

New York Appellate Court Rules That Follow Form Excess Insurer Is Not Bound By Prior Ruling Regarding Scope Of Coverage For Underlying Policy

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Reversing a trial court decision, a New York appellate court ruled that an excess insurer is not bound by a prior judicial ruling finding coverage under the primary policy underlying the follow form excess policy. *Aspen Specialty Ins. Co. v. RLI Ins. Co., Inc.*, 2021 WL 1259156 (N.Y. App. Div. 1st Dep't Apr. 6, 2021).

The coverage litigation arose out of a bodily injury suit. In a separate case arising out of the same accident, a New York trial court ruled that Ironshore Indemnity, a primary insurer, owed coverage for the underlying claims based on an additional insured endorsement. In the present suit, Aspen sought a declaration that RLI, an excess insurer whose policy follows form to the Ironshore primary policy, is bound by that judicial determination. In response, RLI argued that it was entitled to relitigate the issue of whether Ironshore's policy provided additional insured coverage because RLI was not a party to the original action. A New York trial court ruled in Aspen's favor, and the appellate court reversed.

The appellate court ruled that RLI is not bound by the prior ruling under the law of the case doctrine because it was not a party to that action. For the same reason, the court declined to apply the doctrines of res judicata or collateral estoppel. Aspen argued that the prior judicial determination as to additional insured coverage under Ironshore's primary policy is binding on RLI because RLI's excess policy is a "follow form" policy that incorporates the terms of Ironshore's policy. Rejecting this argument, the court stated: "[a] follow-form policy was never intended to bind an excess carrier to a judicial interpretation of an underlying policy in a related but wholly non-controlling decision."

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