

## **Alaska Supreme Court Finds No Coverage Between Policy Cancellation and Reinstatement**

### **Breaking Developments In London Market Law 06/02/08**

On 23 May 2008, the Alaska Supreme Court issued its opinion in *Amos v. Allstate Insurance Company*, concerning an insurer's indemnification obligation for bodily injuries occurring in the period between the insurance policy's cancellation for non-payment of premium and reinstatement.

#### **The Facts**

In 1999, Allstate issued an insurance policy for a river boat owned by Mr. Tatum. The policy was subject to a "short rate" table in which the entire year's premium is earned if the insurance is in effect for five months during the annual period. When Allstate did not receive the monthly premium installment due in June 2000, it notified Tatum that if payment was not received, the policy would be cancelled effective 15 July. Tatum sent a partial payment in late June, but Allstate responded that the policy would still be cancelled if the full installment was not received.

On 9 August 2000, Tatum's boat collided with another river boat on the Little Susitna River, injuring Tatum and two men in the other boat. As shown on the accompanying map below, the Little Susitna River flows out of the Mint Glacier in the Talkeetna Mountains southwest to Cook Inlet and the Gulf of Alaska. The Little Susitna is popular with anglers pursuing salmon, trout and Arctic grayling.

Five days after the accident, Tatum's wife visited the insurance agent and made a payment of the remaining premium due, but neglected to mention the accident. Allstate provided a receipt stating that the policy was cancelled effective 15 July and reinstated on 15 August. Amos and Tice – the men in the other river boat – sued Tatum. Tatum did not tender defense or provide notice of the suits to Allstate, but allowed default judgments to be taken against him totaling \$1.1 million. Tatum then sued Allstate for breach of contract and bad faith. Allstate primarily argued that there was no coverage for the period between 15 July and 15 August 2000, and sought to void the policy *ab initio* based on the Tatums' failure to disclose the 9 August accident.

#### **The Court's Holding**

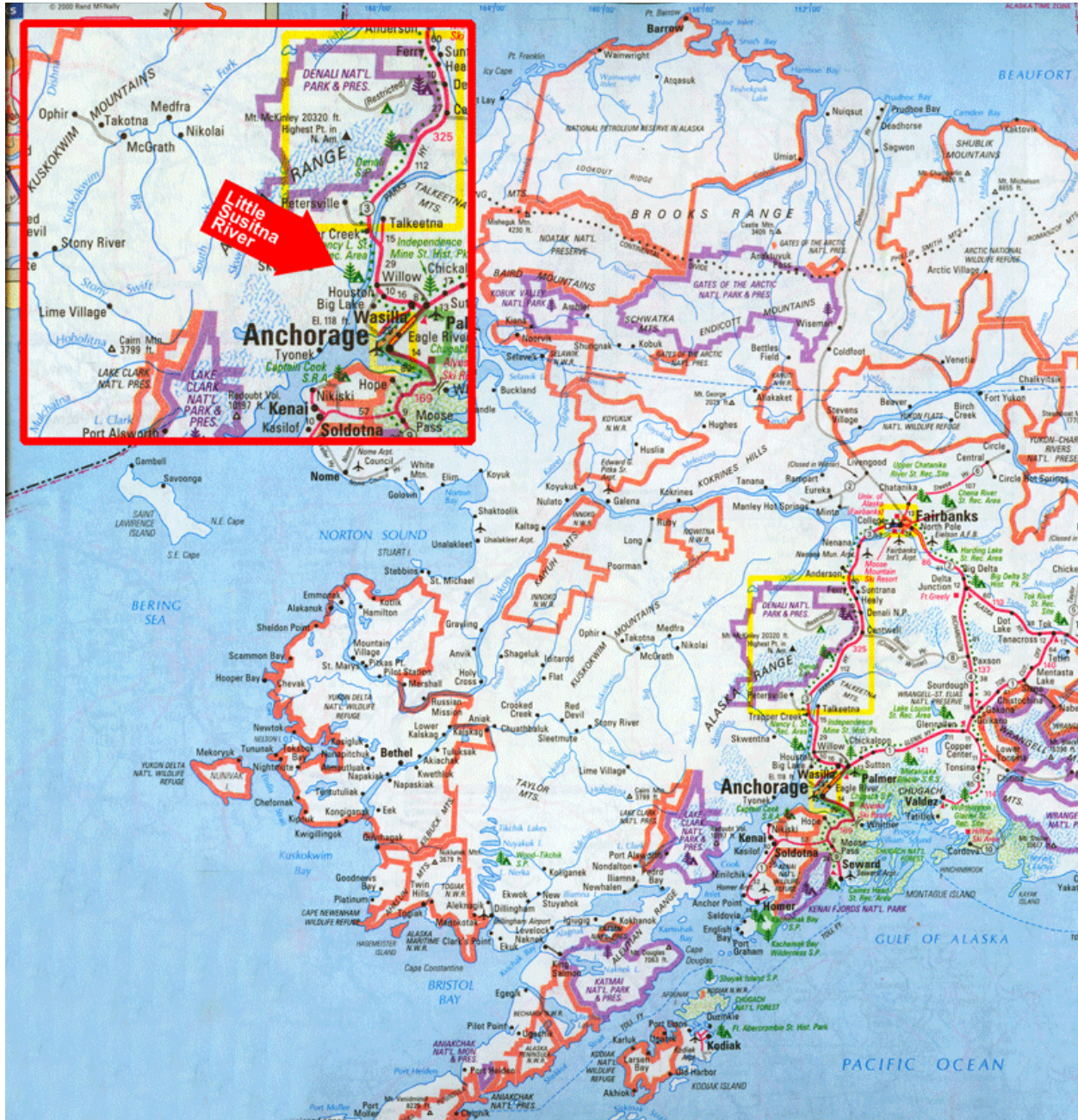
The Alaska Supreme Court held that the policy was not in effect at the time of the accident. The Court noted that the policy was properly cancelled on 15 July, and that nothing in Allstate's policy required that it be reinstated retroactively upon receipt of past-due premium payments. The Court further noted that Allstate provided a "conditional" receipt stating that acceptance of the check would not reinstate the policy retroactively and specified the temporal "gap in coverage." It therefore concluded that the policy was not in effect on the date of the accident and coverage did not exist.

The Court also rejected Tatum's argument that it was inequitable and inconsistent for Allstate to accept premium for the entire year, while still maintaining that there was no coverage for the month after cancellation and before reinstatement upon Tatum's payment of the premium. The Court held that there was no "inconsistency" because under the "short table" clause, the entire premium was earned if the policy was in place for only five months, which is fully consistent with the one-month gap in coverage at issue in *Amos*.

The Court's holding made it unnecessary to address Allstate's additional arguments that (1) Tatum's failure to disclose the intervening accident when he applied for reinstatement voided the policy, and (2) the default judgments were the product of collusion.

### **What This Means for London Market Insurers**

The Alaska Supreme Court's holding that the policy was not reinstated retroactively was based explicitly upon the insurer's statement, when accepting the past due premium, that coverage was not reinstated retroactively. Absent such a reservation, the Court suggests that the opposite result would be reached, noting that "an *unconditional* acceptance of past due premiums reinstates coverage, presumably with no time gap." London Market Insurers should, therefore, take care not to reserve their rights when accepting past-due premiums.



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