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# Insurance Law Alert

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## In This Issue

### Michigan Court Says Collateral Estoppel Precludes Cedent's Declaratory Judgment Action Against Reinsurer

A Michigan district court granted a reinsurer's summary judgment motion, ruling that a cedent was collaterally estopped from arguing that its umbrella policies required payment of defense costs in addition to policy limits. *Amerisure Mutual Ins. Co. v. Swiss Reinsurance America Corp.*, 2024 U.S. Dist. LEXIS 56554 (E.D. Mich. Mar. 28, 2024). (Click here for full article)

### Seventh Circuit Rules That Installation Of Defective Materials In Faulty Construction Suit Did Not Constitute "Property Damage" Under Liability Policy

The Seventh Circuit ruled that defects in welds and columns in a construction project did not constitute property damage for purposes of general liability coverage. *St. Paul Guardian Ins. Co. v. Walsh Construction Co.*, 2024 U.S. App. LEXIS 10285 (7th Cir. Apr. 29, 2024). (Click here for full article)

### Seventh Circuit Rules That Access To Personal Information Exclusion Bars Coverage For BIPA Claims, But That Other Exclusions Do Not

The Seventh Circuit ruled that an Access to Personal Information Exclusion barred coverage for claims alleging violations of the Biometric Information Privacy Act, but that three other exclusions did not. *Thermoflex Waukegan, LLC v. Mitsui Sumitomo Insurance USA, Inc.*, 2024 U.S. App. LEXIS 12033 (7th Cir. May 17, 2024). (Click here for full article)

### Pennsylvania Court Addresses Whether Liability Limits Of Multi-Year Excess Policies Apply On An Annualized Basis

A Pennsylvania district court ruled that multi-year excess policies allowed for annualization of aggregate limits but not for per-occurrence limits. *Zurn Industries, LLC v. Allstate Ins. Co.*, 2024 U.S. Dist. LEXIS 57451 (W.D. Pa. Mar. 29, 2024). (Click here for full article)

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An Ohio appellate court ruled that insurers had no duty to indemnify an underlying suit alleging injuries under the Anti-Terrorism Act, finding that the claims did not allege unintentional conduct. *Travelers Prop. Cas. Corp. v. Chiquita Brands International, Inc.*, 2024 Ohio 1775 (Ohio Ct. App. May 10, 2024). (Click here for full article)

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## Illinois Court Rules That Insurers May Be Held Liable Under Fair Housing Act For Risk-Based Practices That Result In Disparate Impact

An Illinois district court ruled that the Department of Housing and Urban Development's rulemaking as to disparate impact claims against insurers was not "arbitrary and capricious" and that insurers may face liability under the Fair Housing Act for risk-based decisions that disparately impact protected classes of people. *Property Casualty Insurers Assoc. of America v. Todman*, 2024 U.S. Dist. LEXIS 53688 (N.D. Ill. Mar. 26, 2024). (Click here for full article)

## United States Supreme Court Rules That FAA Requires Federal Courts To Stay, Not Dismiss, Suits Pending Arbitration In Response To Motion To Stay/Dismiss

The United States Supreme Court ruled that when a party moves to stay or dismiss a suit pending arbitration, the Federal Arbitration Act requires federal district courts to stay litigation pending arbitration of claims and that dismissal under such circumstances is impermissible. *Smith v. Spizzirri*, 2024 U.S. LEXIS 2170 (U.S. May 16, 2024). (Click here for full article)

# Michigan Court Says Collateral Estoppel Precludes Cedent's Declaratory Judgment Action Against Reinsurer

HOLDING

A Michigan district court granted a reinsurer's summary judgment motion, ruling that a cedent was collaterally estopped from arguing that its umbrella policies required payment of defense costs in addition to policy limits. *Amerisure Mutual Ins. Co. v. Swiss Reinsurance America Corp.*, 2024 U.S. Dist. LEXIS 56554 (E.D. Mich. Mar. 28, 2024).

