Simpson Thacher

Insurance Law Alert

November 2014

This Alert addresses several recent reinsurance decisions, including a New York appellate court decision dismissing tort and contract claims by an original insured against a reinsurer. In addition, we report on rulings relating to an excess insurer's duty to indemnify settlements, the viability of unfair and deceptive practices claims against an insurer that has fully compensated its policyholder, and the scope of a title insurer's duty to defend. Finally, we discuss decisions relating to arbitration, privilege and the discoverability of other policyholder claims in a property insurance dispute.

"Unanimously acknowledged as the country's premier insurer-side practice."

–Chambers USA 2014

New York Appellate Court Dismisses Policyholder's Claims Against Reinsurer

A New York appellate court dismissed a policyholder's claims against a reinsurer and claims administrator, citing the absence of a contractual relationship between the parties. *OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co.*, 2014 WL 5431369 (N.Y. App. Div. 1st Dep't Oct. 28, 2014). (click here for full article)

Two Courts Rule That Reinsurance Limits Cap Both Indemnity and Expenses

An Illinois appellate court and a New York federal district court ruled that policy limits in reinsurance certificates unambiguously create an overall limitation on both losses and expenses. *Continental Casualty Co. v. Midstates Reinsurance Corp.*, 2014 IL App (1st) 133090-U (Ill. App. Ct. Nov. 4, 2014); *Utica Mutual Ins. Co. v. Clearwater Ins. Co.*, No. 6:13-cv-1178 (N.D.N.Y. Nov. 20, 2014). (click here for full article)

Fully-Compensated Policyholder Can Bring Unfair/Deceptive Practices Claim Against Insurer, Says Massachusetts Supreme Court

The Massachusetts Supreme Judicial Court ruled that a policyholder may state a claim under an unfair and deceptive practices statute even if the policyholder did not suffer an uncompensated loss. *Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.*, 469 Mass. 813, 17 N.E.3d 1066 (2014). (click here for full article)

Excess Insurer Is Liable for Underlying Settlements Despite Lack of Consent

A Michigan federal district court ruled that an excess insurer is liable for underlying settlements that exhausted the policyholder's primary coverage notwithstanding the excess insurer's lack of consent to the settlement. *Stryker Corp. v. XL Ins. Co., Inc.*, 2014 WL 5493195 (W.D. Mich. Oct. 30, 2014). (click here for full article)

Seventh Circuit Holds That Illinois "Complete Defense" Rule Is Not Applicable to Title Insurers

The Seventh Circuit ruled that a title insurer's contractual limits on its duty to defend were enforceable under Illinois law and that the insurer was required to defend only claims covered by its policy rather than the entire underlying suit. *Philadelphia Indem. Ins. Co. v. Chicago Title Ins. Co.*, 2014 WL 5858965 (7th Cir. Nov. 13, 2014). (click here for full article)

Michigan Court Refuses to Seal Arbitration Award

A Michigan federal district court denied a motion to file under seal a final arbitration award and portions of a brief in support of a motion to confirm the award. *Amerisure Mutual Ins. Co. v. Everest Reinsurance Co.*, 2014 WL 5481107 (E.D. Mich. Oct. 29, 2014).
(click here for full article)

Seventh Circuit Affirms That Assignee of Ceding Insurer's Rights May Not Enforce Arbitration Provision

