

THOUGHT LEADERSHIP

News

## NOTICE PROVISION IN EXCESS POLICY DOES NOT FOLLOW FORM WITH PRIMARY POLICY SUCH THAT THE EXCESS CLAIM MUST BE REPORTED DURING THE PRIMARY POLICY PERIOD.

Newsbrief

30 JUN 2015

In *Illinois Union Insurance Co. v. Sabre*, 2015 WL 3917981 (Tex. App.-Fort Worth June 25, 2015), Sabre Holdings Corp., Site 59.com LLC, Travelocity.com LP, Travelocity.com LLC and Sabre Inc. (collectively "Sabre") were sued by various governmental entities for failing to fully remit hotel taxes collected from consumers. Sabre was primarily insured by American International Specialty Lines Insurance Company ("AISLIC"). The excess carrier was Illinois Union Insurance Company ("IU"). The policy period for both policies was March 15, 2004 to March 15, 2005. Sabre's broker notified AISLIC of the first three suits on March 11, 2005, and the primary carrier provided a defense with payments up to \$15 million. On December 14, 2010, Sabre sent letter notification to IU of the claims. IU denied coverage because it alleged the excess policy "followed form" with the primary policy and the primary policy was a "follow form policy which means that it follows all the terms and conditions of the primary policy." It argued: "As such, this claim would have to have been reported ... during the same policy period as it was reported to" AISLIC because the primary policy was a "claims made and reported policy." Sabre filed suit for declaratory judgment and moved for summary judgment. The Court granted the summary judgment.

The Court held it was not dispositive that the excess policy was a follow form policy because there was a non-follow form endorsement that stated: "As a condition precedent to coverage under this policy, the Insureds shall give to the Insurer as soon as practicable written notice and the full particulars of ... the exhaustion of the aggregate limit of liability of any Underlying Policy." The Court continued:

Thus, the insuring clause as amended by the endorsement could be reasonably interpreted to mean that the excess policy follows form to the definitions, exclusions, and limitations of the primary policy, but not the terms and conditions of the primary policy. Because the reporting requirements in the primary policy are more properly characterized as conditions rather than definitions, exclusions, or limitations, the insuring clause can be read as not incorporating the notice conditions of the primary policy.... To construe both of these provisions as requiring concurrent notice of the circumstances to AISLIC would not be reasonable because these specific sections deal with circumstances of which the primary insurer would already be aware.