

## Third Circuit Affirms Order Declining to Consolidate Reinsurance Dispute, but Vacates Order Denying Motion to Unseal

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Everest Reinsurance Co. appealed from two district court orders. It claimed that this dispute with Pennsylvania National Mutual Casualty Insurance Co. was the same as a prior dispute that [Penn National had arbitrated with two other reinsurers](#). It, therefore, sought to have this matter consolidated with and heard by the same panel as the prior dispute. The parties agreed that whether this dispute and the prior dispute were actually the same was to be decided by the arbitrators, not the court. The issue was which arbitrators: a new panel, or the panel that heard the prior dispute. The district court ordered that the question goes to a new panel, and the Third Circuit agreed, citing language in the Everest/Penn National arbitration agreement stating that consolidation is only permitted “[i]f more than one reinsurer is involved in the same dispute.” By sending the present dispute to the same panel as the prior dispute at this juncture, the Third Circuit held, Everest was essentially asking the court to prejudge the question of whether the two disputes were “the same,” and thus disregard the express language of the agreement.

Everest separately appealed an order denying its motion to unseal records from the prior dispute. The Third Circuit agreed with Everest that the district did not apply the “more rigorous common law right of access” standard. It therefore vacated and remanded for the district court to apply the legal standard articulated by the Third Circuit in *Avandia Marketing*.

[Pa. Nat’l Mut. Cas. Ins. Co. v. New England Reinsurance Corp.](#), No. 19-1805 (3d Cir. Dec. 6, 2019).

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