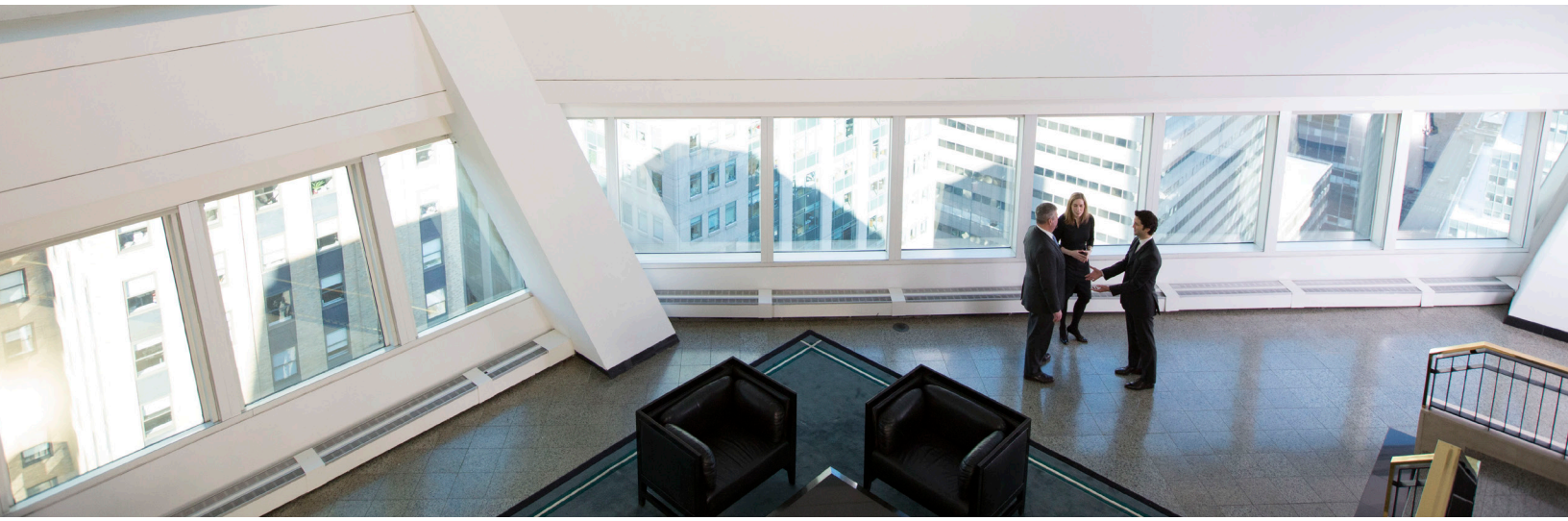
The Seventh Circuit affirmed that a non-party to a reinsurance agreement who acquired the ceding insurer's rights to collect amounts due under the contract may not enforce the contract's arbitration provision. *Pine Top Receivables of Illinois, LLC v. Banco de Seguros del Estado*, 2014 WL 5786951 (7th Cir. Nov. 7, 2014) (click here for full article)

Iowa Court Rules That Reinsurer Communications Are Not Privileged

A magistrate judge's discovery order requiring an insurer to produce reinsurance communications was not clearly erroneous, an Iowa federal district court ruled. *Progressive Casualty Ins. Co. v. Federal Deposit Ins. Corp.*, 2014 WL 4947721 (N.D. Iowa Oct. 3, 2014).
(click here for full article)

Insurer Not Required to Produce Evidence Relating to Other Policyholders' Claims, Says Texas Supreme Court

The Texas Supreme Court ruled that a trial court abused its discretion in ordering an insurer to produce documents relating to claims of other policyholders. *In re National Lloyds Ins. Co., Realtor*, 2014 WL 5785871 (Tex. Oct. 31, 2014). (click here for full article)



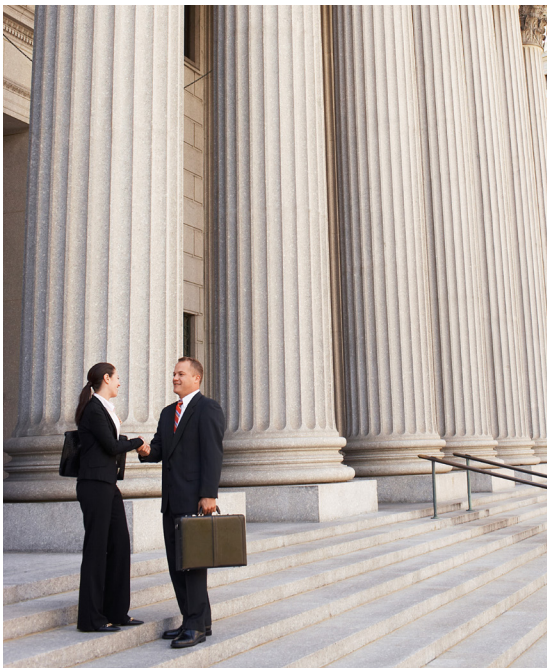
Reinsurance Alerts:

