

Recent Developments on Follow-the-Fortunes in the United States*

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Introduction

The core of the reinsurance relationship is that of utmost good faith, with each party relying on the other to perform its obligations under the reinsurance contract. No rule or doctrine exemplifies this principle more than the follow-the-fortunes doctrine.

The follow-the-fortunes doctrine provides generally that a reinsurer must follow the underwriting fortunes of its cedent and, as claims are resolved, is bound by the good faith and businesslike settlements made by its cedent so long as there is no evidence of fraud, collusion with the insured, or bad faith. It is a burden-shifting doctrine that allows the cedent the freedom of making good faith claims handling decisions without the fear of having to relitigate those decisions with its reinsurer.

In the United States, courts and many practitioners use the terms “follow-the-fortunes” and “follow-the-settlements” interchangeably. This paper will use the term follow-the-fortunes, although there are differences between the two concepts. In fact, most of the recent case law in the United States is really about the depth and breadth of the follow-the-settlements doctrine and its application to post-settlement reinsurance allocation issues.

Early History

Application of the follow-the-fortunes doctrine to reinsurance contracts in the United States began in as early as the 1800s. These early interpretations of the doctrine, however, did not originate from English common law, but instead appear to have evolved from general principles applied to reinsurance contracts in France.¹ By the 1800s in France, it was customary for reinsurance agreements to contain an express provision binding the reinsurer to reimburse the cedent for payment of loss so long as the cedent acted in good faith and could produce evidence of payment of the loss.² This clause obligated the cedent to exercise sound discretion when deciding whether to contest or pay a claim presented by the insured.³ Without this “special contract,” however, reinsurers were entitled to raise every defense that could have been asserted by the cedent in a suit upon the underlying insurance policy.⁴ As the doctrine continued to evolve over the next century, inclusion of a follow-the-fortunes type clause in reinsurance contracts obligated the reinsurer to reimburse the cedent for paid losses so long as: 1) there was evidence that after a proper investigation the cedent was legally liable to pay its insured; and 2) there was no evidence of fraud or bad faith on the part of the cedent.⁵

General Applications of the Doctrine

The general rule is that follow-the-fortunes obligates a reinsurer to follow the underwriting fortunes of its cedent and bars the reinsurer from challenging the good faith claims-handling decisions of its cedent.⁶ Traditionally, courts have interpreted this doctrine as applying to the cedent's decisions regarding claims settlements and judgments.⁷ Although some courts have acknowledged a distinction between "follow-the-fortunes" and "follow the settlements" principles, courts often use the two terms interchangeably.⁸ Failure to distinguish between the two concepts may result from the reference to "settlements" in most standard follow-the-fortunes clauses in reinsurance agreements.⁹

As interpreted by courts when construing loss cessions, the doctrine holds that a reinsurer is bound by the cedent's settlement decisions so long as the decision was made reasonably and in good faith.¹⁰ As most recently put by the Second Circuit Court of Appeals, "[f]ollow-the-fortunes applies only to claims submitted in good faith."¹¹ The obligation not to relitigate a cedent's good faith claims decisions extends to a cedent's good faith decision to waive defenses to which it may have been entitled.¹² This standard is purposefully low in order to preclude *de novo* review of the cedent's decision making process.¹³ Although a reinsurer is entitled to inquire into the dispositions of coverage disputes between cedents and their insureds, a reinsurer may not conduct a *de novo* review of these dispositions.¹⁴ Courts will not permit an intrusive factual inquiry into the settlement process if the settlement itself was in good faith, reasonable, and within the terms of the policies.¹⁵ Thus, the follow-the-fortunes doctrine creates an exception to the general rule allowing *de novo* review of contract interpretation.¹⁶ By prohibiting a court or arbitration panel from conducting a *de novo* review of the cedent's claims decisions, the follow-the-fortunes doctrine obligates a reinsurer to reimburse the cedent unless the reinsurer can demonstrate that the cedent did not act in good faith, the claims did not fall within the scope of the policy, or that the cedent failed to conduct a reasonable businesslike investigation.¹⁷

