

D.C. Federal Court Permits Insured to Amend Complaint in Reinsurance Dispute Related to Credit Insurance Policy

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A District of Columbia federal court partially granted and partially denied a reinsured's motion to amend its complaint in a dispute over a reinsurance agreement for a credit insurance policy. Assured Risk Transfer ("ART") extended a credit insurance policy to Vantage. The policy was reinsured under a contract with the reinsurer defendants, which was placed through a broker, the Willis Defendants. ART denied a claim under the credit insurance policy made by Vantage, and Vantage won an arbitration award against ART based on the denial. Vantage sued ART, the Willis Defendants, and the reinsurers after the reinsurers declined to pay under ART's reinsurance agreement, but the court dismissed for jurisdictional issues. Thereafter, Vantage moved to amend.

First, the court denied Vantage's effort to amend its complaint regarding its breach of contract and accompanying declaratory judgment claims. Vantage's proposed amended complaint alleges that the parties created a contractual relationship via credit insurance "binders" which purportedly confirmed that the underlying credit insurance policy was reinsured, but the court concluded such allegations were insufficient because insurance binders describing a reinsurance agreement do not create a binding contractual relationship with the Willis Defendants or reinsurers.

Second, the court accepted Vantage's proposed amendments related to the breach of implied contract, promissory estoppel, and unjust enrichment claims. On the implied contract claim, the amendments sufficiently alleged that ART and the Willis Defendants acted as agents for the reinsurers by claiming ART facilitated the transaction and the reinsurers delegated their underwriting authority to ART. Additionally, the allegations that reinsurers' agents gave the insurance binders to Vantage and the reinsurers knew ART was unable to pay Vantage's losses without reinsurance led the court to conclude it was plausible the reinsurers knew Vantage expected the reinsurers to pay and agreed to that arrangement.

On the promissory estoppel claim, the court interpreted the reinsurers' agents' delivery of the binders as a sufficiently alleged "promise" to pay any losses according to the credit insurance policy terms. Furthermore, Vantage plausibly alleged reliance upon the promise and an agency relationship between ART, the Willis Defendants, and the reinsurers. On the unjust enrichment claim, the court found the amendments adequately pleaded that reinsurers indirectly benefited through receipt of premiums to allow the claim to proceed. The court noted that Vantage is unable to prevail on its unjust enrichment and promissory estoppel claims if it prevails on its implied contract claim, but

allowed amendment to permit Vantage to pursue all three until a conflict arises.

Lastly, the court granted Vantage's request for leave to attempt to serve the reinsurers, declined to require the D.C. Department of Insurance, Securities, and Banking to accept service on their behalf, and dismissed Vantage's complaint as to ART as a defendant where Vantage failed to establish the necessity for ART to remain.

[Vantage Commodities Fin. Servs. I, LLC v. Assured Risk Transfer PCC, LLC](#), Case No. 17-1451 (USDC D.D.C. Nov. 16, 2018).

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