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SAUL EWING
LLP

REINSURANCE INSIGHTS

Prepared by Saul Ewing's Reinsurance Group

EXECUTIVE SUMMARY

Welcome to the First Edition of Saul Ewing's Reinsurance Insights. This update summarizes select court decisions, regulatory developments, industry forecasts, and emerging topics, with an emphasis on issues likely to impact claims handling, dispute strategy, and compliance. It is designed as a practical, counsel-focused digest: what changed, what it means, and what to do next.

In this edition, we address:

1. Grounds for vacating an arbitration award under the Federal Arbitration Act;
2. Federal jurisdiction for confirming or vacating an arbitration award;
3. Maintaining confidentiality when seeking court intervention associated with an arbitration;
4. Whether a reinsurer to a self-insured employer is entitled to reimbursement from the Massachusetts' Workers' Compensation Trust Fund for any cost of living adjustments that it paid to the employer's injured worker;
5. Late notice; and
6. Contribution when an insolvent insurer can only pay a portion of an allowed claim.

This update is not exhaustive. We selected decisions and regulatory items based on relevance, novelty, practical impact, and significance. Summaries are for informational purposes and should be evaluated in light of specific contract language and facts.

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REGULATORY & MARKET DEVELOPMENTS

Trump Administration Shows Interest in Asset-Intensive Reinsurance

By William Latza

In a development that may have implications for asset-intensive reinsurance ("AIR"), there was a meeting on May 7, 2026 between Secretary of the Treasury Scott Bessent and a delegation of State insurance commissioners led by NAIC President-Elect Elizabeth Dwyer of Rhode Island to "share perspectives on the intersection of private credit and insurance." Although their regulatory focuses are not always the same, Secretary Bessent emphasized the need for fit-for-purpose regulation that encourages innovation while appropriately managing risk and said, "Like all of you, my team at Treasury is monitoring the transformation of the U.S. life insurance industry and trends in private credit. I look forward to our continued engagement as we monitor the developments in both markets."[1]

Background

AIR refers to transactions for which the key element is performance of the underlying assets; more so than any mortality or other biometric risk. The International Association of Insurance Supervisors has stated:

> Investment and related risks are a significant part of the risk transferred in AIR transactions. These types of risk transfer are more common for capital-intensive liabilities such as annuities and certain life insurance products, where substantial reserves are needed, requiring a correspondingly large level of assets to support them. In these transactions, cedents can benefit from capital relief, risk reduction and indirect access to a broader universe of investable assets. Asset-intensive reinsurers are often affiliated or partnered with asset managers, and can benefit from growth in assets under management, discretion over asset selection and the potential for higher investment spreads.[2]

By one report, approximately one-third of insurer assets are now invested in private credit, often through the use of offshore reinsurance. Assets reinsured in the Cayman Islands alone increased from $23 billion in 2020 to $101 billion so far this year. Secretary Bessent reportedly queried "the movement of U.S. life and annuity reserves to offshore jurisdictions" during the meeting.

Broadly speaking, the private credit market is where lending is done outside of the bond market by firms that are not banks but instead are investment funds.

Benefits and Risks

There are many benefits to matching private credit assets (directly or indirectly via reinsurance) with long-duration liabilities (*e.g.*, pension obligations,

annuities, and some forms of life insurance). For example, AIR can facilitate an insurer's change in strategic focus by freeing capital from non-core businesses to pursue new areas and execute strategic plans. AIR can also address financial pressures from low investment income and increased liability costs. Emerging trends in AIR include:

- Block reinsurance transactions now include more complex liabilities such as universal life with secondary guarantees, long-term care, and variable annuities, which are often combined with other types of liabilities in a single transaction.
- Asset-intensive reinsurers are offloading biometric and policyholder behavior risk to traditional reinsurers.
- Flow reinsurance transactions – where new business is ceded on an ongoing basis – are increasing.

However, there are risks arising from two inherent characteristics of the private credit market: illiquidity and opacity.

Firstly, private credit funds allow their managers to limit redemptions to 5% of shares each quarter, to avoid selling illiquid loans in a panic. By one report, redemption requests now exceed that limit, which in turn is causing more investors to ask for their money back.

Secondly, the familiar disclosures associated with public companies are largely absent. Some feel this feeds concern about the quality of the underlying loans and so feeds a spiral of redemptions.

» Key Takeaways

Those considering AIR transactions should consider that State insurance regulators have worked to ensure that assets (wherever located) are adequate to liabilities. In particular:

- The NAIC has strengthened asset adequacy testing under Actuarial Guideline ("AG") 53;
- The NAIC has adopted AG 55 to require additional disclosures and testing; and
- Some States are considering that in some circumstances an investment advisory or investment management agreement – even in the absence of 10% ownership – may result in an acquisition of control with consequent regulatory authority over terms and conditions of such agreements.

It remains to be seen whether the Trump administration will address AIR and what might be the effect on private credit or AIR. To paraphrase Jeff Goldblum in "Jurassic Park," life insurance will find a way.

FEATURED COURT DECISIONS

Employer's Reinsurance Corp. v. Workers' Compensation Trust Fund

106 Mass. App. Ct. 495, 276 N.E.3d 713 (2026)

By Marshall Dworkin

This case addresses whether a reinsurer to a self-insured employer is entitled to reimbursement from the Massachusetts Workers' Compensation Trust Fund ("Fund") for any cost-of-living adjustments ("COLA") that it paid to the employer's injured worker after the employer files for bankruptcy. The Appellate Court overturned an administrative board's decision, and determined that the reinsurer was entitled to reimbursement for COLA payments it made to the employer's injured worker.