An exception to the follow-the-fortunes doctrine exists where the reinsurer demonstrates that the cedent's decision-making process was fraudulent, collusive, made in bad faith, or that the underlying claim was not arguably within the scope of the reinsurance coverage.¹⁸ The standard for "bad faith" is usually a high one and generally requires evidence of gross negligence or recklessness by the cedent, or evidence that the settlement is arguably not within the scope of reinsurance coverage.¹⁹ More recent court decisions require a reinsurer to make an extraordinary showing of a disingenuous or dishonest failure in the claims settlement process to avoid liability for the cession.²⁰ For example, courts have stated that the following scenarios do not constitute a cedent's bad faith: 1) failing to accurately inform reinsurers of an offer of settlement; 2) failure to inform the reinsurer of the cedent's decision to forego an appeal where there was little likelihood of success; and 3) treating a group of similar claims as one

occurrence where there was considerable debate as to whether a large group of claims should be treated as one occurrence or as multiple occurrences.²¹ In addition, at least one court has allowed the jury to consider the failure to obtain an opinion from counsel as evidence of bad faith in evaluating a cedent's refusal to defend.²² Evidence of mere negligence, therefore, is likely to be insufficient.²³

Reinsurers may be successful in convincing a court to grant discovery on whether the underlying claims were within the scope of the policy and whether the cedent's settlement decision was fraudulent, collusive, or in bad faith, but because of the necessity for an extraordinary showing of bad faith, that success may be short lived and may ultimately result in summary judgment against the reinsurer if sufficient proof is not forthcoming.²⁴

Current Trends and Issues

As the follow-the-fortunes doctrine has evolved, courts in the United States have been increasingly willing to expand the doctrine by applying it to claims handling decisions other than those relating to settlement, including the manner of the claims investigation, the cedent's coverage determinations, and the cedent's reinsurance allocation determinations. This expansion, however, has not gone unchecked. Several issues have arisen from this broader application of the follow-the-fortunes doctrine.

Application of Follow-the-Fortunes to Investigation of Claims and Coverage Determinations

Cedent's have increasingly asked reinsurers to follow their decisions regarding the quality of their investigation and evaluation of claims, and their coverage determinations. In applying the follow-the-fortunes doctrine to these claims handling decisions, courts have generally applied the same low standard of "good-faith reasonableness" applied to decisions regarding claims settlements.²⁵ Thus, courts have held that a reinsurer may not refuse to reimburse the cedent where there may be additional interpretations of the parties' obligations that also are reasonable.²⁶

Where, however, the claims handling is so poor as to amount to gross negligence, courts have sided with reinsurers to avoid liability.²⁷ The presumption of follow-the-fortunes may be overcome if the reinsurer shows that the cedent acted in bad faith or that the liability was not reasonably within the scope of the original policy. Where the claim handling and investigation is not a reasonable, businesslike investigation, follow-the-fortunes will not apply. So where a cedent merely relied on information from an underlying insurer, failed to keep abreast of relevant case law in the jurisdiction, failed to obtain its own coverage counsel opinion, and failed to obtain its own expert advice as to when the underlying injury actually occurred, the reinsurer was able to meet the high burden in demonstrating that the cedent had failed to make a reasonable investigation.²⁸

Application of Follow-the-Fortunes to Allocation and Annualization Decisions

Cedents with multi-year policies or multiple policies covering multi-year exposures have sought to bring their cession decisions within the ambit of the follow-the-fortunes doctrine with varying degrees of success. Recent federal circuit court decisions have come out strongly in favor of requiring reinsurers to follow their cedents on these types of determinations.²⁹ But under the right factual circumstances, courts will reject a cedent's post-settlement allocation decision if it is inconsistent, unreasonable, and disingenuous.³⁰

The question faced by the courts is whether a post-settlement allocation of a loss among reinsurers must be followed by those reinsurers. In many cases, cedents perform pre-settlement analyses, which turn out to be inconsistent in part with the actual post-settlement allocation used by the cedent. Reinsurers argue that follow-the-fortunes should not apply to post-settlement allocations that are inconsistent with pre-settlement analyses. This argument has been flatly rejected by the courts.³¹

The leading Second Circuit decisions hold that the follow-the-fortunes doctrine "extends to a cedent's post-settlement allocation decisions, regardless of whether an inquiry would reveal an inconsistency between that allocation and the cedent's pre-settlement assessments of risk, as long as the allocation meets the typical follow-the-[fortunes] requirements i.e., is in good faith, reasonable, and within the applicable policies."³² Thus, under Second Circuit precedent, inquiry into the propriety of a cedent's method of allocating a settlement – even if that allocation is impliedly inconsistent with the terms of the settlement – is not authorized if the settlement itself was in good faith, reasonable, and within the terms of the policies.³³

