**JUDICIAL RESOLUTION OF DISPUTES**

**RELATING TO COMMUTATION OF**

**REINSURANCE AGREEMENTS**

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In the reinsurance context, a commutation agreement is an “agreement between a ceding insurer and the reinsurer that provides for the valuation, payment, and complete discharge of all obligations between the parties under a particular reinsurance contract.”[[2]](#endnote-2) This paper discuses case law relating to the resolution of disputes arising from commutation agreements. Based on the cases discussed, some practical suggestions will be made about commutation agreements.

**The Importance of Designating Specifically The Reinsurance Contracts**

**To Be Commuted And The Parties Subject To The Agreement And**

**Understanding The Scope Of The Release**

It would appear to be obvious and a matter of common sense that any commutation agreement should designate with specificity the reinsurance contracts being commuted and the parties who are subject to the commutation agreement and that the parties to the agreement should be fully conversant with the contract terms relating to the scope of the release. Nonetheless, there are numerous cases where the courts have adjudicated disputes over the scope of the release in a commutation agreement and the parties who are subject to the release. In some of these cases, one party to the agreement was careless in not understanding contract terms or business relationships relating to the scope of the release.

In *Continental Cas. Co. v. Northwestern National Insurance Co*.,[[3]](#endnote-3) the court affirmed summary judgment in favor of the reinsured Continental Casualty Company (“CCC”) and Continental Insurance Company (CIC”) (collectively “Continental”) and ruled that a commutation agreement applied only to three facultative reinsurance contracts between CCC and the reinsurer Bellefonte Insurance Company (“Bellefonte”) and not to all (approximately 2,200) facultative reinsurance contracts between CIC and Bellefonte. The commutation agreement required Northwestern National Insurance Company (“NNIC”), Bellefonte’s successor-in-interest, to pay $6.1 million to CCC in return for a release from NNIC’s obligations under Reinsurance Contracts identified in Schedule A to the Agreement. Schedule A included reinsurance treaties which were listed by number, program, and effective date. Under the title “Through Facultatively Placed,” the Agreement included one entry (“0709 Bellefonte Reins”). The dispute focused on the meaning of this term, which the parties agreed was ambiguous.

NNIC’s position that this term encompassed all of the facultative reinsurance agreements between CIC and Bellefonte was undermined by negotiations between CNA Financial Corporation (“CNA”), an insurance holding company which owned CIC and CCC, and Bellefonte after the execution of the commutation agreement at issue. During those negotiations, NNIC expressed an interest in “commuting all 2,200 facultative certificates at issue with CNA, which included certificates between Bellefonte and CIC.”[[4]](#endnote-4) As the district court noted, NNIC would “not have considered entering into a commutation agreement for facultative certificates that had already been commuted.”[[5]](#endnote-5)

There had also been a dispute between NNIC and CIC with respect to whether CIC was bound by the commutation agreement between CCC and Bellefonte. The commutation agreement defined the term “Reinsured” to include CCC and all of its “affiliates.” Since CIC and CCC were “sibling corporations related to another corporation, CNA,” the district court had previously ruled CIC and CCC were affiliates and CIC was thus bound by the commutation agreement. *See Continental Cas. Co. v. Northwestern Nat’l Ins. Co*.[[6]](#endnote-6)

In *Mid Century Insurance Co. v. American Centennial Insurance Co.*,[[7]](#endnote-7) the court affirmed summary judgment in favor of the reinsurer and held the commutation agreement applied not only to two treaties between Mid Century Insurance Company (“Mid Century”) and American Centennial Insurance Company (“ACIC”) (its reinsurer) but also to facultative certificates between Truck Insurance Exchange (“Truck”), a subsidiary of Mid Century, and ACIC. The court relied upon the broad release language in the commutation agreement in support of its ruling that the parties intended the commutation to be a “global settlement of all agreements between them.”[[8]](#endnote-8) The court rejected Mid Century’s argument that ACIC had misrepresented the scope of the commutation agreement and stated that Mid Century was negligent in failing to “determine the precise extent of its reinsurance business with ACIC.”[[9]](#endnote-9)

