Exit Bellefonte

Presented by:

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EXIT 161
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Bellefonte

The *Bellefonte* Decision

- *Bellefonte Re v. Aetna*, 903 F.2d 910 (1990)
  - Fac Cert:
    - Reinsurance is "subject to the terms conditions and amount of liability set forth herein"
    - Reinsurance Accepted: $500K part of $5M
  - What about defense costs in addition to limits?

The *Bellefonte* Decision

- Held:
  - $500K is an absolute cap on the reinsurer's liability
  - Follow the fortunes does not override the reinsurance contract
  - Provision stating that expenses are paid "***in addition thereto***" does not exempt defense costs from the limit

Cases Following *Bellefonte*

- *Unigard v. N. River*, 4 F.3d 1049 (2d Cir. 1993)
  - Fac cert similar to *Bellefonte*
  - "*Bellefonte*'s gloss upon the written agreement is conclusive."

Cases Following *Bellefonte*

- *Excess v. Factory Mut.*, 3 N.Y.3d 577 (2004)
  - Property policy/fac cert
  - Issue regarding DJ expenses rather than defense costs
  - Court follows *Bellefonte:*
    - Follow the fortunes does not override reinsurance contract
    - $500K is a cap on the reinsurer's liability

The Critics

- Gene Wollan: "Many members of the reinsurance community were shocked by *Bellefonte* and *Unigard*" (ARIAS Quarterly)
- Michael Goldstein: The Second Circuit "erred terribly" (Mealey's)

Judicial Rumblings

- *TIG Premier v. Hartford*, 35 F. Supp.2d 348 (S.D.N.Y. 1999)
  - California rather than New York law
  - custom and practice evidence defeats summary judgment

Judicial Rumblings

- *Utica v. Munich*, 594 Fed. Appx. 700 (2d Cir. 2014)
  - "Reinsurer agrees to indemnify the Company ***against loss or damages*** … subject to the reinsurance limits shown in the Declarations"
  - Ambiguity: does "subject to language" apply only to "loss or damage," or also expense?
  - Second Circuit vacates summary judgment

Judicial Rumblings

- *Utica v. R&Q*, 2015 WL 4254074 (N.D.N.Y. 2015)
  - "subject to" language similar to *Utica v. Munich*
  - "should the [reinsured's] policy limit include expenses, the Reinsurers' maximum limit of liability shall be as stated in … the Declarations"
  - Court denies summary judgment

Looking for the Exit: Step 1

- *Global v. Century*, 843 F.3d 120 (2d Cir. 2016)
  - Facultative certificate similar to *Bellefonte*
  - BUT: "… we find it difficult to understand the *Bellefonte* court's conclusion that the reinsurance certificate in that case ***unambiguously*** capped the reinsurer's liability for both loss and expenses."
  - "Evidence of industry custom and practice might have shed light on this question …"

Looking for the Exit: Step 1

- *Global v. Century*, 843 F.3d 120 (2d Cir. 2016)
  - "If *Excess* imposes a clear rule … with respect to these reinsurance policies, the rule would guide our interpretation …."
  - "If, on the other hand, the standard rules of contract interpretation apply, we would construe each reinsurance policy solely in light of its language, and to the extent helpful, specific context."
  - Certified question to New York Court of Appeals

Looking for the Exit: Step 2

- *Global v. Century*, 30 N.Y.3d 508 (2017)
  - *Excess* does *not* "impose either a rule of construction, or a strong presumption, that a per occurrence liability cap in a reinsurance contract limits the total reinsurance available …"
  - *Excess* "did not supersede the 'standard rules of contract interpretation'… otherwise applicable to facultative reinsurance contracts."

Looking for the Exit: Step 3

- *Global v. Century*, 890 F.3d 74 (2d Cir. 2018)
  - "The decision from the Court of Appeals … requires us to remand this case to the district court …"
  - "The district court should 'construe each reinsurance policy solely in light of its language and, to the extent helpful, specific context."

What's Next?

- Proceeding on remand?
- Any clues in *Century v.* OneBeacon, 173 A.3d 784 (Pa. Super. 2017)?
- Comments?


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