Simpson Thacher

Insurance Law Alert

March 2026

In This Issue

New York Court Holds That Policy's Choice-Of-Law Clause Is Not Invalidated By Texas Insurance Statute

An insurance policy's choice-of-law clause selecting New York law is enforceable, despite the policyholder's argument that the Texas Insurance Code requires Texas law to govern insurance contracts issued by insurers doing business in Texas. *Danaby Rentals, Inc. v. Mt. Hawley Ins. Co.*, No. 24 Civ. 3481 (JPC), 2026 LX 45735 (S.D.N.Y. Feb. 17, 2026). (Click here for full article)

"It is a top-notch firm and we have had victory after victory with them. They are incredibly strategic, great writers and responsive."

– *Chambers USA* 2025 (quoting a client)

Pennsylvania Supreme Court Holds Insurance Bad Faith Statute Does Not Apply To Surety Bonds And Finds Surety May Be Bound By Arbitration Award Against Principal

The Pennsylvania Supreme Court held that surety bonds are not subject to Pennsylvania's insurance bad faith statute and that a surety may be bound by an arbitration award entered against its principal—including attorneys' fees awarded in arbitration—even when the bond states that "litigation against the surety will proceed in a court of law." *Eastern Steel Constructors, Inc. v. Int'l Fid. Ins. Co.*, Nos. 103 MAP 2023, 104 MAP 2023, 2026 Pa. LEXIS 274, (Pa. Feb. 18, 2026). (Click here for full article)

Delaware Court Holds That Insurers Have No Duty To Defend Social Media Lawsuits Under California Law

The Delaware Superior Court, applying California law, held that Meta's insurers have no duty to defend Meta in thousands of lawsuits alleging that users of its social media platforms were harmed because the alleged conduct—Meta's intentional design and operation of its platforms—does not constitute an accident under the policies. *Hartford Cas. Ins. Co. v. Instagram, LLC as. Successor in Int. to Instagram*, No. N24C-11-010-SKR CCLD, 2026 LX 93986 (Del. Super. Ct. Feb. 27, 2026). (Click here for full article)

Massachusetts Court Holds Excess Insurer Must Provide Coverage After Primary Insurer's Insolvency

A Massachusetts trial court applying Washington law held that a primary insurance policy was "exhausted," thereby triggering the excess insurer's coverage obligations, when the primary insurer became insolvent and paid nothing on the insured's claims. *Fed. Ins. Co. v. Water Applications Distribs. Grp.*, No. 2482cv2929-BLS-1, 2026 Mass. Super. LEXIS 17 (Mass. Super. Ct. Mar. 2, 2026). (Click here for full article)

Georgia Appeals Court Vacates $354 Million Judgment Against Insurers In Sexual Abuse Coverage Dispute

The Georgia Court of Appeals vacated a $354 million judgment against insurers whose policies were issued after the alleged abuse occurred, holding that coverage did not apply because the alleged injuries arose from abuse and negligent supervision that predated the insurers' policies, even though the plaintiffs alleged that the resulting mental anguish continued for years afterward. *Phila. Indem. Ins. Co. v. Eubanks*, Nos. A25A1664, A25A1665, A25A1666, A25A1668, A25A1669, 2026 Ga. App. LEXIS 140 (Ga. Ct. App. Mar. 6, 2026). (Click here for full article)

New York's Complex Commercial Division Broadens Its Authority To Hear Additional Categories Of Commercial Insurance Cases

Effective November 3, 2025, the New York Complex Commercial Division amended its rules to allow more commercial insurance litigation to proceed before it. (Click here for full article)

English Court Of Appeal Finds Hierarchy Clause Resolves Conflict Between Irreconcilable Dispute Resolution Clauses In Reinsurance Agreements

The English Court of Appeal unanimously upheld the Commercial Court's decision on conflicting dispute resolution clauses in London-market Master Reinsurance Contracts (MRCs) and Market Uniform Reinsurance Agreement Certificates (Facultative Certificates) that covered the same reinsurance. The court ruled that the English law and exclusive jurisdiction clause in the MRCs prevailed over the New York arbitration clause in the Facultative Certificates, because the Facultative Certificates contained a "Confusion Clause" providing that the relevant MRC was to take precedence over the Facultative Certificate "in case of confusion." *Tyson International Insurance Company Ltd v GIC Re* [2026] EWCA Civ 40. (Click here for full article)

New York Court Holds That Policy's Choice-Of-Law Clause Is Not Invalidated By Texas Insurance Statute

HOLDING

An insurance policy's choice-of-law clause selecting New York law is enforceable, despite the policyholder's argument that the Texas Insurance Code requires Texas law to govern insurance contracts issued by insurers doing business in Texas. *Danaby Rentals, Inc. v. Mt. Hawley Ins. Co.*, No. 24 Civ. 3481 (JPC), 2026 LX 45735 (S.D.N.Y. Feb. 17, 2026).

