Insurance & Reinsurance

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BRIEFING

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New York Court Of Appeals Issues An Important Decision On A Number Of Allocation Issues

SUMMARY: In *United States Fidelity & Guaranty Company v. American Re-Insurance Company*, NY Slip Op 00784 (Court of Appeals, Feb. 7, 2013), the New York Court of Appeals reversed a lower court's decision that had upheld the reasonableness of a cedent's allocation of an asbestos settlement on summary judgment, concluding that there were sufficient factual disputes to warrant a trial. The court held the reasonableness of a cedent's allocation is not determined by whether the insured and insurer agreed to a specific allocation in a settlement agreement, but whether the parties would have agreed to such an allocation in an arm's length negotiation in the absence of reinsurance. But, the court said, when several reasonable allocations are possible, the cedent may choose the one most favorable to it. It is unrealistic to expect a cedent not to be guided by its own interests in choosing how to allocate a loss. A cedent is not a fiduciary of its reinsurers, need not disregard its own interests in allocating a settlement, and is not required to put its reinsurers' interests ahead of its own. Nonetheless, the Court of Appeals held there were disputed questions of fact about whether the cedent had acted reasonably in allocating none of the settlement to bad faith claims that had been asserted by the insured.

United States Fidelity & Guaranty Company ("USF&G") was a liability insurer of Western Asbestos Company, a distributor of asbestos-containing products. The policies USF&G issued to Western contained "per person" and "per accident" limits in varying amounts, the highest being $200,000, but the policies contained no aggregate limits. Western's business was taken over by Western MacArthur Company ("MacArthur"). MacArthur was sued for claims arising out of Western's business. After its own coverage was exhausted, MacArthur demanded a defense from Western's insurers, including USF&G which declined to defend on two grounds. First, USF&G raised a "lost policy"defense, contending that the insured had not produced copies of the policies which evidently had been lost over time. Second, USF&G argued that it only insured Western, not MacArthur, and therefore had no liability to MacArthur. After USF&G (and Western's other insurers) refused to defend MacArthur, the insured agreed not to oppose the entry of default judgments against it in favor of asbestos claimants. In exchange, the claimants agreed not to execute against MacArthur on the judgments. More than a thousand such default judgments were entered against McArthur, totaling $1.4 billion.

In coverage litigation between MacArthur and USF&G, MacArthur also alleged that by refusing to defend the asbestos claimants' lawsuits, USF&G engaged in bad faith. These bad faith claims, if successful, could have led to a judgment against USF&G for the portion of MacArthur's liability that was attributable to USF&G's failure to defend. USF&G and MacArthur settled the coverage action for $975 million to resolve all of MacArthur's claims (including those for bad faith), plus $12.3 million in attorney's fees for the asbestos claimants.

After the settlement, USF&G sought to bill its reinsurers under an excess of loss treaty which provided that USF&G's retention was $100,000 per loss. Because the policies USF&G issued to Western provided (at most) coverage of $200,000 per claimant, the reinsurers' liability was capped at $100,000 per loss. Since the treaty had no aggregate limit, reinsurers could be liable for an indeterminate number of losses, up to $100,000 each. After

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allocating the settlement based on several assumptions, discussed below, USF&G calculated the reinsurers' obligation to be $391 million. The reinsurers refused to pay, and USF&G filed suit to recover its reinsurance.

Reinsurers argued that three of USF&G's allocation decisions were not reasonable: (1) the entire settlement amount was assigned to claims within the limits of USF&G's policies and none to the bad faith claims; (2) lung cancer claims were allocated a value of $200,000 each while certain other claims were given values of $50,000; and (3) USF&G's entire settlement payment was allocated to the 1959 policy year. The reinsurers asserted that USF&G's allocation minimized the burden on the cedent and maximized the cost to reinsurers. USF&G responded that under the "follow-the-settlements" doctrine, the reinsurers were obligated to honor its billings.