But where the post-settlement allocation consists of manifest manipulation of the allocation process in total disregard of the cedent's obligation to act in good faith, the follow-the-fortunes doctrine is not required to be followed according to a New York state appellate court.³⁴ Thus, while an inconsistency between a pre-settlement assessment of the risk and the post-settlement allocation is not by itself sufficient to avoid application of the follow-the-fortunes doctrine, an inconsistency between the cedent's pre-settlement allocation of loss with its insured and its post-settlement allocation with its reinsurer, which is designed to minimize the cedent's loss and maximize unreasonably the amount of collectible reinsurance, does not bind the reinsurer.³⁵

In disputes over whether the underlying occurrence should be applied on an annualized or multi-year basis to the limit of insurance, courts have held that the follow-the-fortunes doctrine binds the reinsurer so long as the settlement was reasonable and made in good faith.³⁶ Where underlying excess policies had follow-the-form provisions that could be read to incorporate the pro-annualization wording in the underlying primary policies applying the policy

limits in a multi-year policy on an annualized basis, the follow-the-fortunes provisions in the reinsurance certificate bound the reinsurer to follow the good faith and reasonable settlement made on an annualized basis.³⁷

What all these cases imply is that a reinsurer will be bound by reasonable, good faith settlement decisions, including allocation and annualization decisions, as long as there is no specific policy provision providing otherwise, and as long as there is no bad faith manipulation of the settlement to maximize reinsurance recoverables.

Limitations on a Reinsurer's Indemnity Obligation Under Follow-the-Fortunes

The general rule is that the follow-the-fortunes doctrine requires a reinsurer to reimburse the cedent for good faith payments that are “at least arguably within the scope of the insurance coverage that was ceded.”³⁸ Courts have limited this obligation, however, by holding that a reinsurer's obligation does not extend to losses that are clearly outside the scope of the underlying policy or to amounts paid in excess of the liability cap of the reinsurance agreement.³⁹ This limitation is particularly important in the context of facultative reinsurance where the reinsurer accepts specific risks.⁴⁰ As one New York trial level court noted: “It would be an unwarranted and indeed tortured construction of that clause to hold a reinsurer bound, for example, to pay if the prime insurer paid moneys to its insured on a claim completely without the scope of the policy and not in good faith.”⁴¹

Courts have also limited efforts to cede declaratory judgment expenses under the follow-the-fortunes doctrine. The Second Circuit has held that follow-the-fortunes does not apply to expenses incurred for which the policyholders obtained no benefit.⁴² Where there are questions of fact concerning whether a claim was proper under the cedent contract, courts will deny summary judgment.⁴³

Application of Follow-the-Fortunes Absent an Explicit Clause in the Reinsurance Contract

The question of whether the follow-the-fortunes doctrine may be invoked absent an explicit clause in the reinsurance contract has been the subject of debate and judicial scrutiny. Early case law indicates that courts were not willing to read follow-the-fortunes type language into reinsurance contracts when not expressly stated in the agreement.⁴⁴ Reinsurance contracts were instead viewed within the confines of the general rules applicable to contract interpretation.

For a period of time, case law suggested a greater tendency to apply the doctrine to all contracts of reinsurance whether expressly provided for or not.⁴⁵ More recently, however, courts are refusing to impose liability on a

reinsurer for a settlement contribution absent an express provision in the contract indicating an agreement between the parties to do so.⁴⁶ A Michigan appellate court has noted that a reinsurer's liability is determined solely by the terms of the reinsurance contract.⁴⁷ Thus, while parties to a reinsurance agreement are free to agree to terms obligating the reinsurer to follow-the-fortunes of its cedent, some courts will not incorporate the doctrine by implication absent an express indication that the reinsurer agreed to be so bound.

Conclusion

The principles embodied in the follow-the-fortunes doctrine represent one of the hallmarks of the reinsurance relationship. While courts have allowed a broad application of the doctrine, recently there has been a push back against the unfettered and unchecked discretion on allocating settlements to the cedent's reinsurance program. But if the settlement or allocation is made in good faith and is reasonable, and there is no direct policy provision precluding the cedent's actions, the courts will not allow further inquiry into the cedent's actions and the reinsurer will be obliged to follow and pay.

