

## PA District Court Holds Newly Formed Arbitration Panel Should Decide Consolidation Dispute

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In *Pennsylvania National Mutual Casualty Insurance Company v. Everest Reinsurance Company*, the U.S. District Court for the Middle District of Pennsylvania held that procedural issues relating to the interpretation of consolidation language in an arbitration provision should be considered by a newly-appointed panel, as opposed to the panel from an earlier arbitration involving different reinsurers.

At issue were a series of excess of loss reinsurance agreements between cedent Penn National and its reinsurer Everest. The excess of loss treaties contain an arbitration provision, which requires that all disputes between the parties be resolved through arbitration. The treaties' arbitration provision also contains consolidation language, which states that "[i]f more than one Reinsurer is involved in the same dispute, all such Reinsurers shall continue and act as one party for purposes of the article." When a dispute arose between the parties concerning Everest's obligations under the treaties, Penn National initiated arbitration. In response, Everest agreed to appoint a party arbitrator, but refused to participate fully in the arbitration, asserting that, by virtue of the consolidation language in the arbitration provision, the dispute should have been decided in an earlier arbitration between Penn National and two of its other reinsurers.

Although the parties agreed that the consolidation question should be decided by an arbitration panel, they disagreed as to which panel should decide. Penn National maintained that the issue should be decided by a new panel, and accordingly, filed a Motion to Compel Arbitration requesting that the district court order the appointment of a new panel. Everest asserted that the issue should be decided by the panel from Penn National's prior arbitration, and, accordingly, filed a Motion to Compel Arbitration requesting that the issue be sent to the earlier panel. In its opinion, the court found in favor of Penn National, holding that in order to send the dispute back to the prior panel, as Everest argued was required by the "mandatory" consolidation provision, the court would be required to interpret the mandatory nature of the provision – something the court found would be "inappropriate." Rather, citing the appointment of a new panel as the "baseline procedure" for addressing disputes between the parties, the court granted Penn National's motion and ordered the formation of a new panel to address consolidation-related issues.

The court also agreed to seal Penn National's arbitration demand and copies of the six treaties at issue, recognizing that Penn National has a "significant privacy interest in [its] reinsurance contracts." In so holding, the court reasoned that "[b]ecause the various [reinsurance] agreements are likely similar but not necessarily identical, disclosure of the precise terms of any one agreement could reasonably have a significant impact on Penn National's ability to negotiate other agreements with different reinsurers." According to the court, the potential harm to Penn National "substantially outweighs" the public's minimal interest in having access to "private commercial agreements" pertaining to a "private business relationship."

This case is significant because it addresses an argument that consolidation language in an arbitration provision is akin to the "entire controversy doctrine" often encountered in litigation (*i.e.*, that all parties with claims regarding the same transaction must litigate the matter in one lawsuit). This case is also noteworthy for the court's explicit, unequivocal recognition of a cedent's right to privacy in its reinsurance agreements.

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