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Trends & Developments
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Trends and Developments

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Dominated by the COVID-19 pandemic, 2020 was a year that featured fast-paced activities and unprecedented challenges for insurers and reinsurers. Some of the more significant trends, decisions and developments are highlighted below.

COVID-19 Business Interruption Coverage Litigation

The issuance of various governmental orders requiring businesses to temporarily modify or close their operations led to an almost immediate avalanche of claims and lawsuits involving first-party commercial property policies. By early December, more than 1,400 COVID-19 business interruption and civil authority insurance coverage cases had been filed in federal and state courts across the USA, with approximately 475 including bad faith claims. Over 140 trial court decisions had been rendered, and hundreds of motions to dismiss are pending. The insurers have prevailed in the vast majority of cases, successfully contending that:

- allegations that the virus claims do not constitute direct physical loss or damage to property as required under most US policy wordings;
- governmental orders do not constitute loss of property; and/or
- virus exclusions preclude coverage.

To date, policyholder arguments that virus exclusions should be invalidated due to purported misrepresentations made to insurance regulators in 2006 concerning the availability of insurance for contamination by disease-causing agents have not been successful.

Despite the growing number of trial court rulings, the COVID-19 insurance coverage battles are only just beginning, with many of those rulings now on appeal. Some policyholders have attempted to end-run the traditional appeal process. In The Inns by the Sea v California Mut. Ins. Co., the California state court granted the insurer's demurrer. The insured hotels filed a Notice to Appeal to the appellate level court. They then filed a Petition to Transfer the matter to the California Supreme Court on 16 October 2020, arguing that the case presents an urgent matter of public concern for California small businesses and their employees. A previous attempt by policyholders to have the Pennsylvania Supreme Court exercise King's Bench jurisdiction was denied by the Pennsylvania high court in Tambellini v Erie Ins. Exchange, No 52 WM 2020 (14 May 2020).

Efforts by some policyholders to consolidate COVID-19 business interruption coverage cases have been largely rejected; the vast majority of COVID-19 coverage cases will not be subject to multidistrict litigation (MDL). On 14 August 2020, the Judicial Panel on Multidistrict Litigation denied a request to consolidate all COVID-19 federal litigation. The Panel later rejected a request to create mini-MDLs with regard to four insurers, although it did agree to centralise more than 30 lawsuits against Society Insurance Company (in re Soc'y Ins. Co. COVID-19 Bus. Interruption Protection Ins. Litigation, 20 U.S. Dist. LEXIS 183678 (J.P.M.L. 2 October 2020)).

Insurers are monitoring the numerous pending federal and state legislative proposals (Seaman, S.M. and Selby, J.A., "Tracking The Flurry Of COVID-19 Related Legislative & Regulatory Activity Impacting Insurers", *Mealey's Litigation Report: Catastrophic Loss*, Vol 15, No 7 (April 2020)). The activity level on other lines of policies – such as general liability, professional liability, D&O, and workers' compensation – is expected to increase.

Protests that give rise to rioting and looting have produced first-party claims. When coupled with COVID-19-related shutdowns, concurrent causation may be presented.

Cyber-Insurance Claims

To date, the vast majority of cyber coverage decisions have involved traditional first-party, third-party and crime/fraud policies. Claims under those policies commonly are referred to as silent cyber claims. Most insurers in the cyber-insurance market have now issued several iterations of cyber-specific policies. Rulings under these policies are expected to be rendered with increasing frequency over the next couple of years (see S.M. Seaman and J.R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 9th Ed. 2020-21) at Chapter 17 (Cybersecurity and Privacy Claims)).

Indeed, cyber-insurers experienced a steep increase in claims in 2020, driven primarily by ransomware, often coupled with data extraction, and business email compromise events. The costs associated with ransomware claims, in particular, have risen dramatically, due to increased ransom demands, threats to disclose extracted data, and related business interruption costs. The pandemic-driven massive shift to remote work spurred additional cyber claims activity. As a result, industry leaders

are anticipating a hardening of the cyber-insurance market, as well as increased premiums and underwriting scrutiny.