* This paper is based on a series of earlier papers and articles by the author updated for recent developments for presentation at the Falconbury Reinsurance Contract Wordings and Disputes Conference, October 8-9, 2009, Hamilton, Bermuda. The author acknowledges former colleagues Melissa Battino and Christa Santos for their assistance in the research, preparation, and drafting of the earlier articles. The author would like to acknowledge Jonathan Barbee and Angela Smedley, both Dewey & LeBoeuf 2009 summer associates, for their research assistance for some of the recent developments discussed in this paper.

¹ See *Hastie v. De Peyote*, 3 Cai. R. 190 (N.Y. Sup. Ct. 1805) (noting that most contracts of reinsurance in England were rendered unlawful by statute).

² See *New York State Marine Ins. Co. v. Protections Ins. Co.*, 18 F. Cas. 160, 160 (C. Ct. Mass. 1841).

³ See generally *New York State Marine Ins. Co.*, 18 F. Cas. at 160.

⁴ See *id.* (noting that without such a clause the reinsurers "are compellable to resist the payment, and to require the proper proofs of loss from the assured in a regular suit against them, so as to protect themselves by a bona fide judgment to the amount of recovery against them under their reinsurance."); *Hastie*, 3 Cai. R. 190.; see also discussion *supra* noting that the law remains unclear as to whether courts are willing to invoke the follow-the-fortunes doctrine absent an express clause indicating the parties' agreement to that doctrine.

⁵ See *Ins. Co. of N.Y. v. The Associated Mfrs. Mut. Fire Ins. Corp.*, 74 N.Y.S. 1038, 70 A.D. 69, 71 (1st Dep't 1902).

⁶ *North River Ins. Co. v. ACE Am. Reinsurance Co.*, 361 F.3d 134, 139-40 (2d Cir. 2004).

⁷ See, e.g., *North River Ins. Co.*, 361 F.3d at 140; *North River Ins. Co. v. Cigna Reinsurance Co.*, 52 F.3d 1194, 1204-05 (3d Cir. 1995); *Unigard Sec. Ins. Co. v. North River Ins. Co.*, 4 F.3d 1049 (2d Cir. 1993); *Mentor Ins. Co. (U.K.) Ltd. v. Brannkasse*, 996 F.2d 506, 516 (2d Cir. 1993); *Commercial Union Ins. Co. v. Seven Provinces Ins. Co.*, 9 F. Supp. 2d 49, 66 (D. Mass. 1998), *aff'd*, 217 F.3d 33 (1st Cir. 2000); *The Aetna Cas. & Sur. Co. v. DR Ins. Co.*, No. 94 Civ. 1132 (MBM), 1995 U.S. Dist. LEXIS 1338, at *11 (S.D.N.Y. Feb. 2, 1995); *Int'l Surplus Lines Ins. Co. v. Certain Underwriters & Underwriting Syndicates at Lloyd's of London*, 868 F. Supp. 917, 921 (S.D. Ohio 1994).

⁸ See, e.g., *Travelers Cas. & Sur. Co. v. Gerling Global Reinsurance Corp.*, 419 F.3d 181 (2d. Cir. 2005) (the "follow-the-settlements" doctrine is the follow-the-fortunes doctrine in the settlement

context); *North River Ins. Co.*, 361 F.3d at 136, n. 2; *North River Ins. Co.*, 52 F.3d at 1999 (defining “follow-the-fortunes” as obligating the reinsurer to indemnify the cedent for any good faith payment of an insured loss); *Seven Provinces Ins. Co.*, 9 F. Supp. 2d at 66 (defining “follow-the-fortunes” as requiring a reinsurer to accept the cedent’s good faith decision that a particular loss is covered by the terms of the underlying policy while defining “follow the settlements” as requiring a reinsurer to follow the cedent’s good faith decision to settle rather than litigate claims); *Aetna Cas. & Sur. Co. v. Home Ins. Co.*, 882 F. Supp. 1328, 1349 (S.D.N.Y. 1995) (defining “follow-the-fortunes” to mean a reinsurer’s obligation to follow the underwriting fortunes of the cedent and “follow the settlements” as a reinsurer’s obligation to follow the actions of the cedent in adjusting and settling claims); see also *Hartford Accident & Indem. Co. v. Columbia Cas. Co.*, 98 F. Supp. 2d 251, 258 (D. Conn. 2000); *Stonewall Ins. Co. v. Argonaut Ins. Co.*, 75 F. Supp. 2d 893, 897 (N.D. Ill. 1999) (noting that “follow the settlements” is similar if not identical to the “follow-the-fortunes” doctrine); *Riunione Adriatica di Sicurta v. Atlanta Int’l Ins. Co.*, No. 601722/97 (Sup. Ct. 2000) (unpublished opinion); Cf. *Nat’l Am. Ins. Co. v. Certain Underwriters at Lloyd’s London*, 93 F.3d 529, 535 (9th Cir. 1996) (stating that the court is not resolving the dispute as to the difference between the follow-the-fortunes and the follow-the-settlements doctrines).