BACKGROUND

Amerisure issued primary and umbrella policies to Armstrong, a company named as a defendant in asbestos-related bodily injury suits. Amerisure paid Armstrong's defense costs under the primary policies, and when the limits of those policies were exhausted, Amerisure began paying Armstrong's defense costs under the umbrella policies. Amerisure made such payments in addition to umbrella policy limits. Thereafter, Amerisure sought reinsurance coverage from Swiss Re under facultative policies. Swiss Re refused to pay for the defense costs, arguing that those payments were outside the scope of Amerisure's umbrella policies.

Amerisure sued, seeking a declaration of coverage under the reinsurance policies—echoing an argument Amerisure previously raised, and lost, in a separate arbitration involving a different reinsurer. The court dismissed the suit, ruling that Amerisure was collaterally estopped from arguing that defense costs payments that exceeded policy limits were subject to reinsurance coverage.

DECISION

In 2019, Amerisure arbitrated a similar dispute with Allstate, another one of its reinsurers, involving the same policy language. In that case, an Illinois district court affirmed an arbitration award which held that the umbrella policies did not provide for the payment of defense costs in addition to policy limits when umbrella coverage was triggered by the exhaustion of underlying primary policies. The Illinois court explained that the arbitration panel found that the policies provided for the payment of defense costs in addition to policy limits only when primary coverage was uncollectible due to a lack of coverage for the risks at issue. Because the panel found that Amerisure's payment of defense costs was not required under its umbrella policies, it concluded that Allstate was not required to reimburse Amerisure for defense costs above policy limits.

In the present case, the court concluded that Amerisure was collaterally estopped from raising the same issue against Swiss Re based on the 2019 arbitration. The court held that the arbitration resulted in a "final determination" on the question of whether the umbrella policies required Amerisure to pay defense costs in addition to policy limits. Amerisure argued that a final determination was not made as to all of the arguments it asserted in the Allstate case because the arbitration panel only addressed one of its legal theories in reaching a determination. Rejecting this assertion, the court stated: "Amerisure is wrong to read [the final determination] requirement to mean that the earlier action must have decided each argument relevant to the issue for those argument to be precluded in later litigation."

Further, the court ruled that Amerisure had a "full and fair opportunity" to litigate the issue of coverage for above-policy limits defense costs. Amerisure argued that it did not have such an opportunity, citing several factors, including the limited scope of judicial review for an arbitration award, the different procedural rules that apply to an arbitration as opposed to a judicial proceeding, and the inclusion of an "honorable engagement" provision in the Allstate facultative certificates (but not in the Swiss Re certificates). The court deemed all of these contentions to be without merit.

Finally, the court rejected Amerisure's assertion that collateral estoppel did not apply based on the absence of mutuality of estoppel (*i.e.*, it was undisputed that Swiss Re could not be bound by the Allstate decision because it was not a party to that case). The court held that mutuality was not required in this case because Swiss Re's assertion of collateral estoppel was defensive—meaning it sought to use collateral estoppel to avoid Amerisure's claim of liability against it rather than to impose liability.

COMMENTS

Because the court dismissed the suit on procedural grounds, it did not address the substantive question of whether a reinsurer must reimburse a cedent for defense costs it paid above and beyond its underlying policy limits. Courts that have addressed that issue have focused on applicable policy language, including in particular a "Limit of Liability" provision, as well as industry custom and practice relating to the presumed concurrency of coverage between reinsurance and primary insurance policies.

## Seventh Circuit Rules That Installation Of Defective Materials In Faulty Construction Suit Did Not Constitute "Property Damage" Under Liability Policy

HOLDING

The Seventh Circuit ruled that defects in welds and columns in a construction project did not constitute property damage for purposes of general liability coverage. *St. Paul Guardian Ins. Co. v. Walsh Construction Co.*, 2024 U.S. App. LEXIS 10285 (7th Cir. Apr. 29, 2024).