In *National Union Fire Ins. Co of Pittsburgh v. Walton*,[[10]](#endnote-10) the court rejected a claim by National Union Fire Insurance Company of Pittsburgh (“National Union”) that a commutation agreement it entered into with its reinsurer Walton Insurance Limited of Bermuda (“Walton”) did not include a reinsurance agreement between the parties involving the Interstate Towers Insurance Program (“Interstate Towers”). The court relied upon the release language in the commutation agreement which specifically identified the Interstate Towers program by Walton contract number. National Union’s “unilateral mistake” in failing to know the meaning of the Walton contract number did not constitute a basis for overturning an otherwise unambiguous contract.[[11]](#endnote-11) Just as the court in *Mid Century Insurance Co.* criticized Mid Century, the court chided National Union for its carelessness: “If National Union signed the release mistakenly, it did so as a result of its own carelessness and, therefore, is barred from contesting the release’s validity on the grounds of mistake.”[[12]](#endnote-12)

In *Old Republic Insurance Co. v. Ace Property and Casualty Insurance Co*.,[[13]](#endnote-13) the court held a commutation agreement between Old Republic Insurance Company (“Old Republic”) and Ace Property and Casualty Company’s (“Ace’s) predecessor-in-interest Central National Insurance Company of Omaha (“Central National”) was unambiguous and included all of the reinsurance agreements between Old Republic and Central National, including some agreements where Central National reinsured Old Republic and other agreements where Old Republic reinsured Central National. The court rejected the contention by Ace that the term “various reinsurance contracts” in the commutation agreement only terminated the reinsurance agreements where Central National reinsured Old Republic and not those where Old Republic reinsured Central National Union. In support of its ruling, the court relied upon language in the second paragraph of the commutation agreement, stating “Old Republic and Central National have heretofore entered into various reinsurance contracts with one another, under which reinsurance agreements there are or may be certain liabilities and obligations outstanding (the ‘[r]einsurance [a]greements’)” and in the third paragraph of the commutating agreement, stating the parties “now wish to fully and finally determine and settle all liabilities and obligations of the parties to each other under the [r]einsurance [a]greements.”[[14]](#endnote-14) The court also cited provisions in the commutation agreement stating that each party would “hereby release and forever discharge” the other party from “any and all liabilities and obligations” arising under or related to the reinsurance agreements.[[15]](#endnote-15)

**Whether Commutation Agreements Are Binding On Retrocessionaires**

Even where no disputes arise between the parties to a commutation agreement, disputes may arise between the reinsurer and its retrocessionaire(s) regarding the impact of the commutation upon the obligations of the retrocessoinaire(s).

In *Global Reinsurance Corp. of America v. Argonaut Ins. Co*.,[[16]](#endnote-16) the court upheld an arbitration award requiring Argonaut Insurance Company (“Argonaut”) to pay its reinsured Global Reinsurance Corporation of America (“Global”) $1,975,747.55 pursuant to reinsurance agreements. In 2003, Global reached a settlement and commutation agreement with its reinsured Home Insurance Company (“Home”) (hereinafter the “Home Settlement”) settling all outstanding claims and releasing Global from its reinsurance contracts with Home for a lump sum payment. The Home Settlement included existing liabilities as well as contingent liabilities. With the assistance of a consulting firm, Global utilized actuarial methods to allocate the lump sum settlement among the retrocessionaires with whom Global had reinsured its Home exposure, including Argonaut. In challenging the arbitration award, Argonaut argued it was not responsible for paying four of the “claims” allocated to it, which represented “contingent liabilities.”

In ruling against Argonaut, the court upheld the arbitration panel’s rejection of the following two arguments advanced by Argonaut. First, Argonaut argued Global failed to give notice of the claims as required by the Treaties between Global and Argonaut. Second, Argonaut argued the commutations were not “claims” within the meaning of the Treaties because they did not fit within the coverage defined by the Treaties.

