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Treaty Tips: Don't Leave It to a Court to Interpret The Parties' "Deems"

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The interpretation of the words "or so deemed" will dictate whether a reinsurer will be liable for reinsured losses under an excess loss workers' compensation and employers' liability reinsurance treaty. So concluded the U.S. Court of Appeals for the Third Circuit in *Princeton Insurance Company v. Converium Reinsurance (North America) Inc.*

Converium's obligation under the treaty to reimburse Princeton for reinsured losses was made "subject to" certain warranties. In the warranty at issue, the ceding company stated that "the maximum Employers' Liability limits are as follows, *or so deemed*: Bodily Injury by Accident - $500,000 each accident." Princeton issued a policy containing the "bodily injury by accident" limit in a state where the limit was unenforceable, and an Employers' Liability claim settlement of $4.4 million resulted. Converium sought a declaratory judgment to the effect that the warranty provision limited the reinsurer's liability for Employers' Liability claims to $500,000. The usual contract interpretation tussle ensued.

Princeton prevailed at the District Court level on the theory that Princeton had complied technically with the warranty, and if the parties had intended to limit the reinsurer's Employers' Liability exposure to $500,000, they would have done so explicitly and directly, not indirectly through the warranty. The Third Circuit disagreed, concluding that the lower court's analysis incorrectly ignored the "or so deemed" clause. Although the Third Circuit appeared to look more favorably on the reinsurer's argument, it found that the treaty wording was ambiguous and should have prevented the lower court from disposing of the matter on summary judgment. The judgment of the District Court was vacated, and the case was remanded for further proceedings.

"Or so deemed" interpretations could be a nightmare