

Court Halts D&O Policy Payment to Trustee

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A federal district court, applying New York law, has granted a stay pending appeal of a bankruptcy court's order authorizing the insured company's Trustee to remit the proceeds of a settlement between the Trustee and the company's D&O insurers. *In re Suprema Specialties, Inc., et al., v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 2005 WL 120352 (S.D.N.Y. Jan. 20, 2005). The bankruptcy court's order had approved the settlement between the Trustee and the carriers, which settlement also provided for rescission of the subject policies. The stay was sought by individual directors and officers who claimed to be insureds under the policies.

In granting the stay, the district court found that there was a risk of irreparable harm to the directors and officers because the settlement proceeds in which they claimed an interest might be unavailable once dispersed. Conversely, the court indicated that the potential harm the Trustee would suffer was minimal, amounting only to a delay in payment to the Trustee's counsel. The court also noted that, because a decision favoring the Trustee might adversely impact the desire of individuals to accept positions as directors and officers generally, public interests warranted the stay. The court then stated that it did "not believe that a high probability of success on appeal should be required because of the competing harms and public interests favor the directors[.]" and determined that the issue of "the Trustee's power to agree to rescission of the D&O policies and to [compromise the directors'] property interest in the insurance payments" was sufficiently close to conclude that the individual insureds did have a "substantial possibility of success on appeal." Accordingly, it stayed the bankruptcy court's order.