BACKGROUND

An insurance coverage dispute arose between Danaby Rentals, Inc., the owner of commercial properties in Texas, and its insurer, Mt. Hawley Insurance Co., concerning storm damage to Danaby's properties. Mt. Hawley declined coverage on the ground that Danaby failed to comply with a policy condition requiring prompt notice of the loss or damage. Danaby filed suit in federal district court in Texas asserting claims for breach of contract, bad faith, and violations of the Texas Prompt Payment of Claims Act. Pursuant to the contract's forum selection clause, the case was transferred to the Southern District of New York.

DECISION

The court found the choice of law provision applying New York law to disputes arising under the policy was enforceable. The court also found that Texas law governed the extra-contractual tort claims.

The policy provided that New York law shall govern "all matters arising hereunder including questions relating to the validity, interpretation, performance and enforcement of this Policy." The Texas Insurance Code, however, states that "Texas law governs insurance contracts payable to citizens or inhabitants of Texas by an insurance company doing business there."

The court determined that a choice-of-law analysis was necessary because Texas and New York law are in actual conflict as to whether an insurer may disclaim coverage based on untimely notice. Under New York law, for policies issued outside of New York, an insurer may decline coverage based solely on untimely notice. Texas law, by contrast, requires the insurer to demonstrate prejudice resulting from the late notice. Because the case was transferred pursuant to the policy's forum selection clause, the court concluded that New York supplied the governing choice-of-law rules.

Under New York General Obligations Law § 5-1401, parties may agree that New York law governs their contract if the transaction involves at least $250,000. When such a clause is present, courts need not perform a traditional choice-of-law analysis. Danaby argued that § 5-1401 could not apply because the choice-of-law clause was void *ab initio* under Texas public policy prohibiting surplus lines insurers like Mt. Hawley from contracting around Texas insurance law.

The court rejected this argument, concluding that allowing another state's public policy to invalidate a contractual selection of New York law would undermine § 5-1401's purpose of eliminating uncertainty regarding the governing law.

Accordingly, the court held that the policy's choice-of-law clause was valid and that the policy must be interpreted under New York law.

Regarding Danaby's constitutional arguments, the court concluded that the policy's choice-of-law and forum-selection clauses constituted sufficient contacts with New York to support application of New York law. The court reasoned that New York has a legitimate interest in promoting predictability for parties that select its law to govern their agreements. The court emphasized that enforcing the parties' contractual choice is not hostile to the laws of another state and therefore does not violate the Full Faith and Credit Clause. Nor does it violate due process as "it is hardly unfair or arbitrary to honor the contractual choice of the parties."

The court reached a different conclusion regarding Danaby's extra-contractual claims. The court explained that the choice-of-law provision is inapplicable to such claims because the provision applies to "[a]ll matters arising hereunder," which the court determined did not encompass tort claims. The court concluded that Texas has the strongest interest because the policy was delivered in Texas, Danaby is based in Texas, the alleged statutory violations arise under a Texas statute, and the alleged injury occurred in Texas.

COMMENTS

This decision highlights choice-of-law and forum-selection provisions in insurance policies covering risks across multiple jurisdictions. Differences across state insurance law—such as notice requirements and the availability and scope of statutory or common law bad faith claims—can have significant effect on the outcome of coverage disputes. By enforcing the policy's choice-of-law clause, the court reaffirmed New York's strong policy favoring predictability and certainty in commercial agreements. The ruling also serves as a reminder that whether such provisions may extend to extra-contractual claims depends on the language of the choice-of-law provision.

Pennsylvania Supreme Court Holds Insurance Bad Faith Statute Does Not Apply To Surety Bonds And Finds Surety May Be Bound By Arbitration Award Against Principal

HOLDING

The Pennsylvania Supreme Court held that surety bonds are not subject to Pennsylvania's insurance bad faith statute and that a surety may be bound by an arbitration award entered against its principal—including attorneys' fees awarded in arbitration—even when the bond states that "litigation against the surety will proceed in a court of law." *Eastern Steel Constructors, Inc. v. Int'l Fid. Ins. Co.*, Nos. 103 MAP 2023, 104 MAP 2023, 2026 Pa. LEXIS 274, (Pa. Feb. 18, 2026).

BACKGROUND

Contractor Ionadi Corp. entered a construction contract with Penn State University. Fidelity issued a surety bond to Ionadi to guarantee payment to subcontractors. The bond provided that Ionadi and Fidelity were jointly and severally liable to subcontractors for "all sums due," and stated that "litigation against the surety [Fidelity] will proceed in court of law."

