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Client Alert

New York Court of Appeals Issues Decision on *Bellefonte* Issue

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The New York Court of Appeals issued a decision today on what is commonly referred to as the *Bellefonte* issue. A copy of the decision can be found here.

In *Global Reinsurance Corp. of Am. v. Century Indemnity Co.*, the Court ruled, on certification from the Second Circuit, that "[u]nder New York law generally," and in particular its prior decision, *Excess Ins. Co. v. Factory Mut. Ins. Co.*, 3 N.Y.3d 577 (2004), "there is neither a rule of construction nor a presumption that a per occurrence liability limitation in a reinsurance contract caps all obligations of the reinsurer, such as payments made to reimburse the reinsured's defense costs."

This decision has significant implications for facultative certificates subject to New York law. In the decades since the Second Circuit's decision in *Bellefonte Reins. Co. v. Aetna Cas.& Sur. Co.*, 903 F.2d 910 (2d Cir 1990), numerous courts (both inside and outside of New York) have relied upon *Bellefonte* for the proposition that the dollar amount stated in the "Reinsurance Accepted" provision of the parties' facultative certificate unambiguously capped the reinsurer's liability for both loss and expense. Today's decision from the New York Court of Appeals makes clear that, under New York law, a court cannot "disregard the precise terminology that the parties used and simply assume … that any clause bearing the generic marker of a 'limitation of liability' or 'reinsurance accepted' clause was intended to be cost-inclusive." Rather, courts must interpret facultative certificates by "look[ing] to the language of the [certificate] above all else," keeping in mind "that even modest variations on the face of a written agreement can alter the meaning of a critical term." (Citations and internal quotations omitted.)

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