THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 02-2097

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UNITED INSURANCE COMPANY, as assignee of
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

v.

UNISYS CORPORATION,

Defendant/Third-Party Plaintiff

v.

AMERICAN RISK MANAGEMENT, INC.; ARM INTERNATIONAL CORP.;
NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA.;
AIG RISK MANAGEMENT, INC.,

Third-Party Defendants

Unisys Corporation,
Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civil No. 94-cv-00411)
District Judge: The Honorable Katharine S. Hayden

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ARGUED MARCH 11, 2003

BEFORE: SLOVITER, NYGAARD, and ALARCON, Circuit Judges.

(Filed April 16, 2003)

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                 OPINION OF THE COURT
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NYGAARD, Circuit Judge.
        This appeal requires that we analyze under New Jersey law a complex
insurance agreement that was devised by sophisticated insurance experts and negotiated
by skilled businessmen. Appellants argue that there is a "maximum premium," above
which they are not obligated to pay. We agree with appellees that, despite the presence of
the phrase "maximum premium" in the documents, appellants did not purchase the
protection of a "maximum" that cannot be exceeded.
        The insurance policy at issue, and all renewals thereof, contained an
Endorsement entitled "Retrospective Premium Endorsement," which set forth the method
which certain retrospective premiums payable by Sperry to National Union are to be
calculated. It is this Endorsement about which United Insurance and Unisys disagree.
        Unisys argues that the phrase "maximum premium" in the Endorsement
fixes a cap on the calculation of the premiums on an aggregate basis. United Insurance
contends that the Endorsement did not provide Unisys with such a protection, and asserts
that under the terms of the Endorsement, "maximum premium" increases as losses are
incurred and paid under the policy. Although the plain language of the insurance policy
is confusing as to precisely what "maximum premium" means, we find that there is no
cap on Unisys' liability for retrospective premiums because Unisys did not pay for this
cap protection. At oral argument, we pressed counsel for Unisys to show where the
protection was acquired, but counsel could not cite any record evidence of such a
purchase. We also considered a 1979 written analysis by Sperry's insurance experts of
the various insurance programs they were evaluating, which renders appellant's argument
meritless. This memorandum states:
                Another possibility which must be considered is a period of
                abnormally high loss frequency resulting in an accumulation
                of losses under $500,000 each which in the aggregate
                significantly exceed the estimated standard premium. Under
                the current Liberty Mutual rating plan, retrospective earned
                premium cannot exceed 150% of standard premium,
                regardless of loss experience. Under the basic ARM
                proposal, aggregate stop loss protection is not provided for
                and an abnormal run of losses would have to be funded by
                [Sperry] . . . . We can purchase aggregate stop loss protection
                from [National Union] in the amount of $5,000,000 excess of
                $13,500,000 (150% of standard premium) for an additional
                premium of $285,000 but we recommend against this
                inasmuch as loss payments are stretched out over a 10 year
                period and, in any event, our past history does not indicate
                that the purchase of this coverage is necessary.

App. 415. Clearly, the Sperry insurance analysts were aware that, had Sperry wanted
"stop loss" protection, they could have paid for it. The record shows that the protection
that Unisys claims they have was in fact never purchased.
        In sum, and for the foregoing reasons, we will affirm the District Court's
granting of summary judgment, which declared that the retrospective premium

endorsements to the policy at issue do not cap Unisys' liability for retrospective premiums.

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/s/ Richard L. Nygaard
Circuit Judge