New York Appellate Court Dismisses Policyholder's Claims Against Reinsurer

A New York appellate court dismissed a policyholder's claims against a reinsurer and claims administrator, citing the absence of a contractual relationship between the parties. *OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co.*, 2014 WL 5431369 (N.Y. App. Div. 1st Dep't Oct. 28, 2014).

OneBeacon issued primary and excess policies to Colgate-Palmolive. Asbestos-related losses under the policies were reinsured through an indemnity agreement with National Indemnity Company ("NICO"). OneBeacon also contracted with NICO to provide certain claim services for the reinsured policies. NICO, in turn, contracted with its affiliate, Resolute Management, to provide those claim services. A dispute arose between OneBeacon and Colgate as to which party had the right to control Colgate's defense in underlying asbestos litigation. Colgate joined NICO and Resolute as counterclaim defendants, alleging, among other things, breach of contract, tortious interference and violation of a Massachusetts deceptive practices statute, Mass. Gen. L. c. 93A. A New York trial court granted in part and denied in part NICO and Resolute's motion to dismiss. The trial court dismissed the tortious interference claim against NICO, finding that NICO was at all times acting as OneBeacon's agent and that an agent "cannot be held liable for inducing [its] principal to breach a contract with a third person." However, the trial court declined to dismiss several counterclaims, including tortious interference and violation of Mass. Gen. L. c. 93A against Resolute, and breach of contract and breach of the covenant of good faith and fair dealing against NICO. The appellate court reversed, dismissing the remaining counterclaims as a matter of law.

The appellate court ruled that Colgate's contract claims alleging that NICO and Resolute breached the OneBeacon insurance policies failed as a matter of law due to a lack of privity between the parties. The court explained that the reinsurance agreement between OneBeacon and NICO was "separate and distinct" from the underlying OneBeacon policies. Therefore, Colgate could not assert a breach of contract claim against NICO and Resolute, which were not parties to the underlying insurance policies. The court also rejected Colgate's assertions that OneBeacon had "assigned" contractual rights and obligations to NICO, or that NICO had "assumed" obligations under the insurance policies. In this context, the court found that NICO's role as claims administrator for the policies did not establish a direct contractual relationship between Colgate and NICO because OneBeacon "remains fully and solely responsible for the performance of its obligations under the Policies even if NICO



and Resolute are performing those obligations on its behalf." The court rejected Colgate's argument that liability could be imposed based on a third-party beneficiary theory, noting that the NICO-Resolute contract expressly stated that the parties did not intend to confer any rights on third parties.

The court also dismissed Colgate's tortious interference claim against Resolute, ruling that "no action for tortious interference can lie against an agent acting within the scope of its duties on behalf of the principal." The court explained that Resolute acted as a designated agent because the reinsurance agreement authorized NICO to act as OneBeacon's agent with respect to the polices and, under the claim services agreement, OneBeacon authorized Resolute to act as a sub-agent. Finally, the court held that the

Massachusetts deceptive practices statute, Mass. Gen. L. c. 93A, was inapplicable where, as here, New York law governed the breach of contract claim. NICO and Resolute are represented by Simpson Thacher partners Mary Beth Forshaw, Bryce Friedman and Michael Garvey.

The decision serves as an important reminder that absent specific language in a reinsurance agreement indicating the reinsurer's intent to be held directly liable to the policyholder, a reinsurer typically has no obligations to the original insured.

Two Courts Rule That Reinsurance Limits Cap Both Indemnity and Expenses

An Illinois appellate court ruled that "reinsurance assumed" provisions in several reinsurance certificates unambiguously created an overall limitation on both losses and expenses. *Continental Casualty Co. v. Midstates Reinsurance Corp.*, 2014 IL App (1st) 133090-U (Ill. App. Ct. Nov. 4, 2014).

