MEALEY'S™ LITIGATION REPORT
Reinsurance

The Myth Of Bellefonte No More

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A commentary article reprinted from the June 19, 2015 issue of Mealey's Litigation Report: Reinsurance

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Commentary

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I. Introduction

For years, reinsurers have attempted to use the *Bellefonte* case to cap their liability. *Bellefonte* has thus served as a thorn in cedents' sides for some time. However, recent court decisions poke holes in the reinsurers' defense. For example, a recent decision in *Utica Mutual Insurance Co. v. R&Q Reinsurance Co.*, No. 6:13-cv-1332 (N.D.N.Y. June 4, 2015) demonstrates that courts will not apply *Bellefonte* as a defense in wholesale fashion, as the reinsurers advocate.

II. The Bellefonte Decision

In *Bellefonte*, the cedent had billed its reinsurers for sums in addition to the reinsurance accepted amounts identified in the reinsurance certificates.[1] The reinsurers claimed that they were not required to pay those amounts because the certificates capped the reinsurers' liability at the reinsurance accepted amount.

The Second Circuit agreed with the reinsurers, finding that the reinsurance accepted amount in the certificates at issue capped the reinsurers' liability. The court's decision turned on a provision in the certificates that made the reinsurance "subject to the . . . amount of liability. . . ."[2] According to the Second Circuit, that provision made the reinsurance subject to the reinsurance accepted amount and therefore the reinsurers were not required to pay more than that amount.[3]

III. After Bellefonte

Following *Bellefonte*, commentators roundly criticized the decision as inconsistent with reinsurance industry custom and practice.[4] Nevertheless, reinsurers relied on the decision and sought to expand its reach by arguing that reinsurance accepted amounts capped their liability even in the absence of clauses like that in *Bellefonte* that made the reinsurance "subject to the . . . amount of liability." And, despite any such differences in the terms of the certificates, many courts blessed those arguments.[5] Some courts even started to refer to a "presumption" that reinsurance accepted amounts in all certificates capped reinsurers' liability, contrary to the well-established principles that courts should interpret contracts according to their specific terms.[6]

These decisions ignored relevant differences between the certificates at issue in those cases and the certificates in *Bellefonte*. They also disregarded reinsurance industry custom and practice. Reinsurers obtained ruling after ruling limiting their liability at reinsurance accepted amounts when the language of the certificates did not support such a limitation.

IV. Reining In Bellefonte

But recent court decisions have started to turn the tide in cedents' favor. The rulings have recognized that courts should evaluate each contract based on the specific terms and provisions at issue. And the courts have refused to apply the result in *Bellefonte* where differences in contract language call for different outcomes.

For example, in *Utica v. Munich Re*, the Second Circuit reversed the trial court's ruling that the reinsurance accepted amount unambiguously capped the reinsurer's liability.[7] The Second Circuit found it particularly important that the certificate in that case did not contain the same "subject to the . . . amount of liability" as the certificates in *Bellefonte*.[8] Thus, the *Bellefonte* ruling did not apply. And, the Second Circuit rejected the notion that reinsurance certificates were subject to a categorical presumption that the reinsurance accepted amount capped the reinsurer's liability.[9] The court concluded that the certificate was ambiguous and remanded the case to the trial court for further proceedings.[10]

A Pennsylvania state court then followed in the Second Circuit's footsteps.[11] In that case, the reinsurer moved for summary judgment and argued that the reinsurance accepted amounts in its certificates capped its liability. The court denied the reinsurer's motion. Like in *Utica*, the court found it significant that the certificates did not make the reinsurance "subject to the . . . amount of liability."[12] And, like the Second Circuit, the court found that there was no presumption regarding the reinsurance accepted amount applicable to every single reinsurance contract.[13] Therefore, the reinsurance accepted amount did not necessarily cap the reinsurer's liability.

In a more recent decision, *Utica v. R&Q*, a federal district court in New York reached the same conclusion.[14] In that case, the court recognized that the result in *Bellefonte* did not necessarily apply because the reinsurer's certificate did not contain the same "subject to the . . . amount of liability" provision as the *Bellefonte* certificates.[15] Moreover, two other provisions in the certificate implied that the reinsurance accepted amount did not cap the reinsurer's liability.[16] Accordingly, the court denied the reinsurer's motion for summary judgment.