Ionadi later subcontracted with Eastern Steel Constructors but defaulted on owed payments to Eastern. Eastern initiated arbitration against Ionadi pursuant to the subcontract. Ionadi failed to defend the arbitration. Fidelity received notice of the arbitration but declined to participate.

The arbitrator awarded Eastern the unpaid subcontract balance, interest and penalties, attorneys' fees, and arbitration costs and expenses. Eastern then sued Fidelity in state court to enforce the arbitration award and asserted a claim under Pennsylvania's insurance bad faith statute, 42 Pa. Cons. Stat. § 8371.

The trial court ruled that the arbitration award, including attorneys' fees and interest, was enforceable against Fidelity and also held that the bad faith statute does not apply to suretyship. The intermediate court affirmed.

DECISION

The Pennsylvania Supreme Court affirmed.

First, the court held that Pennsylvania's insurance bad faith statute does not apply to surety bonds. Section 8371 permits courts to award interest, attorneys' fees, and punitive damages "[i]n an action arising under an insurance policy." The Court relied on case law to distinguish insurance from suretyship and emphasized that while the legislature did not define "insurance policy" in the bad faith statute, it expressly included suretyship within the definition in the Unfair Insurance Practices Act (UIPA). The court reasoned that the legislature's explicit inclusion of suretyship in the UIPA—but not in § 8371—indicates that surety bonds were intentionally excluded from the bad faith statute.

Second, the court held that Fidelity was bound by the arbitration award entered against its principal. Relying on Pennsylvania case law, the court found that

Fidelity had notice of the arbitration proceeding and an opportunity to defend its interests but chose not to participate and did not challenge the resulting award. The court explained that a surety that declines to participate in arbitration after receiving notice "cannot complain when an award is entered against its principal."

Finally, the court held that the scope of Fidelity's liability was governed by the bond's promise to pay "all sums due." Because the subcontract allowed recovery of attorneys' fees and interest, those amounts were part of the sums owed to Eastern.

A dissenting opinion disagreed with the majority's conclusion that the arbitration award binds Fidelity. The dissent argued that a payment bond, like all contracts, should be interpreted according to the parties' intent and that the bond expressly preserved Fidelity's right to litigate in court. The dissent also emphasized that the bond limited Fidelity's obligations to amounts owed for "labor, materials, and equipment." According to the dissent, the majority improperly expanded the phrase "all sums due" beyond the bond's enumerated obligations and effectively required Fidelity to honor an arbitration award despite not agreeing to arbitrate.

COMMENTS

Both the majority and dissent agreed that the bad faith statute did not apply to surety bonds, and the case provides a marker that bad faith claims may not be cognizable against surety providers. As to the arbitration award ruling, the case reminds that parties who have notice of an arbitration but decline to participate may be found to have done so at their own peril.

Delaware Court Holds That Insurers Have No Duty To Defend Social Media Lawsuits Under California Law

HOLDING

The Delaware Superior Court, applying California law, held that Meta's insurers have no duty to defend Meta in thousands of lawsuits alleging that users of its social media platforms were harmed because the alleged conduct—Meta's intentional design and operation of its platforms—does not constitute an accident under the policies. *Hartford Cas. Ins. Co. v. Instagram, LLC as. Successor in Int. to Instagram*, No. N24C-11-010-SKR CCLD, 2026 LX 93986 (Del. Super. Ct. Feb. 27, 2026).

BACKGROUND

Meta is facing thousands of lawsuits consolidated in California alleging that Meta's social media platforms, Facebook and Instagram, caused children to become addicted and suffer various mental and physical harms (the "Social Media Litigation"). Meta's insurers filed a declaratory judgment action against Meta in Delaware Superior Court, seeking a determination that they have no duty to defend Meta in the Social Media Litigation. Meta subsequently filed competing coverage actions in California federal and state court. The parties agreed that California substantive law governs the coverage dispute.

DECISION

The court first addressed Meta's motion to stay the Delaware action under California's "Montrose Stay" doctrine, which requires a stay of coverage litigation when the underlying coverage dispute "turns on facts to be litigated in the underlying action." A stay is required where there is factual "overlap" between the coverage action and the underlying litigation.

The court concluded that a stay was not justified under either California or Delaware law because the duty to defend question could be resolved as a matter of law by comparing the allegations in the underlying complaints with the terms of the insurance policies. Because resolving the coverage issue did not require factual determinations that overlapped with the Social Media Litigation, the court denied Meta's request for a stay.

