

Reinsurance

Overview

Carlton Fields has a long-standing reputation for its knowledge of the insurance, reinsurance and financial markets, and the regulatory landscapes in which they operate. We apply that knowledge in high-risk reinsurance-related litigation and arbitration, the structuring of both routine and innovative reinsurance transactions, and general counseling on a wide variety of issues. In the reinsurance arena, our experience with many kinds of insurance and financial products strengthens our ability to serve the needs of our clients in reinsurance dispute resolution, reinsurance transactions, reinsurance counseling, and regulatory matters.

Our broad litigation practice for insurance companies contributes to our capabilities in the reinsurance area, enabling Carlton Fields to provide services on a cost-effective basis. For example:

- Carlton Fields has experience litigating and arbitrating issues with respect to insurance company products, operations issues, actuarial issues, accounting practices, the acquisition of entire books of business, sales practices, bad faith, breach of contract, and other claims issues.
- We have experience as counsel of record in hundreds of class actions, which routinely present complex procedural, insurance, and evidentiary issues.
- We handle cases involving hundreds of thousands or even millions of pages of documents and electronic data, for which we have developed a range of in-house and vendor-assisted computerized litigation support. Each matter is unique, and requires a customized approach in order to provide high-quality, cost-effective services to our clients.
- Several of our lawyers have written articles on electronic discovery issues, and have moderated and lectured at continuing legal education programs addressing e-discovery issues.

The following factors distinguish Carlton Fields' reinsurance practice from that of other law firms:

- Because our lawyers have been at the forefront of the creation and regulation of many of the innovative insurance products on the market, we understand these products and how they work. Such knowledge makes it easier to understand how to reinsure those risks effectively and efficiently, and how to devise realistic strategies for resolving disputes relating to such products that will accomplish the business goals of our clients.
- The breadth of our practical experience permits us to structure reinsurance agreements or programs effectively, and to advise clients on the best alternatives for reinsuring risks, either through traditional reinsurance or through other facilities or structures. For example: one of our lawyers formerly served on the board of a Bermuda reinsurer; another is a former CPA with deep knowledge of regulatory accounting; others follow the NAIC's activities relating to reinsurance and monitor legislative and regulatory activities.
- We are on the front lines of alternative risk transfer mechanisms, having represented a ceding insurer in the creation of an innovative catastrophe bond series.
- Our experience in handling high-stakes financial services litigation translates into cost-effective arbitration and litigation capabilities and results.
- Our reinsurance lawyers provide clients additional value through our award-winning reinsurance and arbitration blog, *Reinsurance Focus*. The blog provides updates on a broad range of reinsurance matters, including significant reinsurance and alternative risk transfer transactions, reinsurance legislation and regulations, trade associations, educational programs, and scholarly articles about reinsurance, as well as important court opinions addressing reinsurance issues and the arbitration process.
- Our lawyers have worked at major insurance companies and a trade association, and have served on the boards of directors of insurance companies.
- Carlton Fields monitors the activities of the NAIC, and our lawyers actively follow, among other matters, the activities of the NAIC's Reinsurance Task Force. The firm's lawyers have training and experience with generally accepted accounting principles (GAAP) and regulatory accounting principles (RAP).

Reinsurance Dispute Resolution Experience

Carlton Fields lawyers represent industry clients in the resolution of reinsurance disputes, including arbitrations, litigation, mediation, and settlements. The depth of our knowledge regarding insurance products, insurance company operations, and governing accounting principles provides a unique and informed perspective, allowing us in the course of our legal representation to understand and address the business issues central to such disputes.

Our reinsurance dispute resolution experience encompasses both life/health and property/casualty business, domestically and internationally. We have been involved in a broad array of reinsurance disputes, having prosecuted and defended claims ranging from the validity of a single loss under a facultative certificate or reinsurance treaty, to fraud and misrepresentation claims involving the potential rescission of an entire book of business. Our matters have addressed all commonly recurring issues, as well as many unique points of contract interpretation. For example, we have represented clients in cases addressing issues such as allocation, aggregation, number of occurrences, loss adjustment expenses, follow-the-fortunes/settlements, late notice, utmost good faith, claims cooperation, salvage and subrogation recoveries, inuring insurance and/or reinsurance, warranties, rescission, commutations, access to records, offset, reserving methodology and calculation disputes, reinsurance collateral, premium issues, the scope of ECO and XPL clauses, insolvency issues, and disputes involving captive-related issues, underwriting guidelines/standards, bad faith, claims handling, and other coverage issues.

Reinsurance Transactional and Counseling Experience

Carlton Fields' knowledge with respect to insurance company operations, actuarial and accounting principles, and insurance products contributes to our advice to clients on contractual and regulatory issues. Our representation of clients in litigation and arbitrations involving many of the kinds of issues that arise on the transactional side of our practice adds a valuable perspective to our transactional counseling. Carlton Fields' reinsurance transactional experience includes engagements in the following areas:

Counseling – Our lawyers provide counseling with respect to purchases and sales of reinsurers, loss portfolio transfers, sales of reinsurance books of business, purchases and sales of reinsurance underwriting management companies, jumbo reinsurance issues, termination of reinsurance relationships, relationships with brokers, and the formation and operation of reinsurance auditing and runoff companies.