With respect to the notice issue, the Treaties required Global to advise Argonaut with reasonable promptness of any accident or event in which Argonaut was known to be involved. The notice provision also stated Argonaut had the right to cooperate with Global in the defense and/or settlement of any claim in which Argonaut may be interested. In rejecting Argonaut’s late notice argument, the court stated that under New York law, a “reinsurer must show that the failure to give notice was prejudicial or material to the reinsurance contract.”[[17]](#endnote-17) While the arbitration award did not offer any explanation with respect to the late notice issue, the court concluded “nothing in the record suggests that the failure to give notice of Global’s negotiations with Home regarding the Home Settlement was material to the Treaties or prejudicial to Argonaut.”[[18]](#endnote-18)

With respect to Argonaut’s argument that the commutation agreement did not fall within the coverage it afforded to Global, the court upheld the arbitration panel’s conclusion that the claims comprising the Home Settlement were covered by the original reinsurance agreements between Global and Argonaut. According to the court, the question for the arbitration panel was “whether a loss settlement, as used in these [Treaties], includes compromise of liability under all the [Original Reinsurance Contracts] as distinct from the liability of an individual loss settlement under a single [Original Reinsurance Contract].”[[19]](#endnote-19) As the court states, the arbitration panel found the commutation agreements were covered by the Treaties based on the following reasoning:[[20]](#endnote-20)

Noting that “virtually all loss settlements, both in insurance and reinsurance,

involve compromise and include a so-called contingent component…” and that “the comprehensive nature of the commutation between [Home] and [Global] represents a distinction without a difference to the validity of a loss settlement under the [Treaties][.]” the Panel found the Commutations were

covered by the Treaties….

The Treaties at issue in *Global Reinsurance* defined “Loss Occurrence” as “any one disaster, casualty, accident, or loss or series of disasters…arising out of or caused by one event or occurrence.”[[21]](#endnote-21) The arbitration panel construed the Loss Occurrence language broadly to include all the claims and commutations at issue between the parties. While a narrow construction of the clause “might exclude contingent liabilities, the Treaties were interpreted by the Panel as ‘honorable undertakings’ not as strict legal documents.”[[22]](#endnote-22)

Once the arbitration panel determined the claims comprising the commutation transaction (including contingent claims) were covered by the original reinsurance contracts issued by Global, the panel applied the “follow-the-fortunes” doctrine to preclude review of Global’s decision to settle the contingent claims. According to the court, “because the Panel properly applied the ‘follow-the-fortunes’ doctrine to its interpretation of the scope of the treaties, there was “no manifest disregard of the law.”[[23]](#endnote-23)

In *Insurance Co. of Pennsylvania v. Associated International Ins. Co*.,[[24]](#endnote-24) the court held a settlement between an insured and its insurer addressing future claims was reimbursable under a reinsurance certificate. Although this case deals with a reinsurer’s obligations to pay a settlement between the cedent and its insured, the reasoning of the court is applicable to the issue of whether a retrocessionaire is obligated to reimburse a reinsurer for a settlement involving future/contingent claims. The reinsurer Associated International Insurance Company (“Associated”) had argued that a settlement agreement between Insurance Company of Pennsylvania (“ICP”) and its insured, which called for the payment of “future, unidentified” asbestos claims was not covered by a reinsurance certificate because “payment is required only for funds actually expended to injured claimants by way of settlement or judgment.”[[25]](#endnote-25) Associated took this position even though it stipulated that the funds paid by ICO pursuant to the settlement agreement would be used for payment by the insured Fibreboard Corporation (“Fibreboard) of “actual claims made against Fibreboard.”[[26]](#endnote-26)

In support of its ruling, the court noted the ICP-Fibreboard settlement agreement required ICP to pay asbestos claims “as and if such claims arise.” Pursuant to the reinsurance contract, Associated’s liability “shall follow that of [ICP] and shall be subject in all respect to the terms and conditions of the [ICP-Fibreboard] policy.”[[27]](#endnote-27) The ICP-Fibreboard policy required ICP to “indemnify [Fibreboard] for all sums which [Fibreboard] shall be obligated to pay by reason of the liability….”[[28]](#endnote-28) Since the asbestos claims represented a liability Fibreboard was obligated to pay, ICP was required to indemnify Fibreboard and Associated was required to indemnify ICP pursuant to the reinsurance contract. To hold otherwise would violate “California’s policy against implying provisions in insurance contracts that would defeat the contractual purpose” and “would frustrate the public policy which encourages settlement.”[[29]](#endnote-29)

