REINSURANCEFOCUS
reinsurance-related and arbitration developments

Treaty Tips:

The Scourge of Multiple Dispute Proceedings

BY ROLLIE GOSS

One sure cause of expense and frustration for parties to reinsurance contracts is the maintenance of multiple arbitrations or lawsuits concerning a reinsurance contract or reinsurance program. Multiple proceedings commonly present multiple problems, including: additional attorneys' fees; additional court costs; additional expert fees and other litigation expenses; additional demands on the time of the officers and employees of a party in conferring with counsel, providing depositions, assisting in responding to written discovery requests, consulting with outside experts and appearing at hearings or trial. Many of these demands may be perceived to be duplicative, whether or not they are. Worse yet, the maintenance of multiple proceedings increases the possibility of inconsistent or otherwise conflicting interpretations of contract provisions, conflicting principles for the administration of a contract or conflicting monetary awards.

These are not entirely academic issues. For example, inconsistent interpretations of the limit provision for more than one participant in a quota share treaty may result in unintended gaps in reinsurance cover. A recent illustration of the potential problems can be found in *Utica Mutual Ins. Co. v. Employers Ins. Co. of Wausau*, Case No. 12-1293 (N.D. N.Y. Sept. 26, 2013), where the court denied a motion to dismiss and to stay a case in favor of a prior-filed case, even though the parties and issues presented were substantially common, because there were some differences between the two cases.

While legal principles such as *res judicata*, collateral estoppel and stay may help mitigate the risks of multiple proceedings, the more efficient and effective way to manage such risks is by agreement. This can be done to some extent with broad consolidation provisions in the reinsurance contract. Consolidation provisions should state broad principles of agreement by the parties for the consolidation of all proceedings which substantially involve common parties, common claims, or which involve the interpretation or administration of the reinsurance contract. Consideration should be given to agreeing to consolidate proceedings involving multiple but related contracts in a single reinsurance program. Courts typically assign to arbitrators the responsibility for deciding whether multiple proceedings should be consolidated when consolidation is mentioned in the applicable contracts, and providing principles to guide the exercise of discretion by arbitrators should help to promote consistency and efficiency.

JB
JORDEN BURT LLP
25TH ANNIVERSARY