

Disclosure of Information Regarding Reserves Required But Not Reinsurance

June 2009

Applying California law, the United States District Court for the Northern District of California has held that an insurer was required to disclose in discovery information regarding its reserves but not reinsurance. *Flintkote Co. v. General Accident Assurance Co. of Canada*, 2009 WL 1457974 (N.D. Cal. May 26, 2009).

The case involved allegations that a commercial general liability insurer acted in bad faith by failing to defend its insured against asbestos-related claims despite the insurer's purported knowledge that the claims were potentially covered. Addressing the insured's demand for reserve information, the court noted that because "reserves are set for claims that an insurer might be liable to pay, the reserves may indicate an estimate of the amount that [the insurer] believed or knew it would have to pay for [the claims asserted against the insured]." According to the court, evidence showing "a self-conscious disconnect" between what the insurer actually thought its losses might be and its conduct toward the insured in regards to the claims was relevant to the bad faith allegations asserted. On this basis, the court determined that the reserve information sought was properly discoverable. The court also concluded that the insurer was required to disclose the information because it could lead to the discovery of admissible evidence.

Turning to the insured's request for reinsurance information, the court pointed out that other courts in California addressing the issue have determined that an insurer should be required to disclose such information only "when the reinsurance agreement is directly at issue and relevant to the litigation, and the insurer is the defendant in the case, not an outside party." The court concluded that this exception for the discoverability of reinsurance information did not apply in this case because the agreement itself was not at issue and the information was sought only to support plaintiff's bad faith claim. As to the latter point, the court noted that "reinsurance information is typically based on business considerations" and, therefore, of limited relevance to establishing the "state of mind" or actual knowledge of the insurer."