Background

As background, the Fund is a state fund that provides workers' compensation benefits to injured employees whose employers were illegally uninsured. It also provides partial or complete reimbursement to insurers paying certain types of compensation. The Fund is supported by assessments imposed on employers and collected by insurance companies and self-insurers who forward the assessments to the Fund. Self-insurers and public employers can opt-out of paying the assessments, but they lose the ability to obtain reimbursement from the Fund.

In this case, Polaroid was the self-insured employer that, as required by regulations, maintained a bond—through Greenwich Insurance Company ("Greenwich")—to guarantee worker's compensation payments if it ceased to do business, and obtained reinsurance through the plaintiff for "extraordinary losses."[3]

In 1986, an injured employee became totally and permanently disabled due to a workplace accident. Thereafter, Polaroid paid her benefits, including COLA, and received reimbursement from the Fund for a portion of those COLA payments. Upon satisfying its deductible, plaintiff-reinsurer also reimbursed Polaroid for the base benefit payments made, but not for any COLA payments. After Polaroid filed for bankruptcy in 2004, Greenwich paid both base benefits and COLA to the injured employee, but plaintiff-reinsurer only reimbursed Greenwich for the base benefits. The bond was exhausted in 2013.

As a result, the injured worker filed a claim with the Department of Industrial Accidents ("Department") against plaintiff-reinsurer to continue paying benefits. The administrative judge ruled that the injured employee was entitled to benefits and COLA payments from the Fund, and the Fund could seek reimbursement from plaintiff pursuant to the reinsurance contract. On appeal, the administrative board reversed and held that plaintiff-reinsurer was required to pay both base benefits and COLA benefits directly to the injured employee without reimbursement. In May 2017, plaintiff-reinsurer filed a claim for reimbursement of COLA payments with the Fund, which was

denied. Plaintiff-reinsurer instituted this action in 2018 with the Department against the Fund seeking reimbursement for COLA payments since it was never obligated to make such payments to Polaroid under their reinsurance agreement.

Initially, the administrative judge and board both found that plaintiff-reinsurer was not eligible for reimbursement for the COLA payments because plaintiff-reinsurer "did not participate in the system by writing insurance and/or collecting and remitting assessments."[4] Plaintiff-reinsurer appealed to the Appellate Court.

The Court's Reasoning

The Appellate Court noted that the statute which governs the Fund provides that the Fund shall ***not*** provide benefits to any (1) non-insuring public employer, (2) self-insurer, or (3) self-insurance group which "has chosen not to participate in the [Fund]." In this case, Polaroid was a self-insurer that participated in the Fund at the time of the injury, and neither Polaroid nor plaintiff-reinsurer fell into any of the three exceptions. The Court emphasized that these are the only three categories of employers who are ineligible for reimbursement, which "does not include insolvent employers." While the Appellate Court noted that it previously recognized the board's creation of a fourth category—insurance companies in run-off who no longer collected or transmitted Fund assessments—this category was subsequently overruled in *Home Insurance Co. v. Workers' Compensation Trust Fund*, 88 Mass. App. Ct. 189, 36 N.E.3d 600 (2015). If a participating employer became insolvent, it would be the "other participating employers, not the insurance companies, that would have to make up the loss in trust fund revenues."[5] Therefore, plaintiff-reinsurer was entitled to reimbursement under the statute.

The Fund also argued that plaintiff-reinsurer was not an insurer, and COLA benefits could only be "paid by the insurer."[6] The Court, however, quickly disposed of this argument (raised for the first time on appeal) by noting that an "insurer" as defined in the relevant statute is "any insurance company....which has contracted with an employer to pay the compensation provided for by this chapter," which includes self-insurers and public employers. Moreover, as a matter of law, plaintiff-reinsurer paid all benefits directly to the employee, as the policy required the reinsurer to "further guarantee payment of compensation to the employee." The Appellate Court noted that if plaintiff-reinsurer was not an insurer before Polaroid's bankruptcy, "it is now."[7]

As such, the Appellate Court reversed and remanded the administrative judge's and board's determination, stating that plaintiff-reinsurer was entitled to reimbursement from the Fund for payments it made to the injured employee.

"The Legislature has stated that three categories of employers are ineligible for reimbursement—those that chose to opt out of the trust fund—which does not include insolvent employers."

Hamilton Managing Agency Limited v. ICI Mutual Insurance Company

No. 2:25-mc-00079-cr, 2026 WL 1006464 (D. Vt. Apr. 14, 2026)

By Stephanie Denker

This case analyzes whether to vacate an arbitration award under three different bases: (1) evident partiality, (2) exceeded the arbitrator's powers, and (3) manifest disregard of the law. The court found that none of those bases existed and confirmed the arbitration award.

Background

ICI Mutual Insurance Company ("ICIM") issued a primary-level insurance policy with a $100 million limit, which Hamilton Managing Agency Limited and Antares Managing Agency Limited (the "Reinsurers") reinsured through a reinsurance slip that "provided a $10 million limit of liability as a proportionate share of the $35 million excess of $65 million reinsurance layer for the ICIM Policy."[8] ICIM determined that it was obligated to pay the full limit of liability to a policyholder, and then subsequently asked the Reinsurers to pay their respective shares.[9] "The Reinsurers opposed this request because they disagreed with ICIM's coverage determination and contended that the [underlying matter] was excluded by the Prior Acts Exclusion clause of the ICIM Policy."[10] The dispute was arbitrated before one Arbitrator who was selected by the Reinsurers from a list of three individuals provided by ICIM.[11]

