

Northern District of Illinois Prevents Strained Reading of Excess Scheduled Limit of Liability Endorsement

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Zelle Hofmann's Tom Caswell, a partner in the Minneapolis office, secured a pre-trial victory for AXIS Insurance Company in the Northern District of Illinois, in a case where the language of an excess scheduled limit of liability endorsement was alleged to have provided blanket coverage rather than scheduled coverage.

Simborg Development, Inc. insured its various properties under a two-tiered layered property insurance program. The primary insurer provided \$10 million of blanket coverage. AXIS Specialty Insurance Company provided an additional \$10 million of coverage in excess of the \$10 million underlying primary policy limits. Unlike the primary policy, which provided blanket coverage, the Excess Scheduled Limit of Liability Endorsement to the AXIS policy expressly limited the amount of coverage available for a specific property to no more than the stated replacement value for that property as set forth on the Schedule of Values. Specifically, the Endorsement limited coverage to the least of the following:

1. The actual adjusted amount of loss.
2. 100% of the individually stated value for each scheduled item of property shown on the latest Application or Statement of Values on file with the Company.
3. Policy limits.

The AXIS policy further provided that in order for coverage to exist under the AXIS policy, there must first be exhaustion of the \$10 million coverage limits of the underlying primary policy. The policy also provided that the determination of whether the underlying primary policy has been exhausted, for purposes of triggering the AXIS policy, would be determined as though the underlying primary policy contained the Excess Scheduled Limit of Liability Endorsement.

In May 2007, a fire destroyed a property for which Simborg had previously reported a \$6 million replacement value on its Schedule of Values form. After the loss, however, Simborg submitted a claim for more than \$22 million as the actual replacement value of its property. The primary carrier, providing blanket coverage, paid its \$10 million limits notwithstanding Simborg's earlier \$6 million stated replacement valuation. AXIS denied the claim on the grounds that the \$6 million which Simborg reported as the replacement value constituted the limit of coverage under its Excess Scheduled Limit of Liability Endorsement. The primary insurer's payment of \$10 million, which was \$4 million in excess of the reported replacement value, did not exhaust the primary policy for purposes of triggering the AXIS policy. AXIS brought a declaratory judgment action seeking judicial confirmation that the policy's Excess Scheduled Limit of Liability Endorsement limited coverage for the individual properties to the amount reported by Simborg as the property's replacement value.

In arguing that the Endorsement did not limit coverage to the \$6 million previously reported on its Schedule of Values, Simborg asserted that it could add the total value of all of its properties (\$154 million) in order to create blanket (or "quasi-blanket") coverage. According to Simborg, this total amount, not the reported \$6 million stated replacement value for the property involved in the loss, was to be looked at in determining whether coverage under the AXIS excess policy could exist. In other words, Simborg alleged that the sum to be utilized as "100% of the individually stated value for each scheduled item of property" was \$154 million. Since \$154 million is greater than the \$10 million in excess policy limits, Simborg contended it was entitled to the full policy limits because that was the "least of" the enumerated options for limits under the Endorsement.

In granting AXIS' motion for partial summary judgment and holding that Simborg was precluded from recovering from AXIS, Judge David H. Coar found that the words "each" and "individually stated value" unambiguously required that the scheduled value for each property be considered individually, and not collectively. Therefore, the reported replacement value of \$6 million for the destroyed property was the limit of coverage under the AXIS policy. Because this amount was less than the \$10 million minimum necessary for

coverage to be triggered under the AXIS policy, no coverage existed for the single location loss event.

Judge Coar's opinion can be found at 2009 WL 765298, 2009 U.S. Dist. LEXIS 22946.