Property insurance

In January 2020, a federal district court in Maryland ruled that the first-party property coverage in a business owner's insurance policy (BOP) covered the replacement of the insured's computer system after a 2016 ransomware attack (National Ink and Stitch, LLC v State Auto Property and Cas. Ins. Co., 435 F. Supp.3d 679 (D. Maryland 2020) (applying Maryland law)). Following remediation, the system was still functional, but its performance was slowed by new protective software and it was likely that remnants of the virus remained on the system, increasing the risk of re-infection. The court determined that the "loss of reliability, or impaired functionality demonstrate the required damage to a computer system, consistent with the 'physical loss or damage to' language in the policy."

This decision does not materially advance efforts to secure cyber coverage under first-party property policies. The National Ink policy was issued in 2016, but written on the 1999 ISO form. More recent forms, such as the 2012 ISO BOP form, exclude computer-related losses.

Business email compromise

A Mississippi federal district court ruled that Computer Fraud Transfer and Funds Transfer Fraud coverages were not applicable to losses resulting from an email phishing scam (Miss. Silicon Holdings, LLC v Axis Ins. Co., 440 F. Supp.3d 575 (N.D. Miss. 2020)). The insured, Mississippi Silicon Holdings (MSH), had fallen prey to spoofed emails and wired more than USD1 million to fraudsters instead of a legitimate vendor. Three MSH employees approved the wire transfers before MSH learned that hackers had infiltrated its computer system and impersonated an authentic vendor.

MSH's insurer accepted coverage under the Social Engineering provision of its management liability policy, but not under the Computer Fraud Transfer and Funds Transfer Fraud coverage grants, which had much higher limits of liability. MSH instituted coverage litigation, alleging the loss fell within all three coverages.

The Computer Transfer Fraud provision covered losses resulting "directly from Computer Transfer Fraud that causes the transfer, payment, or delivery of Covered Property from the Premises or Transfer Account to a person, place, or account beyond the Insured Entity's control, without the Insured Entity's knowledge or consent."

The Funds Transfer Fraud provision provided coverage for loss "resulting directly from the transfer of Money or Securities from a Transfer Account to a person, place, or account beyond the Insured Entity's control, by a Financial Institution that relied upon a written, electronic, telegraphic, cable, or teletype instruction that purported to be a Transfer Instruction but, in fact, was issued without the Insured Entity's knowledge or consent."

The court declined to adopt a proximate cause standard advocated by MSH, agreeing with the insurer that Computer Transfer Fraud coverage was not implicated because "nothing 'entered' into or 'altered' within [MSH's] Computer System... directly caused the transfer of any Money." Instead, the MSH employees caused the transfer. Because the fraudulent emails did not themselves manipulate MSH's computer system, a "Computer Transfer Fraud" did not directly cause the transfers.

The court further held that the requirement for the transfer to take place "without the Insured Entity's knowledge or consent" was not satisfied. The court rejected MSH's assertion that a more logical reading of the requirement would be that MSH had to have actual knowledge of material facts, such as the transferee's true identity, stating that MSH provided no legitimate reason to impose a heightened requirement into the policy. The court distinguished the Social Engineering Fraud provision, which "clearly authorizes coverage when an employee relies on information that is later determined to be false or fraudulent. In contrast, the Computer Transfer Fraud provision specifically states that coverage is only available when the loss occurs "without the insured entity's knowledge or consent."

The court also held that the Funds Transfer Fraud coverage was not triggered because the MSH employees had knowledge of, and consented to, the transfers. The court found no legitimate basis to accept MSH's argument that the policy required those MSH employees to know that the spoofed emails were fraudulent at the time of the transfers.