After being selected, the Arbitrator reviewed the parties' position statements and disclosed potential biases or conflicts.[12] He also provided his CV, which indicated, among other things, that he "had served as an expert/expert witness in approximately [eighteen] insurance/reinsurance industry cases."[13] The parties "did not request a more comprehensive disclosure."[14]

Eight months later, the Reinsurers discovered that the Arbitrator provided expert witness testimony in two cases "that it is industry custom and practice to impute 'follow the fortunes' clauses into all reinsurance contracts," which was an issue that was central to the arbitration.[15] The Reinsurers thereafter requested that the Arbitrator consider whether his prior expert opinions would inhibit his ability to decide the issues fairly and impartially.[16] The Arbitrator explained that he could be fair and impartial.[17] "The Reinsurers advised the Arbitrator that the parties had conferred and agreed that '[t]here are no lingering issues on the subject of your involvement.'"[18]

The Arbitrator conducted a nine-day evidentiary hearing, which resulted in an award that "order[ed] the Reinsurers to pay ICIM an indemnity amount, loss adjustment expenses, pre-judgment interest, expert testimony expenses, other arbitration expenses, and the Arbitrator's fees and expenses."[19] Consequently, the Reinsurers filed a petition to vacate the arbitration award, contending (1) the award "was predetermined by the Arbitrator's evident partiality," (2) the arbitrator improperly exceeded his authority on three different grounds, and (3) the Arbitrator manifestly disregarded the law.[20]

The Court's Reasoning

Section 10 of the FAA provides four bases for vacating an arbitration award:

1. where the award was procured by corruption, fraud, or undue means;
2. where there was evident partiality or corruption in the arbitrators, or either of them;
3. where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
4. where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.[21]

In addition to these bases, the Second Circuit also allows vacating an arbitration award when an arbitrator manifestly disregards the law, but such grounds are only found "in those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent."[22]

This case concerned 3 of the above 5 bases and found none of them warranted vacating the arbitration award.

First, the court assessed evident partiality and found that the Reinsurers not only waived their objection to evident partiality but also failed to establish the Arbitrator's evident partiality.[23] With respect to waiver, the court noted that: "The settled law of [the Second Circuit] precludes attacks on the qualifications of arbitrators on grounds previously known but not raised until after an award has been rendered. Where a party has knowledge of facts possibly indicating bias or partiality on the part of an arbitrator[,] he cannot remain silent and later object to the award of the arbitrators on that ground. His silence constitutes a waiver of the objection."[24] Here, the Reinsurers argued that the Arbitrator was partial because of his prior expert testimony.[25] However, "the Reinsurers could have searched the Arbitrator's name in a Lexis, Google, or ARIAS U.S. Forms search, all of which reveal the Arbitrator's prior [expert] testimony."[26] As such, the court held that "[t]he Arbitrator's prior expert witness testimony was available through reasonably diligent investigation by the Reinsurers well before he was selected as the sole Arbitrator."[27] Because the Reinsurers did not do such investigation and did not choose a different arbitrator at the outset nor did they request "his withdrawal after discovering his expert witness testimony or even raising and preserving an objection thereto, the Reinsurers waived any claim regarding his alleged evident partiality."[28]

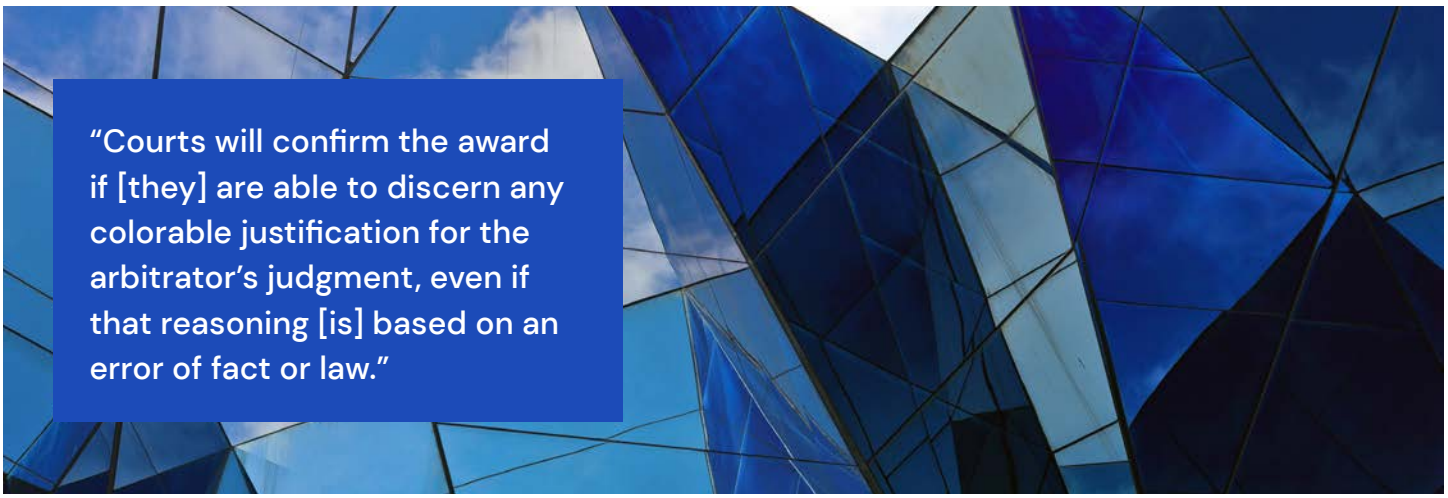
The court also analyzed whether there was evident partiality in the Arbitrator. Courts may find evident partiality "where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration" or where "an arbitrator's general statements and conduct imply bias."[29] Interestingly, "where an arbitrator fails to abide by arbitral or ethical rules concerning disclosure, such a failure does not, in itself, entitle a losing party to vacatur."[30] Here, the court found that the Arbitrator's prior expert testimony regarding "follow the fortunes" "clauses cannot provide a basis to find evident partiality, especially where, as in the instant case, the Arbitrator did not impute" such a clause into the reinsurance slip.[31]

