

## **Scheduling Order Amended 2nd Time in Mass. Reinsurance Case**

BOSTON — A Massachusetts federal judge has agreed to amend the scheduling order for a second time in a dispute between SPARTA Insurance Co. and Pennsylvania General Insurance Co. (PGIC) over payment of claims relating to a stock purchase agreement and reinsurance contract, setting a discovery deadline of Aug. 25.

In a Jun 27 docket note, Chief Judge F. Dennis Saylor of the U.S. District Court for the District of Massachusetts ordered the parties to serve opening expert reports by Sept. 8 and rebuttal reports by Oct. 6.

Expert depositions must be completed by Oct. 27 and motions for summary judgment and oppositions must be filed by Nov. 7 and Dec. 5, respectively. Replies must be filed by Dec. 19.

In June 2005, PGIC and AEIC entered into a reinsurance agreement, under which AEIC's liabilities were transferred and assumed by PGIC.

SPARTA and PGIC entered a stock purchase agreement in March 2007, which resulted in SPARTA acquiring American Employers Insurance Co. (AEIC) from PGIC.

The parties agreed that SPARTA would obtain AEIC as a "clean shell" effectuated in part by the reinsurance agreement, with no liabilities remaining in AEIC after consummation of the transaction. The reinsurance agreement was incorporated into the stock-purchase agreement in several sections.

That transaction closed on Aug. 7, 2007. For more than 10 years, SPARTA and its affiliates tendered liabilities for insurance policies issued by AEIC, which were administered and paid pursuant to the stock-purchase and reinsurance agreements, SPARTA says.

However, in May 2021, SPARTA allegedly learned that claims made pursuant to AEIC policies were no longer being administered or paid. SPARTA contacted PGIC, seeking confirmation that PGIC would satisfy its obligations under the stock purchase and reinsurance agreements to administer and pay all claims arising out of AEIC policies. PGIC refused, according to SPARTA.

On Oct. 4, 2021, SPARTA filed a first amended complaint seeking declaratory judgments as to SPARTA and PGIC's rights under the stock purchase and reinsurance agreements.

In Count I of the FAC, SPARTA alleges that "for more than a decade, PGIC and/or its affiliates handled claims that SPARTA tendered to PGIC," but that recently "PGIC has failed to do so." SPARTA also alleges that "PGIC has repeatedly failed to confirm that PGIC will honor its contractual obligations," and seeks a declaration "based on the plain language of the 2007 SPA" that PGIC must honor those contractual obligations.

In Count 2, SPARTA claims the reinsurance agreement clearly requires PGIC to administer and pay claims made under AEIC policies.

SPARTA moved for judgment on the pleadings, arguing the agreements require PGIC to administer, pay, and indemnify SPARTA for claims. PGIC moved for judgment on the pleadings as to Count 1 on the ground that it should be dismissed for lack of ripeness.

The parties disputed whether the reinsurance agreement requires PGIC to administer claims, as opposed to indemnify claims. The agreement transfers "all of the liabilities and assets" of AEIC to PGIC and defines "assets" to include "direct insurance policies and endorsements in respect thereto." The agreement defines "liabilities" as including "unpaid losses and loss adjustment expenses and any and all liabilities" arising from the insurance policies and endorsements.

The reinsurance agreement also declares that "all liabilities of every nature and description shall attach to and be assumed by [PGIC] and may be enforced against [PGIC] to the same extent as if such liabilities had been originally incurred or contracted by [PGIC]."

PGIC argued the reinsurance agreement should be read in light of language in the stock-purchase agreement and treated as indemnity reinsurance, under which a reinsurer has a duty to indemnify claims but no duty to administer claims. SPARTA countered that the reinsurance agreement reflects an unambiguous commitment on PGIC's part to administer claims.

In a Jan. 13 order, Judge Saylor denied the parties' motions, ruling there are questions of fact as to whether PGIC was required to indemnify SPARTA. He explained it is unclear from the pleadings whether a novation took place between the parties.

The judge then allowed SPARTA to file the SAC, in which it asserted breach of contract claims against PGIC. SPARTA asserts that "PGIC's continued refusal to pay SPARTA for any of the monies that SPARTA has already paid has evolved into breach of contract claims."

SPARTA is represented by James Carroll, Catherine Fisher and Christopher Clark of Skadden Arps Slate Meagher & Flom LLP in Boston.

Counsel for PGIC are John Dew of Cohen Kinne Valicenti & Cook LLP in Pittsfield, Mass., and Reed Forbush, Samuel Kaplan and Maxwell Pritt of Boies Schiller Flexner LLP in San Francisco and Washington, D.C.

*SPARTA Insurance Co. v. Pennsylvania General Insurance Co*, No. 21-11205 (D. Mass.)

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