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Court Affirms Disclosure Requirements Apply to Reinsurance Agreements

The New York Appellate Division, First Department affirms in an insurance coverage case that reinsurance agreements are subject to disclosure under CPLR 3101(f) as revised by the Comprehensive Insurance Disclosure Act.

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The New York Appellate Division, First Department. Photo: Ryland West

New York CPLR 3101(f) mandates that defendants, counterclaim defendants and crossclaim defendants in lawsuits in New York courts provide to other parties insurance policies in place at the time of the alleged loss.

In *The Archdiocese of New York et al. v. Century Indemnity Company et al,* Case No. 2025-03111, 2025 NY Slip Op 06385 (App.Div. [1st Dept] Nov. 20, 2025). (the "Archdiocese Matter"), the Appellate Division, First Department recently reaffirmed that this obligation extends not merely to primary and excess insurance policies, but also to reinsurance agreements.

Reinsurance is colloquially known as insurance for insurance companies. *See Utica Mutual Ins. Co. v. Munich Reinsurance Am., Inc.*, 381 F. Supp. 3d 185, 189 n. 9 (N.D.N.Y. 2019). Courts, however, often recognize that "reinsurance is not insurance" since reinsurance is a contract of indemnity, rather than liability, and the relationship between reinsurer and the reinsured is "fundamentally different from insurer and the insured." *See Folksamerica Reinsurance Co. v. Republic Ins. Co.*, 2004 WL 2423539 (S.D.N.Y. Oct. 29, 2004).

Despite this distinction, New York state courts have often deemed reinsurance agreements as "insurance agreements" for purposes of CPLR 3101(f)'s initial disclosure requirements. This position was recently reaffirmed by First Department in the Archdiocese Matter.

The Archdiocese Matter is a coverage action wherein the insurers for the Archdiocese of New York and its numerous parishes (the "Archdiocese") seek a declaratory judgment as to their obligation to indemnify and defend the Archdiocese for the thousands of lawsuits brought against the Archdiocese under New York's Child Victims Act.

In the course of litigation, a Special Master assigned to the case granted the Archdiocese's motion to compel the production of reinsurance agreements under CPLR 3101(f). However, the Special Master denied the Archdiocese's motion to compel as it related to information about the CVA claims that may be contained in the reinsurance files and for the insurers' communications with the reinsurers about the underlying claims. *Century Indemnity Company v. The Archdiocese of New York,* Supreme Court, New York County Index No. 652825/2023, Doc. 327, p. 4.

This article will analyze the arguments made before the First Department, its decision and potential implications and public policy issues that may result therefrom.

The Parties' Arguments Focused on CPLR 3101(f)(1) and Its Application to Reinsurance Agreements

At the end of 2021, Governor Kathy Hochul signed into law the Comprehensive Insurance Disclosure Act (CIDA) which amended Rule 3101(f) of the CPLR to require defendants to disclose to a plaintiff at the beginning of a lawsuit "proof of the existence and contents of any insurance agreement" which could satisfy a judgment. These agreements expressly include "all primary, excess and umbrella policies, contracts or agreements…" CPLR 3101(f)(1)(i). What was unclear from the CIDA, and not expressly stated within the legislation, is whether reinsurance agreements must be disclosed under the new Rule 3101(f).

In the Archdiocese Matter, the insurers challenged the Special Master's decision to compel the production of reinsurance agreements. In support of its argument, the insurers first focused on the plain reading of the CIDA and CPLR 3101(f).

Noting the distinction between an insurance policy between an insurer and insured and a reinsurance agreement between insurance companies, the insurers argued that the New York Legislature generally distinguishes between insurance and reinsurance when it so chooses, identifying several statutes that expressly acknowledge the distinction between insurance and reinsurance. *See* N.Y. Ins. Law § 6203(c) (noting that Insurance Law "shall apply to the [New York insurance] exchange, its members, and the insurance or reinsurance written through the exchange."); N.Y. Workers' Comp. Law §321 (noting special funds "may be used to effect [certain] insurance or reinsurance.").