Continental sought coverage for environmental liabilities under facultative reinsurance policies issued by Midstates. Midstates argued that its payments to Continental met the limits provided by the reinsurance certificates. Continental alleged that Midstates breached the reinsurance contracts and sought a declaratory judgment that the certificates did not include limits on expenses. An Illinois trial court granted Midstate's motion for judgment on the pleadings. The appellate court affirmed.

The appellate court ruled that "the certificates provided a clear policy limit, inclusive of expenses." The court relied primarily on the "*Bellefonte* principle,"—based on a body of cases following *Bellefonte Reinsurance Co. v. Aetna Casualty & Surety Co.*, 903 F.2d 910 (2d Cir. 1990)—which holds that "facultative reinsurance certificate limits cap reinsurance for both indemnity and expenses." In *Bellefonte*, the court explained that "any other conclusion would effectively eliminate the stated limitation on the reinsurer's liability." The court further noted that none of the reinsurance provisions relied upon by Continental "can be said to remove expenses from the overall liability cap provided in Item D, reinsurance assumed." The court deemed it irrelevant that only some of the certificates included the language "inclusive of expenses," while other certificates were silent on the issue, finding that "this inclusion clearly appears to be an abundance of caution rather than an intention to exclude expenses from the liability cap."

A New York federal district court reached the same conclusion in *Utica Mutual Ins. Co. v. Clearwater Ins. Co.*, No. 6:13-cv-1178 (N.D.N.Y. Nov. 20, 2014). Citing to *Bellefonte*, the court ruled that the limits of facultative certificates issued by Clearwater to Utica included both indemnity costs and expenses. Utica argued that because the certificates did not specifically use the word "limit," *Bellefonte* was inapposite. The court disagreed, explaining that although Clearwater's liability was described as a percentage share, "it logically follows that a percentage share of a policy limit is itself a limit on liability, despite the absence of the word 'limit.'" The court likewise rejected Utica's contention that the certificates' limits did not apply to expenses by virtue of a follow-the-form provision or claims clause.

Bad Faith Alert:

Fully-Compensated Policyholder Can Bring Unfair/Deceptive Practices Claim Against Insurer, Says Massachusetts Supreme Court

The Massachusetts Supreme Judicial Court ruled that a policyholder may state a claim under an unfair and deceptive practices statute even if the policyholder did not suffer an uncompensated loss. Thus, a policyholder's acceptance of full reimbursement of its expenses from its insurer does not preclude a claim under Mass. Gen. L. c. 93A. *Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.*, 469 Mass. 813, 17 N.E.3d 1066 (2014).

The case arose from Hanover's refusal to defend or indemnify Auto Flat in underlying environmental litigation. Auto Flat funded its own defense and remediation and then sued Hanover alleging breach of contract and unfair/deceptive practices under Mass. Gen. L. c. 93A, §11, based on Hanover's refusal to defend. After a court ruled in

Auto Flat's favor on the duty to defend, Hanover reimbursed all of Auto Flat's legal and remediation expenses, plus interest. Notwithstanding this payment, Auto Flat pursued its breach of contract and statutory claims against Hanover. Hanover argued that because Auto Flat had been fully compensated, its claims failed as matter of law. In particular, Hanover asserted that Auto Flat could not establish the requisite "loss of money or property" under §11. Hanover further argued that the §11 claim should be dismissed because no judgment established an actual amount of damages, and there was therefore no predicate for calculating multiple damages under §11. The court rejected both contentions.

Although an unfair or deceptive practice claim under §11 requires the policyholder to suffer "a loss of money or property," the court concluded that a showing of uncompensated loss is not required. Rather, "a plaintiff who can establish that it has sustained such concrete monetary or property loss will have satisfied the actual damages element of §11, without also having to prove that the loss remains uncompensated." The court went on to explain that where a plaintiff has already been compensated for its loss prior to resolution of the §11 claim, such compensation should be treated as an offset against any damages ultimately awarded, rather than as a bar to recovery. The court also ruled that §11 does not require a prior judgment establishing amount of damages as a prerequisite to recovery. Although the statute allows a monetary judgment to be the basis for calculating penalty damages, the court concluded that the absence of a judgment does not preclude recovery under §11. Where no judgment has been entered, "all foreseeable and consequential damages arising out of conduct which violates the statute" are recoverable.

