

Treble Your Limits -- Treble Your Fun

By Linda J. Karpel

New York's highest court, the Court of Appeals recently rendered an important policyholder decision in *Union Carbide Corp. v. Affiliated FM Insurance Co.*, 2011 NY Slip Op 1317, 2011 N.Y. LEXIS 219 (N.Y. Feb. 22, 2011). The *Union Carbide* Court held that the aggregate limit of liability stated in a three-year umbrella excess insurance policy purchased by Union Carbide was "annualized," that is, the limit renewed for each year of the policy. In so holding, the Court resolved an issue that had been the subject of conflicting decisions, both in the New York federal courts and in courts across the country.

Union Carbide's umbrella excess policy was a fifth layer policy that followed form to a three year-primary policy for the same policy period. The primary policy stated clearly that its limits were "annual aggregate[s]" and that the aggregate limits were the most that would be paid "during each consecutive 12 months of the [three year] policy period." The Court found it implausible that a major commercial entity like Union Carbide would have negotiated its complicated insurance program intending that the limits offered by its primary and excess layers of insurance would be spread over different time periods. As the Court noted, if the insurers' position were adopted, by the second and third years of the policy period, the limits of the primary coverage would remain available, but the limits of the fifth year excess coverage would be deemed exhausted.

The Court of Appeals decision had significant financial implications for Union Carbide. As a result of the Court's decision, instead of being able to collect \$10 million from the two insurers remaining liable under Union Carbide's fifth level umbrella excess policy, Union Carbide was able to collect three times that amount, or \$30 million.

[Editor's Note: Linda "Lin" Karpel is an Associate at Fried & Epstein LLP, which regularly represents policyholders in insurance coverage disputes. Information concerning Fried & Epstein's Insurance Coverage Practice Group may be obtained by visiting the firms' website at www.fried-epstein.com. The opinions expressed in this article are solely those of the author and do not necessarily reflect the views of Fried & Epstein or its clients. Responses to this article are welcome. Copyright 2011 Linda J. Karpel.]