In Midlothian Enters. v Owners Ins. Co., 439 F.Supp. 3d 737 (E.D. Va. 2020), a Virginia federal district court ruled a crime insurer had no obligation to cover losses resulting from an email phishing scam. In that case, a Midlothian employee had complied with an email request, purportedly from the company president, to wire more than USD400,000 from Midlothian's bank account to a bank account in Alabama. Several days later, Midlothian discovered the email was fraudulent and tendered a claim to Owners Insurance Company, which denied coverage.

The crime policy provided coverage for theft of money and securities, but excluded coverage for "[l]oss resulting from your, or anyone acting on your express or implied authority, being induced by a dishonest act to voluntarily part with title to or possession of any property." The court had no trouble deciding that the exclusion unambiguously precluded coverage. The

court rejected the insured's attempt to create ambiguities in the exclusion by highlighting terms with more than one meaning or interpretations that conclude in different results in the interpretation of the exclusion. The court stated: "The fact that a word or phrase has more than one dictionary definition… does not make a provision ambiguous."

The court also rejected the insured's argument that a victim of fraud can never act voluntarily, and that the exclusion does not apply where the instruction to make payment is fraudulent: "The fact that another individual pretended to authorize the transaction does not negate the voluntariness of the transfer…" Consequently, "[a]llowing coverage of a fraudulently authorized transaction despite an exclusion based on '*any* dishonest act' would unreasonably limit the exclusion and render the provision meaningless." (Emphasis in original.)

A New Jersey federal district court held that losses arising out of a phishing scam were not covered under a bank's Financial Institutions Bond. In Crown Bank JJR Holding Co. v Great Am. Ins. Co., 2020 U.S. Dist. LEXIS 23136 (D. N.J. 11 February 2020) (New Jersey law), a fraudster impersonated Jackie Rodrigues, the wife of a senior executive of Crown Bank. In a series of 13 emails from a spoofed email address, the impersonator requested wire transfers from the Rodrigueses' Crown Bank accounts to accounts in Singapore.

Pursuant to their Customer Agreement with Crown Bank, the Rodrigueses were permitted to request wire transfers by email, and Crown Bank was required to verify each request by calling the account holder at a designated phone number. Upon receipt of each of the fraudulent email requests, Crown Bank employees requested information needed to complete the transfer and emailed a wire transfer authorisation form back to the impersonator. The impersonator would forge Mrs Rodrigues's signature, and then email a PDF of the completed form back to the bank. Bank employees printed the PDF and then matched the forged signature on the form to the signature the bank had on file for Mrs Rodrigues. Bank employees never called the designated phone number to verify the requests, even though the wire transfer form indicated that the call had been made. By the time the fraud was uncovered, over USD2 million had been transferred from the Rodrigueses' accounts. Crown Bank sought coverage for the loss under its Financial Institutions Bond and its Computer Crime Policy for Financial Institutions. Its insurer denied coverage under both policies, and coverage litigation ensued.

Crown Bank asserted that its claim was covered by Insuring Agreement D of the Financial Institutions Bond. That provision applied to: "Loss resulting directly from the Insured having, in good faith, paid or transferred any Property in reliance on any Written, Original… (4) Withdrawal Order… (6) Instruction or advice purportedly signed by a customer of the Insured or by a banking institution… which (a) bears a handwritten signature of any maker, drawer or endorser which is Forgery; or (b) is altered, but only to the extent the Forgery or [alteration] causes the loss. Actual physical possession of the items listed in (1) through (6) above by the Insured is a condition precedent to the Insured's having relied on the items."

The term "Original" was defined as "the first rendering or archetype and does not include photocopies or electronic transmissions, even if received and printed." "Written" was defined as "expressed through letters or marks placed upon paper and visible to the eye."

The parties' central dispute was whether Crown Bank had actual physical possession of the "Written, Original" wire transfer forms, a condition precedent to coverage under Insuring Agreement D. The insurer argued that the bank failed to satisfy that condition because printouts of the electronically transferred PDFs from the impersonator did not fall within the Bond's definition of "Original". Crown Bank contended that a PDF itself is not an electronic transmission, and each printout of a wire transfer authorisation form from a PDF was a "first rendering" within the definition of "Original".

