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NEWSLETTER

Company Denied Security Interest in Proceeds of D&O Settlement

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A federal district court in Connecticut has rejected an assertion of a security interest in the proceeds of a D&O policy to be paid to the plaintiffs by the insurer on behalf of the defendant directors and officers. Lorraine Brown and Virginia Otis, et al. v. Nationscredit Commercial, et al., No. 3:99-CV-592 (EBB), 2000 U.S. Dist. LEXIS 9153 (D. Conn. June 23, 2000).

The dispute arose after a mediation session among the plaintiffs, a representative from the D&O carrier for the individual defendants (directors and officers of MedEd Holding, Inc. ("MedEd")), and Nationscredit Commercial ("NCC"), a corporate co-defendant. After an oral settlement was reached between the plaintiffs and the insurer (Chubb), NCC announced it would sue to block any settlement using the policy proceeds. It argued that any money to be paid by the individual defendants' insurer was an asset of the insured company, MedEd, and therefore could be used to satisfy a security agreement between MedEd and NCC.

The court rejected NCC's argument, ruling that the benefits of the D&O policy ran to the individual defendants rather than to MedEd or NCC. In support of this conclusion, the court noted that the policy did not directly insure MedEd. Rather, MedEd was insured only insofar as it indemnified its directors and officers. Because MedEd was insolvent, this insuring agreement was not implicated in any event. Additionally, NCC's security agreement gave it an interest in "collateral," but the court stated that "[l]awsuits against companies and/or its officers and directors could never be considered as 'collateral,' as they plainly are considered to be liabilities and insurance policies covering such liabilities simply cannot be fit into the definition of 'collateral.'"