



FUNK & BOLTON

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
1717 ARCH STREET
46TH FLOOR
PHILADELPHIA, PENNSYLVANIA
19103-2713
PHONE: 215.568.4104
FAX: 215.568.4105
www.fblaw.com

DAVID M. FUNK (MD)
BRYAN D. BOLTON (MD, PA)
REN L. TUNDERMANN (MD)
CHARLES D. MACLEOD (MD)
GERALD I. H. STREET (DE)
TIFFANY HANNA ANDERSON (MD)
DARYN RUSH (PA, NJ)
DEREK B. YARMIS (MD, DC)
JEFFERSON L. BLOMQUIST (MD)
MICHAEL P. CUNNINGHAM (MD, DC)
LINDSEY A. RADER (MD)
CHERYL A. C. BROWN (MD)
JAMES F. TAYLOR (MD)
HUGH M. BERNSTEIN (MD)
ERNEST A. CROFOOT (MD)
JOHN I. ELLIS (DE)

SENIOR COUNSEL
HISHAM M. AMIN (MD)

ASSOCIATES
AMY L. STRACHAN (PA, NJ)
MITCHELL W. MAY (VA, DE)
THOMAS KLEMM (MD, DC, PA)
TAMAL A. BANTON (MD)
DESIRÉE S. WILLIAMS (MD, IL, DC)
SEIGRID T. RICH (MD)
MARYAM ZAFAR (MD)
M. DAVID MALONEY (MD, DC)
PATRICK W. THOMAS (MD)
NICOLE M. SANDUSKY (MD)
BENJAMIN E. CARLSON (PA)

OF COUNSEL
STEPHEN P. CARNEY (MD)
AMANDA STAKEM CONN (MD)
CHRISTOPHER E. DUNNE (PA, NY, DC)
GARY C. HARRIGER (MD)
DONNA B. IMHOFF (MD)
MARK A. MCNULTY (DE)
DEBORAH R. RIVKIN (MD)
RONALD L. SOUDERS (PA, DC)
JOHN R. STIERHOFF (MD)

REINSURANCE LAW BULLETIN

Re: Court Holds Follow the Fortunes Clause Is Not Implied As A Matter Of Law in Reinsurance Contract

The United States District Court for the Northern District of California recently ruled that a follow the fortunes clause is not implied as a matter of law in a reinsurance contract.

The issue arose in an action filed by an insurer seeking reimbursement from a reinsurer. In response to the reinsurer's attempt to challenge the claims settlement, the insurer moved for summary judgment arguing (i) as a matter of law, the follow the fortunes clause was an implied term of the reinsurance contract; and (ii) the follow the fortunes clause barred the reinsurer from challenging the insurer's settlement.

The Court rejected this argument finding a follow the fortunes clause is not, as a matter of law, an implied term in a reinsurance contract. According to the Court, if the follow the fortunes clause was sufficiently widely accepted to be implied as a matter of law, then inclusion of a follow the fortunes clause in so many reinsurance contracts would be redundant and unnecessary.

Refusing to adopt an absolute rule, the Court directed a factual inquiry concerning the follow the fortunes clause. A follow the fortunes clause still may be implied, but only if there is "evidence that, contrary to the common law, a custom or usage to 'follow the settlements' existed at the time the contract was entered" and there is no contrary contract language.

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.

March 19, 2007

No. 2007 - 2