The court rejected the Bank's arguments because "documents transmitted electronically are not originals, even if received and printed", according to the Bond. The Bank's additional contention that the "first rendering or archetype" language in the definition of Original was ambiguous as applied to PDFs also missed the mark: "Regardless of any ambiguity concerning whether a PDF may qualify as an 'Original' without electronic transmission, where a PDF (or any electronic file format) is transmitted electronically, it cannot qualify as an 'Original' as defined in the [Bond]."

In G&G Oil Co. of Indiana v Continental Western Ins. Co., 145 N.E.3d 642 (Ind. App. Ct. 2020), an Indiana appellate court held that a ransom payment did not fall within a multi-peril policy's commercial crime and fidelity coverage part because the attacker did not use a computer to fraudulently cause the insured to purchase bitcoin for the ransom payment.

The court deferred ruling on whether there was coverage under the Computer Systems Fraud Insuring Agreement in the crime policy pending further briefing on the insured's objectively reasonable expectation of coverage under that policy.

Privacy violations

In the absence of comprehensive federal laws, individual states continue to adopt their own privacy laws and regulations. For

example, the ground-breaking California Consumer Privacy Act (CCPA) went into effect in January 2020. Similar to the EU's General Data Protection Regulation, the CCPA created a number of privacy rights for California consumers and obligations for businesses that collect and process personal information. Although the California Attorney General has yet to commence a CCPA enforcement action, several class-action lawsuits have already been filed pursuant to the Act's limited private right of action. Despite the recent enactment of the CCPA, California residents voted in November to approve the California Consumer Privacy Rights Act (CPRA), which further expands consumer privacy rights. The CPRA also creates a state-wide privacy agency that will be charged with enforcement of privacy laws. This likely will lead to increased enforcement actions for privacy violations in California.

In New York, a proposed amendment to the state's Civil Rights Law would create criminal liability for certain privacy violations, and the proposed It's Your Data Act would create CCPA-like consumer privacy rights but with a broader private right of action. In July 2020, the New York Department of Financial Services, the state's powerful financial regulator, initiated its first enforcement action for alleged violations of its first-in-nation 2017 cybersecurity regulation.

Increased regulatory enforcement and the further proliferation of privacy and cyber laws and regulations will likely drive increased cyber-insurance claims activity for both breach and information misuse events going forward.

Several decisions on the privacy front were issued in 2020. In Brighton Collectibles, LLC v Certain Underwriters at Lloyd's London, 798 F. App'x 144 (9th Cir. 2020), an insurer was required to defend a putative class action alleging that the insured retailer collected and sold customers' personal information in violation of California's Song-Beverly Credit Card Act. The insured argued that the claim triggered its personal injury coverage, which applied to personal injury caused by an offence arising out of the insured's business, which includes "oral or written publication of material that violates a person's right of privacy."

Based on California Supreme Court precedent holding that the overriding purpose of the Credit Card Act is to protect the personal privacy of consumers, the Ninth Circuit found that the class action alleged an invasion of privacy sufficient to trigger the insurer's duty to defend. The court rejected the insurer's assertion that coverage was barred by the policies' exclusions for "advertising, publishing, broadcasting or telecasting done by or for" the insured. The court stated: "The word 'publishing' in this coverage exclusion cannot be read to have the same meaning as the word 'publication' in the personal injury provision. Such a reading would exclude coverage for virtually any publication over which [the insured] might realistically be sued, rendering the policies' express coverage for publications that violate privacy rights practically meaningless."

The court also noted that the "grouping of 'publishing' with 'advertising..., broadcasting or telecasting' in the coverage exclusion suggests that the exclusion applies only to broad, public-facing marketing activities."

