Cahill Obtains Second Circuit Affirmance of Dismissal of $100 Million Insurance Claim Against Swiss Re

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Cahill had previously prevailed in securing dismissal of all claims against Swiss Re and other insurers on General Motors' program in the district court, and the Second Circuit affirmed this decision recently.

After more than a decade of litigation, the Second Circuit affirmed dismissal of all claims against Cahill's client, Swiss Re, arising out of certain claims against its insured, Residential Funding Company ("RFC," a subsidiary of General Motors Corporation). RFC faced liability arising out of its purchase of tainted second mortgage loans. RFC was sued by two different classes of mortgagors alleging that RFC derivatively was liable in respect of unlawful fees charged by the banks that originated the loans. The claims against RFC were resolved in a bankruptcy court for in excess of $300 million as an allowed claim, with assignment to the class plaintiffs of rights under General Motors' professional liability insurance. The liquidating trust of RFC also asserted claims under this insurance for defense costs and a prior settlement payment. The bankruptcy court issued a report and recommendation in 2019 recommending partial summary judgment in favor of the class plaintiffs and the RFC liquidating trust that an exclusion for fees in the insurance did not apply. The district court in October 2024, contrary to the bankruptcy court's report and recommendation, held that the fee exclusion applies, adopting the reasoning advocated by Cahill that the fee exclusion, in conjunction with a "legally responsible" clause in the policy, barred recovery.

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