On the merits, the court granted the insurers' motion for summary judgment, holding that the underlying complaints in the Social Media Litigation do not allege any harms caused by an "accident" that would trigger coverage. The court explained that determining whether conduct constitutes an "accident" under California law requires a two-step inquiry: (1) do the complaints allege anything other than strictly deliberate conduct; and (2), if not, do they allege an additional, unexpected, independent, and unforeseen happening that may have produced the damage?

As to the first step, the court concluded that the Social Media Litigation exclusively alleged harm arising from deliberate conduct. The court reasoned that because the complaints allege Meta's platform design decisions were intentional business choices designed to "maximiz[e] user engagement," the complaints allege deliberate rather than accidental conduct.

The court next considered whether the complaints alleged any "additional, unexpected, independent, and unforeseen happening" that produced the damage. Evaluating the alleged harms from Meta's perspective, the court concluded that addiction and other harms were foreseeable outcomes of designing platforms to maximize engagement among children.

Because the underlying complaints alleged harm arising from Meta's intentional platform design, and not from any unforeseen event, the court held that the insurers have no duty to defend Meta in the Social Media Litigation and granted summary judgment in favor of the insurers.

COMMENTS

As companies are increasingly sued for public nuisance and other causes of action relating to the effects of their products on society, the "no accident" defense is often at issue in ensuing coverage disputes.

In reaching its decision on "accident", the court drew on California cases holding that deliberate corporate actions which yielded "foreseeable" harms did not constitute an "accident," including those involving opioids and gun accessories. The court emphasized its consideration of the insured's "undeniable, high-level motive in pursuing the course of action" that is challenged by plaintiffs, which purpose is then "juxtaposed against the allegedly negligent or accidental conduct." Applying that framework, the court concluded that the alleged harms to children were not accidental because they flowed from Meta's overarching purpose of designing platforms to maximize child engagement. Even if Meta did not intend the specific harms alleged, the complaints tied those harms directly to deliberate design choices, making the injuries a foreseeable consequence of those choices and precluding a duty to defend.

Massachusetts Court Holds Excess Insurer Must Provide Coverage After Primary Insurer's Insolvency

HOLDING

A Massachusetts trial court applying Washington law held that a primary insurance policy was "exhausted," thereby triggering the excess insurer's coverage obligations, when the primary insurer became insolvent and paid nothing on the insured's claims. *Fed. Ins. Co. v. Water Applications Distribs. Grp.*, No. 2482cv2929-BLS-1, 2026 Mass. Super. LEXIS 17 (Mass. Super. Ct. Mar. 2, 2026).

BACKGROUND

The policyholder, Water Applications Distribution Group, sought coverage for asbestos-related claims through the liquidation proceedings of its primary insurer. The liquidation was closed, and the primary insurer was dissolved, without making any payments to the insured. As a result, the insured sought coverage from its excess insurer, Federal Insurance Company, arguing Federal was required to "step down" to pay the first-dollar that otherwise would have been paid by the insolvent primary carrier.

Federal denied coverage and filed a declaratory judgment action seeking a declaration that it had no coverage obligation. Federal argued that the excess policy attaches only after the primary policy has been "exhausted," which, according to Federal, only occurs once the primary carrier pays the full limits of the primary policy limit. Because the insolvent primary insurer had paid nothing, Federal contended that the excess policy had not been triggered. The insured argued that the primary policy was effectively "exhausted" because the insolvent primary insurer would never make any payment on the claims, leaving the insured without access to the underlying coverage.

DECISION

The court focused on the policy provision stating that coverage applies "only in excess of and after all UNDERLYING INSURANCE . . . has been exhausted." The policy also contained a "Maintenance Clause," requiring the underlying policy to be "maintained in full effect during the currency of this policy except for any reduction of the aggregate limit or limits contained therein solely by payment of claims in respect of occurrences happening during the period of this policy."

Federal argued that these provisions require exhaustion through payment of the primary policy's limits. The insured, by contrast, argued that the primary policy was "exhausted" because there was no possibility of payment from the insolvent primary insurer.

The court found both parties' interpretations reasonable. Because the policy did not clearly define exhaustion as requiring payment of limits, the court concluded that the term "exhausted" was ambiguous. Applying Washington law, which the court found required ambiguities in insurance contracts to be construed in favor of the insured, the court granted summary judgment to the insured.

COMMENTS

The court declined to follow several decisions cited by Federal holding that "exhaustion" requires payment of underlying limits. In particular, the court declined to follow *Zurich Ins. Co. v. Heil Co.,* 815 F.2d 1122 (7th Cir. 1987), where the policy required the insured to maintain "collectible insurance." The court reasoned that the "collectible" modifier clarified the parties' intent because coverage from an insolvent insurer is not "collectible." By contrast, the Federal policy at issue contained no similar language. Emphasizing that "the words of each policy matter," the court found that *Zurich* and subsequent cases recognizing "exhaustion" as requiring payment of claims up to the primary policy's limits were therefore not universally applicable.