**Impact of Commutation Agreements Upon Contingent Commission**

**Calculations**

In *Acumen Re Mgmt. Corp. v. Gen. Sec. Nat’l Ins. Co*.,[[30]](#endnote-30) the court granted summary judgment in favor of the defendant General Security National Insurance Company (“GSNIC”) with respect to substantially all of the breach of contract claims asserted by plaintiff Acumen Re Management Corporation (“Acumen”). In 1994, GSNIC’s predecessor-in-interest Sorema North American Reinsurance Company (“Sorema”) entered into an Underwriting Agency Agreement (“UAA”), pursuant to which it appointed Acumen as its exclusive non-employee excess workers’ compensation facultative reinsurance underwriter. In that capacity, Acumen assessed the risks of various insurance policies and entered into reinsurance agreements on behalf of Sorema. Under the UAA, Sorema received a base compensation for its services, consisting of underwriting commissions calculated as a percentage of premiums on Acumen’s portfolio of business. Under a Contingent Commission Addendum (“CCA”), executed in 1994 by Acumen and Sorema, Acumen was entitled to receive a “contingency commission” equal to thirty percent of Sorema’s annual net profits, if any, on the reinsurance certificates underwritten by Acumen. On May 1, 2002, Acumen and GSNIC entered into a Termination Agreement which provided that certain provisions of the UAA survived the termination of the UAA (including the requirement that quarterly reports with a current report of incurred loss on all outstanding claims be provided by GSNIC to Acumen).

Between July 2004 and December 2007, GSNIC executed four commutation agreements on a contract, rather than claim-specific basis. Certificates of reinsurance underwritten by Acumen represented a “fraction” of the commuted business; however, they represented a “substantial portion” of Acumen’s income-deriving business with GSNIC.[[31]](#endnote-31) GSNIC did not consult with Acumen prior to executing the commutation agreements at issue “though the potential impact on Plaintiff was considered by certain personnel.”[[32]](#endnote-32)

After each commutation, GSNIC “allocated the losses without differentiating between Plaintiff-produced certificates and the rest of the commuted policies – that is, according to Defendant, losses were attributed based on a proportional application of the settlement payment in proportion to the reserve carried on the contracts at the time of the commutation.”[[33]](#endnote-33) In January 2008, GSNIC performed the contingency commission calculations to determine commissions which were potentially owed to Acumen for the underwriting years at issue. GSNIC’s calculations “ultimately revealed that there were no net profits in any of the underwriting years” at issue.[[34]](#endnote-34) GSNIC found Acumen’s book of business “generated underwriting losses in excess of $56.7 million, with over $47 million representing outside case reserves and IBNR on non-commuted Plaintiff produced business.”[[35]](#endnote-35)

While Acumen initially took the position that GSNIC violated the CCA by commuting a substantial portion of its portfolio of business, it subsequently claimed GSNIC violated the CCA by including the commutation payments in the contingent commission calculation. According to Acumen, such inclusion was not permitted by the CCA “because the contract contains no reference to commutations.”[[36]](#endnote-36) Acumen also contended such inclusion was not permitted by the CCA since there was “no category in the formula for the contingent commission calculation that allows Defendant to allocate a portion of the losses incurred as a result of the commutation, without verifying what losses were attributable to Plaintiff-produced certificates.”[[37]](#endnote-37)

In rejecting Acumen’s contentions, the court cited the provisions in the CCA setting forth “in a clear and unambiguous fashion” the formula that GSNIC was required to use to calculate the contingency commission.[[38]](#endnote-38) Pursuant to Section A.2 of the CCA, in computing net profits, a deduction is made for “loses…paid by [Defendant]…arising from facultative certificates bound or written with effective dates during the Underwriting Year under calculation.”[[39]](#endnote-39) According to the court, while the formula did not specifically reference commutation transactions, “the only evidence in the record on commutation indicates that commutations generally result in losses and that, in this instance, the commutation transactions did in fact result in actual losses paid by Defendant.”[[40]](#endnote-40) Thus, the court ruled it was not a violation of the CCA for GSNIC to use losses resulting from the commutation agreements in calculating Acumen’s contingency commission.[[41]](#endnote-41)

The court also noted that GSNIC presented evidence that its methodology for calculating Acumen’s contingency commission “did differentiate between the profitability of Plaintiffs produced certificates and all other commuted certificates – namely, by allocating the commutation price to each commuted certificate proportionally based on its carried reserves at the time of the commutations.”[[42]](#endnote-42)

**Applicability of Arbitration Provisions To Resolution Of Disputes**

The courts in numerous cases have addressed the question of whether disputes between the parties to reinsurance and commutation agreements are subject to arbitration where the reinsurance agreement includes an arbitration provision but the commutation agreement does not include such a provision. In *Repwest Insurance Co. v. Praetorian Insurance Co*., *et al*,[[43]](#endnote-43) the court held the arbitration provisions of a Quota Share Agreement and Aggregate Loss Reinsurance Contract entered into by Repwest Insurance Company (“Repwest”) were applicable and rejected Repwest’s claim that its claims against the defendants were subject to the provisions of a commutation agreement which it sought to invalidate and which did not include an arbitration provision.

