Published on *The National Law Review* https://natlawreview.com

Proving a Reinsurance Contractual Relationship Exists

Article By:

Larry P. Schiffer

Litigating a reinsurance contract dispute is not much different than litigating any commercial contract dispute. The party seeking recovery under the contract has to prove that the contract exists. Proving the policy can be a big issue with claims asserted under old policies and reinsurance contracts. This certainly has been an issue with asbestos and other long-tail claims that take many years to manifest. Lost policies, extrinsic evidence, secondary sources all may come into play, but typically the issue is not raised at the pleading stage.

In a recent case, a federal court decided a reinsurer's motion for judgment on the pleadings in which the reinsurer argued that the cedent did not adequately plead the formation of the reinsurance contractual relationship. The court denied the motion, but the issue is an interesting one because of the semi-automatic nature of the reinsurance relationship.

In R&Q Reins. Co. v. St. Paul Fire & Marine Ins. Co., No. 16-1473, 2017 U.S. Dist. LEXIS 72964 (E.D. Pa. May 12, 2017), the parties entered into a master facultative binding authority agreement that allowed the cedent to reinsure its commercial umbrella policies with a facultative reinsurer on a semi-automatic basis. The master agreement provided that each cession would attach and become effective concurrently with the cedent's policy as long as the policy was reported within 90 days of its effective date. The cedent reported the policy by sending a cession statement with pertinent policy information to the reinsurer.

The motion involved one pair of an umbrella policy and facultative certificate. The reinsurer argued that the cedent did not plead the existence of the cession statement connecting the two and, therefore, judgment on the pleadings dismissing the claim for that facultative certificate was warranted.

In denying the motion, the court held that the complaint adequately pleaded the existence of the contractual relationship between the policy and the facultative certificate even though the cedent did not plead the existence of a cession statement connecting the umbrella policy to the facultative certificate. The complaint asserted that the facultative certificate reinsured the liabilities under that specific umbrella policy and that the limits of that specific facultative certificate were identical to the limits of the example facultative certificate attached to the complaint. Importantly, the court held that the cedent was not required to attach the contracts to the complaint.

The court pointed out that the master agreement did not say that the cession would attach and

become effective only after the cedent submits a cession statement to the reinsurer. The court found that the existence of the cession statement for this umbrella policy and facultative certificate pair was a factual dispute regarding the breach, but the not existence, of the reinsurance contract and should not be addressed on a motion for judgment on the pleadings. The court also noted that another policy and facultative certificate pair suffered from the same defect, but that the reinsurer chose to move for judgment on the pleadings only for the one pair. That fact also weighed in favor of denial according to the court.

National Law Review, Volume VII, Number 142