

RAA Amicus Curiae Briefs

The following amicus briefs (not an exhaustive list), were written and filed by the RAA legal staff (except in special circumstances) under the supervision of Debra Hall, as RAA General Counsel. The positions reflected in these briefs do not necessarily reflect the personal views of Debra Hall, but rather the views of the RAA, as determined by the majority of reinsurance member companies of the RAA at the relevant time.

American Employers' Ins. Co. v. Swiss Re America Corp.

Filed February 2005, US 1st Circuit Court of Appeals

The RAA filed a brief in support of Swiss Re in this case addressing the application of the follow the fortunes doctrine. The RAA argued in its brief that the follow the fortunes doctrine has no application whatsoever to the interpretation of reinsurance contract language. The RAA advocated an application of the follow the fortunes doctrine consistent with longstanding industry understanding, case law, and custom and practice. The RAA brief also outlined the history and rationale behind the follow the fortunes doctrine, expressed the importance to the insurance industry of applying the doctrine consistently, and reviewed the relevant case law.

Zurich American Ins. Co. v. ABM Industries, Inc.

The RAA joined the American Insurance Association (AIA) and the Complex Insurance Claims Litigation Association (CICLA) in filing this brief of *amici curiae*. This case concerns whether a policyholder has an “insurable interest” in property not belonging to it for the purpose of obtaining coverage under a “Business Interruption” (“BI”) provision of a property policy. The brief argues that the Court should accept the petition for rehearing because the Court's decision significantly expands the BI coverage provided by the policy and dramatically alters the bargain made between the policyholder and the insurer. The brief also urges the Court to give effect to the separate CBI coverage provision.

Diane Koken v. Reliance Ins. Co.

Filed August 2004, Pennsylvania Supreme Court

The RAA filed its brief in support of the Pennsylvania Liquidator in this case addressing the lower court's granting of direct access to reinsurance proceeds. Consistent with longstanding industry understanding, case law, and custom and practice the RAA argued that, absent a contractual agreement to the contrary, individual insureds do not have the right to direct payment from reinsurers.

Travelers v. Gerling

Filed August 2004, US 2nd Circuit Court of Appeals

The RAA filed a brief advocating an application of the follow the fortunes doctrine consistent with longstanding industry understanding, case law, and custom and practice. Based on the nature of the dispute and the case law of New York, the RAA argued that the follow the fortunes doctrine did not prohibit Gerling from raising legitimate questions about the reasonableness and good faith basis of travelers' reinsurance claim.

Wells Fargo, MBIA, PNC and Wilmington Trust v. Royal Indemnity Co.

Filed July 2004, US 3rd Circuit Court of Appeals

The RAA filed a brief jointly with the AIA in this case involving issues of fraud and the mischaracterization of insurance contracts. The brief focused on the issue of fraud and its importance as a defense in insurance and reinsurance. Further, the RAA and AIA contended that without a full exploration of the issues of fact, the district court's decision could be interpreted to allow after-the-fact contract modifications to secure coverage for losses and risks never contemplated during the original policy negotiation. *Amici* argued that such a result is anathema to the basic tenets of insurance, which rely on the parties' contractual expectations.

In the Matter of the Liquidation of The Home Ins. Co.

Filed June 2004, New Hampshire Supreme Court

The RAA filed a brief to support reinsurers' rights to appeal orders issued in liquidation and oppose a proposed agreement by the Liquidator which would have offered incentives to certain general creditor claimants to file claims in order to maximize reinsurance recoveries. The brief argued that the Liquidator was without statutory authority to enter into such an agreement which directly contradicted the priority of distribution statute. The brief further asserted that such an agreement would amount to a unilateral rewriting of the reinsurance contract without consent.

Allen v. Pacheco

Filed December 2003, United States Supreme Court

The RAA filed a brief in support of a writ of certiorari on the issue of reverse preemption of the FAA by the McCarran-Ferguson Act. The brief argued, among other things, in support of the federal policy encouraging arbitration.

Koken v. Legion Insurance Co.

Filed October 2003, Supreme Court of Pennsylvania

The RAA filed a brief along with the NAII and IUA in support of the insurance commissioner's position on direct recovery of reinsurance recoverables in receivership. The brief was filed pursuant to the appeal by the insurance department and parallels the RAA brief filed in the Commonwealth Court.

Koken v. Legion Insurance Co.

Filed May 2003, Commonwealth Court of Pennsylvania

Certain large corporate policyholders had asked the insurance commissioner, as rehabilitator, to reform reinsurance contracts to allow direct recovery from reinsurers. The RAA filed a brief in support of the insurance commissioner arguing that the reinsurance agreements at issue did not afford the policyholders a right of direct recovery.