⁹ See, e.g., *Am. Ins. Co. v. North Am. Co. for Prop. & Cas. Ins.*, 698 F.2d 79 (2d Cir. 1982); *Allendale Mut. Ins. Co. v. Excess Ins. Co., Ltd.*, 992 F. Supp. 271 (S.D.N.Y. 1997); *Michigan Millers Mut. Ins. Co. v. North Am. Reinsurance Corp.*, 452 N.W.2d 841 (Mich. Ct. App. 1990).

¹⁰ See *Int’l Surplus Lines Ins. Co.*, 868 F. Supp. at 921.

¹¹ *Travelers Cas. & Sur. Co.*, 419 F.3d at 191.

¹² *North River Ins. Co.*, 52 F.3d at 1212; *Int’l Surplus Lines Ins. Co.*, 868 F. Supp. at 921.

¹³ See *id.*

¹⁴ See, e.g., *North River Ins. Co.*, 52 F.3d at 1199, 1211 (noting that follow-the-fortunes provisions “prevent reinsurers from second guessing good faith settlements.”); see also *Christiania Gen. Ins. Corp.*, 979 F.2d at 280; *Seven Provinces Ins. Co.*, 9 F. Supp. 2d at 66; *Int’l Surplus Lines Ins.*, 868 F. Supp. at 921.

¹⁵ *Travelers Cas. & Sur. Co.*, 419 F.3d at 189; *North River Ins. Co.*, 361 F.3d at 141.

¹⁶ See *North River Ins. Co.*, 52 F.3d at 1206.

¹⁷ See *id.* at 1204, 1207 (stating that the “doctrine requires a court to find reinsurance coverage unless the reinsurer demonstrates the liability to the insured was the result of fraud and collusion or not reasonably within the scope of the original policy.”); see also *Am. Bankers Ins. Co. v. Northwestern Nat’l Ins. Co.*, 198 F.3d 1332, 1336 (11th Cir. 1999) (same); *Int’l Surplus Lines Ins. Co.*, 868 F. Supp. at 921 (noting that follow-the-fortunes “requires reinsurers to reimburse the cedent . . . so long as the payments were made reasonably and in good faith.”).

¹⁸ See *North River Ins. Co.*, 52 F.3d at 1204; *Mentor Ins. Co. (U.K.) Ltd.*, 996 F.2d at 516-17 (“The insurance fortunes with respect to a claim contemplate a valid, covered insurance claim that is settled in good faith and without fraud in any form or breach of a condition of the reinsurance contract.”); *Seven Provinces Ins. Co.*, 9 F. Supp. 2d at 66; *Allstate Ins. Co. v. Am. Home Assur. Co.*, 43 A.D.3d 113 (1st Dep’t 2007); *Ins. Co. of N.Y.*, 74 N.Y.S. at 1039, 70 A.D. at 71.

¹⁹ See *Seven Provinces Ins. Co.*, 9 F. Supp. 2d at 66 (concluding that the doctrine of follow-the-fortunes required the reinsurer to follow the cedent’s good faith and reasonable allocation of settlement dollars between different policies and sites); see also *Am. Bankers Ins. Co.*, 198 F.3d at 1336 (adding an additional requirement of “deliberate deception”).

²⁰ *Travelers Cas. & Sur. Co.*, 419 F.3d at 191.