Contract Structuring, Drafting, Negotiation – We negotiate and draft reinsurance agreements and trusts for quota share, excess of loss, facultative and retrocessional arrangements, covering general lines (e.g., life, health, annuity, and property) and specialized lines (e.g., workers' compensation, occupational accident, financial guaranty, and residual value). Our work with clients on matters involving intermediaries and other industry participants, such as managing general agency, reinsurance intermediary, and general underwriter agreements, rounds out our contractual counseling experience.

Alternative Risk Transfer Mechanisms – We have extensive experience in documenting and interpreting sidecars, traditional reinsurance, fully collateralized reinsurance and catastrophe bonds, in isolation and in combination as part of an integrated risk transfer program. We have represented a ceding insurer in the creation and issuance of three large fully collateralized catastrophe bonds, including two that were the largest in the history of the market when they were issued. We also have substantial experience in the formation and operation of offshore captive insurers.

Assumption Reinsurance – Carlton Fields lawyers have handled numerous assumption transactions, including, for example, drafting agreements to position companies in advance of their sale. We have also drafted and obtained New York Insurance Department approval for an alien surplus lines insurer that transferred its business to a licensed insurer through assumption reinsurance to release its NAIC Surplus Lines Trust Fund.

Run-Offs and Commutations – Our lawyers have represented a number of reinsurers in runoff and have helped design programs to commute or otherwise minimize exposure to cedents while protecting retrocession recoverables in a number of different lines.

Reinsurance Company Insolvencies – Carlton Fields lawyers have counseled both reinsurers and liquidators with respect to their rights and obligations in the insolvency and pre-insolvency contexts.

Due Diligence – Our lawyers have performed due diligence on reinsurance matters in mergers and acquisitions of insurance companies.

We also routinely counsel insurance and reinsurance clients on regulatory matters and represent them before state insurance departments. We have been retained as special counsel to state insurance departments on various matters. For example, a Department of Insurance retained Carlton Fields in connection with the Department's consideration of a controversial acquisition involving its largest domestic medical malpractice carrier.

Experience

Life/Health Reinsurance

We currently act or have acted as lead counsel in a number of significant life, long-term care and annuity reinsurance matters, on behalf of cedents, reinsurers, retrocedents and retrocessionaires, involving the following:

- Various engagements concerning a reinsurer's ability to enforce rate change provisions in YRT reinsurance agreements, which has been an emerging issue in the reinsurance sector in recent years.
- A cedent's duty to disclose issues pertaining to internal replacement life insurance policies, and a reinsurer's facultative underwriting obligations with respect to the same.
- The application of errors and omissions clauses to the policy issuance and underwriting process, and impact on a reinsurer's indemnity obligations.
- Represented a participant in hundreds of reinsurance treaties in the London Personal Accident reinsurance market involving a series of arbitrations in the U.K., and the defense of a major U.S. arbitration involving claims exceeding \$100 million. Our representation included advising on a strategic plan for managing and defending multiple arbitrations and lawsuits in this market, and representing the client in the U.S. arbitration and a related lawsuit.
- The scope of a reinsurer's indemnity obligations, and applicability of the follow-the-fortunes/settlements doctrine, to administrative errors in the policy issuance process.
- Agent/broker misconduct, follow-the-fortunes/settlements as it pertains to agent/broker misconduct/errors, and the interplay between E&O coverage and reinsurance cover;
- Fraud in the inducement (actuarial or underwriting misrepresentations).
- The duties of a cedent and reinsurer in the facultative submission process.
- Violations of treaty underwriting standards and guidelines.
- The rights of a reinsurer to contest claims ceded on an automatic basis.
- Recapture.
- The duty of utmost good faith.
- The scope of ECO/XPL provisions.
- Claims handling issues.
- Other contract interpretation issues or disputes concerning industry custom and practice in the life, LTC, and annuity reinsurance context.

Property/Casualty

Some representative matters in which our attorneys have recently acted in the property/casualty area include the following:

- Acted for cedents and retrocedents in numerous disputes with reinsurers and retrocessionaires regarding the collection of reinsurance recoverables.
- Represented a client in arbitration related to the aggregation of claims under the event wording of a catastrophe treaty.
- Secured a multimillion-dollar award for client with respect to asbestos billings, where the issues involved aggregation and follow-the-fortunes.
- Represented a client in an arbitration involving late notice and bad faith claims handling.
- Represented clients in arbitrations concerning the number of occurrences, allocation, annualization and aggregation issues related to clergy abuse, toxic tort, asbestos, pollution, and construction defect claims.
- Represented a cedent in an arbitration involving the scope of ECO and UNL provisions.
- Represented a major insurer of windstorm risks in resolving issues with its reinsurer.
- Represented cedents in disputes regarding the recoverability of commutation-related payments and follow-the-

fortune/settlements implications.

