was retained to prosecute rather than defend a lawsuit on behalf of its insured. The court also rejected the argument that Fidelity's reservation of rights created a conflict of interest and thereby waived privilege.

Bad Faith Claim Does Not Justify Access to Insurer's Privileged Documents, Says Louisiana Court

Bad faith claims against insurance companies often give rise to disputes over the discoverability of documents maintained in an insurer's files. Policyholders seeking the production of claims handling or other internal documents argue that such materials are relevant and necessary to the prosecution of bad faith claims. The success of these arguments is typically fact-dependent and turns on the relationship between the particular documents requested and the factual bases upon which bad faith is alleged.

In a recent decision, a Louisiana district court affirmed a magistrate judge's denial of the policyholders' motion to compel the production of privileged documents. *Miller v. Favre*, 2012 WL 6475612 (M.D. La. Dec. 13, 2012). Under Federal Rule 26, privileged documents are not discoverable unless the party seeking production has shown a "substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." Fed. R. Civ. P. 26(b)(3)(ii). Here, the court concluded that the policyholders' generalized allegations that the documents might reveal the insurer's "state of mind, business policies, and strategies" were insufficient to establish a compelling need for the privileged documents.

As *Miller* illustrates, absent a showing that information contained in particular documents is necessary to support a bad faith claim and is not otherwise obtainable, a bad faith claim, standing alone "cannot justify unlimited access to [an insurer's] claim file."

ARBITRATION ALERTS:

Washington Supreme Court Enforces State Statutes Prohibiting Arbitration of Insurance Disputes

The Washington Supreme Court declined to enforce an arbitration clause in an insurance agreement, citing state statutes prohibiting insurers from requiring arbitration of insurance disputes. The court ruled that the statutes reverse preempted the Federal Arbitration Act because they regulate the business of insurance pursuant to the McCarran-Ferguson Act. *State of Washington Dep't of Transportation v. James River Ins. Co.*, 2013 WL 174111 (Wash. Jan. 17, 2013).

James River Insurance Company issued surplus line insurance to the Washington Department of Transportation ("WDOT"). When a coverage dispute arose, James River sought to compel arbitration. WDOT objected, arguing that the arbitration clause was unenforceable under Washington statutes which prohibit insurance contracts from "depriving the courts of this state of the jurisdiction of action against the insurer" and which require an "unauthorized insurer [to] be sued in the superior court of the county in which the cause of action arose." RCW 48.18.200(1)(b); RCW 48.15.150(1). WDOT also argued that these statutes regulate insurance and therefore reverse preempt the Federal Arbitration Act pursuant to the McCarran-Ferguson Act. A Washington trial court agreed with WDOT and denied James River's motion to compel arbitration. The Washington Supreme Court affirmed.

The Washington Supreme Court first ruled that the statutes prohibit binding arbitration clauses in insurance contracts. In so ruling, the court rejected the notion that the statutes were forum selection provisions rather than prohibitions on arbitration. Having reached this conclusion, the court then addressed whether the statutes were preempted by the FAA, which favors enforcement of arbitration agreements. When a conflict exists between state law and the FAA, the

FAA typically preempts the state laws. However, the McCarran-Ferguson Act creates an exception to federal preemption with respect to state statutes that regulate the business of insurance. The court concluded that because the statutes at issue related to the insurer-insured relationship and the enforcement of insurance coverage, they regulated the business of insurance within the meaning of the McCarran-Ferguson Act, and were thus shielded from FAA preemption.

James River comports with numerous decisions which have enforced state statutes prohibiting insurance dispute arbitration. The precedential reach of *James River* and other analogous decisions may be limited to cases involving domestic arbitration agreements. Arbitration arising from international insurance contracts is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is subject to a different preemption analysis. As discussed in our July/August 2012 Alert, the Fourth Circuit recently ruled that parties to an international arbitration agreement were required to arbitrate a coverage dispute because McCarran-Ferguson reverse preemption principles do not extend to international treaties. *ESAB Grp. Inc. v. Zurich Ins. PLC*, 2012 WL 2697020 (4th Cir. July 9, 2012).

Illinois Appellate Court Rules That Parties May Not Seek Judicial Review of Discovery Ruling Until Arbitration Ends

An Illinois appellate court ruled that parties to arbitration may not obtain judicial review of discovery rulings until the arbitration has concluded. *Klehr v. Illinois Farmers Ins. Co.*, 2013 WL 240539 (Ill. App. Ct. Jan. 22, 2013).

During arbitration between an injured passenger and her automobile insurance carrier, a dispute arose as to whether certain discovery requests were permissible. The arbitrators ruled in favor of the insurer and ordered the production of the documents. Thereafter, the policyholder filed a declaratory judgment action in state court seeking a ruling that the discovery was not allowed. The circuit court dismissed the complaint for lack of subject matter jurisdiction, reasoning that because the arbitration was not complete, the court lacked jurisdiction to review the interlocutory discovery order. The appellate court affirmed on different grounds.

The appellate court upheld the dismissal of the complaint on the grounds that the discovery dispute was not ripe for adjudication. Applying the Uniform Arbitration Act, the appellate court ruled that "this is precisely the type of dispute that the drafters intended to be reviewed by the courts only at the conclusion of arbitration as part of a motion to vacate the award."

STB News Alert

Simpson Thacher was named "Insurance Group of the Year" by Law 360 (January 29, 2013). The publication recognized the Firm as "an international leader in the practice of insurance and reinsurance law" and cited the Firm's success in numerous recent cases.

Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.

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