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NEWSLETTER

The Danger of Playing with House Money: The Case against Collusion between D&O Insureds and Shareholder Claimants

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Wiley Rein & Fielding attorneys David H. Topol and Kimberly M. Melvin recently authored an article in *Coverage* magazine responding to an article, "Conserving D&O Insurance Policies in Securities Fraud Litigation: A Common Interest of Policyholders and Institutional Shareholder Claimants," authored by John H. Mathias, Jr. and Timothy W. Burns in the July/August issue. View the response.

The article identifies a number of fundamental flaws in Mathias and Burns's article. First, Mathias and Burns's argument that insureds should, in effect, collude with claimants to maximize policy proceeds flies in the face of the numerous provisions in the D&O policy that expressly preclude such conduct. Second, Mathias and Burns's assertion that "the insurance company has agreed to stand in the shoes of its allegedly wrongdoing insureds to the full extent of its policy's limits of liability" ignores the fact that the insureds paid for an insurance contract that includes provisions that exclude coverage for certain types of conduct. Third, Mathias and Burns ignore the common interest that insureds and insurers share in effectively defending against lawsuits by securities claimants, many of which have little merit. Insureds should be working cooperatively with their insurers, as D&O policies require, to defend aggressively securities litigation, not working with claimants to maximize insurance proceeds, as Mathias and Burns advocate.

For more information, please contact us at 202.719.7130.