- Represented a client in a dispute concerning the recovery of declaratory judgment and bankruptcy-related expenses.
- Represent insurer in dispute with their managing general agent concerning various underwriting violations.
- Represent an insurer in various disputes with its agents concerning contingent commissions.
- Represent clients in matters regarding salvage and/or subrogation recoveries, including one in which the panel granted summary judgment on behalf of our client.
- Represented various clients in matters relating to insolvencies.
- Represented a leading aviation insurance pool in litigations to secure increases in LOCs, necessitated by 9/11 and other large aviation losses.
- Represented clients in multiple arbitrations involving surety bond claims.
- Prevailed in matters for insurers in disputes with their managing general agents regarding a variety of issues, including profit commissions.
- Devising and implementing a strategy for a global insurer to resolve a major reinsurance dispute with the reinsurance market.
- Obtained summary judgment in an arbitration on behalf of a client, which was also awarded the fees and costs of the panel in addition to compensatory damages.
- Acted in matters involving disputes between captive insurers and their reinsurers, as well as a dispute between an insurer and a captive acting as its reinsurer.

Pre-Dispute Counseling

In addition to litigating or arbitrating disputes, we are routinely engaged to assist cedents, reinsurers, retrocedents, and retrocessionaires in the pre-dispute process, whether by providing coverage opinions or counseling clients on contentious issues with their counterparties to resolve matters in advance of litigation or arbitration.

Drafting

Apart from contentious matters, we also represent or have represented clients in the drafting of reinsurance agreements, the review and preparation of treaty amendments, and the development or review of treaty wordings and guidelines.

Brokers and Agents

We have also handled many arbitrations and litigations between insurers and brokers and agents involving numerous issues, including underwriting violations, commissions, and agent misconduct.

Producer Owned Reinsurance Companies

We are also very familiar with the structure and operation of producer-owned reinsurance companies and other "captive" reinsurers, including tax issues relating to such entities, and have litigated various issues relating to such entities, including issues arising as a result of the bankruptcy of the owner of such entities. Some of these reinsurers have been domiciled in non-U.S. jurisdictions, such as Bermuda and the Turks and Caicos.

Reinsurance Transactional and Counseling Experience

- Counseling a reinsurer and its affiliates in complex cessions and retrocessions of life product risks involving entities operating in the United States, Asia, Europe, and Bermuda.
- Assisting in a loss portfolio transfer of medical malpractice risks from a group of medical facilities and providers to a major P&C insurer and reinsurer.
- Closing a commutation of a reinsurance treaty for a P&C insurer that sought to terminate its treaty with a large international reinsurer that had been downgraded by A.M. Best, and commuting a treaty with a group of Lloyd's Syndicates covering long-tail liabilities of a casualty insurer.
- Representing ceding and assuming companies in the structuring and documentation of complex P&C and life and health reinsurance treaties of various types, including consideration of risk transfer and related regulatory compliance issues.
- Representing the ceding insurer in the creation of a billion-dollar reinsurance program, which includes traditional reinsurance, umbrella cover, and the largest catastrophe bond ever placed. The cat bond provided a fully collateralized two-year reinsurance cover at a fixed price, which was sold to capital market participants, some of which do not participate in the traditional reinsurance market.

All Insights



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Fifth Circuit Suggests Question of Class Arbitrability Was for Arbitrator Not Court

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SDNY Concludes Arbitrators Did Not Exceed Authority in Interpreting Product Pollution Liability Exception to Policy's Pollution Exclusion

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Pennsylvania Court Finds Respondent's "Different Reading" of Arbitration Award Need Not Be Raised in a Timely Motion to Vacate, Modify, or Correct

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New York Appellate Court Finds Bankruptcy Trustee Not Bound by Arbitration Clause in Bankrupt Company's Engagement Agreement With Accounting Firm

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Court Affirms Ruling That Insured Cannot Recover From Captive Reinsurer or Affiliated Insurance Brokerage

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Illinois Federal Court Finds Futures Traders Are Estopped From Avoiding Operating Agreement's Arbitration Clause Where They Sought to Directly Benefit From Operating Agreement

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Court Compels FMLA Employment Dispute to Arbitration, Finding That Arbitration Agreement Delegated Arbitrability to Arbitrator and Agreement Appeared Not to Be Void or Unconscionable

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District Court Orders Insurer in Receivership to Arbitrate With Reinsurers, Rejecting Argument That Jurisdiction Rests With Receivership Court and That McCarran-Ferguson Act Preempts FAA

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Court Compels Arbitration Based on Merger Clause Incorporating Separate Agreement Into Contract Containing Arbitration Clause and Rejects Argument That Delay Precluded Arbitration

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SDNY Severs Arbitration Award to Confirm in Part and Vacate in Part

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Utah Court Stays Claims in Litigation Pending Completion of Arbitration

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Fireman's Fund Obtains Second Circuit Reversal in Long-Running Reinsurance Dispute Involving Asbestos Claims and Policies Without Aggregate Limits

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Southern District of New York Confirms Arbitration Award Finding Force Majeure Clause Did Not Apply to Excuse Performance Under Charter

