REINSURANCEFOCUS
reinsurance-related and arbitration developments

JORDEN BURT LLP

Treaty Tips

Treaty Tips: Avoiding Gaps in Reinsurance Cover

BY ANTHONY CICCHETTI (ANC@JORDENUSA.COM)

Modifications to underlying policies can create reinsurance coverage gaps. In *Arrowood Surplus Lines Insurance Co. v. Westport Insurance Co.*, a reinsured unsuccessfully sought to close such a gap by resorting to a "follow the fortunes" provision in the reinsurance agreement. That agreement circumscribed the reinsurer's exposure to underlying policies that became effective after the inception date of the agreement (February 1, 1999) and with respect to occurrences thereunder before the agreement's termination date (August 18, 2000). The agreement gave the reinsured a "run-off" option. If exercised for an eligible policy, that option extended coverage to occurrences through the anniversary of the policy's inception date. The reinsured exercised the option for the underlying policy at issue, but the policy was modified to provide for coverage beyond one year. The Second Circuit concluded that the reinsurance agreement's express terms covered only occurrences in the initial one-year period of the policy. Moreover, the "follow the fortunes" provision was inapposite because it "cannot expand the express limits of coverage imposed by a reinsurance agreement." **The reinsured's failure to align its underlying exposure with its reinsurance when the policy was modified apparently resulted in no reinsurance cover for the claim at issue.**