BACKGROUND

The City of Chicago hired Walsh as the general contractor for a construction project at O'Hare Airport. Walsh contracted with Carlo Steel for the manufacture of a steel and curtain wall. Carlo Steel, in turn, subcontracted with LB Steel for the production and installation of steel elements of the wall. Under the contract between Carlo Steel and LB Steel, LB Steel was obligated to indemnify Carlo Steel and Walsh for any property damage resulting from LB Steel's negligent performance. When the City discovered cracks in the welds performed by LB Steel, it sued Walsh, seeking to recover the costs it incurred in investigating and remediating the defective welds. Walsh tendered defense of the suit to insurers that issued policies to LB Steel, on which it was named an additional insured.

The insurers sued Walsh, seeking a declaration that they had no duty to defend Walsh and that their policies did not cover a $19 million judgment that was ultimately issued against LB Steel. Ruling on cross-motions for summary judgment, the district court ruled in the insurers' favor. The district court reasoned that because the physical damage at issue was limited to LB Steel's own products, there was no covered "property damage."

DECISION

Affirming the district court decision, the Seventh Circuit held that the policies at issue required physical injury to tangible property, separate and apart from the steel elements manufactured by LB Steel. The court explained that certain policies defined property damage as "physical damage to tangible property of others" and that other policies which did not include the "of others" verbiage included "Your Product" exclusions which barred coverage for property damage arising out of the insured's product.

The court concluded that Walsh did not allege covered property damage because it failed to identify any damage to glass, concrete or any other parts of the wall that were not manufactured by LB Steel. While Walsh did install retrofit structures to remedy the defects in the columns, the court held that such structures did not establish damage to other property.

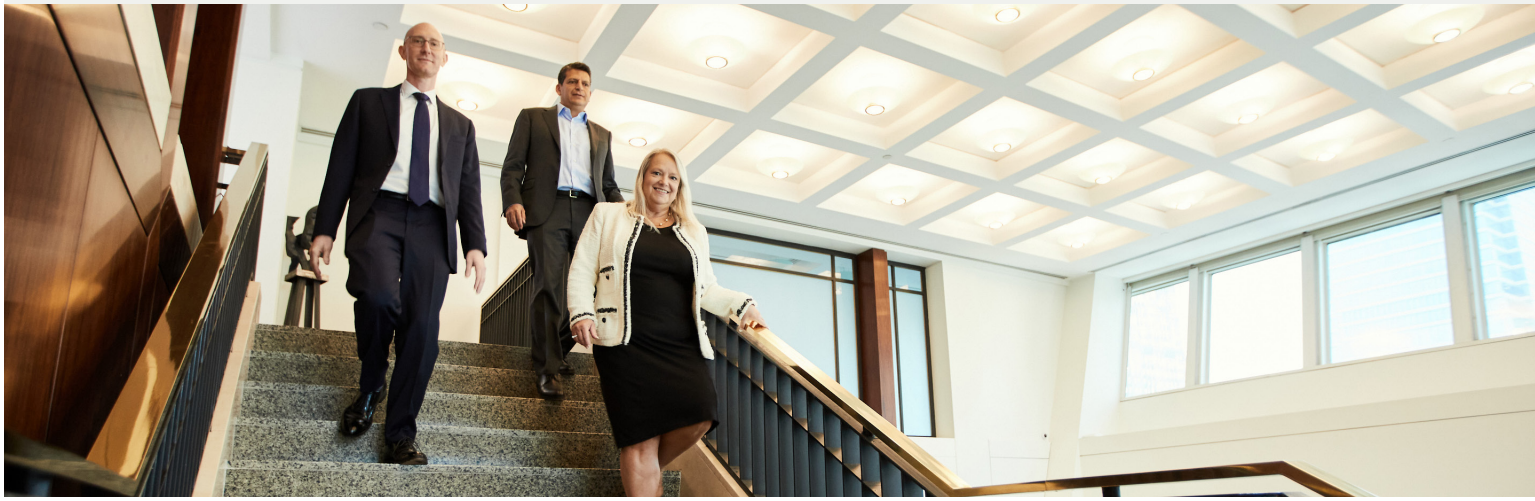
Additionally, the court rejected Walsh's assertion that cracking in the columns created "structural instability," which constituted a "harmful physical change" sufficient to establish property damage. The court reasoned that a potential for collapse does not constitute property damage and that in any event, there was no evidence that any structural instability had manifested itself in any physical manner.

