

Jury Says Reinsurer Must Reimburse Cedent For Underlying Asbestos Settlement, Finding No Evidence Of Bad Faith In Underlying Allocation

08.06.21



(Article from *Insurance Law Alert*, July/August 2021)

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In a dispute relating to several facultative reinsurance contracts issued by Clearwater Insurance Company, a federal jury in New York awarded Utica Mutual Insurance Company approximately \$11 million, finding that Utica did not act in bad faith or improperly allocate underlying asbestos settlement payments to the reinsured policies. *Utica Mut. Ins. Co. v. Clearwater Ins. Co.*, No. 6:13-cv-1178 (N.D.N.Y. July 8, 2021). The jury also concluded that the underlying primary policies contained aggregate limits and that Utica had paid up to those limits.

In a prior ruling in this case, the Second Circuit ruled that the reinsurance certificates were expense-supplemental and thus required Clearwater to reimburse Utica for expenses in addition to the stated limit of liability. See [October 2018 Alert](#). In that decision, the Second Circuit also ruled that neither the reinsurance certificates nor certain contracts through which Clearwater participated as part of a pool of reinsurers imposed a follow the settlements obligation. The court therefore concluded that Clearwater's indemnity obligations must be based on Utica's proven liability under its umbrella policies.

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