In another case addressing the "publication" requirement for personal injury coverage, an Illinois state appellate court ruled that a customer's biometric privacy class-action claims against an insured tanning salon potentially fell within two insurers' personal injury coverage (West Bend Mutual Insurance Co. v Krishna Schaumburg Tan, Inc., 2020 IL App (1st) 191834 (20 March 2020)). The plaintiff in the underlying class action alleged that the salon collected her fingerprint to verify her identification to access the insured salon as well as affiliated salons, in violation of Illinois' Biometric Information Privacy Act (BIPA).

Even though the plaintiff's biometric information was shared with only the single vendor, the court ruled that the policies' "publication" requirement was satisfied. The court also held that an exclusion for "violation of statutes that govern emails, fax, phone calls, or other methods of sending materials or information" did not apply, even though the fingerprint scan had been sent to the vendor allegedly in violation of BIPA. The court ruled that the exclusion applies to laws that govern "methods of communications", not to laws such as BIPA, which "limit the sending or sharing or certain information."

Lead Paint

Coverage issues relating to the USD400 million-plus lead paint abatement fund involving three lead paint manufacturers are being addressed in three separate coverage actions. The courts have reached different conclusions in each on motions for summary judgment.

First, a California trial court ruled, in Certain Underwriters at Lloyd's of London v Conagra Grocery Products Company, CGC-14-536731, Cal. Super. Ct., San Francisco Cty. (25 February 2020), that California's wilful acts insurance law precluded coverage for public nuisance claims against the insured based on its predecessor's promotion of lead paint. Evidence in the underlying liability litigation established that the predecessor had actual knowledge that lead paint on residential interior surfaces posed a public health hazard.

In the subsequent coverage litigation, the court rejected the insured's attempt to be "insulated from" that knowledge, as well as its argument that the scienter findings in the underlying liti-

gation were insufficient to meet the wilfulness standard of California Insurance Code §533, which provides that an "insurer is not liable for a loss caused by the willful act of an insured." The fact that senior managers of the predecessor company were not proven to have knowledge of the relevant hazards made no difference, according to the court. Under §533, an entity's employees' collective knowledge "is what matters." The case is on appeal.

Next, in Sherwin-Williams v Certain Underwriters at Lloyd's of London, CV-06-585780, Ohio Ct. Common Pleas, Cuyahoga Cty (4 December 2020), the court rejected the insurers' arguments that Sherwin-Williams either expected or intended the damages. It nonetheless granted summary judgment to the insurers on the grounds that the abate fund does not constitute "damages" under the policies. Finally, in Certain Underwriters at Lloyd's, London v NL Industries, 650103/2014, N.Y. Sup. Ct., New York Cty (29 December 2020), the court denied the insurers' motion for summary judgment based on similar grounds.

Long-Tail Claims – Allocation

Allocation of losses among insurers and policyholders continues to be a driving issue in long-tail claims. Pro rata allocation continues to be the majority approach and is superior to the "all sums" allocation alternative (see S.M. Seaman and J.R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 9th Ed. 2020-21)). Maryland's high court unanimously held that a commercial general liability (CGL) insurer was responsible for only a pro rata share of a USD2.7 million judgment against its insured based on a worker's bodily injury due to exposure to asbestos at the now defunct insured's property (Rossello v Zurich American Insurance Company, 468 Md. 92, 226 A.3d 444 (2020)). The worker, who developed mesothelioma decades after his asbestos exposure, argued that the policy's all sums language supported joint and several allocation, allowing him to collect the entire judgment against a single insurer. Joining the majority of states that have considered the issue, the court held that damages for continuous injury must be allocated on a pro rata basis across all insured and insurable periods triggered by the worker's injuries. The court stated that all sums allocation is inconsistent with the policy requirement for bodily injury to occur "during the policy period."

