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NEWSLETTER

Insurer Must Advance Defense Costs Pending Resolution of Coverage Issues
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In an unpublished opinion applying New Jersey law, the United States District Court for the District of New Jersey has granted a policyholder's motion to require its insurer to advance defense costs in connection with the underlying action even though the district court had yet to resolve the insured's pending claim for coverage under the policy at issue. *G-I Holdings Inc. v. Reliance Ins. Co.*, 2006 WL 776809 (D.N.J. Mar. 24, 2006).

The insurer issued a D&O policy that obligated the insurer to "pay on behalf of the Directors and Officers Loss which the Directors and Officers shall become legally obligated to pay as a result of a Claim first made during the Policy Period." The policy also contained a reimbursement clause that stated that "to the extent it is finally established that any such Claims Expenses are not covered under this Policy, the Insureds, as appropriate, agree to repay the Insurer such non-covered Claims Expenses."

The court rejected the insurer's assertion that the language of the policy did not obligate it to advance defense costs where the court had not yet resolved whether the underlying allegations implicated the policy. Citing cases such as *Little v. MGIC Indemnity Corp.*, 836 F.2d 789 (3d Cir. 1987), *Associated Electric & Gas Ins. Services, Ltd. et al. v. Rigas et al.*, 2004 WL 540451 (E.D. Pa. Mar.17, 2004), *Federal Ins. Co. v. Tyco Int'l Ltd.*, 2004 WL 583829 (N.Y. Sup. Mar.5, 2004), and *In re Worldcom, Inc. Sec. Litig.*, 2005 U.S. Dist. LEXIS 1466, *28 (S.D.N.Y. Feb. 4, 2005), the policyholder argued that the insurer was obligated to advance defense costs. Relying primarily on the Third Circuit's decision in *Little*, the court concluded that the insurer had an obligation to advance defense costs as they were incurred by the policyholder, subject to the insurer's right to reimbursement if it were ultimately determined that the underlying claim was not subject to coverage.