The failure to expressly identify reinsurance agreements in the CIDA purportedly showed the Legislature's intent to omit reinsurance agreements, particularly since reinsurance is substantively different from the "primary, excess and umbrella" policies listed in the CIDA which impact insureds directly.

The insurers next focused on the legislative history of CPLR 3101 and the CIDA. The insurers noted that the legislative sponsor memorandum to the CIDA stated that the intent of the legislation was to clarify the "nature, extent, and timeliness of mandated disclosure of insurance policies" since in

"personal injury cases, disclosure of complete and accurate information about the nature and extent of insurance coverage is often delayed." N.Y. Bill Jacket, 2021 Senate Bill 7052 at 8.

In light of this purported legislative intent, the insurers argued that claimants are not "remotely served" by the disclosure of reinsurance agreements, and the Legislature's reference to personal-injury and consumer-fraud cases in the sponsor memorandum indicated its concern for were tort actions rather than coverage actions between insurers and reinsurers.

In opposition, the Archdiocese primarily relied on the colloquial phrase "reinsurance is insurance for insurers"—a phrase previously cited by the insurers in the litigation, as well as other state and federal New York courts—to argue that reinsurance agreements are subject to CPLR 3101(f)'s automatic disclosure requirements since reinsurance is referred to as insurance for insurers.

Moreover, the Archdiocese noted that it sought the insurers' reinsurance agreements because they related to the insurers' "potential liabilities in connection with this case" and are therefore discoverable under CPLR 3101. The Archdiocese disputed the policy arguments of the insurers by arguing that the reinsurance agreements "serve the same function" as traditional insurance policies with an insured and their disclosure would "facilitate and encourage the potential settlement of claims" by learning of the insurers' reinsures' limits of liability and the relevant terms thereof.

The Archdiocese then disputed the insurers' reading of CPLR 3101(f) and argued that a plain reading of that Rule's provision regarding "any insurance agreement" under which "any person or entity" may be liable will include reinsurance agreements. The Archdiocese argued that the Rule's listing of "primary, excess and umbrella policies" is not an exhaustive list or limitation but "written in an inclusive manner."

Indeed, The Archdiocese cited to CPLR 3101(f)(1)(ii)'s express provision that disclosure requirements are meant to reach "any policy, contract or agreement under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the entry of final judgment."

The Archdiocese also disputed the insurers' legislative history arguments by noting that the sponsor memorandum expressly focused on "any insurance agreement under which any person or entity may be liable to satisfy part or all of a judgment."

Critically, the Archdiocese noted that the CIDA did not expressly address reinsurance agreements in light of two New York precedents—*Clarendon Natl. Ins. Co. v. Atlantic Risk Mgt. Inc.*, 59 A.D.3d 284 (1st Dept. 2009) and *Anderson v. House of Good Samaritan Hosp.*, 1 A.D.3d 970 (4th Dep't 2003)—which found that reinsurance agreements were subject to disclosure under CPLR 3101 prior to the enactment of the CIDA.

In *Clarendon*, an insurer brought claims against its third-party claims administrator ("TPA") seeking reimbursement of a $4.6 million settlement Clarendon paid to a policyholder as a result of the TPA's alleged erroneous recommendations. The court in *Clarendon* required the insurer – who was also a counterclaim-defendant—to disclose relevant reinsurance policies that could potentially satisfy a judgment in the case.

The insurers distinguished the *Clarendon* case by noting that (a) *Clarendon* (and *Anderson*) was decided before the CIDA was enacted, and (b) the TPA's purpose for seeking the reinsurance agreement was to discover whether the insurer received reinsurance payments for the settlement, thereby reducing its claimed damages.

The Archdiocese, however, noted that CPLR 3101 is not "contingent on the particular nature of the liability case" and must be disclosed if the agreement may satisfy part or all of a judgment.

The Appellate Division Found That CPLR 3101(f) Requires Disclosure of Relevant Reinsurance Agreements

The Appellate Division sided with the Archdiocese and stated that CPLR 3101(f) "applies broadly" to "any insurance agreement" and that a reinsurance agreement "is a type of insurance agreement." 2025 NY Slip Op 06385. In doing so, the Appellate Division rejected the insurers' argument that the CIDA's failure to specify that it included reinsurance agreement meant that they were not included, and found instead that the Legislature's failure to expressly exclude reinsurance agreements from the disclosure requirements of CPLR 3101 and its failure to do so in the CIDA *after* *Clarendon* had been decided is "strong evidence that it did not disagree with the conclusion of those courts."