In *Continental Casualty Co. v. LaSalle Re LTD*,[[44]](#endnote-44) the court held the provisions of a commutation agreement between Continental Casualty Company (“Continental”) and LaSalle Re LTD (“LaSalle”) extinguished their obligations under a retrocession agreement, including the duty to arbitrate. Since the commutation agreement did not include an arbitration provision, the court held Continental could not be compelled to arbitrate a dispute with LaSalle over Continental’s purported obligation to pay its share of claims paid by LaSalle to its cedent Hartford Insurance Company of Canada.

Similarly, in *Continental Casualty Co. v. Commercial Risk Re-Insurance Company*,[[45]](#endnote-45) the court held a dispute between plaintiff Continental Casualty Company (“Continental”) and the defendants (collectively “SCOR”) concerning the scope of a commutation agreement and whether it covered certain reinsurance agreements (the “Unity Fire Contracts”) was not subject to the arbitration provisions in the Unity Fire Contracts since the commutation agreement did not include an arbitration provision.

In *Trenwick Am. Reinsurance Corp. v. CX Reinsurance Co. Ltd.*,[[46]](#endnote-46) the court addressed a dispute involving a reinsurance agreement between Commercial Casualty Insurance Company (CCIC) and Trenwick Reinsurance Corporation (“Trenwick”) and a subsequent commutation agreement under which all reinsurance obligations between Trenwick and CCIC were extinguished. When CCIC became insolvent, Trenwick was obligated through a “cut-through” provision to pay claims to CX Reinsurance Co. Ltd (“CX”). After Trenwick refused to pay a claim submitted by CX before the execution of the commutation agreement, CX demanded arbitration pursuant to the reinsurance agreement at issue and moved to compel arbitration. Trenwick sought to enjoin the arbitration on the ground that there was no arbitration provision in the commutation agreement, which commuted and extinguished all reinsurance obligations between Trenwick and CCIC.

The court ruled in CX’s favor and held an arbitrator should resolve the dispute between Trenwick and CX concerning whether CX’s claims were subject to arbitration. The court distinguished *LaSalle* (relied upon by Trenwick) on the ground that CX was not a party to the commutation agreement at issue and was vested with certain rights under the reinsurance agreement at issue which could only be terminated as provided for in the reinsurance agreement. In support of its ruling, the court relied upon Second Circuit case law, including *ACE Capital Re Overseas Ltd. v. Central United Life Insurance Co*.[[47]](#endnote-47) In *ACE*, the court held a clause in a reinsurance agreement requiring arbitration “as a condition precedent” to resolution of any dispute between the parties “with reference to the interpretation” of the agreement or “their rights with respect to any transaction involved” was a “broad one that encompasses the parties’ disputes regarding fraudulent inducement and contract termination.” *See also Connecticut General Life Insurance Co. v. Houston Scheduling Services[[48]](#endnote-48)* (stating, [w]here there is a broad arbitration clause, the arbitrator resolves any claim of contract termination.”).

**Impact of Breach of Commutation Agreement**

In *Korea Foreign Insurance Co. v. Omne Re SA*,[[49]](#endnote-49)the U.K. Court of Appeal ruled that a breach of a commutation agreement by a reinsurer gave the reinsured the option of affirming the agreement or wholly discharging it. Pursuant to a commutation agreement, the reinsurer Omne Re SA (“Omne”) agreed to pay the reinsured Korea Foreign Insurance Company (“KFIC”) $1,350,000 in full and final settlement of all outstanding claims arising from the reinsurance contracts between them. Omne paid the $100,000 due upon execution of the commutation agreement but failed to pay any of the $1,250,000 balance due. Article 3 of the commutation agreement, captioned Special Condition provided that if Omne defaulted in any of its payment obligations, “this Commutation and Release Agreement shall be wholly null and void, and KFIC shall be entitled to reserve its full rights without prejudice to its rights under the Reinsurance Agreements and the claims recoveries.”