Excess Alert:

Excess Insurer Is Liable for Underlying Settlements Despite Lack of Consent

A Michigan federal district court ruled that an excess insurer is liable for underlying settlements that exhausted the policyholder's primary coverage notwithstanding the excess insurer's lack of consent to the settlements. *Stryker Corp. v. XL Ins. Co., Inc.*, 2014 WL 5493195 (W.D. Mich. Oct. 30, 2014).

The dispute arose from defective knee-replacement claims brought against Stryker. XL insured Stryker under a primary policy with a $15 million limit (above a $2 million self-insured retention) and TIG also insured Stryker under an excess policy with an attachment point of $17 million. XL declined to defend or indemnify Stryker, and Stryker settled the claims on its own.

A court later determined that XL was liable for those settlements. In a related and subsequent matter, a New York court ruled that Stryker had an obligation to indemnify Pfizer (from whom Stryker purchased the knee replacement manufacturer) for losses stemming from the defective products. Stryker sued XL and TIG, seeking indemnification for both the direct underlying settlements (approximately $7.6 million) and amounts owed to Pfizer (exceeding $18 million). XL ultimately agreed to pay Pfizer over $17 million, thereby exhausting its policy. Stryker then sought reimbursement from TIG for its direct settlements. Although TIG stipulated to the reasonableness of Stryker's settlements, it refused to pay on the basis that it had not consented to the settlements. Stryker moved for summary judgment, arguing that TIG's policy did not require Stryker to obtain TIG's consent because at the time the settlements were reached, the settlement amounts were exclusively within the XL primary layer of coverage. The court agreed.

TIG's policy provided coverage for "Ultimate Net Loss" in excess of underlying insurance, defined as "claims for which the insured is liable, either by adjudication or compromise with the written consent of [TIG]." TIG acknowledged that it typically does not require consent for settlements below its coverage layer, but argued that "the policy does require consent if those settlements are offered to TIG for payment." In contrast, Stryker argued that the policy requires consent only for settlements within TIG's policy layer, and that the underlying settlements were completely within the underlying XL layer when executed. The court concluded that under the "unusual" facts of this case, the consent provision was ambiguous. Applying Michigan law, the court construed the ambiguity in favor of the policyholder, reasoning that "it is better to place the risk of this unanticipated development on TIG rather than on Stryker."

Importantly, this decision does not hold that consent provisions, which are common in excess policies, are ambiguous across the board. Rather, the court expressly limited its holding to the "unique circumstances" of the case, which raised the unusual question of whether an excess policy's consent provision applies to settlements that were entered into before the underlying insurance was exhausted.

Duty to Defend Alert:

Seventh Circuit Holds That Illinois "Complete Defense" Rule Is Not Applicable to Title Insurers

Addressing a matter of first impression under Illinois law, the Seventh Circuit ruled that a title insurer's contractual limits on its duty to defend were enforceable and thus that the insurer was required to defend only claims covered by its policy rather than the entire underlying suit. *Philadelphia Indem. Ins. Co. v. Chicago Title Ins. Co.*, 2014 WL 5858965 (7th Cir. Nov. 13, 2014).

In coverage litigation between a policyholder, a general liability insurer (Philadelphia Indemnity) and a title insurer (Chicago Title),

a dispute arose as to the scope of the title insurer's duty to defend underlying suits. Chicago Title maintained that its defense obligation was contractually limited to claims potentially falling within the title policy's coverage. Philadelphia Indemnity argued that this limitation was unenforceable under Illinois's "complete defense" rule, which generally requires an insurer to provide a complete defense in a suit against its insured even if only some claims are potentially covered. An Illinois district court agreed and ruled that Chicago Title owned a defense of all claims in the underlying action. The Seventh Circuit reversed.

