

Reinsurer Has No Duty To Reimburse Cedent's Payments Notwithstanding Follow The Settlements Clause, Says New York Appellate Court (Insurance Law Alert)

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A New York appellate court ruled that a cedent was not entitled to reimbursement of defense costs it paid under its umbrella policies because the reinsurance policies did not cover such costs and a follow the settlements provision did not apply in such circumstances. *Utica Mutual Ins. Co. v. Abeille Gen. Ins. Co.*, 2022 WL 2092908 (N.Y. App. Div. 4th Dep't June 10, 2022).

Utica issued primary and umbrella policies to the underlying insured, who had been sued in an asbestos-related bodily injury action. Utica paid defense costs under the primary policies, but disputed its obligation to pay defense costs under the umbrella policies after primary policy exhaustion. Utica ultimately settled with its policyholder and agreed to pay defense costs and losses under the umbrella policies. Thereafter, Utica sought reinsurance. The reinsurer refused to pay, arguing that Utica had no obligation to pay under the umbrella policies, rendering reinsurance coverage unavailable.

A New York trial court agreed with the reinsurer, finding that the unambiguous terms of Utica's umbrella policy indicated that it did not cover the disputed defense costs and were thus not reinsured. However, the trial court declined to grant the reinsurer's summary judgment motion based on purported issues of fact relating to the follow the settlements doctrine. The appellate court modified the order and granted the reinsurer's motion.

The appellate court affirmed the trial court's ruling that the umbrella policies did not cover the defense costs in the underlying action. In addition, the court ruled that follow the settlements clauses in the reinsurance agreements did not require the reinsurer to reimburse Utica. While such clauses require a reinsurer to indemnify payments "reasonably within the terms of the original policy, even if technically not covered by it," they do not require reinsurance coverage where, as here, the payments are "clearly beyond the scope of the original policy."

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