Finally, the court rejected Walsh's contention that property damage existed because LB Steel's parts were so intertwined with the larger structures such that damage to the steel columns necessarily imposed damage to the canopy structure as a whole. Accepting the premise that where a part is so intertwined with the entire mechanism that damage to the part constitutes damage to the whole, the court held that this case did not present such a scenario because damage to the steel columns did not require the entire canopy structure to be removed or rebuilt.

COMMENTS

The decision reinforces the well-established principle that preventative measures do not constitute property damage for purposes of general liability coverage. Rather, such costs are typically considered preventative economic costs, which are outside the scope of general liability policies.

Additionally, the ruling addresses an issue commonly raised in construct defect coverage disputes—namely, whether general liability coverage is implicated when the only damage alleged is damage to the insured's own product. Courts have reached different conclusions in this context, with numerous courts concluding that damage to the insured's own property, without more, does not implicate coverage, even where the policy does not contain explicit language requiring damage to "other" property.



# Seventh Circuit Rules That Access To Personal Information Exclusion Bars Coverage For BIPA Claims, But That Other Exclusions Do Not

HOLDING

The Seventh Circuit ruled that an Access to Personal Information Exclusion barred coverage for claims alleging violations of the Biometric Information Privacy Act ("BIPA"), but that three other exclusions did not. *Thermoflex Waukegan, LLC v. Mitsui Sumitomo Insurance USA, Inc.*, 2024 U.S. App. LEXIS 12033 (7th Cir. May 17, 2024).

BACKGROUND

Employees alleged that use of handprint data by their employer violated the BIPA. The employer sought defense and indemnity from Mitsui under primary, excess and umbrella policies, which the insurer denied. As discussed in our January 2023 Alert, an Illinois district court ruled that an Access to Personal Information Exclusion in the primary policy barred coverage, and therefore that Mitsui had no duty to defend under the primary or follow form excess policies, but that three other exclusions in the umbrella policy did not apply. The Seventh Circuit affirmed.

DECISION

The Access to Personal Information Exclusion provided that the insurance "does not apply to [claims] arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information." The Seventh Circuit agreed with the district court that handprints fall within the scope of confidential or personal information and that the exclusionary language was unambiguous. In so ruling, the court rejected Thermoflex's assertion that the exclusion was ambiguous because it referenced patents, which are public, noting that inclusion of a non-private example did not create ambiguity.

However, because the umbrella policy lacked that exclusion, the court considered whether three other provisions precluded coverage. A "Statutory Violation Exclusion" applied to matters

> arising directly or indirectly out of violations of or alleged violations of: (1) the Telephone Consumer Protection Act (TCPA), including any amendments thereto, and any similar federal, state, or local laws, ordinances, statutes, or regulations; (2) the CAN-SPAM Act of 2003, including any amendments thereto, and any similar federal, state, or local laws, ordinances, statutes, or regulations; (3) the Fair Credit Reporting Act (FCRA), including any amendments thereto, such as the Fair and Accurate Credit Transaction Act (FACTA), and any similar federal, state, or local laws, ordinances, statutes, or regulations; or (4) any other federal, state, or local law, regulation, statute, or ordinance that restricts, prohibits, or otherwise pertains to the collecting, communicating, recording, printing, transmitting, sending, disposal, or distribution of material or information.

The Seventh Circuit ruled that this exclusion did not relieve Mitsui of its duty to defend, citing *West Bend Mutual Ins. Co. v. Krishna Schaumbugh Tan, Inc.*, 2021 IL 125978 (Ill. 2021), in which the Illinois Supreme Court ruled that a similar exclusion did not bar coverage for BIPA claims.

Additionally, the court concluded that a "Data Breach Liability" provision, which excluded coverage for: "1) … [loss] arising out of disclosure of or access to private or confidential information belonging to any person or organization; or 2) any loss, cost, expense, or 'damages' arising out of damage to, corruption of, loss of use or function of, or inability to access, change, or manipulate 'data records,'" did not apply. The court reasoned that the exclusion was intended to apply to situations in which hackers obtain access to personal information, not to claims based on mandated disclosure of personal information to an employer.

