

A Single Claim for Equitable Apportionment of Defense Costs Between Two Insurance Towers Is Insufficient To Confer Equitable Jurisdiction When Complete Relief Can Be Had at Law

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The Delaware Court of Chancery has held that a single claim for equitable apportionment of defense costs between two insurance towers is insufficient to confer jurisdiction over the case on the Court of Chancery when complete relief can be had at law in the Superior Court. *Massachusetts Mutual Life Ins. Co. v. Certain Underwriters at Lloyd's of London*, C.A. No. 4791-VCL (Del. Ch. Ct., Sept. 24 2010). The court rejected the argument that the Court of Chancery's greater familiarity with the facts of the case and the similarity of the coverage issues to the indemnification and advancement determinations that the Court of Chancery regularly makes under Delaware Law were sufficient to overcome the jurisdictional bar.

This insurance coverage dispute arose out of the dollar losses to certain funds owned and managed by Tremont Group Holdings, Inc., a subsidiary of Massachusetts Mutual Life Insurance Company (MassMutual), as a result of their investments with Bernard L. Madoff Investment Securities LLC. MassMutual filed a declaratory action in the Delaware Court of Chancery seeking a declaration of coverage and equitable apportionment of indivisible defense expenses between two towers of insurance, one consisting of a primary and excess directors and officers (D&O) liability policies, and the other consisting of a primary and excess fidelity bonds.

The court concluded that it did not have jurisdiction and ordered the case transferred to the Delaware Superior Court. The court began its decision by noting that only one of the six counts of the Complaint—the count seeking equitable apportionment of defense costs—even arguably involved a matter of equity. The remaining five counts concerned alleged breaches of contract and/or requested declarations as to the scope of policy obligations. The court characterized the attempt to ground jurisdiction on this single count as "a docked equitable apportionment tail wagging a very large and complex insurance coverage dog." Because the court found that the equitable apportionment count was the most attenuated of the counts, and would only potentially come into play after the other purely legal counts had been resolved by discovery or even a trial, the court was not convinced that this "remedial" aspect of the case was sufficient to sustain equitable jurisdiction.

Weighing the balance between equitable and legal issues, the court concluded that in cases such as this, where "the plaintiffs have a remedy at law that will afford them full, fair and complete relief," the Court of Chancery should not exercise its equitable jurisdiction. The court also noted that the fact that this was a complicated case with numerous parties should does not affect the jurisdictional question, particularly given the expertise of the Superior Court's Complex Commercial Litigation Division. Finally, the court explained that, if at some future point in the litigation the equitable questions come to dominate the case and require review in the Court of Chancery, "[t]he transfer statute is not a one-way street."