²¹ See *North River Ins. Co.*, 52 F.3d at 1215, 1217; *Am. Bankers Ins. Co.*, 198 F.3d at 1336; see also *Seven Provinces Ins. Co.*, 9 F. Supp. 2d at 58-59 (noting that the fact that there may be additional possibilities for allocation does not necessarily constitute bad faith).

²² See *Providence Hosp. v. Rollins Burdick Hunter*, No. 92 C 8096, 1994 U.S. Dist. LEXIS 96, at *7 (N.D. Ill. Jan. 7, 1994); see also *Suter v. Gen. Accident Ins. Co. of Am.*, No. 01-2686, 2006 U.S. Dist. LEXIS 48209 (D.N.J. Jul. 14, 2006) (upholding reinsurer’s challenge to a claim and rejecting a follow-the-fortunes argument because the cedent was grossly incompetent by not retaining coverage counsel and for allowing the claim without obtaining the medical information necessary to support the claim).

See, e.g., *Am. Bankers Ins. Co. of Fla.*, 198 F.3d at 1336 (specifically rejecting mere negligence and requiring the higher standard of “deliberate deception, gross negligence or recklessness.”).

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²⁴ See *Nat’l Union Fire Ins. Co. v. Am. Re-Insurance Co.*, 441 F. Supp. 646 (S.D.N.Y. 2006).

²⁵ See, e.g., *Seven Provinces Ins. Co.*, 9 F. Supp. at 66 (finding no evidence of unreasonableness in allocation of settlement monies); *Am. Bankers Ins. Co.*, 198 F.3d at 1336-37 (finding that the retrocedent’s evaluation and payment of claims insufficient to meet the elevated standard for bad faith); *Commercial Union Ins. Co. v. Lexington Ins. Co.*, No. 97-4804 T-II, 2000 Mass. Super. LEXIS 297, at *21 (Mass. Super. Ct. Mar. 24, 2000) (stating that follow-the-fortunes applies to a cedent’s decision to “cover underlying claims under its primary policies, the settlement itself, [and] the allocation of that settlement.”).

²⁶ See, e.g., *United Fire & Cas. Co. v. Arkwright Mut. Ins. Co.*, 53 F. Supp. 2d 632, 642 (S.D.N.Y. 1999); *Seven Provinces Ins. Co.*, 9 F. Supp. at 59 (noting that although other settlement allocations were possible, this did not suggest that the one selected was unreasonable); *Int’l Surplus Lines Co.*, 868 F. Supp. at 923 (noting that a reinsurer is bound to the cedent’s decision as to the number of occurrences so long as that determination was reasonable).

²⁷ See *Suter*, 2006 U.S. Dist. LEXIS at *80 - *87.

²⁸ *Id.*

²⁹ *Travelers Cas. & Sur. Co.*, 419 F.3d at 181; *North River Ins. Co.*, 361 F.3d at 134.

³⁰ *Allstate Ins. Co.*, 43 A.D.3d at 113.

³¹ *Travelers Cas. & Sur. Co.*, 419 F.3d at 188-89; *North River Ins. Co.*, 361 F.3d at 141.

³² *North River Ins. Co.*, 361 F.3d at 141; see *Travelers Cas. & Sur. Co.*, 419 F.3d at 188.

³³ *Travelers Cas. & Sur. Co.*, 419 F.3d at 190.

³⁴ *Allstate Ins. Co.*, 43 A.D.3d at 120.

³⁵ *Id.* at 121-22.

³⁶ *Commercial Union Ins. Co. v. Swiss Reinsurance Am. Corp.*, 413 F.3d 121 (1st Cir. 2005).

³⁷ *Id.*; see also *Am. Employers’ Ins. Co. v. Swiss Reinsurance Am. Corp.*, 413 F.3d 129 (1st Cir. 2005).

³⁸ *Aetna Cas. & Sur. Co.*, 1995 U.S. Dist. LEXIS 1338, at *11; *British Int’l Ins. Co. v. Seguros La Republica, S.A.*, 342 F.3d 78, 85 (2d Cir. 2003); see also *Mentor Ins. Co. (U.K.) Ltd.*, 996 F.2d at 517; *Intl Surplus Lines Ins. Co.*, 868 F. Supp. at 920 (stating that a reinsurer is required to indemnify for payments within the terms of the original policy, even if not technically covered by it).

