

REINSURANCEFOCUS

reinsurance-related and arbitration developments

Treaty Tips:

The Service of Suit Provision

BY ROLLIE GOSS

One common provision in reinsurance agreements is a Service of Suit provision, which typically provides that the parties consent to the jurisdiction of “any court of competent jurisdiction.” The breadth of the traditional wording of this provision has led to problems. Some have argued, for example, that even if the reinsurance agreement contains a clear mandatory arbitration provision, the breadth of this language may make arbitration permissive rather than mandatory by preserving the right of the parties to sue instead in a court. In *Hazelwood Logistics Center, Inc. v. Illinois Union Insurance Company*, No. 4:13-CV-2572 CAS (USDC E.D. Mo. Feb. 28, 2014), the court recently held that a broad Service of Suit provision waived the right of a party to remove a case filed in a state court to federal district court, because the state court was competent to exercise jurisdiction over the dispute.

Such court opinions demonstrate that a broad Service of Suit provision may have unintended consequences, waiving other rights expressly provided for in a reinsurance agreement. Some parties have attempted to avoid such unintended consequences by maintaining the broad language of the Service of Suit provision but placing conditions on its application in either the Service of Suit provision or in other provisions of the agreement. Such drafting invites interpretation disputes, and the Hazelwood opinion shows that such efforts are not always successful. If one does not successfully foresee all potential adverse consequences, trying to name and exclude each such consequence will not be effective in accomplishing the purposes of the provision.

The better approach is to limit the Service of Suit provision to what the parties actually intend for it to accomplish. For example, if the real purpose of the Service of Suit provision is to facilitate the enforcement of any arbitration award by permitting the party which prevails in arbitration to file for confirmation of an arbitration award in the most convenient forum, the language should be limited to accomplishing that purpose. If the purpose is to specify how court actions shall be served on the parties to the agreement, the provision should be written to provide that information. Limiting the scope of the Service of Suit provision to its intended purposes, rather than trying to limit the application of the broad language just because such language is “traditional,” is the best way to avoid unintended adverse consequences.

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