Georgia Appeals Court Vacates $354 Million Judgment Against Insurers In Sexual Abuse Coverage Dispute

HOLDING

The Georgia Court of Appeals vacated a $354 million judgment against insurers whose policies were issued after the alleged abuse occurred, holding that coverage did not apply because the alleged injuries arose from abuse and negligent supervision that predated the insurers' policies, even though the plaintiffs alleged that the resulting mental anguish continued for years afterward. *Phila. Indem. Ins. Co. v. Eubanks*, Nos. A25A1664, A25A1665, A25A1666, A25A1668, A25A1669, 2026 Ga. App. LEXIS 140 (Ga. Ct. App. Mar. 6, 2026).

BACKGROUND

Between 1974 and 1994, a teacher at a Georgia school sexually abused at least 20 boys. In 2017, the school sent a letter to alumni that it had been made aware of one instance of abuse. Following the letter, several former students filed lawsuits against the school and the abuser. The plaintiffs ultimately settled their claims against the school for $351 million, of which the school was to contribute $6 million, and the trial court entered a consent judgment. The school's insurers issued policies primarily in effect between 1996 and 2000 and refused to defend and indemnify the school. The school assigned its insurance rights to the plaintiffs, who then sued the insurers for breach of contract, direct recovery of insurance benefits, recovery as judgment creditors, and attorneys' fees.

The trial court granted summary judgment to the plaintiffs, concluding that sexual abuse constituted "bodily injury" under the policies and that coverage was triggered during all years when the injury manifested, rather than only when the abuse occurred. Although the acts of abuse pre-dated the policies, the court held that the victim's ongoing mental anguish was a covered injury that manifested during the policy periods. The trial court entered a $345 million judgment against the insurers, which the insurers appealed.

DECISION

The Georgia Court of Appeals reversed the judgment.

The court examined the relevant policies, several of which contained a "sexual or physical abuse or molestation vicarious liability" (SPAM) endorsement providing coverage for damages due to bodily injury and mental anguish resulting from "abusive conduct" for which the insured could be liable "by reason of" negligent employment, selection, supervision and retention. The endorsement required that the "bodily injury occur[] during the policy period." Because the policies did not define "occur," the court relied on a dictionary definition, explaining that the term "occur" means to "appear," "happen," or "to come into existence." Applying that definition, the court reasoned that "[a]n injury could only appear, happen, or come into existence at a single point in time. Therefore, the fact that the mental anguish *continued* in subsequent years does not mean the injury 'comes into existence' in each subsequent policy period." Instead, the relevant occurrence took place when the abuse happened and when the school allegedly negligently hired and supervised the perpetrator, both of which occurred before the policies took effect.

The court further explained that its conclusion was reinforced by other policy provisions. For example, the policies defined "abusive conduct" in relevant part as "each, every, and all actual, threatened, or alleged acts of physical abuse, sexual abuse, sexual molestation or sexual misconduct performed by one person or two or more people acting together" and are "deemed to take place . . . at the time of the first such act or encounter." Applying this language, the court concluded that the plaintiffs' alleged mental anguish stemming from the physical abuse and the school's failure to supervise was deemed to occur when the abuse occurred in the 1970s and 1980s.

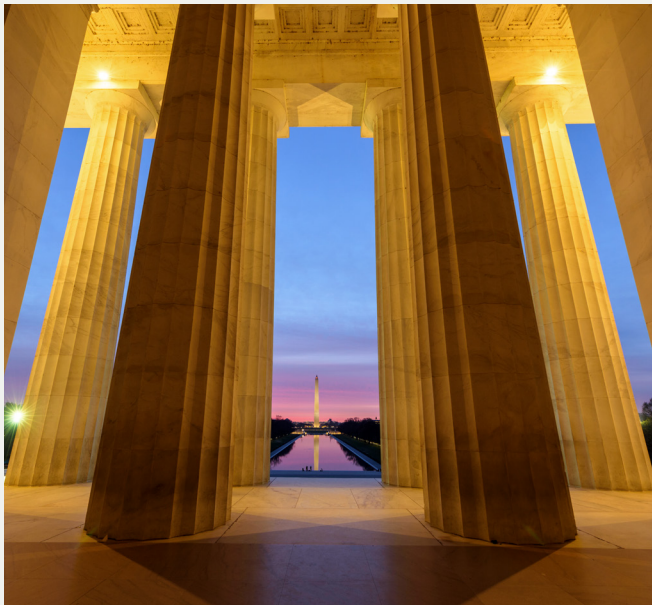
The court also rejected the plaintiffs' argument that the school's 2017 alumni letter caused new mental anguish that constituted a separate "bodily injury." The court concluded that any emotional distress arising from the letter did not stem from negligent hiring or supervision during the policy periods and therefore did not fall within the policies' coverage.

