

Court Orders Transfer of D&O Case Addressing Coverage for Claims for Breach of Contract and Fiduciary Duties in Connection with Investors' Web Site

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A federal district court has ordered the transfer of a case dealing with coverage under a directors' and officers' liability policy for claims of breach of contract and fiduciary duties in connection with an agreement to create a web site providing information to mutual fund investors. The court held that the insureds had met their burden of proving that transfer was necessary for the convenience of the parties and witnesses. *Carolina Casualty Co. v. Data Broadcasting Corp.*, No. C01-1485 (N.D. Cal. July 26, 2001).

Data Broadcasting Corporation ("DBC") and several of its officers were sued in state court in Los Angeles for breach of contract, breach of fiduciary duty, and fraud. DBC and the plaintiff, Paul Farrell, had entered into a business arrangement to create a web site providing information to mutual fund investors, agreeing to be equal partners in the venture. Thereafter, DBC joined forces with CBS to form the investor web site MarketWatch.com. On January 15, 1999, MarketWatch.com went public and was valued at \$1 billion. When Farrell did not receive any shares of the entity, he brought suit against DBC and its officers. DBC sought coverage under its directors' and officers' liability insurance policy. The insurer brought a declaratory judgment action in the United States District Court for the Northern District of California in San Francisco, seeking a declaration that it owed no coverage to DBC for the claims. The next day, DBC filed a competing action in the United States District Court for the Central District of California in Los Angeles. DBC then filed a motion in the Northern District to dismiss the case for improper venue, or, in the alternative, to transfer the case to the Central District.

The federal district court for the Northern District denied the motion to dismiss for improper venue, reasoning that venue was proper because a substantial portion of the events giving rise to the claim took place in the Northern District of California. Specifically, the MarketWatch.com web site office was located in San Mateo, California, and at least one meeting between DBC and Farrell took place in San Mateo. The court granted the motion to transfer, however, reasoning that DBC had met its burden of proving that transfer was necessary for the convenience of the parties and witnesses. In particular, the court held that the convenience of the parties and witnesses, the location of evidence, the possibility of consolidation and the relative interests of the two

districts favored transfer to the Central District. By contrast, the insurer had not shown that a single factor favored retention of the case in the Northern District.