Finally, the court ruled an Employment-Related Practices exclusion did not relieve Mitsui of its duty to defend. That provision barred coverage of injury arising out of: "a) refusal to employ that person; b) termination of employment of that person; or c) coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, malicious prosecution, discrimination, sexual misconduct, or other employment-related practices, policies, acts, or omissions directed towards that person." The court acknowledged that the collection and processing of handprints to keep track of work hours may be an "employment-related practice" but emphasized that such a practice was not "directed towards" any given worker.

The Seventh Circuit therefore held that Mitsui had a duty to defend under the umbrella policy after all underlying insurance and self-insured retentions have been exhausted.

COMMENTS

The Seventh Circuit's decision is one of a growing body of Illinois law related to the scope of coverage for BIPA claims. As discussed in previous Alerts, courts have reached different conclusions, relying primarily on the specific exclusionary language at issue. A previous Seventh Circuit decision, *Citizens Insurance Co. v. Wynndalco*, 70 F.4th 987 (7th Cir. 2023), held that an exclusion for claims based on "laws, statutes, ordinances, or regulations, that address, prohibit or limit the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information" did not bar coverage for BIPA claims because such a reading of the exclusion would nullify coverage expressly provided elsewhere in that policy. However, an Illinois intermediate appellate court, faced with similar language, reached a contrary conclusion. *See National Fire Insurance Co. v. Visual Pak Co.*, 2023 IL App (1st) 221160 (Ill. App. Ct. 2023).

# Pennsylvania Court Addresses Whether Liability Limits Of Multi-Year Excess Policies Apply On An Annualized Basis

HOLDING

A Pennsylvania district court ruled that multi-year excess policies allowed for annualization of aggregate limits but not for per-occurrence limits. *Zurn Industries, LLC v. Allstate Ins. Co.*, 2024 U.S. Dist. LEXIS 57451 (W.D. Pa. Mar. 29, 2024).

BACKGROUND

Zurn, a manufacturer of equipment allegedly containing asbestos, was named as a defendant in thousands of bodily injury lawsuits. Zurn was insured under various primary and excess policies, including multi-year excess policies issued by American Home, Granite State and Aetna. The declarations pages of the American Home and Granite State policies set forth a "Limit of Liability" of $5 million. Zurn sought a ruling that these policies provided $5 million in coverage on an annualized basis, such that a total of $15 million was available under the 3-year American Home policy and $10 million was available under the 470-day Granite State policy.

DECISION

The court concluded that both the American Home policy and the Granite State policy provided for a $5 million aggregate limit for each of the annual periods. The court explained that because the American Home and Granite State policies followed the terms and conditions of underlying umbrella policies, the language of the underlying policies was outcome determinative for the annualization issue. The court further reasoned that the "unambiguous intent" of the underlying policies was to provide separate aggregate limits for each year based on language stating that the aggregate limits represent the "total limits of the company's liability for all damages . . . because of the following occurring during any one annual period during which this policy is in force."

However, the court held that the underlying policies did not provide an annual limit with respect to a particular "occurrence," emphasizing the absence of annualization language in the provisions relating to liability limits for "each occurrence." As such, the court ruled that the American Home and Granite State policies allowed Zurn to collected an aggregate of $15 million, but only $5 million for each occurrence during each respective policy term.

COMMENTS

In concluding that the multi-year policies provided annual aggregate limits, the court rejected the excess insurers' assertions that silence on the excess policies' declarations pages indicated that a single aggregate limit applied to the entire policy period. The court reasoned that the "bare bones" nature of the declarations pages rendered the argument unpersuasive, particularly in light of the follow form nature of the polices. In this respect, the decision illustrates the presumption of consistency between layers of insurance policies containing express follow form clauses.

The decision also highlights the importance of particular policy language in determining whether aggregate and/or per occurrence limits may be annualized. The court based its conclusion on verbiage referring specifically to "annual periods," rather than on extra-contractual factors, such as the payment of premiums on an annual basis or the fact that the Granite State excess policy sat above multiple one-year umbrella policies.

