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NEWSLETTER

Parties in Shareholder Lawsuit Enjoined from Collecting on D&O Policy

February 2004

A federal district court in Illinois has held that a bankruptcy court can preliminarily enjoin the parties in separate securities actions from collecting any judgment or settlement from the proceeds of the debtor's D&O liability policies, where the debtor was pursuing an adversary proceeding against one of the same directors or officers in the bankruptcy court. *Keywell v. HA-LO Indus., Inc.*, No. 03-C-5538 (N.D. Ill. Dec. 22, 2003) (minute order). The district court ruled that the bankruptcy court had jurisdiction to enter the injunction because the securities action was "related to" the bankruptcy proceeding for purposes of Section 105(a) of the Bankruptcy Code.

The court reasoned that although the proceeds from the D&O policies are not property of the bankruptcy estate, the bankruptcy court has authority to enjoin actions that "may affect the amount of property in the bankrupt estate, or the allocation of property among creditors." That possibility existed here, the court held, because the debtor could make a claim on the policies if it prevailed in the adversary action.

In so holding, the court rejected the argument that the public interest would be undermined by restricting the securities plaintiffs' ability to pursue their case, noting that although the shareholders could not collect any judgment from policy proceeds, they could still pursue their action against the directors and officers. The court also rejected the directors and officers' argument that the injunction undermined the public interest in providing professional liability coverage, explaining that one of the defendant directors and officers in the shareholder action was also a defendant in the adversary and thus benefited from the injunction.

For more information, please contact us at 202.719.7130.