The court applied the “general rule of contract law that upon a repudiatory breach by one party, the other party has a right to elect whether or not to affirm that agreement or to treat it as wholly discharged.” Thus, upon Omne’s failure to meet its payment obligations, KFIC had the “right, either to affirm the compromise agreement and to insist upon performance of its terms or, alternatively, to disregard the compromise agreement and revert to the underlying reinsurance contracts.” Since KFIC elected to rely upon the commutation agreement, it was entitled to a recovery based on that agreement.

**Practical Suggestions**

There are a number of practical suggestions which can be derived from the case law discussed above, including the following:

**First**, the commutation agreement should identify clearly and specifically the reinsurance contracts being commuted as well as the parties subject to the commutation agreement. Since many insurance and reinsurance companies utilize a holding company structure, it is essential that the commutation agreement designate correctly the parties which are subject to the commutation agreement. Defining terms used in the release, such as “affiliates,” is important in avoiding disputes over the scope of the release.

**Second**, to decrease the likelihood of disputes with retrocessionaires, reinsurers entering into commutation agreements should consider providing notice to the retrocessionaires of their intent to commute reinsurance agreements and express their expectation that the retrocessionaires will be honor their obligations with respect to such commutations. This does not guarantee there will be no disputes concerning the impact of the commutation agreements upon the retrocessionaires’ obligations with respect to such commutations. However, there is no downside to providing such notification and the potential upside that disputes may be avoided.

**Third**, the position of the reinsurer in seeking reimbursement from its retrocessionaire(s) for sums paid pursuant to a commutation agreement is enhanced if the commutation agreement includes an Extended Reporting Clause, requiring the reinsured to provide the same notice(s) of loss(es/occurrence(s) as it would have been obligated to provide to the reinsurer under the reinsurance agreements. The inclusion of a Continued Access to Records Clause in the commutation agreement is also beneficial.

**Fourth**, reinsurers should be cognizant of the impact of commutation agreements upon commissions which are due based on reinsurance agreements which are being commuted and consider providing notice to the parties affected by the commutation prior to execution of the commutation agreements. As noted above, in *Acumen*, GSNIC personnel considered the impact of the commutation agreements upon Acumen but did not consult with Acumen prior to completing the agreements. Again, there would not appear to be any downside to such consultation even though it may not have eliminated the subsequent dispute between GSNIC and Acumen.

**Fifth**, given the conflicting case law on the issue of whether disputes between parties to a reinsurance agreement (which includes an arbitration provision) and a subsequent commutation agreement (which does not include such a provision) are subject to arbitration, a cedant or reinsurer who favors arbitration of disputes versus litigation would be well-advised to include an arbitration clause in the commutation agreement which is consistent with the arbitration clause(s) in the reinsurance agreements being commuted.

**Sixth**, to avoid any uncertainty concerning the impact of any breach by the reinsurer of its payment obligations under the commutation agreement, the agreement should make clear that such a breach does not void the terms of the commutation agreement and the reinsured is entitled to a recovery based on these terms.