Earlier in the year, the Ohio Supreme Court rejected the application of an all sums allocation for a product defect property damage claim where there was no evidence that the injury was over time (Lubrizol Advanced Materials, Inc. v National Union Fire Ins. Co. of Pittsburgh, PA, 2020-Ohio-1579, 2020 Ohio LEXIS 1009 (2020)). Under the facts of that case, the court stated that "the operative contract language is not the reference to policy coverage for 'those sums' but rather to injury or damage 'that takes place during the Policy Period.'" There was "no reason to allocate liability across multiple insurers and policy periods if the injury or damage for which liability coverage is sought occurred at a discernible time. In that circumstance, the insurer who provided coverage for that time period should be liable, to the extent of its coverage, for the claim." The court distinguished cases where it applied all sums allocation, noting that those cases involved progressive environmental pollution and asbestos bodily injury claims.

In the long-running Montrose environmental coverage litigation, the California Supreme Court adopted a vertical exhaustion requirement, allowing the policyholder to access coverage under any excess policy upon exhaustion of directly underlying excess policies for the same policy period (Montrose Chem. Corp. of Cal. v Superior Court, 9 Cal. 5th 215, 260 Cal. Rptr. 3d 822, 460 P.3d 1201 (2020)). Relying on the policies' "other insurance" clauses, the court rejected the horizontal exhaustion method advocated by the insurers, noting that none of those clauses clearly or explicitly states that Montrose must exhaust insurance with lower attachment points purchased for different policy periods.

Construction Defect

Cases across the country have reached differing results as to whether defective construction is an "occurrence" or "accident" under general liability policies (see S.M. Seaman and J.R. Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 9th Ed. 2020-21) at Chapter 16 (Construction Defect Losses)).

In a unanimous decision, the Michigan Supreme Court held that an "accident" could include faulty subcontractor work that was unintended by the insured, thereby constituting an occurrence under a CGL policy (Skanska United States Bldg. v M.A.P. Mech. Contractors, No 159510-159511, 2020 Mich. LEXIS 1194 (29 June 2020)). The court rejected the insurer's argument that covering faulty subcontractor work would convert the policy into a performance bond, noting that "the CGL policy covers what it covers" and there is no basis to eliminate coverage because similar protections may be available under another insurance product.

Opioids Coverage

In the wake of the nationwide opioids epidemic, various state and local governments sued numerous entities involved in the manufacture, sale, distribution and prescription of opioid pharmaceutical products. Facing staggering potential liabilities, these entities have turned to their insurance companies for coverage under CGL and other policies.

In Acuity v Masters Pharm. Inc., 2020 WL 3446652 (Ohio App. Ct. June 24, 2020), the court reversed the trial court's ruling that

the insurer had no duty to defend a pharmaceutical distributor against opioid lawsuits. In finding a duty to defend, the court determined that, although the government entities were seeking their own economic losses, some of those losses, such as medical expenses and treatment costs, were arguably "because of" bodily injury. See also Cincinnati Ins. Co. v. H.D. Smith, L.L.C., 829 F.3d 771 (7th Cir. 2016). Other decisions have ruled in favor of insurers on this issue (Cincinnati Ins. Co. v Richie Enters., LLC, 2014 WL 3513211, at *5 (W.D. Ky. July 16, 2014); Travelers Property Cas. Co. of Am. v Anda, Inc., 90 F.Supp.3d 1308 (S.D.Fla.2015), *aff'd*, 658 Fed. Appx. 955 (11th Cir.2016)). It also rejected the insurer's argument based on the loss in progress or Montrose clause, ruling coverage for opioid claims would be barred only if the insured had knowledge of the specific injuries at issue.

In October, AIG-related insurers filed suit against McKesson Corporation, seeking a declaration that they are not obligated to cover lawsuits against the drug distributor for its role in the opioids epidemic. The insurers had denied coverage on multiple grounds, including that:

- their policies were not triggered because McKesson has not established that it exhausted or satisfied the self-insured retentions or limits underlying the policies;
- McKesson failed to provide the insurers with sufficient information about the underlying lawsuits for the insurers to evaluate coverage;
- the lawsuits do not stem from an accident, and therefore there was no occurrence;
- the underlying plaintiffs do not seek recovery for damages because of bodily injury;
- McKesson cannot show that the plaintiffs' damages were caused by bodily injuries that occurred during the respective policy periods;
- McKesson had knowledge of bodily injury prior to the policy periods; and
- McKesson expected or intended bodily injury to occur.

