

Owens-Corning Fiberglas Awarded Attorneys Fees and Prejudgment Interest in Coverage Dispute with D&O Insurer

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The court in *Owens Corning Fiberglas Corp. v. National Union Fire Insurance Co.*, No. 3:95 CV 7700 (N.D. Ohio Sept. 10, 1999), has awarded prejudgment interest and attorneys fees to Owens-Corning Fiberglas ("OCF") in its successful action to establish coverage under a directors and officers liability policy issued by National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union").

In October 1991 shareholders of OCF brought a securities class action alleging that corporate officers and directors misstated the impact of asbestos litigation against OCF on the company's financial condition. National Union declined coverage based on an exclusion in the policy for class actions arising out of or related to asbestos or asbestos-related injuries. See *Owens Corning Fiberglas v. National Union Fire Insurance Co.*, No. 97-3367, 1998 U.S. App. LEXIS 26233 (6th Cir. Oct. 13, 1998). OCF retained counsel, entered into settlement negotiations and ultimately settled the securities class action. According to the district court's recent opinion, National Union was kept apprised of these events. The coverage litigation ensued. After initially losing on a motion for summary judgment in the district court, OCF appealed, won, and eventually was granted summary judgment entitling it to reimbursement from National Union.

On OCF's motion for final judgment, the court determined that OCF was entitled to prejudgment interest under Ohio law. However, the parties disputed the date upon which prejudgment interest should begin accruing. The court determined that the accrual date would be the date OCF actually lost use of its funds, i.e. the date it made its settlement payment.

As to attorney fees, National Union asserted that OCF failed to establish that National Union acted in bad faith, precluding an award of fees. The court disagreed that this was the appropriate standard, relying on Ohio precedent that an award of fees is appropriate where a policyholder must resort to litigation to enforce the terms of its policy.

Lastly, the court determined that National Union had no basis to challenge the reasonableness of the underlying settlement because a reasonableness hearing had been conducted by the judge presiding over the underlying case, and National Union, despite having had notice of the settlement and the hearing, chose

not to participate.