The Court of Appeals noted that almost all courts that have considered the question have held that a follow-the-settlements clause requires deference to a cedent's allocation decisions. The court agreed with those decisions, stating that if a court were to review each allocation decision *de novo*, that would invite long litigation over complex issues that courts may not be well equipped to resolve, creating costs and uncertainty and making the reinsurance market less efficient.

Since the interests of a cedent and its reinsurers will often conflict, courts generally hold that a reinsurer is bound only by a cedent's "good faith" decisions which must be reasonable. Objective reasonableness should ordinarily determine the validity of an allocation. Reasonableness does not imply disregard of a cedent's own interests. Cedents are not fiduciaries of their reinsurers and are not required to put the reinsurers' interests ahead of their own. A cedent's motive should generally be unimportant. When several reasonable allocations are possible, the cedent may choose the one most favorable to it. It is unrealistic to expect that a cedent will not be guided by its own interests in making the choice.

The Court of Appeals said, however, that a cedent's allocation decisions are not immune from scrutiny. The court rejected USF&G's argument that its allocation should be considered to be reasonable because it had been agreed to with MacArthur and the asbestos claimants. The court held that reasonableness cannot be established merely by showing that the allocation used for reinsurance billing purposes was the allocation the cedent and the insured (and the claimants) actually adopted in settling the underlying insurance claims. To demonstrate reasonableness, the cedent must prove the allocation would have been adopted if reinsurance did not exist.

With respect to whether any of the settlement should have been allocated to MacArthur's bad faith claims, the Court of Appeals held that, while USF&G did have plausible defenses to those claims, there were disputed issues of fact such that summary judgment in the carrier's favor was not appropriate. The court noted that the decision to allocate all of the settlement to claims within the policy limits and nothing to the bad faith claims worked to USF&G's advantage because the bad faith claims were not covered by reinsurance. The court held a fact finder could conclude that an allocation giving no value to the bad faith claims was unreasonable since USF&G faced a significant risk of an adverse verdict on those claims. Arguably, USF&G knew its litigation position was an irresponsible attempt to exploit the fact that the policies it had issued had been lost with the passage of time. It could also be found that USF&G's refusal to defend MacArthur resulted in the many large default judgments. Indisputably, when the coverage case went to trial in California, USF&G was faced with the possibility of a very large jury verdict against it on the bad faith claims.

In allocating the settlement, it could also be found that USF&G assigned inflated values to claims other than the bad faith claims, that is, to claims that were covered in part by reinsurance. USF&G valued each lung cancer claim at $200,000, thus allocating the maximum payment to each such claim. Although USF&G, MacArthur, and the claimants agreed to this allocation, the court did not assign dispositive weight to their agreement. At an earlier stage of the coverage litigation, an expert retained by the asbestos claimants estimated MacArthur's liability for each lung cancer claim at about $90,000. The court noted that it was unusual for claims to be settled for more than twice what the claimants' expert asserted they were worth. A fact finder could conclude, the court said, that the lung cancer claims were allocated an unreasonably high amount and included values that should have been attributed to the bad faith claims.

Furthermore, while those who negotiated the settlement of the coverage litigation agreed that the settlement gave no value to the bad faith claims, a demand made shortly before the settlement did include such value. One of MacArthur's pre-settlement demands ascribed $167 million of its $2 billion claim to bad faith claims. The final settlement was for $975 million, almost exactly one-half of MacArthur's demand. A fact finder might infer that this was a simple 50% settlement, and that $83.5 million of it was attributable to bad faith claims. In sum, the court held it was impossible to conclude that parties bargaining at arm's length in the absence of reinsurance would reasonably have given no value to the bad faith claims.

With respect to the second allocation decision challenged by the reinsurers – the relative valuation of lung cancer and other claims – the court first noted that there was evidence

(discussed above) that the $200,000 value assigned by USF&G to lung cancer claims was unreasonably high. While one possible inference is that some of the value should have been attributed to the bad faith claims, another possible inference is that claims falling below the reinsurers' $100,000 retention were undervalued. If some of the value attributed to the lung cancer claims were reassigned to other types of claims, the result might be to decrease the reinsurers' liability. If, for example, the lung cancer claims were reduced to $100,000 each, and if the values for other types of claims were doubled, there would be no reinsurance coverage for any claims since none of them would have met the treaty's retention. Considering all of this evidence, the court concluded that a fact finder could infer that USF&G's valuations of the various types of claims was unreasonable.