Additionally, the court concluded that the plaintiffs' claims under certain umbrella policies failed for the reasons discussed above with respect to the primary policies and on the basis that the underlying abuse claims did not allege an "occurrence," which was defined as an "accident." The court concluded that the plaintiffs' allegations that the school knew of the abuse, failed to act, and concealed the conduct did not allege accidental conduct as would be required for coverage.

COMMENTS

On the issue of trigger, the Georgia Court of Appeals rejected any analogy of the abuse claims to asbestos-related claims for which some courts have applied a "continuous trigger" theory and found coverage across multiple policy periods. The court noted that, "to the extent the plaintiffs' argument could be to raise a 'continuous trigger' theory, we have never applied it to sexual abuse and the resulting mental harm." The court further emphasized that, regardless, "the language of the policy controls and confirms that coverage is not based on a continuous trigger theory." The Georgia decision follows on a January 2026 decision from a federal court in Washington that also declined to apply a continuous trigger theory to sex abuse claims. *See C.C. v. United States Fid. & Guar. Co.*, No. 3:24-cv-05535-TMC, 2026 U.S. Dist. LEXIS 12865 (W.D. Wash. Jan. 23, 2026).

The Court's holding on "occurrence" signifies that even if an underlying action is styled in negligence, if the factual allegations do not allege accidental conduct, insurers can prevail in showing no duty to defend or indemnify under occurrence-based insurance policies.



New York's Complex Commercial Division Broadens Its Authority To Hear Additional Categories Of Commercial Insurance Cases

Effective November 3, 2025, the New York Complex Commercial Division amended its rules to allow more commercial insurance litigation to proceed before it. Under the previous rules, while the Commercial Division had jurisdiction over most breach of contract claims so long as the monetary thresholds were met, many high-stakes insurance coverage disputes were excluded. In particular, the rules previously excluded all suits that sought a declaratory judgment as to insurance coverage for personal injury or property damage or concerned first-party insurance claims. Under the amended rules, the carve-outs for bodily injury, property damage, and first party claims have been removed, opening the doors of the Commercial Division to more insurance coverage disputes.

Parties have 90 days from the service of the complaint (if no Request for Judicial Intervention (RJI) has been filed) or within ten days of receipt of the RJI to file a letter to transfer to the Commercial Division. The amendments are not retroactive. The Commercial Division has expressly said as much in denying a renewed application to transfer a case that would otherwise qualify. *Certain Underwriters at Lloyd's, London v. BASF Corp.*, No. 651150/2024, Dkt. No. 350.

This rule change should make New York a more favorable venue to litigate complex insurance disputes and will bring New York in line with other jurisdictions where coverage actions have been litigated in business or complex divisions for many years.

English Court Of Appeal Finds Hierarchy Clause Resolves Conflict Between Irreconcilable Dispute Resolution Clauses In Reinsurance Agreements

HOLDING

The English Court of Appeal unanimously upheld the Commercial Court's decision on conflicting dispute resolution clauses in London-market Master Reinsurance Contracts (MRCs) and Market Uniform Reinsurance Agreement Certificates (Facultative Certificates) that covered the same reinsurance. The court ruled that the English law and exclusive jurisdiction clause in the MRCs prevailed over the New York arbitration clause in the Facultative Certificates, because the Facultative Certificates contained a "Confusion Clause" providing that the relevant MRC was to take precedence over the Facultative Certificate "in case of confusion." *Tyson International Insurance Company Ltd v GIC Re* [2026] EWCA Civ 40.

BACKGROUND

The substantive dispute arose from losses sustained by Tyson Foods, Inc after a major fire occurred at a poultry processing plant facility in Alabama. Tyson's Bermudan captive insurer, Tyson International Insurance Company Ltd, accepted coverage for the losses under the captive policy and notified its reinsurers, including GIC Re, India, Corporate Member Ltd (GIC) of the loss. GIC underwrote separate reinsurance of two layers within Tyson International's property reinsurance program (each covered by an MRC and corresponding Facultative Certificate). However, after the fire, GIC purported to rescind its reinsurance coverage, alleging that the stated values of the processing plant facility had been misrepresented and significantly understated. Tyson brought proceedings against GIC in the English Commercial Court, which gave rise to a dispute as to the correct forum.