Second, the court assessed whether the Arbitrator exceeded the scope of his authority and found that he did not.[32] "Objections to an award on the grounds that the arbitrators exceeded their authority are narrowly applied, and the focus of the judicial inquiry is whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue."[33] The court noted that an arbitrator acts "within his authority as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority."[34] Here, the court found that "[t]he Arbitrator's decision was well within the scope of the Arbitration Clause."[35]

Third, the court determined that the arbitrator did not manifestly disregard the law.[36] "[A] movant must establish more than a mistake of law on the arbitrator's part. A mere error of law or the failure of the arbitrators to understand or properly apply the law is insufficient. Courts will confirm the award if [they] are able to discern any colorable justification for the arbitrator's judgment, even if that reasoning [is] based on an error of fact or law."[37] The court found that "the Arbitrator provided a 'colorable justification' for his decision, and no 'egregious impropriety' is apparent."[38]

» Key Takeaways

1. Before selecting an arbitrator, make sure to (a) search him or her on Google and/or a legal research platform and (b) request his or her CV.
2. If a potential conflict arises with an arbitrator, you should consider either requesting his or her withdrawal or raising and preserving an objection.
3. If the arbitration award "draws its essence" from the arbitration agreement, then courts are unlikely to find that the arbitrator exceeded his authority.
4. Not all courts will vacate an arbitration award for the manifest disregard of the law, but for those that do, it is applied in very limited circumstances.



Jules v. Andre Balazs Properties

146 S. Ct. 1209 (2026)

By Stephanie Denker

After *Badgerow v. Walters*,[39] the Second, Third, and Seventh Circuits found that its holding was limited to freestanding motions to confirm or vacate an arbitration award under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, without a pre-existing federal lawsuit, whereas the Fourth Circuit found that it applied to all motions to confirm or vacate.[40] The Supreme Court resolved that split in *Jules v. Andre Balazs Properties*.

The Supreme Court held that a federal court has jurisdiction when the claims that are the subject of the arbitration award were previously stayed by ***that*** court under FAA § 3.[41] The Court stated: "Because a federal court in this scenario has jurisdiction over the original claims and does not lose that jurisdiction while the case is stayed pending arbitration, it retains jurisdiction to determine whether the arbitral award resolving those claims is valid and should be confirmed."[42] The Court noted that "unlike with the freestanding applications . . ., assessing jurisdiction over a § 9 or § 10 motion in a case originally filed in federal court does not require 'looking through' the filed action. Instead, the court may assess its jurisdiction by looking at the suit that is already before it."[43]

Background

By way of background, Jules sued his former employer in the Southern District of New York "alleging, among other things, that respondents unlawfully discriminated against him in violation of federal and state law."[44] In response, respondents sought to enforce an arbitration agreement that Jules signed at the outset of his employment, which the District Court found covered the claims and stayed the federal court proceedings.[45] Thereafter, Jules initiated arbitration against the respondents, which resulted in "a final award ruling against Jules on all claims" and awarding about $34,500 in sanctions.[46] Respondents then filed a motion to confirm the award under FAA § 9 in the Southern District of New York, which Jules opposed and cross-moved to vacate.[47] The Southern District of New York confirmed the arbitration award, which both the Second Circuit and Supreme Court affirmed.[48]

The Court's Reasoning

The Supreme Court stated: "the District Court had original jurisdiction, under 28 U.S.C. § 1331, over Jules's federal claims" and "[n]othing in the FAA eliminated that jurisdiction while the parties arbitrated."[49] The Court differentiated *Jules* from *Badgerow* because the Southern District of New York had "pre-existing jurisdiction" in *Jules*, whereas "[i]n *Badgerow*, the first (and only) thing that had occurred in federal court was the confirm-or-vacate dispute under § 9 and § 10."[50]

In rendering its decision, the Supreme Court rejected the following arguments:

- Applications under FAA § 9 or § 10 "should be treated as entirely 'new federal actions' for purposes of assessing jurisdiction, even when filed in pre-existing suits;"[51]

- In § 8 of the FAA, Congress included that "the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award," but did not include that "jurisdictional anchor" in § 9 or § 10;[52] and
- "Allowing courts to exercise jurisdiction in cases like this one . . . will encourage parties to engage in useless federal litigation for the sole purpose of creating a jurisdictional anchor later on . . . disrupting the 'sensible … division of labor' between state and federal courts."[53]

Key Takeaway

Jules confirms that if a lawsuit begins in federal court before the parties are compelled to arbitrate, then the parties should anticipate any further issues connected to those claims will be heard before that same federal court.

In the Matter of the Liquidation of Home Insurance Company

2026 N.H. 19, 2026 WL 1109170 (N.H. 2026)

By Thomas Spain

Background

This action involves the liquidation of the Home Insurance Company ("HIC") under New Hampshire's Insurers Rehabilitation and Liquidation Act (the "Act"). Century Indemnity Company ("Century") and HIC issued separate direct insurance policies to cover the same risks for a common insured (the "Insured"). The Insured filed insurance claims against both HIC and Century. Century separately reinsures HIC under its insurance policy to the Insured.

