

New York Court of Appeals: Allocation of Settlement Under ‘Follow the Settlements’ Clause Binding on Reinsurer When Reasonable

The New York Court of Appeals remanded a complex decades-old reinsurance case for further factual determination last week on a settlement allocation issue. The case arose from United States Fidelity & Guaranty Company’s near billion-dollar settlement of asbestos related claims. USF&G then turned to reinsurers American ReInsurance to recover a portion of the settlement. One of the major issues was the allocation of the settlement—specifically, if a portion of the settlement was for the bad faith claims against USF&G. The New York Court of Appeals determined that a follow the settlements clause in a reinsurance treaty will make the settlement allocation binding on the reinsurer only when the allocation is reasonable. The Court remanded the Supreme Court’s grant of summary judgment in favor of USF&G, finding that substantial evidence called the insurer’s allocation of the settlement into question.

United States Fidelity & Guaranty Co. v. American Re-Insurance, No. 1 (N.Y. Ct. App. Feb. 7, 2013).