The reinsurance coverage had been placed on June 30, 2021 by means of two MRCs, which were subsequently followed by the issuance of two corresponding Facultative Certificates on July 9, 2021. The MRCs contained an English choice of law and exclusive jurisdiction clause, whereas the Facultative Certificates included a New York arbitration clause. The Facultative Certificates contained an amendment stating that the "RI slip to take precedence over reinsurance certificate in case of confusion." It was common ground between the parties that the "*RI slip*" referred to the relevant MRC.

The question was whether the substantive dispute was to be referred to New York arbitration, per the Facultative Certificates, or to the English courts, per the MRCs.

DECISION

The English Court of Appeal, in a unanimous judgment, upheld the Commercial Court's decision that the English jurisdiction clause in the MRCs prevailed over the New York arbitration clause in the Facultative Certificates and dismissed GIC's two grounds of appeal.

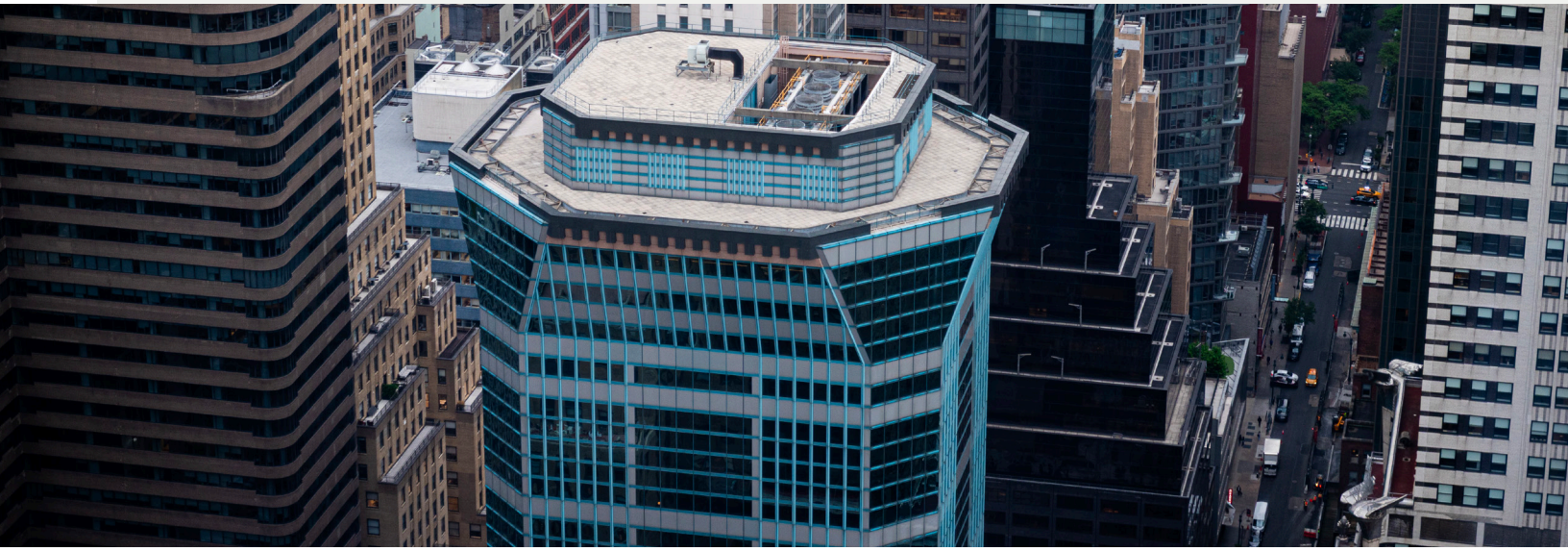
GIC's first ground of appeal was that the Confusion Clause should have only applied in circumstances where there was ambiguity or confusion between two

provisions in the same Facultative Certificate, rather than confusion as between provisions in the Facultative Certificate and MRC. The Court of Appeal firmly rejected this argument, finding that the Confusion Clause could only be interpreted as intending to resolve conflicts between the MRC and the Facultative Certificate. The court reasoned that if the Confusion Clause had simply said the MRC "takes precedence," this would plainly be a hierarchy clause. The addition of the words "in case of confusion" was "merely intended to confirm that the MRC was to prevail where there was a confusing difference between the two documents." The court relied on both the ordinary and natural language and commercial common sense.

GIC's second ground of appeal was that the two jurisdiction clauses in the MRCs and Facultative Certificates could be reconciled by giving priority to the later arbitration agreement in the Facultative Certificates and reading the English jurisdiction clause in the MRCs as giving the English court supervisory jurisdiction over the New York arbitration. The court rejected this argument, emphasizing that the jurisdiction clauses in the MRC and the Facultative Certificate are "flatly inconsistent" and that, where parties have expressly agreed to a hierarchy or inconsistency clause as between two distinct documents, it is impermissible to interpret the subordinate document in a way that fundamentally changes the meaning of the primary document.