³⁹ See, e.g., *North River Ins. Co.*, 52 F.3d at 1207 (noting that a reinsurer may be liable only for loss of the kind cedent and not for loss that it did not agree to cover); *Bellefonte Reinsurance Co. v. Aetna Cas. & Sur. Co.*, 903 F.2d 910 (2d Cir. 1990), *aff’g*, No. 85 Civ. 2706 (JFK), 1989 U.S. Dist. LEXIS 10432 (S.D.N.Y. Sept. 5, 1989) (holding that follow-the-fortunes did not obligate reinsurer to pay for expenses in excess of policy limit); *Aetna Cas. & Sur. Co.*, 1995 U.S. Dist. LEXIS 1338, at *11; *Am. Marine Ins. Group*, 775 F. Supp. 703, 708 (S.D.N.Y. 1991); *Unigard Sec. Ins. Co. v. North River Ins. Co.*, 762 F. Supp. 566, 594-95 (S.D.N.Y. 1991); see also *Christiania Gen Ins. Corp. v. Great Am. Ins. Co.*, 979 F.2d 268 (2d Cir. 1992); *Aetna Cas. & Sur. Co.*, 1995 U.S. Dist. LEXIS 1338, at *11; *Am. Marine Ins. Group*, 775 F. Supp. at 708.

⁴⁰ See *North River Ins. Co.*, 52 F.3d at 1207; see also *Aetna Cas. & Sur. Co. v. Philadelphia Reinsurance Corp.*, No. 94-2683, 1995 U.S. Dist. LEXIS 7742, at *9 (E.D. Pa. June 7, 1995) (“[W]hile a ‘follow the fortunes’ clause limits a reinsurer’s defenses, it does not make a reinsurer liable for risks beyond what was agreed upon in the reinsurance certificate.”).

⁴¹ *Insurance Co. of N. Am. v. United States Fire Ins. Co.*, 322 N.Y.S.2d 520, 523 (Sup. Ct. 1971) (holding reinsurer not liable under follow-the-fortunes where marine cargo policy covered goods “in transit” and loss occurred during the bagging process).

⁴² *British Int’l Ins. Co. v. Seguros La Republica, S.A.*, 342 F.3d at 85.

⁴³ *Granite State Ins. Co. v. ACE Am. Reinsurance Co.*, 46 A.D.3d 346 (1st Dep’t 2007) (finding issues of fact on both the bad faith and ex gratia payment exceptions to the follow-the-fortunes doctrine).

⁴⁴ See, e.g., *Hastie*, 3 Cai. R. 190.

⁴⁵ See, e.g., *ReliaStar Life Ins. Co. v. IOA Re, Inc.*, 303 F.3d 874, 881 (8th Cir. 2002); *Aetna Cas. & Sur. Co.*, 882 F. Supp., at 1349-50 (noting that follow-the-fortunes is implicit in every reinsurance contract); *Int'l Surplus Lines Ins. Co.*, 868 F. Supp. at 920 (noting that the follow-the-fortunes doctrine applies to all reinsurance contracts even if not expressly formalized in the reinsurance agreement).

⁴⁶ See *Employers Reinsurance Corp. v. Laurier Indem. Co.*, No. 8:03-cv-1650, 2007 U.S. Dist. LEXIS 45670 (M.D. Fla. Jun. 25, 2007); *Am. Motorists Ins. Co. v. Am. Re-Insurance Co.*, No. C 05-5202 CW, 2007 U.S. Dist. LEXIS 88624 (N.D. Calif. Nov. 21, 2007); *Village of Thompsonville v. Federal Ins. Co.*, 592 N.W.2d 760, 764-65 (Mich. Ct. App. 1999), *appeal denied*, 2000 Mich. LEXIS 1 (Mich. Jan. 6, 2000), *but see* *Employers Reinsurance Corp. v. Mass. Mut. Life Ins. Co.*, No. 06-0188-CV, 2008 U.S. Dist. LEXIS 63420 (W.D. Mo. Aug. 19, 2008) (reading the provision authorizing the cedent to investigate, pay, settle, and defend claims was a follow-the-fortunes clause); *Columbia Cas. Co. v. TransFin Ins. Ltd.*, No. 2:05 –CV-199 (D. Vt. Apr. 27, 2007) (implying the doctrine).

⁴⁷ See *Village of Thompsonville*, 92 N.W.2d at 765.