The Act governs insurer insolvency in New Hampshire. The Act coordinates the allowance and dispute of claims and distributions to policyholders from the insolvent insurer. The Act also serves to bifurcate an insolvent insurer's liability from its actual distribution amounts to promote efficient and fair apportionment of claims. Importantly, the Act also governs the priority of payment as to policyholders and reinsurance considerations.

HIC entered into liquidation under the Act in 2003. In 2023, the New Hampshire Insurance Commissioner, as liquidator (the "Liquidator"), settled HIC's liability to the Insured, thereby establishing an allowed settlement amount (the "Settlement") under the Act. HIC did not have sufficient assets to pay the Settlement in full. As

a result, HIC paid a smaller actual distribution amount (the "Distribution") to the Insured than what was owed under the Settlement.

In January 2023, Century asserted a contribution claim against HIC for the shortfall between the Settlement and Distribution. Century's position was that the Insured would seek the difference between HIC's Settlement and Distribution from Century, as a co-insurer. Century sought to set off any permitted contribution amount against Century's separate reinsurance liability owed to HIC.

After the Liquidator disallowed Century's contribution claim, the parties asked a referee to decide whether contribution should be determined by the Settlement or the Distribution. The referee determined that Century's contribution claim would not be permitted as under the Act, because HIC had paid its fair share to the Insured. Century then brought a motion to return or recommit the referee's order so that Century could reassert a contribution claim against HIC. The Superior Court, Merrimack County denied the motion. On April 24, 2026, the Supreme Court of New Hampshire affirmed the Superior Court's ruling.

The Court's Reasoning

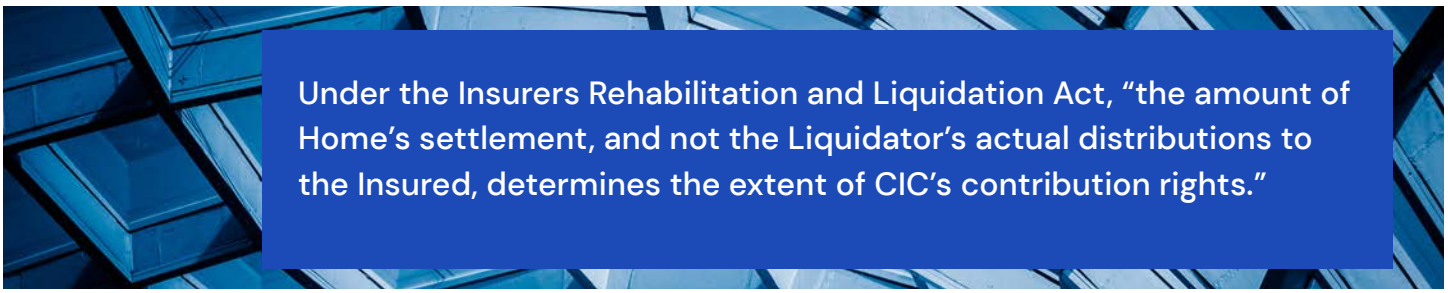
The Supreme Court of New Hampshire concluded that the Act governs and supersedes common law rules addressing contribution.[54] In doing so, the court upheld the referee's finding that the Act provides for a complete scheme to govern the review of claims against an insurer in liquidation. The Act requires that the Settlement, and not the Distribution, determines the extent of Century's contribution rights.[55]

The court reasoned that the Act is a broad remedial statute that is intended to provide protection for insurers and should be liberally construed in the reinsurance context.[56] Although the Act does not directly address contribution calculations, the court explained that contribution among co-insurers is intrinsically tied to their liabilities to the Insured.

The court explained that the Act's text reflects an intent to prioritize recovery by preferred creditors.[57] The court reasoned that it would be improper to use actual distributions to determine the contribution amount at issue, as this approach would undermine the Act's priority scheme. Thus, Century is not entitled to contribution from HIC for the shortfall between the Settlement and the Distribution.

Key Takeaways

1. An insurer's contribution rights are contingent on an insolvent insurer's liability to a common insured, not on the amount distributed from the insolvent estate.
2. The Act governs the calculation of contribution claims in insurer liquidations, and setoff rights do not allow parties to circumvent statutory priorities under the Act.



Under the Insurers Rehabilitation and Liquidation Act, "the amount of Home's settlement, and not the Liquidator's actual distributions to the Insured, determines the extent of CIC's contribution rights."

Pohjola Insurance Ltd. v. Continental Insurance Company

2016 IL App (1st) 242294-U, 2026 WL 688406 (March 11, 2026)

By Marshall Dworkin

In this case, the Illinois Appellate Division reversed the trial court's summary judgment order, and determined there were issues of fact as to whether an insurer gave late notice to its reinsurer under New York law.

Background

Here, plaintiff was a Finnish insurance company that—for certain business outside of Finland—utilized fronting companies for which it reinsured 100% of the risk. In 1986 and 1987, Defendant Continental Insurance Company ("Continental") issued a comprehensive general liability insurance policy to Neles, Inc. ("Neles"), a subsidiary of Finnish conglomerate Metso Corporation ("Metso") that was insured by the plaintiff. In 2004, Neles—who eventually merged with another company to form Neles-Jamesbury, Inc. ("NJI")—claimed coverage under the Neles policies for asbestos bodily injury liabilities. In 2007, NJI and Continental entered into a defense cost sharing agreement whereby Continental agreed to pay a 7.7% share of NJI's asbestos defense costs incurred after it tendered notice to Continental.

