REINSURANCEFOCUS
reinsurance-related and arbitration developments

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Treaty Tips

Addressing Non-Payment Contingencies

BY ANTHONY CICCHETTI (ANC@JORDENUSA.COM)

Two recent cases illustrate the potential for very different economic results depending on whether reinsurance parties provide in their agreement for an interest rate applicable to overdue payments. In the first, the agreement provided for an interest rate on overdue payments of 1.5% per month. The reinsurer, found to owe the cedent approximately $1 million, argued that a lower statutory interest rate should apply. Emphasizing that the parties had addressed the interest rate in the reinsurance agreement, the court held that the higher rate set forth therein must apply.

In the second case, a reinsurer withheld more than $32 million with respect to reinsured claims. The cedent ultimately prevailed and collected the full amount, but because the reinsurance agreement did not provide for a specific interest rate on overdue amounts, it was left to the court to decide the interest rate. Although the applicable state statute allowed for as much as 10%, the court cited a declining economy over the relevant period (2006-2008) and concluded that the appropriate rate should be the corresponding one-year constant maturity Treasury rate (CMT). The CMT ranged from a high of approximately 5% to a low of approximately 0.5% over that period. The absence of a specified contractual interest rate on overdue payment in this case may have cost the cedent hundreds of thousands, if not millions, of dollars.

A point or two here and there can really add up!