The Archdiocese Matter is Consistent With Federal Courts' Initial Disclosure Requirements Under Fed. R. Civ. P. 26

The First Department's decision in the Archdiocese Matter is consistent with many federal courts which have found that reinsurance agreements should be disclosed under Federal Rule of Civil Procedure 26(a)(1)(A)(iv) "when the primary insurer is named as a party," as was the case in the Archdiocese Matter. *See Suffolk Fed. Credit Union v. Cumis Ins. Soc., Inc.*, 270 F.R.D. 141 (E.D.N.Y. 2010) (citing *Imperial Trading Co., Inc. v. Travelers Property Cas. Co.*, 2009 WL 1247122, at *2 (E.D.La. May 5, 2009).

This comparable federal rule has been found to be "absolute…and does not require any showing of relevance." *Id*. (citing *United States Fire Ins. Co. v. Bunge N. Am, Inc.*, 244 F.R.D. 638 (D. Kan. 2007)). Some federal courts have questioned the relevancy of the disclosure of reinsurance agreements and did not compel their disclosure because the agreements were not relevant to the matter or relief sought.

For instance, in *Rhone-Poulenc Rorer Inc. v. Home Indemnity Company*, 139 F.R.D. 609 (E.D.Pa. 1991), the court in a coverage dispute found that since the "relief sought in this case is a declaratory judgment," rather than money damages, initial disclosures under the former Fed. R. Civ. P. 26(b)(2) "did not mandate disclosure" of reinsurance agreements. These decisions, however, appear to be in the minority, as most courts compel the disclosure of such relevant agreements.

Key Takeaways

The Archdiocese decision clarifies that agreements between insurers are susceptible to disclosure in coverage disputes between the insured and insurer, and potentially more broadly, as nothing in the First Department's opinion expressly limits disclosure obligations to coverage disputes.

As a practical matter, however, many plaintiffs in lawsuits that are not coverage disputes may be uninterested in reinsurance agreements at the time of suit. Moreover, defendants other than insurers who are parties to litigation are unlikely to have reinsurance agreements in their possession to disclose in the first place. Nevertheless, it is possible that in some cases, parties may seek to use the Archdiocese decision to compel insurers to provide reinsurance policies and other information.

Although the Special Master rebuffed the Archdiocese's request for communications and information on the underlying cases in the reinsurance files as potentially implicating work product protection, that issue was not raised on appeal. It seems likely that in some cases, some parties will argue that the Archdiocese decision includes discovery of at least some such material.

However, there are several counterarguments to any claim for such materials, and there is significant precedent denying access to such information in coverage disputes. *See, e.g. Potomac Electric Power Company v. California Union Insurance Company*, 136 F.R.D. 1 (D.D.C. 1990).

The Archdiocese decision appears to have raised the concern of several industry organizations. The Appellate Division's decision is currently subject to a motion for reargument or, in the alternative, leave to appeal which has been supported by several industry *amici*.

For instance, the Reinsurance Association of American and American Property Casualty Insurance Association argued, among other things, that the cedent insurer may not necessarily know which reinsurance treaty may be implicated at the outset of an individual coverage claim, and the applicability of a particular reinsurance treaty may itself be subject to dispute between the cedent insurer and reinsurer.

Likewise, the American Home Assurance Company and Commerce and Industry Insurance Company argued, among other things, that reinsurance transactions are "complex, multilayered, and dynamic" and mandatory disclosure of reinsurance agreements will impose "substantial economic burdens…without advancing the resolution of the dispute."

It is unclear how far these disclosures will go in the reinsurance arena. For large insurance policies and excess policies and reinsurance agreements that have several layers of retrocessionaires, CPLR 3101, as now interpreted by the First Department, potentially opens up the disclosure of numerous reinsurance agreements.

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