
Second Circuit Finds Broad Coverage for Investigative Costs Under D&O Policy

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On July 1, 2011, the United States Court of Appeals for the Second Circuit issued an opinion finding broad coverage under directors and officers ("D&O") insurance policies for pre- and post-suit costs relating to investigations. *MBIA Inc. v. Federal Ins. Co.* (opinion by Chief Judge Preska, sitting by designation).

In applying New York and Connecticut law, the Court of Appeals specifically found coverage for: (i) costs incurred to respond to a subpoena from the New York Attorney General ("NYAG"), (ii) costs "voluntarily" incurred to respond to an oral request for information from the SEC, (iii) costs "voluntarily" incurred to respond to an oral request for information from the NYAG, (iv) costs incurred by a special litigation committee of the board of directors after initiation of derivative litigation to investigate the allegations made in such litigation, and (v) costs of independent consultants retained to investigate transactions which investigations were required in connection with a settlement with the SEC and the NYAG.

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