COMMENTS

This case provides a reminder to be mindful of the consequences of entering into contractual arrangements containing multiple and/or conflicting dispute resolution clauses. Comparatively, in a prior case that involved a similar dispute between Tyson and one of its other excess insurers arising out of the same substantive events, the Court of Appeal held that the New York arbitration agreement in the later in time Facultative Certificate superseded the jurisdiction clause in the earlier MRC, as there was no provision specifying that the terms of the MRC prevailed. *Tyson International Company Ltd v Partner Reinsurance Europe SE* [2024] EWCA Civ 363.



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.

Lauren Brazier
+44-(0)20-7275-6344
lauren.brazier@stblaw.com

Laura Lin
+1-650-251-5160
laura.lin@stblaw.com

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

Summer Craig
+1-212-455-3881
scraig@stblaw.com

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

Matthew C. Penny
+1-212-455-2152
matthew.penny@stblaw.com

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

Joshua Polster
+1-212-455-2266
joshua.polster@stblaw.com

Sarah E. Phillips
+1-212-455-2891
sarah.phillips@stblaw.com

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

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

Abigail W. Williams
+1-202-636-5569
abigail.williams@stblaw.com

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

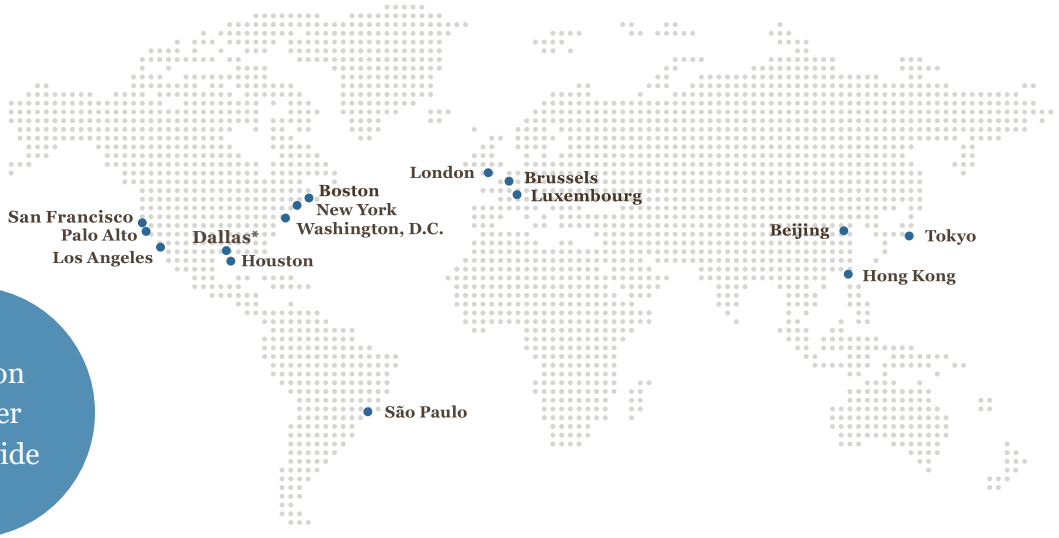
Alan C. Turner
+1-212-455-2472
aturner@stblaw.com

Madelin Meiers
+1-212-455-2481
madelin.meiers@stblaw.com

This edition of the
Insurance Law Alert
was prepared by
Lauren Brazier / +44-(0)20-7275-6344
lauren.brazier@stblaw.com
Joshua Polster / +1-212-455-2266
joshua.polster@stblaw.com
Sarah E. Phillips / +1-212-455-2891
sarah.phillips@stblaw.com
and
Madelin Meiers / +1-212-455-2481
madelin.meiers@stblaw.com.

Please click here to subscribe to the Insurance Law Alert.

Simpson
Thacher



Simpson Thacher Worldwide

In February 2026, Simpson Thacher announced plans to expand its presence in Texas with an office in Dallas.

UNITED STATES

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

Boston
855 Boylston Street, 9th Floor
Boston, MA 02116
+1-617-778-9200

Houston
1000 Main Street, Suite 2900
Houston, TX 77002
+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

San Francisco
One Market Plaza
Spear Tower, Suite 3800
San Francisco, CA 94105
+1-415-426-7300

Washington, D.C.
900 G Street, NW
Washington, D.C. 20001
+1-202-636-5500

EUROPE

Brussels
Square de Meeus 1, Floor 7
B-1000 Brussels
Belgium
+32-2-504-73-00

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

Luxembourg
Espace Monterey
40 Avenue Monterey
L-2163 Luxembourg
Grand Duchy of Luxembourg
+352-27-94-23-00

ASIA

Beijing
6208 China World Tower B
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

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