LEGAL UPDATES

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Sixth Circuit: Ceding Company Collaterally Estopped from Relitigating Issue Decided Against It in Arbitration with Different Reinsurer

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In an unpublished decision, the United States Court of Appeals for the Sixth Circuit in *Amerisure Mut. Ins. Co. v. Swiss Reinsurance America Corp*., No. 24-1492 (6th Cir. Nov. 4, 2025) affirmed the district court's grant of summary judgment in favor of Swiss Reinsurance America Corporation ("Swiss Re"), holding that Amerisure Mutual Insurance Company ("Amerisure") is collaterally estopped from relitigating a defense cost reimbursement issue previously decided against it in arbitration with another reinsurer.

The dispute arises out of decades-long asbestos litigation involving Armstrong International, a manufacturer insured by Amerisure under primary and umbrella policies issued between 1979 and 1981. Amerisure, in turn, had purchased facultative reinsurance covering its liabilities under the umbrella policies from several reinsurers, including Swiss Re and Allstate. After Armstrong was sued by thousands of asbestos claimants, Amerisure paid substantial defense costs and indemnity payments, and sought reimbursement from its reinsurers. While Swiss Re reimbursed defense costs up to the umbrella policy limits, it (like Allstate) refused to pay defense costs incurred by Amerisure in excess of those limits, arguing such costs were not covered under the umbrella polices and, thus, the facultative certificates.

Amerisure and Allstate arbitrated the dispute. The arbitration panel unanimously decided against Amerisure, finding that the umbrella policies only required Amerisure to pay defense costs within the policy limits, and thus Allstate was not liable for costs above those limits. Amerisure, considering the

"award favorable overall," moved to confirm the arbitration award in federal court.

Subsequently, Amerisure sued Swiss Re in federal court, seeking a declaratory judgment that Swiss Re was obligated to reimburse the same defense costs under its facultative certificates. Swiss Re moved for summary judgment, arguing that Amerisure was precluded by collateral estoppel from relitigating the issue of whether it was obligated to pay defense costs in addition to its umbrella policy limits because that issue had already been decided against it in the Allstate arbitration. The district court agreed and granted summary judgment to Swiss Re. Amerisure appealed.

On appeal, Amerisure advanced several arguments to avoid the preclusive effect of the arbitration award. Amerisure contended that collateral estoppel should not apply because Swiss Re was not a party to the arbitration, that the precise legal issue had not been actually decided, and that the arbitration did not provide a full and fair opportunity to litigate due to its less formal procedures and limited appellate review. The Sixth Circuit rejected each of Amerisure's arguments.

First, relying on the text of the Allstate arbitration award, the court found that the defense cost reimbursement issue had been actually litigated and necessarily decided in the prior arbitration, even as the arbitration award did not specifically address every argument or legal theory advanced by Amerisure. According to the court, the "arbitration record" from the Allstate arbitration (including the pre-hearing briefs and hearing arguments) confirmed that Amerisure raised the same coverage arguments in the arbitration that it was raising in the litigation.

Second, the court concluded that Amerisure had a full and fair opportunity to litigate the issue in arbitration. Amerisure participated fully, was represented by counsel, engaged in discovery, and presented its arguments—including those regarding the drop-down provision. The court was not persuaded by Amerisure's arguments about the informality of arbitration or the absence of appellate review, noting that Amerisure had voluntarily agreed to the arbitration process and could have sought vacatur of the award under the Federal Arbitration Act.

Third, the court emphasized that mutuality of parties is not required when (as here) collateral estoppel is asserted defensively. The court reasoned that allowing Amerisure to relitigate the same issue against different reinsurers would encourage gamesmanship and undermine judicial economy.

Finally, the court rejected Amerisure's argument that even if the elements of collateral estoppel were met, it would be "unjust" to apply collateral estoppel. According to Amerisure, the "honorable engagement provision" in the Allstate arbitration clause "renders collateral estoppel unjust because it allowed the arbitration panel to apply a different legal and evidentiary standards than courts apply." The court found that argument unavailing, reiterating that collateral estoppel applies to arbitration awards despite "the different rules and procedures that arbiters follow" and that here there was no

reason to "doubt the quality, extensiveness, or fairness of procedures followed" in the Allstate arbitration.

What this means to you

Although an unpublished decision, the decision makes clear that at least in the Sixth Circuit a ceding company which has fully and fairly litigated an issue in arbitration with one reinsurer cannot relitigate the same issue against another reinsurer under identical contract provisions. For insurers and reinsurers, this case highlights the importance of considering the broader implications of arbitration outcomes and the potential for those decisions to preclude future claims, even against non-parties to the original proceeding.

Contact us

If you have questions regarding the court's decision, please contact Michael Robles, Brian O'Sullivan, or your Husch Blackwell attorney.