In early 2021, Continental undertook a review of its underwriting files and discovered documents that showed that plaintiff had reinsured the Neles policies at issue. In April 2021, Continental sent plaintiff notice of the Neles asbestos loss, and in October 2021, Continental sent an initial reinsurance billing for over $1.8 million. Plaintiff responded that it needed more information, but acknowledged there could be reinsurance obligations. In November 2022, Plaintiff sued Continental seeking a determination that it had no reinsurance obligations to Continental. Ultimately, the court agreed and granted plaintiff's motion for summary judgment.

The Court's Reasoning

The Appellate Division reversed and found, in part, that there were issues of fact as to whether Continental's notice to plaintiff constituted late notice. To begin, the Appellate Division determined that New York law governed (as opposed to Illinois) since, among other things, Continental was a New York-based company, issued the insurance policy form New York, and Neles—the subject of the policy—also operated out of New York.

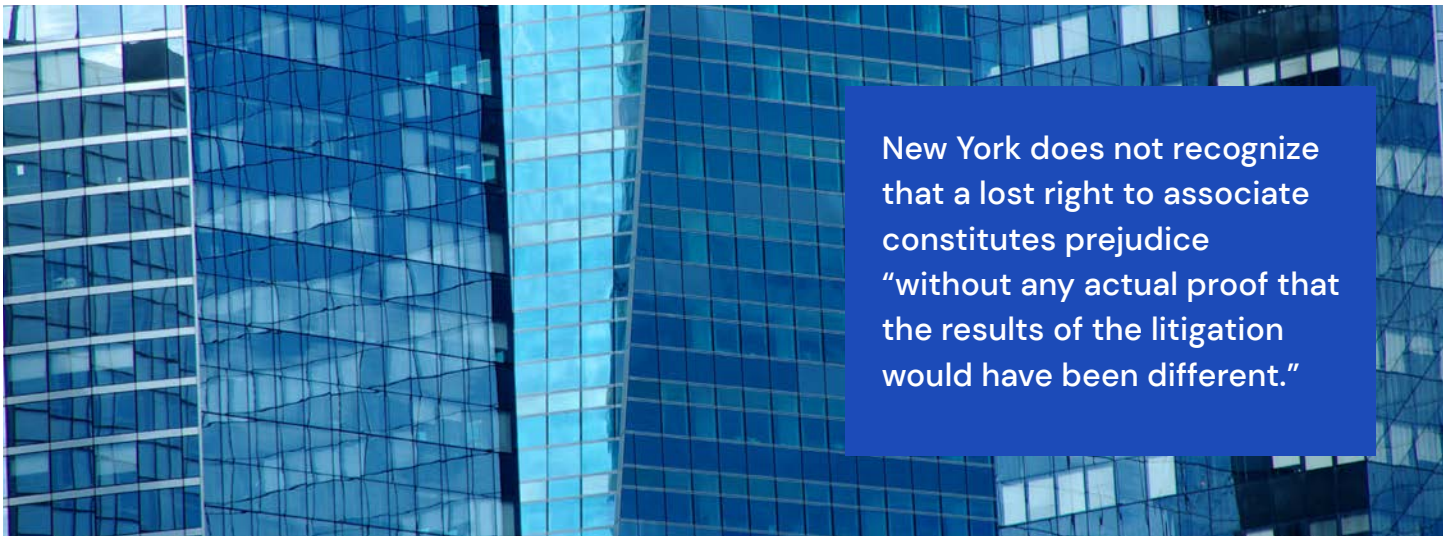
Plaintiff argued that Continental's 2021 notice and tendering of its purported reinsurance obligations constituted late notice, since its agreement with Neles occurred in 2007. Under New York law, the Appellate Division differentiated plaintiff's reinsurance obligations—which are contracts of indemnity—from direct insurance with insureds. In the latter case, insurers do not need to prove it was prejudiced by the insured's late notice under New York law. While plaintiff argued that the fronting arrangement essentially made them direct insurers of Neles, the Appellate Division found "no relevant support for this argument."[58] As such, the Appellate Division found that plaintiff must prove prejudice to claim a late notice defense against Continental.

To prove prejudice, the plaintiff alleged that if it had received earlier notice and associated itself with the direct claims-handling, it would have prevented Continental from paying defense costs. The Appellate Division rejected this argument, noting that New York does not recognize that a lost right to associate constitutes prejudice "without

any actual proof that the results of the litigation would have been different."[59] As a result, the Appellate Division found that the plaintiff failed to show any evidence that earlier notice would have resulted in Continental paying as much under the Neles policies. Therefore, issues of fact remained on the prejudice element, and the Appellate Division reversed the trial court's award of summary judgment in favor of the plaintiff.

» Key Takeaways

1. Reinsurers in New York should be aware of the difficult standard they must satisfy in order to successfully claim late notice from a ceding insurer.
2. Formal structures are still important, and New York courts will not necessarily grant captives or fronting companies with "cut through" rights without specific language in the reinsurance agreements.



