



Now You See It; Now You Don't: A Sixth Circuit Decision Regarding Reinsurance Agreements

By: Jonathan Bank and Rebecca Dircks

Last week, a court in the Sixth Circuit helped to clarify its position on the discoverability of communications and agreements regarding reinsurance. In doing so, it held that reinsurance agreements themselves are discoverable and that communications regarding reinsurance are only discoverable in certain circumstances. *First Horizon Nat'l Corp., v. Houston Cas. Comp.*, 2016 WL 5869580 (W.D. Tenn. Oct. 5, 2016).

At issue was whether the plaintiff insured was entitled to discovery of the defendant insurers' reinsurance agreements and communications relating to them. First examining the discoverability of the agreements themselves, the Court noted that Federal Rule of Civil Procedure 26(a)(1) requires production of "any insurance agreement" in the initial disclosures.

Now you see it:

The court went on to recognize prior precedent construing reinsurance agreements to be encompassed within the requirement and held that the agreements were discoverable.

Turning to the reinsurance communications, the Court stated that such communications could be discoverable if they reflect "the nature and extent of the Insurers' claims investigations, their interpretations of policies, and potential admissions on coverage."

Now you don't:

If, however, the insurers can establish, by affidavit or other evidence, that the communications relate only to the "insurers' business decisions to spread risk," the communications are not relevant or discoverable. Further, the Court held that, if the reinsurance is treaty insurance, under which the reinsurer agrees to accept an entire block of business from the insured, then the communications are not relevant to a claim of bad-faith denial of a claim.

This decision is an important one for the protection of an insurer's expectation of privacy regarding its communications with reinsurers and about its decisions to spread risk. Defendant insurers can now point to federal precedent protecting such communications as they relate solely to business decisions.

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