The Court of Appeals ruled in favor of USF&G on the reasonableness of its allocation of all of the losses in the settlement to the 1959 policy year. The court recognized that if the claims had been prorated over all the policy years, few if any losses would have exceeded the $100,000 treaty retention. USF&G's decision to allocate all of the losses to one policy year was based on the reasonable assumption that California courts would have followed the "continuous trigger," "all sums," and "no stacking" rules. Applying those rules to this case, the claimants could have chosen any one of the policies that USF&G issued to Western and attributed all of their injuries to that policy. It was undisputed that, given such a choice, they would have picked the 1959 policy year because there was no other policy with higher limits, and all claimants who were exposed to asbestos-containing products in 1959 or earlier could claim to have suffered some injury in that year.

IMPORT OF DECISION: This very important decision from a leading court contains a number of significant holdings: (1) a follow-the-settlements clause requires deference to a cedent's allocation decisions; (2) the test for the reasonableness of a cedent's allocation is not whether the insured and insurer agreed to a specific allocation in a settlement agreement, but whether the parties would have agreed to such an allocation in an arm's length negotiation in the absence of reinsurance; (3) a cedent need not disregard its own interests in allocating a settlement; (4) a cedent is not a fiduciary of its reinsurers and is not required to put their interests ahead of its own; (5) it is unrealistic to expect a cedent to not be guided by its own interests in choosing how to allocate a loss; (6) when several reasonable allocations are possible, the cedent may choose the one most favorable to it; (7) if there is evidence that bad faith claims have appreciable value, a cedent may be obligated to allocate some portion of a settlement to those claims even if they are not covered by reinsurance; and (8) a cedent's decision on how much to allocate to specific types of claims must be objectively supportable by the facts of the case.

Insurance Issues Relating To Fracking

What Is "Fracking"?

"Fracking" is the commonly used term for hydraulic fracturing, which is a method used to extract underground oil or natural gas trapped in underground shale rock formations. The process involves injecting a mixture of pressurized water, sand, and chemicals deep into the ground to create or expand pre-existing pathways (known as "fractures") in the gas-bearing rock through which the oil or gas may flow and thereby be extracted for commercial use. To do this, deep wells must be drilled and constructed through which the liquid mixture is injected under high pressure. For many decades, fracking was only performed vertically; however, advancements in technology in the past decade or so have allowed for fracking to be carried out horizontally. Horizontal fracking involves vertical downward drilling followed by horizontal drilling. This allows access to much larger underground areas from a single well pad than was possible from vertical wells.

What harm or damage may be caused by fracking?

Whether or not fracking causes environmental property damage or bodily injury is disputed and probably still largely unknown at this point in time. The principal alleged types of damages include groundwater contamination, contamination of surface waters and soils, ground subsidence (including sinkholes), air and noise pollution, and even earthquakes.

Potentially toxic chemicals are included among the mixture of liquids pumped into the wells. Acids may be used to clean the wellbores.

Water contamination may occur from equipment failures or leakages from well casings caused by fractures or breakages or even blowouts. Some of the liquids injected into wells may return to the surface (referred to as "flowback") where they become wastewater, potentially containing pollutants. The wastewater may be stored in tanks or open pits or it may be trucked to off-site locations for disposal. Tank ruptures or accidental spills could occur. Linings of open pits may be defective and could tear, resulting in spills or leakages. Storage pits or tanks could be overfilled.

Some of the chemicals may remain underground and potentially contaminate aquifers. Serious health effects may arise from the consumption of contaminated drinking water. The most common method of disposal is injecting the wastewater into deep wells. This may cause ground subsidence or pollute the groundwater. Also, the process may lubricate fault lines, conceivably causing earthquakes.

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In addition, spills of toxic materials may occur at any point in the process.

Withdrawing water from streams, lakes, and aquifers for drilling and fracking could adversely affect water sources by lowering water levels thereby depleting water supplies.