The Seventh Circuit concluded that the complete defense rule was limited to the general liability insurance context. Although the Illinois Supreme Court has not addressed this issue, the Seventh Circuit reasoned that unlike the "broad defense promise in standard general liability policies," title insurance imposes "much narrower" defense and indemnity obligations. The court noted that title policies typically define defense obligations in terms of particular causes of action, rather than in terms of defending "suits" or "actions," as is the case with most general liability policies. As the court noted, the Massachusetts Supreme Court reached the same conclusion in *GMAC Mortgage, LLC v. First Am. Title Ins. Co.*, 985 N.E.2d 823 (2013).

Arbitration Alerts:

Michigan Court Refuses to Seal Arbitration Award

In an unusual ruling, a Michigan federal district court denied a motion to file under seal a final arbitration award and portions of a brief in support of a motion to confirm the award. *Amerisure Mutual Ins. Co. v. Everest Reinsurance Co.*, 2014 WL 5481107 (E.D. Mich. Oct. 29, 2014). The reinsurance arbitration was conducted pursuant to a confidentiality agreement between the parties. The agreement, containing language that is consistent with the standard confidentiality agreement on the ARIAS-US website, provided that the "final award and any interim decisions, correspondence, oral discussions and information exchanged in connection with the proceedings will be kept confidential." The agreement further provided that "all submissions of Arbitration Information to a court shall be sealed." Relying on these provisions, Amerisure moved to seal the final arbitration award and portions of its brief in support of a motion to confirm the award. Although Everest opposed the motion in part, it acknowledged that the final award contained "certain information that is properly subject to sealing under the standards applied in this Circuit." In particular, Everest did not contest the appropriateness of sealing the portions of the award containing non-party testimony or "reflect[ing] substantive rulings of the panel majority." Notwithstanding, the court denied in part Amerisure's motion.

While the court agreed to seal the portions of the award that identified non-parties to the arbitration, noting their legitimate privacy interests, it declined to seal portions of the award containing "discrete substantive rulings," finding that controlling Sixth Circuit law did not warrant such action. The court specifically rejected the contention that sealing was warranted to avoid citation of the award in future litigation, noting that this precise kind of harm is insufficient to justify entry of a protective order.

Seventh Circuit Affirms That Assignee of Ceding Insurer's Rights May Not Enforce Arbitration Provision

Our July/August 2013 Alert reported on an Illinois district court decision holding that a non-party to a reinsurance agreement who acquired the ceding insurer's rights to collect amounts due under the contract may not enforce the contract's arbitration provision. *Pine Top Receivables of Illinois, LLC v. Banco de Seguros del Estado*, 2013 WL 2574596 (N.D. Ill. June 11, 2013). This month, the Seventh Circuit affirmed. *Pine Top Receivables of Illinois, LLC v. Banco de Seguros del Estado*, 2014 WL 5786951 (7th Cir. Nov. 7, 2014).

The Seventh Circuit agreed with the district court that the purchase agreement between the original ceding company and Pine Top, rather than the reinsurance treaties, controlled the scope of the Pine Top's rights, and that the purchase agreement did not

convey the right to compel arbitration. The court rejected Pine Top's contentions that (1) the right to compel arbitration was transferred via the Uniform Commercial Code; (2) that parol evidence indicated that the parties intended to transfer the right to compel arbitration; and (3) that the reinsurer was estopped from refusing to arbitrate because it had relied on other reinsurance policy provisions to deny coverage.

The court also addressed whether the reinsurer, a foreign entity wholly owned by the country of Uruguay, was required to post pre-answer security under Illinois statutory law. The reinsurer argued that the Foreign Sovereign Immunities Act ("FSIA"), which states that certain foreign entities "shall be immune from attachment arrest and execution," precluded the imposition of prejudgment security. The Seventh Circuit agreed. In so ruling, the court rejected Pine Top's argument that the prejudgment security was not an "attachment" under the FSIA. Additionally, the court rejected the notion that the reinsurer had waived its FSIA immunity by transacting reinsurance business in Illinois or by virtue of a reserves clause in the reinsurance contracts.

