

Reversing Jury Verdict, Second Circuit Rules That Reinsurer's Refusal To Indemnify Settlement Was Not Breach Of Contract

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The Second Circuit reversed a jury verdict and ruled that a reinsurer did not breach its obligations under reinsurance contracts by refusing to indemnify a ceding insurer's settlement. *Utica Mut. Ins. Co. v. Fireman's Fund Ins. Co.*, 2020 WL 2047431 (2d Cir. Apr. 28, 2020).

Fireman's Fund issued several reinsurance contracts to Utica, each reinsuring umbrella policies that Utica had issued to Goulds Pump, Inc. The reinsurance certificates stated that Fireman's Fund's liability followed Utica's liability pursuant to the umbrella policies. The umbrella policies, in turn, provided that Utica was liable "for the ultimate net loss resulting from any one occurrence in excess of . . . the amounts of the applicable limits of liability of the underlying insurance as stated in the Schedule of Underlying Insurance Policies." The underlying insurance for Utica's umbrella policies were primary policies that Utica had also issued to Goulds.

Utica and Goulds disputed the extent of coverage available for asbestos bodily injury claims brought against Goulds, including whether Goulds' primary policies included aggregate limits for bodily injury claims. Utica and Goulds ultimately stipulated that each primary policy contained an aggregate limit for bodily injury claims that had been exhausted and that Utica's umbrella policies would therefore provide coverage. Thereafter, Utica sought to recover reinsurance from Fireman's Fund in the amounts that Utica had paid out under the umbrella policies. In doing so, Utica relied upon a "follow the settlements" clause in the reinsurance contracts, arguing that it bound the reinsurer to all good faith, reasonable settlements within the terms of the policies, including Utica's settlement-related stipulation as to the exhaustion of the primary policies. Fireman's Fund denied liability, arguing that the umbrella policies were not triggered until the bodily injury losses exceeded any limits specified in the underlying schedules, which had not occurred. That matter proceeded to a trial, in which a jury issued judgment in Utica's favor.

The Second Circuit reversed the verdict, ruling as a matter of law that Fireman's Fund had no obligation to pay for losses that were not covered by the umbrella policies. The court explained that the umbrella policies only covered losses that exceeded the limits stated in the schedules of underlying insurance. In referencing the primary policies underlying Utica's umbrella policies, those schedules did not list any aggregate limits applicable to bodily injury claims (and instead only provided aggregate limits for property damage claims). On this basis, the court found that Fireman's Fund had no contractual duty to pay for the bodily injury losses. The court rejected Utica's contention that the schedules did not need to list aggregate limits for bodily injury claims because they included per-occurrence limits, finding that assertion

unsupported by case law or principles of policy interpretation.

In addition, the court rejected Utica’s argument that Fireman’s Fund was nevertheless obligated by the follow the settlements clauses to accept Utica’s interpretation of when the umbrella policies were required to respond to claims, as set forth in the underlying settlement with Goulds. The court explained that follow the settlements does not override the terms of the reinsurance policies. Where such terms expressly limit coverage, follow the settlements cannot be used to vacate those limitations. The court stated: “a reinsurer cannot be held accountable for an allocation that is contrary to the express language of the reinsurance policy.” The court further noted that although follow the settlements prohibits *de novo* review of a cedent’s settlement and allocation decisions, it does not insulate a cedent from application of unambiguous policy terms.

Authors and
Contacts

Bryce Friedman
Partner
bfriedman@stblaw.com
[+1-212-455-2235](tel:+12124552235)