Even a recent decision in favor of a reinsurer demonstrates that courts should not disregard the pertinent provisions in the reinsurance certificates in dispute to follow the conclusion in *Bellefonte*. In that case, the court granted summary judgment to the reinsurer, Global, finding that the reinsurance accepted amount in the reinsurance certificates capped Global's liability.[17] After the *Utica* decision, the cedent moved the court to reconsider its earlier decision. The court denied the reconsideration request. The court explained that "the holding in *Utica* was based on the language of the particular reinsurance certificate at issue there, which differs from the Certificates here." Because the certificates at issue provided that the reinsurance was "subject to" either the "amount of liability" or "limits of liability" in each certificate, the court followed the conclusion in *Bellefonte*.[18] Importantly, even though the *Global* decision followed *Bellefonte*, it did so not with a blind eye to the relevant contract language. Instead, the court did so with a specific finding that the contract language at issue was similar to that considered in *Bellefonte*.

These recent rulings show that courts have finally returned to the contract principle of interpreting reinsurance contracts based on their actual terms. Cedents should take solace in these decisions and reinsurers should reconsider their opportunistic attempts to use *Bellefonte* as a talisman to cap their liability.

Endnotes

1. *Bellefonte Reins. Co. v. Aetna Cas. & Sur. Co.*, 903 F.2d 910, 911 (2d Cir. 1990).

2. *Id.* at 912-914; *see also Utica Mut. Ins. Co. v. Munich Reins. Am., Inc.*, 594 F. App'x 700, 704 (2d Cir. 2014) (recognizing that *Bellefonte* turned on this language).

3. *Bellefonte*, 903 F.2d at 912-914.

4. *See* Eugene Wollan, *Sing a Song of Reinsurance*, ARIAS-U.S. Quarterly (First Quarter Review 1999) ("Many members of the reinsurance community were shocked by Bellefonte and Unigard, not because they were inherently horrifying decisions, but because they ran in the face of long-standing industry practice."); Michael H. Goldstein, *Bellefonte Lives*, 8 Mealey's Litig. Report: Reins. 9, Sept. 24, 1997 (noting that *Bellefonte* "was met by almost universal condemnation and in some quarters ridiculed by insurance and reinsurance claims people"); P. Jay Wilker & Edward K. Lenci, *Much Ado About Nothing: A Response Regarding Bellefonte's Reach*, 9 Mealey's Litig. Report: Reins. 16, Sept. 24, 1998 ("The *Bellefonte* line of decisions

has been criticized as being contrary to the general custom and practice of the industry."); *id.* (expressing frustration that facultative reinsurers rely on *Bellefonte* as the rule "from sea to shining sea"); Michael H. Goldstein, *For Whom Does Bellefonte Toll? It Tolls for Thee*, 9 Mealey's Litig. Report: Reins. 12, Aug. 13, 1998 (noting that *Bellefonte* "has been roundly criticized in the reinsurance industry" and that commentators criticized *Bellefonte* as "utterly at odds with decades-old custom and practice").

This article does not address whether *Bellefonte* was correctly decided and does not address whether a reinsurance accepted amount can cap a reinsurer's liability where the certificate contains provisions similar to those in *Bellefonte*.

5. *See*, *e.g.*, *Utica Mut. Ins. Co. v. Munich Reins. Am., Inc.*, 976 F. Supp. 2d 254 (N.D.N.Y. 2013), *rev'd* 594 F. App'x 700 (2d Cir. 2014).

6. *Id.* at 264.

7. *Utica*, 594 F. App'x 700 (2d Cir. 2014).

8. *Id.* at 704.

9. *Id.*

10. *Id.* at 704-705.

11. *Century Indemn. Co. v. OneBeacon Ins. Co.*, 2015 Phila. Ct. Com. Pl. LEXIS 25 (Pa. Ct. Com. Pl. Mar. 27, 2015).

12. *Id.* at *6-8.

13. *Id.*

14. *Utica Mut. Ins. Co. v. R&Q Reins. Co.*, No. 6:13-cv-1332 (N.D.N.Y. June 4, 2015).

15. *Id.* at 14-15.

16. *Id.* at 15-18.

17. *Global Reins. Corp. of Am. v. Century Indemn. Co.*, 2014 U.S. Dist. LEXIS 113793, at *12-18 (S.D.N.Y. Aug. 15, 2014).

18. *Global Reins. Corp. of Am. v. Century Indemn. Co.*, 2015 U.S. Dist. LEXIS 50236, at *5-6 (S.D.N.Y. Apr. 15, 2015). ■

MEALEY'S LITIGATION REPORT: REINSURANCE
edited by Andrew McCue
The Report is produced twice monthly by

LexisNexis®

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Email: mealeyinfo@lexisnexis.com
Web site: http://www.lexisnexis.com/mealeys
ISSN 1049-5347