# Ohio Appellate Court Affirms That Insurers Had No Duty To Indemnify Settlement Of Underlying Tort Claims Based On Intentional Conduct

HOLDING

An Ohio appellate court ruled that insurers had no duty to indemnify an underlying suit alleging injuries under the Anti-Terrorism Act, finding that the claims did not allege unintentional conduct. *Travelers Prop. Cas. Corp. v. Chiquita Brands International, Inc.*, 2024 Ohio 1775 (Ohio Ct. App. May 10, 2024).

BACKGROUND

In the underlying litigation, claimants alleged that Chiquita illegally financed Columbian terrorist groups from 1989-2004, resulting in injury to American citizens. The suit ultimately settled and Chiquita sought coverage from its insurers. In a prior ruling in this case, an appellate court ruled that National Union, one of Chiquita's primary insurers, had no duty to defend because the underlying claims did not allege a covered "occurrence," but rather only intentional conduct.

In the present case, Travelers and Federal sought a declaration that they had no duty to indemnify the underlying settlement payment. A trial court granted the insurers' summary judgment motion and the appellate court affirmed.

DECISION

The appellate court rejected Chiquita's assertions that the trial court improperly shifted the burden of proof and that the insurers failed to establish as a matter of law that Chiquita expected or intended to cause injury to the underlying claimants. The court ruled that Chiquita's assertion that it did not intend injury was insufficient to raise a triable issue of fact because under the doctrine of inferred intent, intent may be inferred when an act "necessarily results" in harm, notwithstanding the absence of a specific intent to injure. In applying the inferred intent doctrine, the court noted that it was undisputed that Chiquita intentionally made regular payments to a terrorist group and that during that time frame, the terrorist group kidnapped and killed Americans. Additionally, the court emphasized that the basis for liability in the underlying litigation was whether Chiquita financially supported the terrorist organization "knowing and intending" it would be used in acts of terrorism.

Notably, the court deemed it irrelevant Chiquita did not seek to have acts of terrorism committed on its behalf and that it made payments to the terrorist organization solely for the purpose of protecting its employees. The court stated: "The natural and expected consequences of sending protection money to a terrorist group engaged in a campaign of violence is that the group would use the money to continue that violent campaign but select different targets."

COMMENTS

The decision highlights several important issues in the "inferred intent" context. First, under Ohio law, an insured need not have a specific intent to injure particular plaintiffs in order for the doctrine to apply. Second, a court may infer intent to a policyholder even where, as here, the injury-causing actions were done by a third party rather than the policyholder itself.

# Illinois Court Rules That Insurers May Be Held Liable Under Fair Housing Act For Risk-Based Practices That Result In Disparate Impact

HOLDING

An Illinois district court ruled that the Department of Housing and Urban Development's ("HUD") rulemaking as to disparate impact claims against insurers was not "arbitrary and capricious" and that insurers may face liability under the Fair Housing Act ("FHA") for risk-based decisions that disparately impact protected classes of people. *Property Casualty Insurers Assoc. of America v. Todman*, 2024 U.S. Dist. LEXIS 53688 (N.D. Ill. Mar. 26, 2024).

BACKGROUND

In 2013, HUD refused to exempt risk-based insurance practices from its new Disparate Impact Rule, which created a legal framework for resolving discriminatory effects FHA claims. Property Casualty Insurers Association of America ("PCI") sued, alleging that HUD's refusal to recognize such an exemption was arbitrary and capricious and contrary to law. In 2014, an Illinois district court dismissed several of PCI's claims, ruling that HUD had authority to formulate a rule that left the question of disparate impact liability against insurers to be decided "ex post" by courts, rather than "ex ante" via an exemption or safe harbor provision. However, the court concluded that HUD had not adequately considered several critical issues relating to disparate impact liability, including reverse preemption under the McCarran-Ferguson Act and the filed-rate doctrine. In 2023, HUD reinstated its 2013 Disparate Impact Rule and PCI again argued that its decision to do so was arbitrary and capricious.

