

New York Appellate Court Rules That Without “Cut Through” Clause, Original Insured Cannot Bring Suit Directly Against Reinsurers

06.30.21



(Article from *Insurance Law Alert*, June 2021)

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A New York appellate court affirmed a trial court’s dismissal of claims brought by an original insured against reinsurers. *Wells Fargo Bank, N.A. v. Lloyd’s Syndicate AGM 2488*, 144 N.Y.S.3d 590 (N.Y. App. Div. 1st Dep’t June 1, 2021). The appellate court held that the original insured was not entitled to bring direct suit against the reinsurers because the reinsurance policies did not contain a “cut through” provision allowing such claims. The appellate court stated that “the motion court correctly decided that plaintiff did not have standing because its interpretation of the contract would lead to an absurd result and is contrary to the parties’ reasonable expectations.”

The decision in *Wells Fargo* reflects the well-established legal principle that a reinsurance agreement is a contract of indemnity between a ceding insurer and a reinsurer, and does not create privity of contract between the original insured and the reinsurer. Courts have recognized an exception to this general rule where the reinsurance contract includes an express “cut through” provision granting the original insured a direct right of action against the reinsurer. However, case law in this context indicates that specific and clear wording is required in such clauses in order to be valid and enforceable. See *Jurupa Valley Spectrum, LLC v. National Indem. Co.*, 555 F.3d 87 (2d Cir. 2009).

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