

## *Treaty Tips*

### **“Follow The Fortunes” Not Implied**

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One of the fundamental doctrines in reinsurance is the concept of “follow the fortunes.” This doctrine provides generally that a reinsurer must follow the underwriting fortunes of its reinsured and, therefore, is bound by the claims-handling decisions of its reinsured so long as there is no evidence of fraud, collusion with the insured, or bad faith. In *Employer Reinsurance Corporation v. Laureir Indemnity Company*, a Florida district court addressed whether this doctrine could be implied into a reinsurance contract where the contract did not expressly provide. The defendant, an insurer incorporated in Bermuda, argued that the absence of the clause constituted an ambiguity in the contract and that the court should allow custom to imply the clause into the reinsurance contract. The court disagreed, and after acknowledging that the parties negotiating a reinsurance contract are both sophisticated parties that could negotiate “an express” follow the fortunes clause into the agreement, concluded that it could not “go outside the laws of contract construction and outside the four corners of an unambiguous contract to add a



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fortunes of their reinsured*

clause that was not bargained for.” As such, the court granted partial summary judgment for the plaintiff/reinsurer on the issue of the “follow the fortunes” clause.