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Court Affirms Ruling Putting End to Arbitration on Issue and Claim Preclusion Grounds

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Fourth Circuit Affirms Summary Judgment for Employer on Hostile Work Environment Claim, Vacates for Employer on Retaliation Claim

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Court Confirms Award in Favor of Reinsurer, Including Over \$400,000 in Attorneys' Fees

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Alabama Supreme Court Reverses Order Compelling Arbitration Based on Failure to Authenticate Arbitration Agreement

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Court Confirms Arbitration Award Against Parties Who Failed to Attend Arbitration

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District Court Compels Arbitration for Claims Against Supervisor Despite Plaintiff's Claims Regarding Never Seeing or Signing Agreement Containing Arbitration Clause

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District Court of Maryland Denies Motion to Dismiss Petition to Vacate Arbitration Award

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Fourth Circuit Determines Arbitral Panel in UK Is Foreign Tribunal for Purposes of Section 1782

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Hawaii Supreme Court Finds Arbitration Clause Not Applicable Where Defendants Fail to Comply With Statutory Arbitration Notice Requirements and Claims Did Not Fall Within Scope of Arbitration Clause

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Seventh Circuit Agrees Defendant Expressly Waived Right to Arbitrate by Withdrawing Arbitration Argument From Motion to Dismiss

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Ninth Circuit Finds LRRRA Preempts Washington Anti-Arbitration Statutes as It Applies to Risk Retention Groups Chartered in Other States

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Court Dismisses Professional Negligence Action Against Insurance Broker for Lack of Personal Jurisdiction

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Third Circuit Addresses Interplay Between LMRA and FAA and Affirms Arbitration Award in Favor of Union Under Collective Bargaining Agreement

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Second Circuit Upholds Injunction Against Arbitration Based on Prior Singaporean Judgment

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District of Massachusetts Finds Subsequent Arbitration Not a Collateral Attack on Confirmed Award

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Eleventh Circuit Affirms Confirmation of Arbitration Award Over Claims of Fraud, AAA Rule-Breaking, and Lack of Jurisdiction

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California District Court Confirms Arbitration Award Properly Conducted Under ICC Rules

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Northern District of New York Refuses to Change Credibility Determination Regarding Bench-Trial Testimony by Attorney Involved in Underlying Settlement Negotiations

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Court Upholds Arbitration Provision Despite Allegations of Fraud in Contract's Execution

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"Grossly Excessive" Arbitration Award Overturned Due to "Evident Material Miscalculation"

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Court Declines to Compel Arbitration Based on Third-Party Agreement

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Third Circuit Affirms Confirmation of Arbitration Award Despite Challenge That Damages Figure Was Completely Irrational

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Southern District of Texas Compels Arbitration Over Insured's Claim that Arbitration Clause was Unconscionable

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Kentucky District Court Confirms Arbitration Award Allocating All Environmental Contamination Costs to Petitioner

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Carlton Fields and FEMA Catapult NFIP to \$2.53 Billion of Reinsurance Protection With New CAT Bond

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Ninth Circuit Affirms District Court's Order Denying Motion to Compel Arbitration in Putative Class Action Where Defendant Failed To Prove Plaintiffs Assented to Arbitration Clause

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Former Employees Not Bound by Their Former Union's Arbitration Agreement

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Court Compels Arbitration of Balance Billing Dispute Under a California Health Plan, Severs Certain Unconscionable Provisions, and Rejects Class Arbitration Proceedings

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First Circuit Refuses to Vacate Arbitration Award Following Stock Dispute

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Fifth Circuit Affirms Arbitration Award and Finds Panel Was Fairly Constituted and Did Not Award Punitive Damages

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Nebraska Appellate Court Affirms Dismissal for Lack of Personal Jurisdiction in Suit Involving Breach of Reinsurance Participation Agreement

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Massachusetts District Court Appoints Arbitrator in Light of Parties Inability to Do So

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Eleventh Circuit Affirms District Court Order that Defendants Waived Arbitration

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District Court Enforces Mandatory Arbitration Clause, Despite State Law Prohibiting Such Provisions in Insurance Contracts

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Maryland District Court Finds Damages Award, Not Liability Award Was “Final” Decision Triggering Time to Challenge Award Under FAA

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Court Holds Former Director in Contempt Following Wild Reinsurance Dispute

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Without Jurisdiction or Authority to Review, California Appellate Court Dismisses Appeal of Trial Court’s Statement of Decision

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Ninth Circuit Affirms Denial of Motion to Compel Arbitration in Smartphone App Case Based on Obscure “Browsewrap” Arbitration Clause

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Second Circuit Affirms District Court’s Order as It Addressed Party’s Argument on Appeal

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Federal Court Dismisses Policyholder’s Third-Party Action Against Reinsurers

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Court Denies Petition to Vacate Arbitration Award Based on Judicial Estoppel

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Third Circuit Affirms Order Declining to Consolidate Reinsurance Dispute, but Vacates Order Denying Motion to Unseal

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Court Finds No Manifest Disregard of the Law or Exceeding of Powers in Upholding Arbitration Award Related to Dispute Over Earn-Out Payment