Dehoyos v. Allstate

Filed September 2002, US 5th Circuit Court of Appeals

The RAA joined in an insurance industry amicus brief supporting Allstate in a civil rights violation case based on Allstate's use of credit information for purposes of premium determinations. The *amicus* brief of the insurance industry focused specifically on the inappropriateness of the disparate impact test in cases involving alleged discrimination in the business of insurance.

North River Ins. Co. v. ACE American Re

Filed August 2002, US 2nd Circuit Court of Appeals

RAA filed an amicus brief supporting reinsurers' appeal on the issue of whether the follow the fortunes doctrine could be applied to a cedent's allocation decisions. The brief argued, in part, that the follow the fortunes doctrine does not apply to the post-settlement calculation of reinsurance billings

IOA Re, Inc. and Swiss Re Life Canada v. ReliaStar Life Ins. Co.

Filed August 1998, US Supreme Court

RAA filed an amicus brief supporting retrocessionaires on the issue of whether a follow the fortunes clause is implied in all agreements, and nature of reinsurer duties under an explicit follow the fortunes clause.

Joseph Naegel v. R.J. Reynolds Tobacco Co., et al.

Myers v. Philip Morris Cos.

Filed November 2001, California Supreme Court

RAA filed an amicus brief in both cases on an identical issue, opposing retroactive application of a state liability statute.

Travelers Casualty and Surety Co. v. Certain Underwriters at Lloyd's

Filed August 2001, New York Court of Appeals

RAA filed an amicus brief with other insurance trades supporting reinsurers on issue of single-versus-multiple occurrences under reinsurance agreements, and the nature of a reinsurer's duties under a follow the fortunes clause.

In the Matter of the Liquidation of Integrity Insurance Company

Filed May 2000, New Jersey Supreme Court

RAA filed an amicus letter in support of reinsurer in claim estimation case on whether a state regulator could claim a "deliberative process privilege" in documents related to the liquidation plan for an insolvent insurer.

Transit Casualty Company v. Lloyd's

Filed December 1999, US District Court, Western District of Missouri

RAA filed an amicus brief in support of reinsurer's motion to compel arbitration.

Jayne LaVecchia v. Munich Reinsurance Company

Filed March 1999, US District Court for the District of New Jersey

RAA filed an amicus brief in support of reinsurer's motion to compel arbitration.

Reliance Nat'l Ind. Co. v. Jennings

Filed December 1998, US Court of Appeals for the Eighth Circuit

RAA filed brief with other insurance trades supporting reinsurer and its rights of salvage and subrogation, and application of the collateral source rule in the reinsurance context.

Donaldson v. United Community Ins. Co.

Filed October 1998, Louisiana Court of Appeals

RAA filed an amicus brief supporting reinsurer in its defense against a direct action by a policyholder of its insolvent cedent.

Humana, Inc. v. Forsyth

Filed August 1998, US Supreme Court

RAA signed on to an amicus brief filed by insurance trades opposing application of the federal civil RICO Act to allegedly fraudulent insurance conduct that is already regulated by state insurance law.

American Re-Insurance Co. and NAC Reinsurance Corp. v. Crawford

Filed October 1998, US 5th Circuit Court of Appeals

RAA filed an amicus brief in support of the reinsurer's motion to compel arbitration.

Ruthardt v. Munich American Re

Filed May 1998, Massachusetts Supreme Court

RAA filed an amicus brief in support of reinsurers' setoff rights in an insurance insolvency.

Ieyoub v. American Tobacco Co.

Filed June 1998, US 5th Circuit Court of Appeals

RAA filed an amicus brief in support of direct insurers supporting their contractual arbitration rights in tobacco liability case.

First State Ins. Co. v. Hughes (Fremont Ins. Co. UK)

Filed March 1998, US Bankruptcy Appellate Panel for the 9th Circuit

RAA filed an amicus brief in support of ceding insurers in their efforts to stop a US bankruptcy court from turning over a reinsurance trust to the UK receiver of an insolvent insurance company.

Transit Ins. Co. in Liquidation v. Lloyd's

Filed March 1998, Missouri Supreme Court

RAA filed an amicus brief supporting reinsurer's request to have Missouri's highest court review whether a service of suit clause in a reinsurance contract nullifies an arbitration clause in the same agreement.

Marathon Oil Co. v. Ruhrgas, A.G.

Filed February 1998, US 5th Circuit Court of Appeals

RAA filed an amicus brief in support of broad arbitration rights under federal law.

United States v. Brennan

Filed January 1998, US 2nd Circuit Court of Appeals

RAA signed on to an amicus brief of insurance trades on issue of whether a ceding insurer owes a reinsurer a fiduciary duty in the performance of a reinsurance agreement under New York law.

Atlantic Mutual v. Commissioner of Internal Revenue

Filed December 1997, US Supreme Court

RAA filed an amicus brief on the issue of whether the IRS has the authority to deny “fresh start” relief under Section 1023 of the Tax reform Act of 1986.