In October, the Ninth Circuit held that a doctor's professional liability policy did not coverage an opioid-related wrongful death claim (National Fire & Marine Ins. Co. v Estate of Diana Hampton, 19-17235 (9th Cir. 21 October 2020)). The insured doctor had admitted that he wilfully violated federal controlled substances laws, which resulted in the death of a Nevada woman. The court held that the policy's exclusion for any wilful violations of law "clearly applied" to the claim.

Other

Insurers are monitoring the Aqueous Film Foam (firefighting foam) claims, particularly with respect to environmental property damage claims, which are subject to MDL proceedings in the Federal District Court for the District of South Carolina. Sports-related concussion claims have resulted in numerous settlements and a class-action settlement for medical monitoring. The National Collegiate Athletic Association has a coverage action pending in Indiana state court. Wildfires have joined hurricanes and tornadoes as frequent producers of casualty claims.

Insurers are assessing the impact of expected policy changes and priorities of the Biden administration on claims. The emphasis on climate change may produce additional claims and claim types, but success in that area could reduce the frequency and severity of events such as hurricane and wild fires. The administration's emphasis in other areas, such as civil rights and consumer protection, will be watched as well.

Reinsurance

For nearly 30 years, the majority rule has been that the "reinsurance stated" limits in a facultative reinsurance contract capped a reinsurer's total liability for indemnity and defence costs (Bellefonte Reinsurance Co. v Aetna Cas. and Sur. Co., 903 F.2d 910 (2d Cir. 1990)). The New York Court of Appeals, in its 2017 Global Re decision, ruled that there is no blanket rule, and directed courts to look at the language of the particular reinsurance contract to determine the scope of the limits. Earlier this year, in Global Reinsurance Corporation of America v Century Indemnity Company, 2020 WL 995860 (S.D.N.Y. 3 March 2020), the district court concluded on remand after conducting an evidentiary hearing that the stated limit capped losses and also capped expenses where there are no losses, but did not cap expenses where there are losses.

In Utica Mut. Ins. Co. v Fireman's Fund Ins. Co., 957 F.3d 337 (2d Cir. 2020), the court ruled that a reinsurer was not obligated to pay the ceding company as a matter of law because the underlying asbestos-related bodily injury claims did not excess the attachment points of the reinsured umbrella policies. In reversing, the Second Circuit held that the follow the settlements doctrine does not override the terms of the reinsurance contract.

Finally, reinsurers are evaluating their exposures for COVID-19-related cessions (Seaman, S.M. and Lenci, E., "Reinsurers Must Prepare for Coronavirus-Related Claims", Law360 (9 April 2020)).

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Hinshaw & Culbertson LLP is a full-service US-based law firm with offices in Arizona, California, Florida, Illinois, Indiana, Louisiana, Massachusetts, Minnesota, Missouri, New York, Rhode Island, Texas, Wisconsin and London, England. For more than 80 years, domestic and foreign insurance companies have turned to Hinshaw for complete legal services. The firm's advice and representation spans the full range of matters, including insurance coverage litigation and counselling, bad faith and class actions, reinsurance, corporate transactional, cybersecurity and privacy, regulatory, insolvency insurance, emerging issues, and claims management. The firm is well versed in the full panoply of commercial and personal lines of insurance as well as reinsurance and risk transfer mechanisms. With a premier team of 130 diversified insurance lawyers, Hinshaw offers leading insurers breadth and depth that is second to none. Through its strategic alliance with the London-based firm RPC, the firm is transforming the delivery of legal services to insurers internationally.

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