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NEW JERSEY APPELLATE COURT REVERSES \$90,000,000 TRAVELERS INSURANCE CASE

Friday, March 17, 2017 ~ Lawrenceville, NJ: On March 10, 2017, the Superior Court of New Jersey, Appellate Division, handed down its opinion in favor of plaintiffs in Ferguson et al v. Travelers Indemnity Company and Executive Risk Specialty Insurance Company, a \$90 million insurance coverage action. Szaferman, Lakind, Blumstein, & Blader, PC was plaintiffs' appellate counsel.

Plaintiffs were former shareholders in Lion Holding, Inc., an insurance holding company. Lion's principal operating companies were Clarendon America Insurance Company and Clarendon National Insurance Company.

In the early 1990's Clarendon hired Raydon Underwriting Management Company who arranged for Clarendon to write reinsurance policies as part of a program known as LMX. Raydon's assessment of the LMX program was flawed, causing Clarendon to sustain significant damages. Plaintiffs thereafter sold Clarendon but agreed to indemnify the new owners for up to \$50 million in losses and reduced the sales price by \$25 million. As part of the sale, plaintiffs retained a claim against Raydon.

Plaintiffs sued Raydon and were awarded \$92 million. This judgment was uncollectible.



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Plaintiffs then filed suit in the Superior Court in Mercer County New Jersey against Travelers Indemnity Company as successor to Gulf Insurance Company, Raydon's errors and omissions carrier, and Executive Risk Insurance Company (ERSIC), who had provided an excess indemnity policy on behalf of Raydon. However, in December 2013, Travelers commenced an action in Bermuda, without joining the Clarendon plaintiffs, and obtained a declaration that the Raydon policy was void. In Travelers' view, this eliminated its exposure on plaintiffs' claim against Raydon.

Travelers then moved to dismiss the New Jersey case arguing that the New Jersey plaintiffs should have intervened in the Bermuda case and that the New Jersey court was constrained to honor the finding of the Bermuda court. The New Jersey trial court granted that motion finding that plaintiffs, who had notice of the Bermuda action, should have intervened in that action and the failure to do so required dismissal of the New Jersey case. The lower court went on to find that, even were plaintiffs not required to intervene in the Bermuda action, they were bound by that court's judgment and, even were that not so, New Jersey was not the proper forum for the case against Raydon's insurers.

In a lengthy opinion, the Appellate Division disagreed. The appellate court found that any decision binding plaintiff to the findings of the Bermuda court violated plaintiffs' right to constitutional due process. In the Appellate Division's view, it was incumbent upon Travelers to have joined plaintiffs in the Bermuda action. The failure to do so deprived the Bermuda judgment of preclusive effect. Travelers had also argued that the Clarendon plaintiffs stood in the shoes of Raydon and for this reason they were bound by the Bermuda court's finding. The Appellate Division, however, found that the Clarendon plaintiffs were not in privity with Raydon; their interest was, in fact, hostile to that of Raydon. The Appellate Division also found that New Jersey was an appropriate venue for the litigation of plaintiffs' coverage claims because Travelers was licensed to do business in New Jersey and ERSIC was domiciled in New Jersey.

Plaintiffs were represented by Szaferman Lakind Partner Arnold Lakind, who observed, "We are pleased with the court's reasoning in this matter and await the opportunity to proceed in the appropriate forum."

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