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Eleventh Circuit Clarifies Standard for New York Convention's Public Policy Defense to Foreign Arbitration Awards

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Connecticut Supreme Court to Consider Whether Parties Can Use FAA to Extend Time to Vacate Arbitration Award

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Second Circuit Finds Arbitrator Within Authority to Bind Absent Class Members to Arbitration

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Eighth Circuit Rejects Claim That Arbitration Clause in Retainer Was Unconscionable

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District Court Confirms \$220 Million Award, Finds No Manifest Disregard of Law

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Court Confirms Arbitration Award as Not in Manifest Disregard of the Law

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New York Appellate Division Declines to Enjoin Baltimore Orioles' Arbitration Against Washington Nationals

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Court Dismisses Reinsurance Litigation in Favor of Prior Pending Action

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Court Denies Motion to Set Aside Confirmation of Arbitration Award, Rejecting Arguments of Excusable

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California Court Finds Arbitration Agreement Invalid and Unenforceable as a Result of Economic Duress and Undue Influence

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Court Enforces Arbitration Agreement Incorporated Into “Notice to Employees”

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Texas Magistrate Denies Motion for Attorneys’ Fees Incurred in Seeking Confirmation of Arbitration Award

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Court Vacates Arbitration Award on Grounds of Evident Partiality

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Southern District of New York Holds That Arbitrator’s Refusal to Postpone Hearing and Consider Witnesses Not “Misconduct” Requiring Vacatur

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Court Denies Motion to Reconsider Order Compelling Arbitration

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SDNY Compels Arbitration Based on Severability Doctrine, Finds Fee-Shifting Clause Not Unconscionable

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Fifth Circuit Affirms Confirmation of Arbitration Ruling in Favor of Ameriprise Financial

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Court Orders Stay of New Arbitration Over Disputed Reinsurance Billings and Compels Parties to Proceed Before a Predecessor Arbitration Panel

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Oklahoma Supreme Court Reverses Course: Finds Arbitration Clause Printed on Shingles' Wrapping Did Not Bind Homeowner to Arbitrate

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Court of Federal Claims Finds HHS Offset Invalid Under Colorado's Insurance Liquidating Priority Scheme

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North Carolina Court Rules Reimbursement for Extracontractual Losses Discretionary

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Court Finds Medical Bill Reimbursement Claim Subject to "Biblically-Based Mediation and Arbitration"

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New York Court Compels Arbitration of Commercial Marijuana Dispute

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Court Confirms Arbitration Award Under FAA's Strong Presumption in Favor of Such Awards

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Ninth Circuit Reverses Dismissal of Case Involving Foreign Arbitration Award Based on Comity for French Appellate Ruling and Quasi in Rem Jurisdiction

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Second Circuit Affirms Judgment Confirming Arbitration Award in Favor of Labor Union Involving Alleged Non-Signatory to Collective Bargaining Agreement

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Court Compels Arbitration Based on Clause Incorporated Into Guaranty Agreement

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Second Circuit Confirms Arbitration Awards That Are (Literally) Out of This World

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Nevada Supreme Court Reverses Ordered Arbitration as the FAA Preempts NRS 597.995

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District Court Dismisses Petition to Confirm Interim Arbitration Award for Lack of Subject-Matter Jurisdiction

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District Court Compels Arbitration Citing Insurance Policy's "Service-of-Suit" Provision

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Employment Discrimination Claim Compelled to Arbitration Despite Arguments That "Clickwrap" Stock Incentive Agreement and Discovery Limitations Were Unconscionable

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District Court Compels Arbitration Pursuant to Operating Agreement

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Ninth Circuit Affirms Confirmation of Arbitration Award, Finding Plaintiffs Failed to Show Prejudice From Denial of Discovery

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Court Holds That Issue of Arbitrability Is for an Arbitrator to Decide Pursuant to Agreement

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Southern District Concludes That Invocation of AAA's Rules Subjects Arbitrability Questions to Arbitrator, Rejects Waiver Claim

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Intervenor-Defendant Obtains Stay of SDNY Action in Favor of Arbitration 14 Months After Complaint Filed

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Could Concludes That Bankruptcy Discharge Does Not Affect Arbitration Clause

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District of Connecticut Enforces Amex Arbitration Clause Where Cardmember Did Not "Opt Out"

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UK High Court Declines to Sanction Transfer of Annuity Portfolio

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Court Holds Arbitration Provision Does Not Violate California's McGill Rule

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Court Stays Yacht-Wreck Coverage Action Pending Concurrent Proceeding to Vacate Arbitration Award in Favor of Insurers

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Court Directs Arbitration Where Plaintiff Acknowledges the Parties Agreed to Do So

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First Circuit Affirms Denial of Vacatur of Arbitration Award, Rejects Arguments That Parties Opted Out of FAA and Arbitrator Erred

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After Reviewing the Arbitration Record, Court Enters Default Judgment Confirming Default Arbitration Award

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SDNY Denies Class Certification in Action Alleging Rate Regulation Violations