Granting HUD's summary judgment motion, the court ruled that "HUD has supplied what was missing before: a thorough and well-reasoned explanation for its decision to allow disparate impact claims against risk-based insurance practices under the FHA."

DECISION

As a preliminary matter, the court ruled that PCI had standing to assert claims against HUD based on "a sufficiently persuasive likelihood of concrete and imminent harm to its members" and that the claims were ripe for resolution. Turning to the merits of the suit, the court concluded that HUD's decision to reinstate the 2013 Rule to risk-based insurance practices was not arbitrary and capricious.

With respect to the McCarran-Ferguson Act, under which state insurance laws reverse-preempt more generalized federal law, the court ruled that HUD's refusal to establish a blanket exemption or safe harbor provision for insurers was not arbitrary or capricious. Finding the framework in which such determinations are made on a case-by-case basis to be reasonable, the court noted that a blanket exemption establishing reverse preemption of state law over FHA claims would be overbroad, particularly in light of variation among states' insurance regulatory frameworks and the fact that some states allow for disparate impact claims against insurers.

Along similar lines, the court ruled that HUD's consideration of the filed-rate doctrine was not arbitrary and capricious. As HUD noted in its 2023 Reinstatement of the Rule, the filed-rate doctrine has not been successfully used to defeat a FHA claim. Further, the court deemed persuasive HUD's assertion that the link between the filed-rate doctrine and disparate impact liability under the FHA to be "attenuated, at best" because disparate impact claims do not challenge the reasonableness of rates, but rather the discriminatory

impact of rates. In any event, the court noted the reasonableness of HUD's case-by-case approach to evaluating filed-rate doctrine challenges to disparate impact claims given the state-specific nature of regulatory filing procedures.

Finally, the court rejected PCI's argument that HUD's consideration of the overall nature of insurance was arbitrary and capricious. PCI argued that as a matter of public policy, the inherent nature of risk-based decision making is "fundamentally incompatible" with disparate impact liability. While the court's 2014 opinion concluded that HUD's original rulemaking had "failed to meaningfully engage with this thorny issue," the court ruled that HUD adequately responded to this issue in its 2023 Reinstatement. In particular, the court noted that the Rule does not interfere with legitimate risk-based practices because it protects insurers' objective risk-based decisions pursuant to a "business necessity" defense.

COMMENTS

While the decision rejected a blanket exemption for insurers from disparate impact liability, it by no means lowers the bar for establishing liability under the FHA or prevents insurers from utilizing risk-based classifications in premium pricing. As the court acknowledged, "states allow (or mandate) insurers to 'fairly' discriminate by treating people with similar risks similarly and different risks differently." The framework for HUD's Disparate Impact Rule, which requires case-by-case determinations, entails a three-step burden shifting approach under which claimants bear the burden of providing factual evidence of disparate impact and which allows insurers to successfully refute such claims based on legitimate business justifications.

## United States Supreme Court Rules That FAA Requires Federal Courts To Stay, Not Dismiss, Suits Pending Arbitration In Response To Motion To Stay/Dismiss

HOLDING

The United States Supreme Court ruled that when a party moves to stay or dismiss a suit pending arbitration, the Federal Arbitration Act ("FAA") requires federal district courts to stay litigation pending arbitration of claims and that dismissal under such circumstances is impermissible. *Smith v. Spizzirri*, 2024 U.S. LEXIS 2170 (U.S. May 16, 2024).

BACKGROUND

Petitioners, current and former delivery drivers for an on-demand delivery service operated by respondents, sued in state court, alleging violations of federal and state employment laws. Respondents removed the case to federal court, and moved to compel arbitration and dismiss the suit. Petitioners conceded that all of their claims were subject to arbitration, but argued that §3 of the FAA required the district court to stay the action pending arbitration rather than dismiss it entirely.