Discovery Alerts:

Iowa Court Rules That Reinsurer Communications Are Not Privileged

A magistrate judge's discovery order requiring an insurer to produce reinsurance communications was not clearly erroneous, an Iowa federal district court ruled. *Progressive Casualty Ins. Co. v. Federal Deposit Ins. Corp.*, 2014 WL 4947721 (N.D. Iowa Oct. 3, 2014).

In a dispute relating to coverage under a directors and officers liability policy issued by Progressive, a magistrate judge ordered the production of redacted communications between Progressive and its reinsurers. The magistrate judge found that the redacted materials were not protected by attorney-client privilege or work-product doctrine. An Iowa federal court upheld the ruling, finding that it was not "clearly erroneous" or "contrary to law."

With respect to work-product protection, the court held that the relevant inquiry was whether the documents were prepared in anticipation of litigation, as opposed to the ordinary course of business. In concluding that the materials at issue fell within the latter category, the court noted that work-product protection is not established simply because documents were prepared by or transmitted to claims attorneys. Similarly, an "internal use" notation is not equivalent to "in anticipation of litigation," the court noted. The court agreed with the magistrate that the materials at issue were largely "business planning documents" (such as case updates) and did not include legal advice or litigation strategy. With respect to attorney-client privilege, the parties disputed whether the "common interest" doctrine applied, such that privilege would not be waived if Progressive shared documents with its reinsurer, with whom it allegedly shared a "common interest." Although Iowa courts have not addressed the issue, the court agreed with the magistrate that the "common interest" doctrine serves as an exception to waiver of privilege if the two parties share

a common legal interest and the materials are shared in the course of formulating a common legal strategy. The court held that the shared obligation of Progressive and its reinsurers to pay Progressive's losses was a common commercial/financial interest, rather than a common legal interest. The court also concluded that the existence of a contract provision authorizing the reinsurers to participate in litigation with Progressive did not establish a common legal strategy between the parties.

As discussed in our May and September 2014 and our March 2011 Alerts, most courts recognize the "common interest" doctrine, but the particular requirements for invoking the doctrine vary from jurisdiction to jurisdiction.

Insurer Not Required to Produce Evidence Relating to Other Policyholders' Claims, Says Texas Supreme Court

The Texas Supreme Court ruled that a trial court abused its discretion in ordering an insurer to produce evidence relating to claims of other policyholders. *In re National Lloyds Ins. Co., Realtor*, 2014 WL 5785871 (Tex. Oct. 31, 2014).

A homeowner alleged that her property insurer undervalued storm-related claims in bad faith. During discovery, she requested production of all claim files from recent years involving the same adjusters that were assigned to her claim, as well as claim files from the previous year for nearby properties involving the same adjusting firms. The insurer objected to the requests as overbroad, unduly burdensome and not calculated to lead to the discovery of admissible evidence. A trial court limited the requests in minor respects, but largely ordered the production of the materials sought. The insurer petitioned for a writ of mandamus with an intermediate appellate court, which denied relief. The insurer then successfully sought mandamus from the Texas Supreme Court.

Texas Rules of Civil Procedure provide for discovery of "any matter that is not privileged and is relevant to the subject matter of the pending action." Tex. R. Civ. P. 192.3(a). Although this statute is broadly construed, the court noted that "even these liberal bounds have limits." The court concluded that production of claim files relating to claims made by other policyholders was not reasonably calculated to lead to the discovery of relevant evidence. In particular, the court explained that an insurer's "overpayment, underpayment or proper payment of the claims of unrelated third parties is [not] probative of its conduct with respect to [the] [ ] undervaluation claims at issue in this case." The court noted that there are "many variables" associated with each specific claim and reasoned that "[s]couring claim files in the hopes of finding similarly situated claimants" is "at best an 'impermissible fishing expedition.'"

As *Lloyds National* illustrates, even when a policyholder's claim file requests are reasonably limited in scope by time and location, they may nonetheless be deemed undiscoverable.

Simpson Thacher

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.

