

## **District Court Declines to Decide Procedural Arbitrability Issue, Separately Seals Docket, Finding “Reasonably Significant Privacy Interest” in Reinsurance Treaties**

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Everest Reinsurance Co. reinsured Pennsylvania National Mutual Casualty Insurance Co. under several treaties requiring the parties to arbitrate all disputes. The arbitration clauses in the treaties also contained a “consolidation” provision stating that “[i]f more than one Reinsurer is involved in the same dispute, all such Reinsurers shall constitute and act as one party for the purposes of this Article.” A dispute later arose and Pennsylvania Mutual commenced arbitration, but Everest refused to participate fully, claiming the dispute should have been joined with an earlier arbitration between Pennsylvania Mutual and other reinsurers. While the parties agreed that this threshold “consolidation” issue was for arbitrators to decide, not the court, they disagreed as to *which* arbitrators. Pennsylvania Mutual wanted a new panel; Everest wanted the prior panel. The court agreed with Pennsylvania Mutual, finding the issue was purely “procedural” and, therefore, not for the court to decide. The court enforced the process set forth in the treaties for selecting a new arbitration panel before whom Everest could raise consolidation as a threshold issue.

Separately, Pennsylvania Mutual moved to seal various documents submitted in support of its motion to compel arbitration, including its arbitration demand to Everest, subsequent correspondence, and the relevant treaties. The court agreed with Pennsylvania Mutual that it had a “reasonably significant privacy interest” in the treaties and the “sensitive and proprietary” information in its correspondence with Everest. Because Pennsylvania Mutual negotiates various agreements with different reinsurers, each of which is likely similar, but not necessarily identical, the court held that “disclosure of the precise terms of any one agreement could reasonably have a significant impact on [Pennsylvania Mutual’s] ability to negotiate other agreements with different reinsurers.” Finding this privacy interest “substantially outweighs” the minimal public interest in disclosure, the court granted Pennsylvania Mutual’s motions.

[\*Pennsylvania Nat’l Mut. Cas. Ins. Co. v. Everest Reinsurance Co.\*](#), No. 1:18-mc-00653 (M.D. Pa. Mar. 14, 2019).

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