The district court issued an order compelling arbitration and dismissing the case without prejudice. The court stated that "the text of 9 U. S. C. §3 suggests that the action should be stayed," but that circuit precedent "instructed that 'notwithstanding the language of §3, a district court may either stay the action or dismiss it outright when, . . . the court determines that all of the claims raised in the action are subject to arbitration.'" The Ninth Circuit affirmed. The United States Supreme Court granted certiorari noting the importance of the issue and the split among federal circuit courts. The Second, Third, Tenth and Eleventh Circuits interpreted §3 to mandate a stay when all claims are subject to

arbitration and a party properly requests a stay, whereas the First, Fifth, Eighth and Ninth Circuits recognized a district court's discretion to dismiss, rather than stay an action. The Seventh Circuit construed §3 to require a stay even where no party requested a stay.

DECISION

The United States Supreme Court reversed the Ninth Circuit's decision, ruling that the plain language of the FAA requires a stay of a suit pending arbitration and that a district court lacks discretion to dismiss the suit altogether. The Supreme Court reasoned that use of the word "shall" establishes "an obligation impervious to judicial discretion." Further, the Court explained that "stay" means "stay," rejecting the respondents' assertion that "stay" in §3 "means only that the court must stop parallel in-court litigation, which a court may achieve by dismissing without retaining jurisdiction."

The Court also rejected the assertion that notwithstanding the FAA's explicit language, district courts retain inherent authority to dismiss proceedings subject to arbitration. The Court noted that even assuming district courts have such authority, the inherent powers of courts may be overridden or limited by statute.

COMMENTS

As the Court noted, staying rather than dismissing a suit "comports with the supervisory role that the FAA envisions for the courts." Further, a stay is administratively economical and avoids the potential cost and complication of filing a new suit in order to invoke the FAA's procedural protections.

Importantly, the decision does not prevent a district court from dismissing a suit if there is an independent basis for dismissal, separate and apart from arbitration. For example, dismissal of a suit subject to arbitration may be appropriate if a court lacks jurisdiction. Similarly, the decision does not preclude district courts from implementing practices to minimize any administrative burden caused by FAA-mandated stays.

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Simpson Thacher has been an international leader in the practice of insurance and reinsurance law for more than a quarter of a century. Our insurance litigation team practices worldwide.


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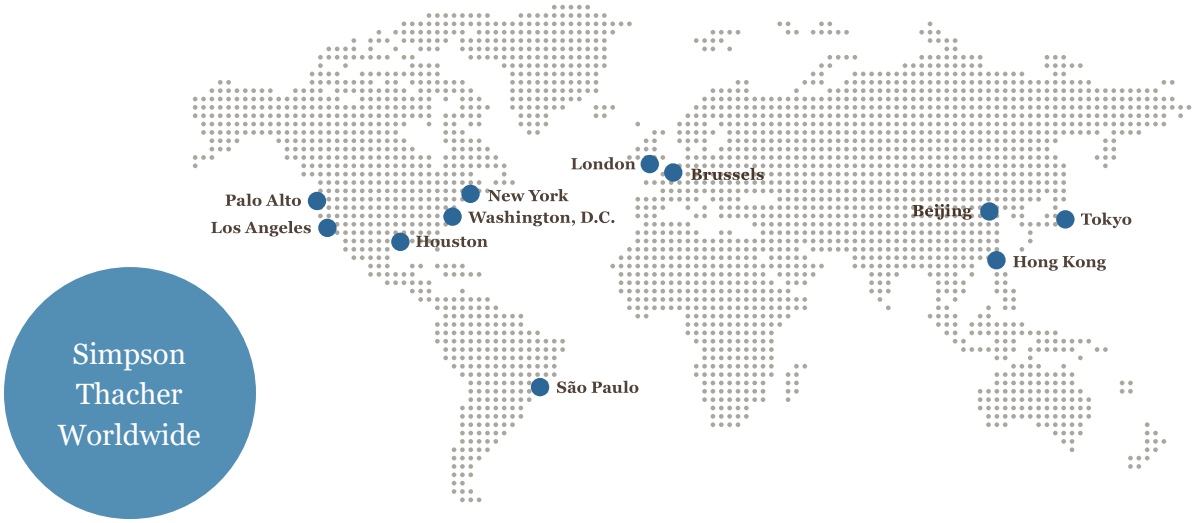


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