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NDNY Finds Party Waived Right to Pursue Employment-Related Claims and Confirms Arbitration Award

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Ninth Circuit Concludes Defendant Waived Right to Seek Arbitration of Class Action

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NDNY Unable to Resolve Ambiguity in Umbrella Policies and Sets Trial

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Court Remands Arbitration Award to Arbitrator for Clarification

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Court Denies Reinsurer's Motion to Compel, Finding No Basis to Decide Issues Concerning Costs for Which Cedent Has Not Requested Payment

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Third Circuit Holds That Statute of Limitations Was Not Extended for Class Action Lawsuit

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Court Confirms Arbitration Award, Finding It Was Based in Part on "Plain Error," but Did Not Amount to Manifest Disregard of the Law

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Fifth Circuit Determines That Louisiana Nonresident Attachment Statute Allows for Attachment in Aid of Arbitration

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Applied Underwriters Overcomes Bid for Renewed Motion for Class Certification in Workers' Compensation Reinsurance Dispute

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Southern District of New York Rejects Claim That a Letter Threatening to Terminate a Reinsurance Agreement Terminated the Agreement

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New York Federal Court Punts Request for Foreign Reinsurer to Post Security Back to Arbitrators

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Fifth Circuit Holds Propriety of Class Arbitration Is “Gateway” Issue for Courts

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Maryland Federal Court Denies Untimely Request to Vacate Arbitration Award

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SDNY Dismisses Captive Reinsurer’s Counterclaims, Finding Reinsurance Agreement Never Rescinded and Cedent’s Duty to Cede Premiums Never Arose

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Ninth Circuit Affirmed That Non-Signatories Could Invoke Arbitration Clause Under Arizona Law

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Ninth Circuit Binds Plaintiff to Arbitration Clause It Never Received, Finding Clause Was “Readily Available” and Incorporated by Reference Into Purchase Order

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Third Circuit Affirms Arbitration Award for Employee’s Breach of Employment Agreement

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Court Refuses to Treat Unopposed Petition to Confirm Arbitration Award as a Motion for Default Judgment, Reviews the Merits of the Petition, and Enters Order Confirming the Award and Legal Fees

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Odyssey Reinsurance Obtains Summary Judgment in Fraudulent Transfer Case Against Owners of Agency Involved in Reinsurance Arrangement

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Court Holds Prior Compliance Is Not a Ground to Refuse Confirmation of an Arbitration Award

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Failure to Specifically Challenge “Delegation” Clause in Arbitration Agreement Means Motion to Compel Arbitration “Must Be Granted”

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District Court Grants Motion to Compel Arbitration, Finding Arbitration Provision Not Severable From Allegedly Void Contract

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Ninth Circuit Affirms Order Denying Arbitration, Applying Precedent That State Law Does Not Overcome the New York Convention's Signatory Requirement to Compel Arbitration

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Court Compels Arbitration Under the New York Convention and Dismisses Case in Windstorm Insurance Claim Dispute

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An Agreement to Arbitrate Is Not a Contract Defense Under Montana Law

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Second Circuit Affirms Ruling Rejecting Lack of Notice Defense Under New York Convention Article

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Ninth Circuit Denies Mandamus After District Court Compels Arbitration Based on Allegedly Inconspicuous Arbitration Provision

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Alabama District Court Enforces Arbitration Clause Related to Disability Policy Over Unconscionability Claim

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Court of Appeals Finds District Court Did Not Err in Lifting Stay Ordered to Refer Case to Arbitration

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SNDY Clears the Air, Finds Arbitrators Applied UAE Law in Determining Award in Aircraft Lease Agreement Dispute

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Second Circuit Adopts Standard for Determining Subject-Matter Jurisdiction Over Motions to Confirm Arbitration Awards Under FAA Section 9

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West Virginia Supreme Court Reverses, Finds “Delegation Clause” in Employment Arbitration Agreement Neither Ambiguous nor Unconscionable

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Court Finds Panel Did Not Manifestly Disregard Law When It Entered FINRA Award in Favor of Investment Firm and Advisors in Dispute over Fraud Committed by Late NFL Player’s Agent

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Confidential Reinsurance Agreement Made Public After Party Failed to Show Good Cause for Maintaining Confidentiality

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Southern District Confirms Arbitration Award Over Challenge Based on Failure of Arbitrators to Disclose Information

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U.K. Court of Appeal Prohibits “Spiking” in Mesothelioma Cases in Win for Reinsurers

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Fifth Circuit Affirms Ruling That Policy’s Conformity Provision Does Not Negate the Agreement to Arbitrate Despite Statute Prohibiting Arbitration Agreements in Insurance Contracts Covering Property

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Third Circuit Interprets Unique Arbitrability Language in Arbitration Clause

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California Court Denies Defendants’ Motions for Summary Judgment, Finding Evidentiary Support for Odyssey Re’s Fraudulent Transfer Claims

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New York Federal Court Finds Vacatur of Arbitration Award Not Warranted

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Carlton Fields and FEMA Catapult NFIP to \$2.12 Billion of Reinsurance Protection With New CAT Bond

