

Munich Re Awarded Summary Judgment in Reinsurance Brawl with Municipal Insurer

MONTGOMERY, Ala. — An Alabama federal judge has ruled that Munich Reinsurance America Inc. is not obligated to reimburse a municipal insurer for \$385,546 paid to the Town of Woodland, Ala., ruling that the sum is not covered under the parties' reinsurance treaty.

In an Aug. 30 order, Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama explained that because the sum represents expenses and fees that were incurred in a legal battle between Alabama Municipal Insurance Corp. (AMIC) and another insurer, it is not reimbursable under the treaty.

“The fact that AMIC accrued legal costs as a result of its dispute with a third-party insurer, outside the express boundaries of its contract with Woodland and its treaty with Munich, does not mean the court can attach a corresponding obligation to the treaty, which would effectively ‘make a new contract for the parties’ in violation of long-standing contract law,” Judge Thompson concluded. “This court is not at liberty to rewrite treaties in order to provide coverage not intended by the parties, in the absence of ambiguity or statutory provisions to the contrary.”

AMIC is a non-profit public insurer that provides Alabama municipalities with insurance coverage. Between 2005 and 2015, AMIC and Munich Re were parties to an annual “Casualty Excess of Loss Reinsurance Agreement,” under which Munich Re reinsured certain of the AMIC policies.

From 2015 to 2018 AMIC submitted reinsurance billings to Munich Re, seeking reimbursement for sums it paid to defend and/or settle lawsuits filed against member cities. Munich Re refused to pay and AMIC filed the instant action in May 2020, asserting five breach of contract claims against the reinsurer, seeking compensatory damages and prejudgment interest.

In the “Woodland Claim,” The Town of Woodland and its employee, Billy Edmondson, were sued as a result of a 2009 vehicle accident in which two passengers were injured. AMIC defended the lawsuit under its coverage document with Woodland, and in November 2010, a Georgia jury found Woodland and Edmondson liable, awarding one of the passengers \$3.65 million and the other passenger \$340,000.

The trial court later ruled that AMIC's policy limits of \$2 million applied, rather than the \$100,000 per person municipal cap under Alabama law. Woodland and Edmondson appealed the verdicts. AMIC appealed the ruling that its two-million-dollar limits applied.

In January 2011, the passengers sued AMIC for bad faith failure to settle within policy limits. AMIC tendered the action to its E&O insurer, Scottsdale Insurance Co., which defended the suit.

AMIC and Scottsdale settled the claims for \$2 million. AMIC contributed \$1.1 million to the total settlement - \$200,000 for what it perceived the tort liability cap and \$900,000 representing half of the remaining \$1.8 million.

Scottsdale contributed \$900,000, then filed a declaratory judgment action in the Middle District of Alabama against AMIC to recoup its contribution, arguing the \$900,000 was not covered under the E&O policy. Scottsdale also sought reimbursement for legal fees, costs and other expenses incurred to recover its payment.

The District Court ruled that Scottsdale had no duty to pay the \$900,000 because it was excluded under the E&O policy. It awarded Scottsdale reimbursement, plus costs and interest. The 11th Circuit U.S. Court of Appeals affirmed the judgment and remanded the case to award Scottsdale fees and expenses associated with the appeal. AMIC then paid another \$45,997.60 to Scottsdale's attorneys.

On April 24, 2015, AMIC billed Munich Re for the Woodland accident. Munich Re paid AMIC \$1,973,166.30, but refused to pay \$385,546.03, saying that amount was for expenses and fees not reimbursable under the treaty. In response, AMIC argued the action against Scottsdale was undertaken solely for the benefit of Munich Re.

AMIC sued Munich Re for the \$385,546.03. Munich Re, however, said those costs do not come within the 2008 reinsurance treaty's “Ultimate Net Loss” and are not reimbursable.

AMIC countered that Munich Re is liable for the sum because under the treaty's definition of “Ultimate Net Loss,” the reinsurer is obligated for

“all other reinsurances or insurances that may inure to the benefit of” Munich Re — “whether collectible or not.”

Judge Thompson explained that Munich’s obligations to AMIC were directly tied to AMIC’s obligations to Woodland, and AMIC has conceded that the costs for which it sought reimbursement from Munich Re are attributable to the legal battle between AMIC and Scottsdale, and did not arise directly from AMIC’s insurance obligations to Woodland.

Munich Re is not generally liable for costs that AMIC decided to pay above and beyond its obligations to its insured clients, the judge noted.

Judge Thompson found that a plain reading of the “Ultimate Net Loss” indicates that if AMIC were to recover sums from a third-party insurer, Munich would be allowed to deduct a corresponding sum of money from its reimbursement to AMIC.

Nothing in the provision’s language establishes that AMIC is affirmatively obligated to seek recovery, the judge found. Rather, it establishes only that, if and when AMIC should fail to recover money from a third-party insurer, Munich’s liability, correspondingly, “shall not increase.”

Judge Thompson agreed with Munich that because the additional litigation costs were accrued between AMIC and Scottsdale, they are not “legal expenses” for “coverage issues between [AMIC] and [Woodland].”

“In general, AMIC repeatedly argues that, because AMIC would have been obligated to reimburse Munich for any amount of the Woodland settlement that it was able to recover from Scottsdale, Munich is correspondingly obligated to reimburse AMIC for the money it spent while attempting to secure such a recovery. But AMIC fails to identify any specific provision of the treaty creating an affirmative obligation for AMIC to pursue recoveries from third-party insurers in circumstances such as these. Similarly, AMIC does not identify any aspect of the treaty explicitly creating an obligation for Munich to pay for legal expenses arising between AMIC and Scottsdale. Those obligations simply aren’t reflected in the text,” the judge concluded.

AMIC is represented by John Smith, Aria Allan, Steven Corhern and Thomas DeBray of Balch & Bingham LLP in Birmingham, Ala., and Montgomery, Ala.

Counsel for Munich Re are Connie R. Stockham, John Pocus and Hanna M. Thrasher of Stockham Cooper & Potts PC in Birmingham, Ala.

Alabama Municipal Insurance Corp. v. Munich Reinsurance America Inc., No. 20-300 (M.D. Ala.)

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