1. Wm. Gerald McElroy, Jr. is a Senior Partner with the Boston office of Zelle LLP. The author acknowledges with gratitude the research assistance for this paper provided by Jeffrey Gordon, a Senior Associate in the Boston office of Zelle LLP. Any views expressed in this paper re those of the author and do not necessarily reflect those of Zelle LLP or Zelle LLP’s clients. [↑](#endnote-ref-1)
2. [http://www.irmi.com/online/insurance-glossary/term/c/commutation -- agreement.aspx](http://www.irmi.com/online/insurance-glossary/term/c/commutation%20--%20agreement.aspx). In its “simplest form,” a “lump sum payment by the reinsurer is substituted for the unknown future liabilities on ceded risks and it is done for reasons on both sides having to do with the relative advantages of current and long-term money or the convenience of closing certain yearly accounts.” A commutation may also be “partial, leaving some long-term obligations in effect, and it may be a contract for a series of fixed future payments rather than a present lump sum.” Staring, Graydon S., **Law of Reinsurance**, Section 14.6 (March 2016 Update). In either case, it “terminates the liabilities for indemnities on the one hand and premiums on the other, with respect to the risks specified.” *Id*.  [↑](#endnote-ref-2)
3. 427 F.3d 1038 (7th Cir. 2005). [↑](#endnote-ref-3)
4. 427 F.3d at 1042. [↑](#endnote-ref-4)
5. *Id.* [↑](#endnote-ref-5)
6. No. 03 C 1455, 2003 WL 21801022 (N.D.Ill. Aug. 4, 2003) at \*4. [↑](#endnote-ref-6)
7. 108 F.3d 1385 (9th Cir. 1997) (unpublished). [↑](#endnote-ref-7)
8. 108 F.3d at \*3. [↑](#endnote-ref-8)
9. *Id.* at \*4. [↑](#endnote-ref-9)
10. 696 F. Supp. 897 (S.D.N.Y. 1988). [↑](#endnote-ref-10)
11. 696 F. Supp. At 902. [↑](#endnote-ref-11)
12. *Id*. at 903-904. [↑](#endnote-ref-12)
13. 389 Ill.App.3d 356, 906 N.E.2d 630 (lst District, 2009). [↑](#endnote-ref-13)
14. 906 N.E.2d at 637. [↑](#endnote-ref-14)
15. 906 N.E.2d at 637-38. [↑](#endnote-ref-15)
16. 634 F.Supp.2d 342 (S.D.N.Y. 2009). [↑](#endnote-ref-16)
17. 634 F.Supp.2d at 349. [↑](#endnote-ref-17)
18. *Id.* [↑](#endnote-ref-18)
19. *Id*. at 347. [↑](#endnote-ref-19)
20. *Id*. [↑](#endnote-ref-20)
21. *Id*. at 350. [↑](#endnote-ref-21)
22. *Id*. [↑](#endnote-ref-22)
23. *Id.* [↑](#endnote-ref-23)
24. 922 F.2d 516 (9th Cir. 1991). [↑](#endnote-ref-24)
25. 922 F.2d at 525. [↑](#endnote-ref-25)
26. *Id.* [↑](#endnote-ref-26)
27. *Id.* at 526. [↑](#endnote-ref-27)
28. *Id*. [↑](#endnote-ref-28)
29. *Id*. at 526. [↑](#endnote-ref-29)
30. No. 09 CV 01796 (GBD), 2012 WL 3890128 (S.D.N.Y. Sept. 7, 2012), [↑](#endnote-ref-30)
31. 2012 WL 3890128 at\*3. [↑](#endnote-ref-31)
32. *Id.* [↑](#endnote-ref-32)
33. *Id.*  [↑](#endnote-ref-33)
34. *Id*. at \*4. [↑](#endnote-ref-34)
35. *Id*. [↑](#endnote-ref-35)
36. *Id*. at \*8. [↑](#endnote-ref-36)
37. *Id*. [↑](#endnote-ref-37)
38. *Id*. [↑](#endnote-ref-38)
39. *Id*. [↑](#endnote-ref-39)
40. *Id*. [↑](#endnote-ref-40)
41. *Id*. [↑](#endnote-ref-41)
42. *Id.* [↑](#endnote-ref-42)
43. 890 F.Supp.2d 1168 (U.S.D.C. Arizona 2012). [↑](#endnote-ref-43)
44. 511 F.Supp.2d 943 (N.D.Ill. 2007). [↑](#endnote-ref-44)
45. No. 07 cv 6912 (HDL), 2009 WL 1034951 (N.D. Ill. April 16, 2009). [↑](#endnote-ref-45)
46. No. 3:13cv1264 (JBA), 2014 WL 2168504 (D. Conn. May 23, 2014). [↑](#endnote-ref-46)
47. 307 F.3d 24 (2nd Cir. 2002). [↑](#endnote-ref-47)
48. No. 3:12 cv 01456 (MPS), 2013 WL 4l647252 (D. Conn. Aug. 29, 2013). [↑](#endnote-ref-48)
49. No. 299057402 (U.K. Ct. App., Civil Div., April 14, 1999). The decision can be accessed at <http://vlex.com/vid/ur-judge-david-smith-52581560>. [↑](#endnote-ref-49)