

Client Update

Eighth Circuit Affirms Dismissal of Putative Class Action Challenging Affiliate Reinsurance Transactions

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In a closely watched case, the United States Court of Appeals for the Eighth Circuit has affirmed the dismissal of claims challenging the use by our clients, HRG Group, Inc., Fidelity Guaranty Life Insurance Company (“F&G”), Raven Reinsurance Company, and Front Street Re (Cayman), Ltd., of affiliate reinsurance transactions that had been approved by state insurance regulators.¹

BACKGROUND

The plaintiff alleged civil violations of the Racketeer Influenced and Corrupt Organizations Act² (“RICO”) on behalf of a putative class of annuitants based on the theory that certain affiliate reinsurance transactions fraudulently inflated F&G’s financial position and understated the risk of the annuities at issue. On February 12, 2016, the United States District Court for the Western District of Missouri dismissed the complaint on the ground that the claims would require the court to second-guess decisions of state insurance regulators and were therefore preempted by the McCarran-Ferguson Act,³ which bars the application of any federal statute that would hinder state insurance regulation if the statute does not relate specifically to the business of insurance.

DECISION

The plaintiff appealed and, on April 13, 2017, the Eighth Circuit affirmed the dismissal under the McCarran-Ferguson Act. This case is of significance to insurers with affiliate reinsurance transactions because it appears to close down another avenue by which plaintiffs sought to challenge the financial impact of

¹ *Ludwick v. Harbinger Group, Inc., et al.*, Case No. 16-1561 (8th Cir. Apr. 13, 2017).

² 18 U.S.C. § 1961 *et seq.*

³ 15 U.S.C. § 1101 *et seq.*

such transactions by means of potentially high-stakes class action lawsuits. The decision in *Ludwick* follows a recent decision of the United States Court of Appeals for the Second Circuit affirming the dismissal for lack of Article III standing of two cases that attempted to challenge affiliate reinsurance transactions under a provision of the New York Insurance Law.⁴

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For a copy of the Eighth Circuit's decision, [click here](#). Please do not hesitate to contact us with any questions.

⁴ *Ross v. AXA Equitable Life Ins. Co.*, No. 15-2665-CV (2d Cir. Feb. 23, 2017).