There have even been cases in which claimants have asserted that natural gas has been found in aquifers.

There have also been air pollution claims, allegedly due to engine exhaust from increased truck traffic, emissions from diesel-powered pumps used to operate equipment, and natural gas that is burned off or vented during drilling operations.

Silica sand, commonly used as a proppant,[1] may pose a risk to human health (silicosis) if not properly handled.

The fracturing process may result in erosion.

Who are the claimants?

Property owners, homeowners, nearby residents, and workers are the most likely claimants. A property owner who sold mineral rights to contractors may claim his property was damaged by the fracking process, or he may allege he suffered bodily injuries. Property damage claims could include surface or groundwater contamination or subsidence damage. Bodily injury claims may arise from consuming contaminated drinking water or from exposure to toxic chemicals or other substances used in the fracking process. Homeowners and nearby residents may assert similar claims. Workers exposed to toxic materials may bring claims. In addition, governmental entities may assert regulatory claims or file lawsuits to recover damages for spills or other environmental harm.

Who are the potentially responsible parties?

Entities that may be potentially liable for fracking-related exposures include owner-operators of sites, non-operating site owners, drilling contractors, design professionals, chemical companies that prepared components used in fracking fluids, contractors who built or maintained wells, contractors who built retention ponds, equipment suppliers, wastewater transporters, and storage and recycling facilities.

Theories of liability

Based on the types of cases brought and those threatened, the theories of liability may include strict liability (alleging fracking is an "ultra-hazardous" or "abnormally dangerous" activity), trespass (alleging the intrusion of fracking fluid into adjacent property), medical monitoring, negligence (alleging well casings were improperly or inadequately designed or constructed, thereby allowing fracking fluid to leak from well bores), negligence *per se* (alleging violations of state or federal regulations), breach of contract (alleging drilling companies violated agreements pertaining to safety procedures), fraudulent misrepresentation (alleging drilling companies misled landowners or the public), and employer liability.

Types of insurance policies that may be implicated

First party property, general commercial liability, umbrella, environmental/pollution liability, errors and omissions, directors and officers, business interruption, operator's extra expense, homeowners, workers compensation, earthquake, and products.

Insurance coverage issues

Coverage issues typically associated with environmental claims likely will apply to fracking claims, including trigger (manifestation, injury in fact, continuous or triple trigger), number of occurrences, aggregate limits, notice, and allocation. Fracking claims may arise from one-time events, such as sudden spills of toxic chemicals, or they may involve allegations of gradual harm, for example, that well casings leaked over time or that wastewater polluted the groundwater for extensive periods, implicating many years of coverage. Assuming multiple years of coverage are triggered involving more than one carrier, issues of how to allocate the loss between policies and carriers will arise. Carriers may seek to enforce notice provisions in policies. Generally speaking, a carrier must demonstrate that it has been prejudiced by any late notice in order to avoid liability.

Potentially applicable policy exclusions

Known loss, expected or intended, and absolute pollution exclusions may apply to preclude coverage. A carrier may assert that the loss was known or expected or intended from the standpoint of the insured. Pollution exclusions are less likely to be enforced in cases involving traditional property damage and personal injury claims, and more likely to be enforced where bodily injury or property damage is directly caused by the release of a pollutant specifically defined in the policy. The form of the insurance industry's pollution exclusion has evolved over time. The terms of a particular exclusion in effect when the damage occurred may be dispositive of whether or not coverage exists.

Reinsurance issues

Fracking claims have the potential to give rise to reinsurance claims similar in many respects to those that have arisen from asbestos and environmental claims. There may be issues concerning whether the claims arose from single or multiple occurrences and whether claims may be aggregated to meet reinsurance retentions. Depending on the circumstances, reinsurers may raise late notice defenses. As is true with other long-tail claims, allocation issues may be important for reinsurance purposes if multiple policies are involved.

[1] A proppant is a solid material, typically treated sand or man-made ceramic materials, designed to keep an induced hydraulic fracture open, during or following a fracturing treatment.

New York State Court Establishes Novel Umpire Selection Procedure In Reinsurance Arbitrations

SUMMARY: In *American Home Assurance Company v. Clearwater Insurance Company*, 958 N.Y.S.2d 870 (Sup. Ct. 2013), a New York trial court devised a method to appoint an umpire in a reinsurance arbitration which called for each side to nominate five candidates. Three were then to be stricken by the other side. Each side was then to rank the remaining four candidates in order of preference. The individual with the highest ranking would become the umpire. If there was a tie, the umpire was to be drawn by random lot from among the two candidates with the highest ranking.

The cedents – American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh – commenced arbitrations against their reinsurer, Clearwater, under three reinsurance treaties. All three treaties provided for each party to appoint an arbitrator. One of the treaties said the dispute was to be submitted to the two arbitrators and that if they failed to agree, then the dispute was to be decided by an umpire to be chosen by the arbitrators. The treaty also said that if the arbitrators failed to agree on the umpire, either party could petition the New York state court to appoint the umpire. The other two treaties provided that the two party appointed arbitrators were to choose the umpire, but contained no provision concerning how the umpire was to be appointed if the two party arbitrators could not agree. New York state law provides that the court may appoint an arbitrator if the contract does not have a selection method or if the method fails.

In this case, the cedents petitioned the New York Supreme Court (the trial court) to appoint an umpire from among the three individuals whom the cedents' arbitrator had proposed. Alternatively, the cedents suggested that the court use the ranking method prescribed by ARIAS-US. Clearwater said the court should use the "strike and draw" method which it claimed was the usual and customary procedure for umpire selection in the insurance industry. In the alternative, the reinsurer argued the court should appoint the umpire from among the three individuals whom it had proposed.

The court first addressed the reinsurer's challenge to the court's power to appoint the umpire since two of the treaties did not expressly provide for the court to do so. Citing to state law granting the courts power to appoint an arbitrator if the agreement does not provide for the method of appointment or if the method in the contract fails, the court dismissed the challenge to its power to appoint, noting that the statutory mechanism providing this power to the court was in existence long before the applicable treaties were entered into.

Next, the court determined that neither the treaties nor state law provided a procedure for selecting the umpire. Instead of adopting an approach proposed by one party or the other, the court decided to combine the "ranking" and "strike and draw" methods to create a new procedure. The court ruled that each side was to select five candidates and then strike three from the opponent's list, leaving two candidates from each side. The parties were then to rank the remaining four individuals, with the highest ranking candidate being named umpire. In the event two individuals tied, the umpire would be determined by the drawing of lots between those two candidates, similar to the "strike and draw" method.

The court ordered the parties to adopt this new method to determine the umpire in all three disputes even though one of the treaties provided that the dispute was to be submitted to the umpire only in the event the two party appointed arbitrators could not agree upon a finding in the underlying arbitration. The court determined that the parties' disagreement upon the method of selecting an umpire created the need for an umpire under the treaty, and that appointing the umpire before the arbitration would save time and expenses and would avoid the need for a second arbitration at which the umpire would need to hear the evidence again.

IMPORT OF DECISION: The New York Supreme Court's decision illustrates the value of an agreed-upon umpire selection method in a reinsurance contract in order to avoid litigation over umpire selection. The case serves as a good example of the gaps that often exist in treaties, state law, and federal law with respect to reinsurance arbitration procedure. Finally, in addition to providing a new method for umpire selection, this decision demonstrates how the courts may fashion their own solutions to the parties' disputes in ways not advocated or anticipated by either party or by the express terms of the governing treaty.

Second Circuit Rules Federal Common Law, Not State Law, Applies To Determine Whether Parties Agreed To "Arbitration" Under Federal Arbitraion Act

SUMMARY: In *Bakoss v. Certain Underwriters at Lloyds of London*, 707 F.3d 140 (2d Cir. 2013), the Second Circuit held that federal common law, not state law, should be used to determine whether a contractual dispute resolution mechanism constitutes "arbitration" under the Federal Arbitration Act ("FAA").

Imad John Bakoss and Certain Underwriters at Lloyds of London entered into a Certificate of Insurance ("Certificate") that provided disability coverage to Bakoss if he became "permanently totally disabled."

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The Certificate provided that each party had the right to have Bakoss examined by a physician of its choice to determine if Bakoss met the Certificate's disability requirements. In the event of a disagreement between the physicians over whether Bakoss was "permanently totally disabled," the Certificate provided that the two physicians "shall [jointly] name a third Physician to make a decision on the matter which shall be final and binding."

After Lloyds declined to agree to pay disability benefits to Bakoss, he filed suit seeking coverage in New York state court. Lloyds removed the case to federal court, asserting that the "third physician" clause was an arbitration provision, thus providing federal subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the FAA. Section 2 of the FAA (9 U.S.C. § 2) provides that a "written provision in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable."

The District Court applied federal common law to the issue of whether the "third physician" clause constituted an agreement to arbitrate. The court relied upon the federal common law decisions in *McDonnell Douglas Fin. Corp. v. Pa. Power & Light Co.*, 858 F.2d 825 (2d Cir. 1988) (provision calling for appointment of independent tax counsel where language of agreement clearly manifests intention by parties to submit certain disputes to third-party for binding resolution constitutes enforceable agreement to arbitrate) and *AMF Inc. v. Brunswick Corp.*, 621 F. Supp. 456 (E.D.N.Y. 1985) (agreement by parties to submit dispute for decision by third party constitutes agreement to arbitrate) in concluding that the "third physician" clause was an agreement to arbitrate since the parties agreed to submit a medically-related policy dispute to a third-party to make a final and binding decision.

The District Court denied Bakoss' motion to dismiss for lack of subject matter jurisdiction and granted Lloyds' motion for summary judgment. Bakoss appealed, arguing that because the FAA does not provide a definition of "arbitration," the District Court should have looked to New York state law, rather than federal common law, to define that term.

On appeal, the Second Circuit noted it had not directly addressed whether federal courts should look to state law or federal common law for the definition of "arbitration" under the FAA. The court stated that while Congress sometimes intends a statutory term be defined by state law, absent a clear indication to the contrary, it is presumed that the application of a federal law is not dependent on state law. The court noted the split in the Circuits on whether state law or federal common law applied to the *FAA: Evanston Ins. Co. v. Cogswell Properties, LLC*, 683 F.3d 684 (6th Cir. 2012) (applying federal law); *Salt Lake Tribune Pub'l Co. v. Mgmt. Planning, Inc.*, 390 F.3d 684 (10th Cir. 2004) (applying federal law); *Fit Tech, Inc. v. Bally Total Fitness Holding, Corp.*, 374 F.3d 1 (1st Cir. 2004) (applying federal law); *Hartford Lloyd's Ins. Co. v. Teachworth*, 898 F.2d 1058 (5th Cir. 1990) (applying state law); and *Wasyl, Inc. v. First Bos. Corp.*, 813 F.2d 1579 (9th Cir. 1987) (applying state law).

The Second Circuit said that the decisions applying federal common law to determine whether the parties agreed to "arbitration" relied on congressional intent to create a uniform national arbitration policy. In contrast, the courts that applied state law articulated few reasons for doing so, the court said. The Second Circuit also noted that while the *Wasyl* decision remained good law in the Ninth Circuit, it had been questioned in *dicta* in later decisions. The Second Circuit agreed with the rationale expressed by the courts holding that federal common law should apply. The court said there was no indication that in passing the FAA, Congress intended to create a patchwork system whereby the FAA would mean one thing in one state and something different in another. The court, therefore, concluded that federal common law applied to determine what the term "arbitration" means under the FAA.

IMPORT OF DECISION Although the federal Circuit Courts are divided on the issue of whether state or federal law applies to interpret the term "arbitration" under the FAA and while the Supreme Court has yet to step in to resolve the split, the Second Circuit's decision in *Bakoss* may bring an end to the debate. For one thing, the Second Circuit is generally considered to be the leading federal appellate court on arbitration issues. Also, only two Circuits have ruled state law applies, and one of those – the Ninth – has indicated it would likely change course if the issue were to arise again. This case also shows how broadly courts will define the term "arbitration." Here, the Second Circuit concluded that even though the contract did not use the word "arbitrate" or "arbitration," a provision under which the parties agreed to submit the resolution of a disagreement to a third-party for a final decision constituted an agreement to arbitrate disputes. *Bakoss*, thus, is consistent with the strong federal policy favoring arbitration agreements.

Clark Hill PLC And Thorp Reed & Armstrong LLP Announce Merger Agreement, Creating 300 Attorney, 12 Office Firm

Detroit, Mich. and Pittsburgh, Pa. – The law and professional service firms of Clark Hill PLC and Thorp Reed & Armstrong, LLP announce an agreement to merge the two firms, each with more than 100 years of history. The firms expect the merger to close in the second quarter of this year.

The combined firm includes more than 300 attorneys in a wide variety of practice areas. The firm will operate in 12 offices in seven states plus the District of Columbia. Office locations are in Birmingham, Mich., Chicago, Ill., Detroit, Mich., Grand Rapids, Mich., Lansing, Mich., Philadelphia, Pa., Phoenix, Ariz., Pittsburgh, Pa., Princeton, N.J., Washington, D.C., Wheeling, W.Va. and Wilmington, Del.

The combined firm will utilize the brand name Clark Hill Thorp Reed in chosen markets, including all geographic markets where Thorp Reed & Armstrong has a presence today. However, its legal name will remain Clark Hill and the Clark Hill name will continue to be used in all of Clark Hill's current markets. The combined firm's decentralized structure empowers local offices to make business decisions in close proximity to clients in ways that meet the needs of their individual markets, while remaining consistent with the firm's culture and values.

"This merger allows us to provide more value to our clients, with more expertise and capabilities in more places," said John J. Hern, Jr., CEO of Clark Hill PLC and the combined firm. "We're investing in client relationships of all sizes while staying core to the common DNA which has made both firms successful for more than a century."

The combined firm will offer clients specialized legal knowledge and extensive experience and resources in practice areas such as:

- Banking and Finance Law
- Energy, Environment and Natural Resources Law
- Technology and Intellectual Property Law
- Corporate Law
- Litigation
- Employment Law
- Insurance and Reinsurance
- Employee Benefits and Executive Compensation
- Construction and Real Estate Law
- Manufacturing and Distribution
- Bankruptcy and Financial Reorganization

Additionally, the merger will provide a strong foundation in which to develop new legal practice areas.

"The Clark Hill Thorp Reed merger provides our current clients with increased depth and services," said Jeffrey J. Conn, who will assume a seat on the Executive Committee of the combined firm and will serve as Partner in Charge of the firm's Pittsburgh office. "Our two firms have similar cultures, governance and business structures, which creates a solid platform to continue to provide value to our clients and allows for a seamless transition. For example, the combined firm's servicing rates will remain consistent at our current levels. The merger provides our firm with opportunities to grow in our current markets, as well as expand into new markets. I am confident our clients will be pleased with the additional capacity and expertise that will come with the combined firm."

James K. Goldberg, partner at Thorp Reed & Armstrong, will also join the combined firm's Executive Committee when the merger is completed.

Founded in 1895 in Pittsburgh, Thorp Reed and its nearly 100 attorneys have gained a reputation as lawyers who exemplify the profession's best practices, and lawyers who other lawyers turn to when they need counsel. The Firm supports a wide variety of clients' needs within the practice areas of corporate law, litigation, and financial and real estate transactions. Businesses, financial institutions, contractors, public and governmental entities, healthcare and not-for-profit organizations of all sizes, ranging from Fortune 500 companies to the middle market and entrepreneurs, rely on Thorp Reed for quality legal services.

Founded in 1890 in Detroit, Clark Hill PLC is an entrepreneurial, full-service law firm serving clients in all areas of business legal services, government and public affairs, and personal legal services. Its more than 200 experienced attorneys and other professionals consistently deliver the results and solutions that its clients have come to trust.

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