Barry R. Ostrager
+1-212-455-2655
bostrager@stblaw.com

Mary Kay Vyskocil
+1-212-455-3093
mvyskocil@stblaw.com

Andrew S. Amer
+1-212-455-2953
aamer@stblaw.com

David J. Woll
+1-212-455-3136
dwoll@stblaw.com

Mary Beth Forshaw
+1-212-455-2846
mforshaw@stblaw.com

Andrew T. Frankel
+1-212-455-3073
afrankel@stblaw.com

Lynn K. Neuner
+1-212-455-2696
lneuner@stblaw.com

Chet A. Kronenberg
+1-310-407-7557
ckronenberg@stblaw.com

Linda H. Martin
+1-212-455-7722
lmartin@stblaw.com

Bryce L. Friedman
+1-212-455-2235
bfriedman@stblaw.com

Michael D. Kibler
+1-310-407-7515
mkibler@stblaw.com

Michael J. Garvey
+1-212-455-7358
mgarvey@stblaw.com

Tyler B. Robinson
+44-(0)20-7275-6118
trobinson@stblaw.com

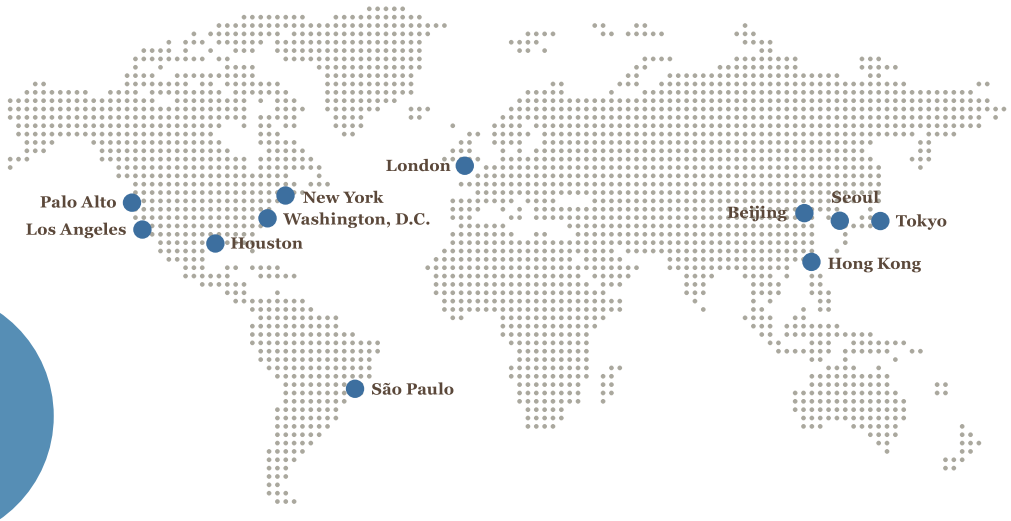
George S. Wang
+1-212-455-2228
gwang@stblaw.com

Deborah L. Stein
+1-310-407-7525
dstein@stblaw.com

Craig S. Waldman
+1-212-455-2881
cwaldman@stblaw.com

Elisa Alcabes
+1-212-455-3133
ealcabes@stblaw.com

This edition of the Insurance Law Alert was prepared by Mary Beth Forshaw (mforshaw@stblaw.com/212-455-2846) and Bryce L. Friedman (bfriedman@stblaw.com/212-455-2235) with contributions by Karen Cestari (kcestari@stblaw.com).



Simpson Thacher Worldwide

UNITED STATES

New York
425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Houston
2 Houston Center
909 Fannin Street
Houston, TX 77010
+1-713-821-5650

Los Angeles
1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto
2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.
1155 F Street, N.W.
Washington, D.C. 20004
+1-202-636-5500

EUROPE

London
CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing
3919 China World Tower
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong
ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Seoul
West Tower, Mirae Asset Center 1
26 Eulji-ro 5-gil, Jung-gu
Seoul 100-210
Korea
+82-2-6030-3800

Tokyo
Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo
Av. Presidente Juscelino
Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000