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Court Finds Arbitration Panel Did Not Exceed Powers or Manifestly Disregard the Law in Confirming Award in Dispute Over Leasing of Oil Lands

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Eleventh Circuit Finds Removal Jurisdiction Is Included Within Federal Subject-Matter Jurisdiction Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

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Court Denies Reinsurers' Attempts to Avoid Suit

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Northern District of New York Declines to Imply a Follow-the-Fortunes or Follow-the-Settlements Obligation in Reinsurance Certificate

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New York Court Discusses Qualifying and Disqualifying Conditions for Umpires

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Tenth Circuit Finds No Jurisdiction to Hear Appeal of District Court Stay Order While Motion to Compel Arbitration Is Pending in Parallel Federal Court Proceeding

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Supreme Court's Lamp Plus Brings Ambiguity in Classwide Arbitration to Light

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Court Holds That Arbitration Award Was Final and Definite and Arbitrator Did Not Manifestly Disregard the Law

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Second Circuit Vacates SDNY Order Enforcing Arbitration Award Against Reinsurer

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Ninth Circuit Affirms Order Compelling Class Arbitration in Employment Dispute Involving Two Employment Agreements With Varying Arbitration Provisions

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Court Finds Jurisdiction Over Petition to Confirm Arbitration Award in Dispute Between Liquidator and Foreign Reinsurer

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Ninth Circuit Finds No Foreign Arbitration Award to Uphold

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New York Federal Court Rejects Attempt to Vacate Arbitration Award Related to Theft of Corporate Assets

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California Federal Court Enforces Arbitration Provision in Uber Agreements

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Arbitrator Found Not to Have Issued a Reasoned Award, SDNY Remands to Arbitrator for Clarification

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Fourth Circuit Holds That Arbitrator Exceeded Powers

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Connecticut Superior Court Holds That Consolidation Is a Procedural Question to Be Considered by an Arbitrator

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District Court Denies Summary Judgment to Trustee of Trust Account Maintained for Beneficiary of “Fronted” Reinsurance Program

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SDNY Vacates Amended Arbitration Award, Confirms Original \$39 Million Award, Finding Panel Exceeded Authority and Manifestly Disregarded Law

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California Appellate Court Holds U.S. Supreme Court’s Epic Systems Ruling Does Not Authorize Waiver

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Discovery Under Section 1782 Denied Based on Finding That Chinese Arbitration Organization Was Not a “Foreign or International Tribunal”

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Perspectives: 'Partial Final' Does Not Mean Final

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“Partial Final” Does Not Mean Final

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Court Rejects Attempt to Relitigate Arbitration Award

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District Court Declines to Decide Procedural Arbitrability Issue, Separately Seals Docket, Finding “Reasonably Significant Privacy Interest” in Reinsurance Treaties

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Ninth Circuit Dismisses Interlocutory Appeal, Finds Order Compelling Arbitration Not a “Final Decision” Under FAA

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Trial Deadlines Continued in Collection Action Filed by Reinsurer Related to Fraudulent Transfer Scheme

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D.C. Circuit Court Affirms \$1.2 Billion Arbitration Award to Gold-Mining Company

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Tenth Circuit Affirms Partial Enforcement of Arbitration Clause

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Second Circuit Finds Factual Issues Regarding Whether Limit of Liability in Reinsurance Agreements Include Loss Adjustment Expenses

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Ninth Circuit Holds Putative Class Action ERISA Claims Fall Outside Scope of Individual Arbitration

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Puerto Rico Addresses Impact of the NRRA

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Eleventh Circuit Reverses Order Compelling Arbitration Between Non-Signatories

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Financial Stability Oversight Council Determines Bank Holding Company Will Not Be Treated as a Nonbank Financial Company Post Merger

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Contract Claims Dismissed Against Reinsurers and Reinsurance Service Providers, but Negligence Claim

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Ninth Circuit Upholds Lower Court Rulings on Nurse Staffing and Work Break Arbitration Awards

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Fifth Circuit Finds That Arbitrator Exceeds Authority In Reforming Contract For Mutual Mistake

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Tenth and Eleventh Circuits Buck Other Circuits Requiring Higher Showing of Intent to Delegate Class

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Eighth Circuit Upholds Confirmation of Arbitration Award Directing Payment of Attorney's Fees and Expenses Unrestricted by Contractual Limit on Liability

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New Mexico Adopts NAIC Credit for Reinsurance Model Regulation

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Eleventh Circuit Reverses Sanction Imposed Against Party That Defaulted in Arbitration to Determine Whether Party Acted in Bad Faith

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Eighth Circuit Finds All Claims Involving Consumer Credit Dispute Subject to Arbitration

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Promissory Note Issued In Satisfaction of Unpaid Insurance Premiums Is Valid And Enforceable, Even If Allegedly Derived From Unapproved Reinsurance Agreement

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Federal Court in Puerto Rico Voids Marine Insurance Policy Based Upon Misrepresentation in Insurance

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Special Focus: Follow the Fortunes Doctrine

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Insurance Broker Must, at Its Own Expense, Produce Documents Requested by Subpoena Issued in Dispute