Tyson International Company, Limited v. Partner Reinsurance Europe SE

No. 1:25-cv-03452 (ALC), 2026 WL 945688 (S.D.N.Y. Apr. 1, 2026)

By Stephanie Denker

This lawsuit concerned whether to confirm or vacate an arbitration award. In connection therewith, the parties filed four motions to seal, which sought to seal the petition to vacate a portion of the arbitration award, three memoranda of law, and certain exhibits. According to the Court, "the Parties' exhibits fall into three main categories: (1) the contracts/policies at issue in the underlying dispute, (2) transcripts and opinions from the arbitration proceedings, and (3) internal correspondence related to the dispute."[60] The Court concluded that "the contracts/policies at issue in the underlying dispute" could remain under seal, as well as the petition and memoranda of law.[61] However, the parties were to redact any confidential commercial information contained in the other exhibits.[62]

The Court's Reasoning

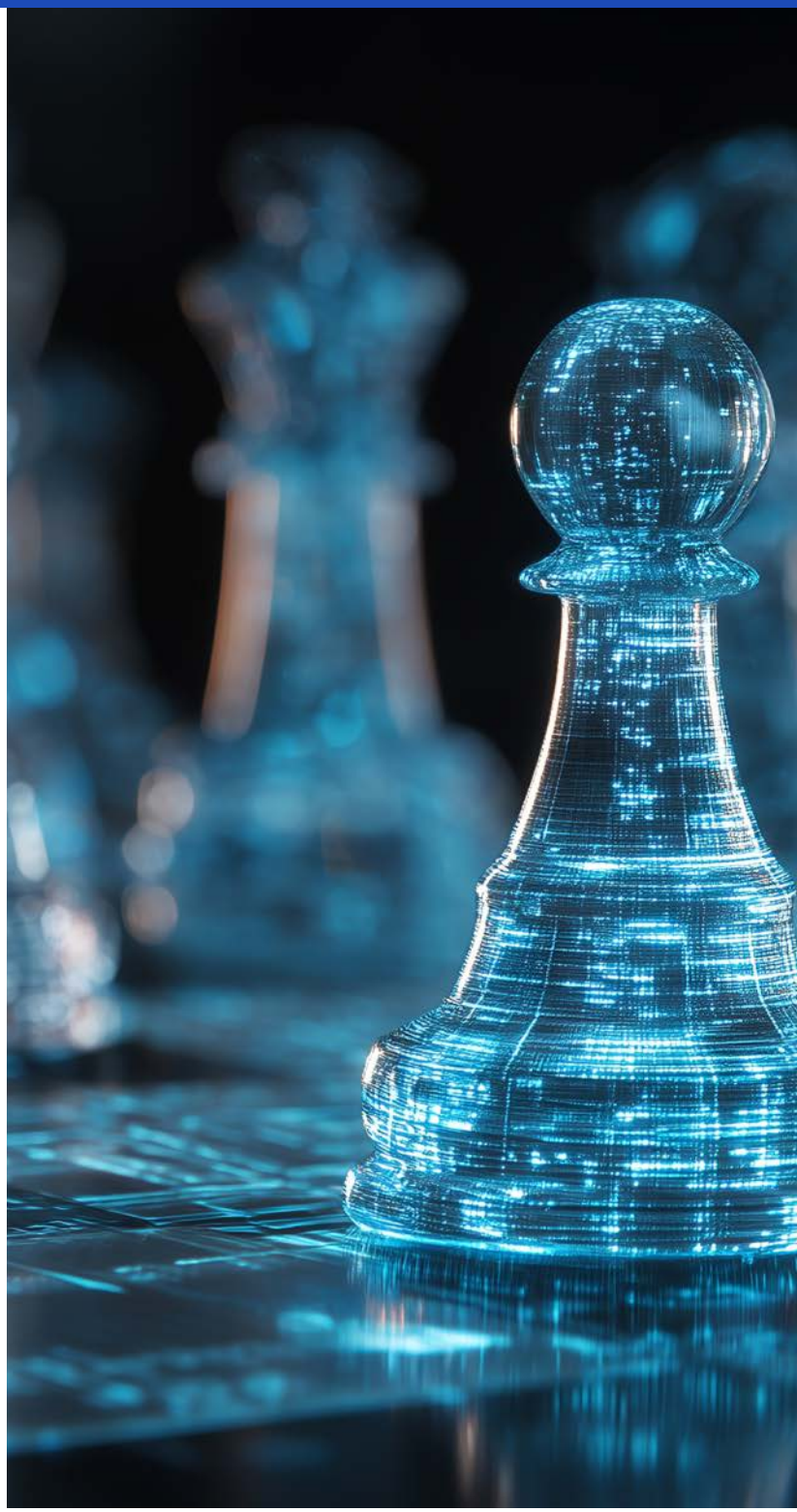
In deciding the motions, the court applied the Second Circuit's three-step test for determining whether to seal a document, which is set forth in *Lugosch v. Pyramid Co.*, 435 F.3d 110, 119 (2d Cir. 2006). "First, a court must determine whether the presumption of access attaches to the documents that a party wishes to seal."[63] Second, "the court gauges how strong the presumption of access is by asking (1) how directly the material bears on the court's Article III decision making, and (2) how useful it is for public oversight."[64] When moving to confirm or vacate an arbitration award, the documents cited in support are "judicial documents that directly affect[ ] the Court's adjudication' of that petition."[65] As such, whether to grant a motion to seal falls on the third step, which is where the court balances the weight to the presumption of access "against competing interests, including potential harm to law enforcement or judicial efficiency and the privacy interests of those opposing disclosure."[66] Therefore, when making a motion to seal in connection with a petition to vacate or confirm an arbitration award, the movant must show "that sealing is necessary to preserve higher values."[67]

Key Takeaway

One advantage of arbitration is that it is typically confidential. However, this perceived advantage may be impacted if one of the parties needs to seek a court's assistance with confirming or vacating the arbitration award. Fortunately, *Tyson* demonstrates that courts are willing to seal large portions of the materials in support of the petition. But, that willingness is not unlimited. So, when deciding whether to seek court intervention in connection with an arbitration, you should be prepared that certain documents may have to be filed, in whole or part, publicly.

