

United States Fid. & Guar. Co. v Excess Cas. Reins. Assn.
2009 NY Slip Op 09076
Decided on December 8, 2009
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
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Decided on December 8, 2009

Tom, J.P., Nardelli, Renwick, Freedman, Roman, JJ.

1684N 1684NA 1684NB 604517/02

[*1] United States Fidelity & Guaranty Company, et al., Plaintiffs-Respondents,

v

Excess Casualty Reinsurance Association, et al., Defendants-Appellants, American Re-Insurance Company, et al., Defendants.

Quinn Emanuel Urquhart Oliver & Hedges, LLP, New York (Michael B. Carlinsky of counsel), for appellants.

Simpson Thacher & Bartlett LLP, New York (Mary Kay Vyskocil of counsel), for respondents.

Orders, Supreme Court, New York County (Richard B. Lowe, III, J.), entered October 21, 2008, January 9, 2009 and January 23, 2009, which, inter alia, denied defendants-appellants' (reinsurers) motion to compel plaintiff (cedant) to disclose attorney-client communications, unanimously affirmed, with costs.

Our prior decision in [American Re-Insurance Co. v United States Fid. & Guar. Co.](#) (40 AD3d 486, 492-493 [2007]) held that cedant's waiver of the attorney-client privilege was limited to communications between its officer, James Kleinberg, and Robert Omrod, the in-

house lawyer whose advice Kleinberg disclosed at his EBT, regarding preparation of cedant's re-insurance bill. Our citation to *Kirschner v Klemons* (2001 US Dist LEXIS 17863, 2001 WL 1346008 [SDNY 2001]) ought to have made it clear that, based on cedant's representation that it did not intend to use "advice of counsel" as a defense, our finding of waiver did not extend to cedant's communications with any other attorneys concerning this subject matter. In view of cedant's concession, however, that it will not raise the "advice of counsel" defense and make any reference to attorney-client communications by cedant at the trial, we agree that the court should [*2]not permit cedant to raise this defense to reinsurers' claims, or refer to any such communications.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 8, 2009

CLERK

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