

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

SUMMARY ORDER

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 18th day of October, two thousand and six.

Present: HON. RICHARD C. WESLEY,
HON. PETER W. HALL,
Circuit Judges,
HON. BARBARA S. JONES
*District Judge.**

TRAVELERS CASUALTY & SURETY COMPANY, formerly known as the Aetna Casualty and Surety Company,

Plaintiff-Appellee,

- v -

(05-6189)

ACE AMERICAN REINSURANCE COMPANY, formerly known as CIGNA Reinsurance Company, formerly known as INA Reinsurance Company and Insurance Company of North America.

Defendant-Appellant.

*The Honorable Barbara S. Jones, of the United States District Court for the Southern District of New York, sitting by designation.

Appearing for Plaintiff-Appellee: JOSEPH SCHIAVONE, Bud Lerner PC, Short Hills, New Jersey (Vincent J. Proto, *on the brief*).

Appearing for Defendant-Appellant: WAYNE R. GLAUBINGER, Mound Cotton Wollan & Greengrass, New York, NY (James M. Dennis, Olga Sekulic, *on the brief*).

Appeal from the United States District Court for the Southern District of New York (Rakoff, J.).

1 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
2 **DECREED** that the judgment of the District Court be **affirmed**.

3 Familiarity by the parties is assumed as to the facts, the procedural context, and the
4 specification of appellate issues. This reinsurance collection dispute was brought by plaintiff
5 Travelers Casualty Company (“Travelers”) against defendants ACE American Reinsurance
6 Company (“ACE”) for breach of contract relating to ACE’s refusal to pay Travelers’ outstanding
7 billings on three three-year facultative reinsurance certificates (“Certificates”). The Certificates
8 provide reinsurance for excess insurance policies (“Policies”) issued by Travelers. The parties
9 are in agreement that the underlying Policies provide coverage up to certain *annual* aggregate
10 limits. They disagree, however, about whether the aggregate liability limits of the Certificates
11 also apply on an annual basis, or whether the Certificates provide for a *single* aggregate limit for
12 the three-year period of coverage. Obviously, an annual aggregate limit significantly enlarges
13 ACE’s liability exposure.

14 The Certificates contain a “follow the form” clause that states that the terms and

1 conditions of liability of the Certificates shall “follow” those of the Policies, “except as otherwise
2 specifically provided.” Item 2 of the Certificate Declarations states the amount of liability and
3 the application of the liability limits under the Policies; Item 4 states the amount of liability and
4 the application of the liability limits under the Certificates. Both use the term “each occ.-agg.” to
5 describe how the limits are applied. Neither “occurrence” nor “aggregate” is defined in the
6 Certificates. The terms are defined, however, in the Policies. Under the Policies, the “aggregate”
7 amount applies on an annual basis.

8 ACE argues that, because the Certificates do not contain the term “annual,” the district
9 court erred in finding that the aggregate limits of the Certificates apply on an annual basis. ACE
10 contends that the plain meaning of “aggregate” is a single aggregate limit. We disagree. Item 2
11 of the Certificates uses “agg” to describe the indisputably annualized aggregate limit of the
12 Policies. The same term is used in Item 4 to describe the aggregate limit of the Certificates. The
13 use of the term “agg,” therefore, does not “otherwise specifically provide” that the aggregate
14 liability limits in the Certificates do not “follow the form” of the Policies.

15 The follow the form clause required the district court to presume that the liability limits
16 of the Certificates applied in a manner concurrent with those of the Policies. That presumption is
17 not a matter of law, but a matter of simple contract interpretation. Because the Certificates do
18 not contain terms that specifically provide otherwise, the presumption of concurrence created by
19 the follow form clause is not rebutted. The district court was therefore correct in holding that the
20 aggregate limits of the Certificates, like those of the Policies, apply on an annualized basis.

21 Accordingly, for the reasons set forth above, the judgment of the District Court is hereby

1 **affirmed.**

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For the Court
Roseann B. MacKechnie, Clerk

By: