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REINSURANCE LAW BULLETIN

Re: Party Forfeited Right To Appoint Arbitrator For Failure to Comply With Thirty-Day Time Limit In Arbitration Agreement

An arbitration provision in a reinsurance agreement required a party to appoint an arbitrator within “thirty days” from receipt of a request from the opposing party. When the thirtieth day after such a request fell on the Sunday before Labor Day, the party deferred naming the arbitrator until the thirty-second calendar day. The opposing party asserted the appointment was untimely and, therefore, claimed the right to appoint a second arbitrator.

To determine the rights of the parties, a declaratory judgment action was filed in the United States District Court for Northern District of Illinois. The Court, applying California and Federal law, concluded the arbitration agreement language “within thirty days” means within thirty calendar days. The Court viewed any other construction, such as excluding holidays and non-working days, as producing unnecessary uncertainty and the possibility for greater disagreement. Indeed, such a construction would be particularly problematic if, for example, the parties were from different countries observing different holidays and/or work weeks.

Although missing the deadline may not have been prejudicial, the Court refused to rewrite the terms of the agreement. According to the Court, these sophisticated parties could easily have negotiated a provision accounting for holidays and work days, but neglected to do so.

For further information or a copy of the decision, please contact Daryn Rush at 215.399.5773 or drush@fblaw.com. Please visit our website at www.fblaw.com.