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Reinsurer Obtains Summary Judgment in Suit by Annuity Issuer

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Third Circuit Vacates and Remands Order Quashing Subpoena of Documents for Use in Litigation in Germany

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An Update on the Implementation of the US-EU Covered Agreement

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National Flood Insurance Program Extended to November 30, 2018

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Court Construes Reinsurance Participation Agreement, Rejects Venue Objection, and Confirms Arbitration Award

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Minority Shareholders Utilize 28 USC § 1782 to Issue Subpoenas in Aid of Criminal Action They Plan to File Against Company Director in Luxembourg

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Court Enforces Forum Selection And Choice Of Law Clauses In Worker's Compensation Reinsurance Participation Agreement

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New York Federal Court Confirms Arbitration Award

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Guiding FEMA Through Groundbreaking CAT Bond Reinsurance Transaction

AUGUST 15, 2018

The bond is a first-of-its-kind for the federal government; it is the first flood-only CAT bond and the only CAT bond issued on behalf of the NFIP.

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Tax Court Rejects Captive Insurance Company Status Under 501(c)(15)

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Florida Federal Court Dismisses Reinsurer's Agent From Breach of Contract Lawsuit

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California Court Grants § 1782(a) Application Seeking Subscriber Identity for Facebook Page Following Amendment of Application

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New Jersey Tax Court Finds That Companies for Which New Jersey is the Home State Must Pay Taxes on All Premiums Paid to Captive Insurers for U.S. Based Risks

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Alaska Follows Other States in Adopting Law Based on Updates to NAIC Credit for Reinsurance Model Law

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Court Finds That Apparently Inconsistent Forum Selection Provisions Do Not Render Arbitration Agreement Unenforceable

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New York Federal Court Awards Damages for Reinsurance Payments in Lawsuit Against Iran Related to September 11 Attacks

AUGUST 6, 2018

The Southern District of New York recently granted a motion for damages by insurance plaintiffs in a multidistrict litigation case against Iran stemming from the September 11, 2001 terrorist attacks.

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Rhode Island Amends Laws to Permit Voluntary Restructuring of Insurers Using Protected Cells with Commissioner Approval

AUGUST 2, 2018

Rhode Island has amended its laws related to voluntary restructuring of insurers and protected cell companies to allow for domestic insurance companies to enter into a voluntary restructuring, including the use of a protected cell, with the approval of the commissioner.

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Eleventh Circuit Reverses NLRB Order, Enforcing Individualized Arbitration Clause in Employee Agreement

AUGUST 1, 2018

A pizza delivery driver employed by Domino's Pizza franchisee Cowabunga Inc. filed a collective action under the Fair Labor Standards Act with the National Labor Relations Board.

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Court Orders Compliance with Arbitral Subpoenas, Deferring to the Panel's Assessment of the Value of the Requested Testimony

JULY 31, 2018

In a case that had been filed and then stayed in a New York federal district court in connection with an ongoing arbitration involving alleged violations of federal securities laws, the plaintiffs filed a motion to enforce two subpoenas issued by the arbitrators.

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Two Federal Appellate Courts Decline to Find "Evident Partiality" Due to Trivial Omissions in Arbitrator's Disclosures

JULY 30, 2018

In two separate appellate decisions, two circuit courts of appeal declined to overturn orders enforcing arbitration awards where the appellants had challenged the respective awards based on "evident partiality" under the FAA.

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U.S. Tax Court Finds Captive Insurer Is Not an "Insurance Company" Under the Internal Revenue Code

JULY 26, 2018

The U.S. Tax Court held that Reserve failed to qualify as an insurance company for federal income tax purposes under the Internal Revenue Code section 501 (a), (c)(15), which provides for the tax-exempt treatment of income received by insurance companies that meet certain criteria.

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California Federal Court Finds Defendant Did Not Wave Right to Arbitrate Despite Delay in Initiating

JULY 25, 2018

Plaintiff argued that Defendant's basis for removal was not applicable because Defendants waived their right to arbitration or because the case is not related to the agreement containing an arbitration provision.

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First Circuit Holds Online Mandatory Arbitration Agreement is Unenforceable

JULY 24, 2018

The First Circuit recently held that an arbitration clause contained in the online contract of the ride sharing app, Uber Technologies, Inc., is unenforceable under Massachusetts law.

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New York Federal Court Finds Section 1782 Petition Can Reach Documents Abroad

JULY 23, 2018

In a petition brought under 28 U.S.C § 1782, petitioner sought discovery of documents outside the United States.

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Texas High Court Declines to Enforce Compel Arbitration Against Non-Signatory

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Northern District Of New York Allows Evidence That Follow The Fortunes Or Follow The Settlements Provision Could Be Implied In Facultative Reinsurance Certificates

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Second Circuit Joins Sister Circuits in Holding Party-Appointed Arbitrators Not Subject to Same Disclosure Requirements as Neutral Arbitrators

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NAIC Publishes Exposure Drafts of Proposed Revisions to Credit for Reinsurance Models to Implement the Covered Agreement

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