ABOUT SAUL EWING'S REINSURANCE PRACTICE

Saul Ewing LLP's Reinsurance practice spans the full lifecycle of the reinsurance business, from program design and regulatory compliance to complex transactions, insolvency, and high-stakes disputes. We counsel insurers, reinsurers, retrocessionaires, captives, cedents, intermediaries, MGAs, MGUs, and self-insured entities on drafting and negotiating reinsurance arrangements, advising on reinsurer organization and licensing, and navigating regulatory, InsurTech, and cybersecurity frameworks. Our team also provides legal advice on acquisitions, portfolio transfers, and other strategic transactions in the reinsurance space. When disputes arise, we represent clients in federal and state courts, as well as in arbitration, in some of the largest and most complex matters involving a broad array of underlying risks, including contract interpretation, allocation, insolvent market participants, business torts, and payment of claims.



To learn more about how Saul Ewing can assist with your reinsurance needs, please contact a member of our Reinsurance team.

ENDNOTES

[1] *State Insurance Regulators Share Coordinated Work to Oversee Markets During Meeting with U.S. Treasury,* National Association of Insurance Commissioners (May 7, 2026), https://www.prnewswire.com/news-releases/state-insurance-regulators-share-coordinated-work-to-oversee-markets-during-meeting-with-us-treasury

[2] *Issues Paper on Structural Shifts in the Life Insurance Sector*, International Association of Insurance Supervisors (Nov. 2025), https://www.iais.org/uploads/2025/11/Issues-Paper-on-structural-shifts-in-the-life-insurance-sector.pdf

[3] *Employer's Reinsurance Corp. v. Workers' Comp. Tr. Fund,* 106 Mass. App. Ct. 495, 497 (Mass. App. Ct. 2026).

[4] *Id.* at 498.

[5] *Id.* at 500 (citing *Arrowood Indem. Co. v. Workers' Comp. Tr. Fund*, 496 Mass. 222, 233 n.8 (2025)).

[6] *Employer's Reinsurance Corp.*, 106 Mass. App. Ct. at 501.

[7] *Id.* at 502.

[8] *Hamilton Managing Agency Ltd. v. ICI Mutual Ins. Co.*, No. 2:25-mc-00079-cr, 2026 WL 1006464, at *1-2 (D. Vt. Apr. 14, 2026).

[9] *Id.* at *2.

[10] *Id.*

[11] *Id.*

[12] *Id.* at *2-3.

[13] *Id.* at *3.

[14] *Id.*

[15] *Id.* at *4.

[16] *Id.*

[17] *Id.* at *5-6.

[18] *Id.* at *6.

[19] *Id.* at *11.

[20] *Id.* at *11-12.

[21] 9 U.S.C. § 10(a).

[22] *Hamilton Managing Agency Ltd.*, 2026 WL 1006464, at *13.

[23] *Id.* at *13-17.

[24] *Id.* at *13 (citations omitted).

[25] *Id.*

[26] *Id.* at *14.

[27] *Id.*

[28] *Id.*

[29] *Id.* at *15 (citations omitted).

[30] *Id.*

[31] *Id.* at *16.

[32] *Id.* at *17-20.

[33] *Id.* at *17.

[34] *Id.*
[35] *Id.* at *20.
[36] *Id.* at *20-22.
[37] *Id*. at *21.
[38] *Id.* at *22.
[39] In *Badgerow v. Walters*, 596 US 1 (2022), the Supreme Court "held that a federal court, in determining whether it has jurisdiction to decide an application to confirm, vacate, or modify an arbitral award, looks only to the application actually submitted to the court, and it does not look through the application to the underlying substantive controversy between the parties." Badgerow initiated an arbitration against her former employer alleging unlawful termination, which resulted in the dismissal of Badgerow's claims. *Id.*at 5. Thereafter, Badgerow filed an action in Louisiana state court, which her former employer tried to remove to federal court and sought to confirm the arbitration award. *Id.*
[40] *Jules v. Andre Balazs Properties*, 146 S. Ct. 1209, 1217 (2026).
[41] *Id.* at 1214.
[42] *Id.* at 1214-1215.
[43] *Id.* at 1218.
[44] *Id.* at 1217.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.* at 1218.
[51] *Id.* at 1220.
[52] *Id.* at 1221.
[53] *Id.*
[54] *In the Matter of the Liquidation of Home Ins. Co.*, 2026 N.H. 19, 2026 WL 1109170, at *4 (N.H. 2026).
[55] *Id.*
[56] *Id.* at *2.
[57] *Id.* at *5.
[58] *Pohjola Ins. Ltd. v. Continental Ins. Co.*, 2016 IL App (1st) 242294-U, 2026 WL 688406, at *11 (Ill. App. Ct. March 11, 2026).
[59] *Id.* (citing *Unigard Sec. Ins. Co., Inc. v. N. River Ins. Co.*, 4 F.3d 1049, 1068-69 (2d Cir. 1993), *abrogated on other grounds by Glob. Reinsurance Corp. of Am. v. Century Indem. Co.*, 22 F.4th 83, 95 (2d Cir. 2021)).
[60] *Pohjola Ins. Ltd.*, 2026 WL 945688, at *2.
[61] *Id.*
[62] *Id.*
[63] *Id.* at *1 (citing *Lugosch*, 435 F.3d at 119, 120).
[64] *Pohjola Ins. Ltd.*, 2026 WL 945688, at *1 (citing *Lugosch*, 435 F.3d at 119).
[65] *Pohjola Ins. Ltd.*, 2026 WL 945688, at *2 (citation omitted).
[66] *Pohjola Ins. Ltd.*, 2026 WL 945688, at *1 (citing *Lugosch*, 435 F.3d at 120).
[67] *Pohjola Ins. Ltd.*, 2026 WL 945688, at *2.