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TransRe Defeats Berkshire's Asbestos Liability Suit

By **Bibeka Shrestha** 0 Comments Share us on:

Law360, New York (November 15, 2013, 4:14 PM ET) -- Transatlantic Reinsurance Co. and its parent Alleghany Corp. on Thursday beat two Berkshire Hathaway Inc. companies' lawsuit claiming they had used deceptive practices to rid themselves of "crippling" asbestos liabilities.

Judge Thomas Billings granted the defendants' motion to dismiss the suit, in which Resolute Management Inc. and National Indemnity Co. accused TransRe of unjustifiably withholding amounts it owed under reinsurance contacts with insurers that NICO and claims adjuster Resolute represented.

The plaintiffs accused TransRe and Alleghany of interfering with their ability to meet their contractual duties to the insurers, which hired NICO and Resolute to resolve their asbestos injury claims and to recover amounts owed under reinsurance contracts.

After holding that New York law applied to the dispute, Judge Billings tossed NICO's three claims for tortious interference, pointing out that there was no allegation that the defendants' interference had caused NICO to breach any of the three contracts, a legal requirement in New York.

The judge also held that Resolute's claims of tortious interference failed because the contracts at issue were only between NICO and the other insurers, and Resolute had no contractual relationships with the insurers.

Moreover, Resolute and NICO's claim of unfair and deceptive acts did not pass muster because these alleged acts did not primarily occur in Massachusetts, the ruling said.

Judge Billings noted that the parties were headquartered in Nebraska and New York and incorporated in those states or Delaware. The conduct at issue took place in New York and caused an injury in Nebraska, he said.

"The 'center of gravity' of the dispute between National Indemnity and the defendants ... lies somewhere west of the Massachusetts-New York border," Judge Billings said. "Count IV therefore fails to state a claim."

Resolute and NICO claimed that TransRe had resorted to the allegedly unfair tactics because their "efficient resolution" of asbestos injury claims and "prompt collection" of reinsurance payments had threatened TransRe's business model. They alleged that that TransRe held hostage the amounts that it owed under reinsurance contracts with NICO's clients to pressure NICO into relieving the reinsurer of its asbestos obligations for "below-market" and "irrational" rates.

According to the suit, TransRe unjustifiably prolonged the reinsurance collection process and acted in bad faith in mid-2012 and in 2013, after Alleghany acquired TransRe.

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NICO, too, had tried to pick up TransRe, only to see its offer rejected by the reinsurer, which until 2010 was owned by American International Group Inc., the order said.

Attorneys for the parties were not immediately available for comment Friday.

TransRe and Alleghany are represented by Joseph D'Ambrosio of Ford Marrin Esposito Witmeyer & Gleser LLP.

Resolute and NICO are represented by Bryce Friedman and Andrew Amer of Simpson Thacher & Bartlett LLP.

The case is Resolute Management Inc. et al. v. Transatlantic Reinsurance Co. et al., case number SUCV2013-01597, in the Superior Court of Suffolk County, Commonwealth of Massachusetts.

--Editing by Elizabeth Bowen.

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