Munich American Reinsurance Co. v. Crawford

Filed June 1997, US 5th Circuit Court of Appeals

RAA filed an amicus brief in support of reinsurer’s motion to compel arbitration.

Everest Reinsurance Company v. Howard

Filed May 1997, Texas Court of Appeals

RAA filed an amicus brief in support of reinsurer’s motion to compel arbitration.

Security Life Ins. Co. v. Clark

Filed May 1997, Georgia Court of Appeals

RAA filed an amicus brief arguing that a policyholder has no right of direct action against a reinsurer, and that a reinsurance agreement cannot be the basis of a RICO conspiracy claim due to a cedent’s misconduct.

Transit Ins. Co. v. Selective Ins. Co.

Filed February 1997, US 8th Circuit Court of Appeals

RAA filed an amicus brief in support of reinsurers’ setoff rights in an insurance insolvency.

Transit Ins. Co. in Liquidation v. Lloyd’s

Filed September 1996, US 8th Circuit Court of Appeals

RAA filed an amicus brief in support of reinsurer’s motion to compel arbitration.

Michigan National Bank-Oakland v. American Centennial Ins. Co., et al

Filed September 1996, New York Court of Appeals

RAA filed an amicus brief in support of reinsurer’s right to void a contract back to its inception due to the cedent’s fraud in the inducement, and the reinsurer’s ability to enforce that right against the cedent’s liquidator.

Quackenbush v. Allstate Ins. Co.

Filed January 1996, United States Supreme Court

RAA filed an amicus brief in support of reinsurer’s motion to compel arbitration.

Lipton v. California Superior Court

Filed January 1996, California Court of Appeals

RAA filed an amicus brief in support of reinsurer arguing discovery of reinsurance information by an insured is not legally or otherwise permissible.

Romero Corp. v. Old Republic Ins. Co.

January 1996, California State Court of Appeals

RAA staff provided substantial legal support to reinsurer arguing that an insured does not have a right of direct action against a reinsurer.

Care Convalescent v. TIG Reinsurance Co.

December 1995, California Superior Court

RAA staff provided substantial legal support to reinsurer arguing that an insured does not have a right of direct action against a reinsurer.

Rebardi v. Myers

December 1995, Louisiana State Supreme Court

RAA staff provided substantial legal support to reinsurer arguing that an insured does not have a right of direct action against a reinsurer.

Crawford v. Guardian Life Ins. Co.

Filed June 1995, Oklahoma Court of Appeals

RAA filed an amicus brief filed in support of reinsurer arguing a court may not apply retroactively an anti-setoff statute.

Durjee v. American Druggists Ins. Co.

Filed August 1995, Ohio Court of Common Pleas

RAA filed an amicus brief in support of reinsurer arguing statutory setoff is available between multiple reinsurance contracts.

Crum and Forster v. Monsanto Corp.

Filed September 1995, RAA staff provided substantial legal support to reinsurer arguing a reinsurance pooling agreement is not evidence of a joint venture that justifies piercing the corporate veils of the agreement's participants.

National American v. Lloyd's

Filed August 1995, US 9th Circuit Court of Appeals

RAA filed an amicus brief supporting reinsurer arguing a follow the fortunes clause is not implied in reinsurance agreements. Court reversed lower court, in part, based expressly on the RAA's amicus brief.

Stevens v. International American Ins. Co.

Filed February 1995, US 2nd Circuit Court of Appeals

RAA filed an amicus brief in support of reinsurer arguing a Kentucky anti-arbitration statute that applied to insurer insolvencies did not nullify an arbitration clause in a reinsurance agreement.

North River Ins. Co. v. Allstate Ins. Co.

Filed January 1995, US District Court, Southern District of New York, and US 2nd Circuit Court of Appeals

RAA filed an amicus brief in each court in support of reinsurer arguing arbitrators can and should decide the issue of whether a prior arbitration has a preclusive effect on a subsequent arbitration.

In re Liquidation of Western Int'l Ins. Co.

Filed October 1994, California Superior Court

RAA filed an amicus brief in support of reinsurer's motion to compel arbitration.

North River Ins. Co. v. Cigna Reinsurance Co.

Filed March 1994, US 3rd Circuit Court of Appeals

RAA filed an amicus brief arguing a follow the fortunes clause prohibits an insurer from expanding coverage over the limits set in the reinsurance agreement.

Affiliated FM Ins. Co. v. Constitution Reinsurance Co.

Filed May 1993, Massachusetts State Supreme Court

RAA filed an amicus brief in support of reinsurer arguing reinsurers are not responsible to pay an insurer's declaratory judgment expenses unless the reinsurance agreement explicitly provides for such payment.