

# Federal Court Allows Investors to Appeal Bankruptcy Order Approving Settlement by Insurers and Trustee

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A New York federal court has allowed investors to appeal a bankruptcy court's order approving a settlement between two D&O insurers and a bankruptcy trustee. *In re: Suprema Specialties, Inc.*, 2005 WL 2072291 (S.D.N.Y. Aug. 25, 2005). The court held that the investors had standing to challenge the approval and stayed the order approving the settlement.

The policyholder, a cheese manufacturer, filed bankruptcy after it discovered that members of its management team engaged in sham deals designed to inflate the company's earnings. Certain institutional investors then sued the policyholder's directors, officers and employees, not as creditors, but for false statements in the company's public filings. The policyholder had three D&O policies that covered the company and certain officers and directors for any "actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, or act . . . with respect to any Executive or an Organization, by such Executive in his or her capacity as such or any matter claimed against such Executive solely by reason of his or her status as such." After adversary proceedings against the officers and directors were initiated, one of the insurers rescinded its policy based on material misrepresentations in the public statements. The trustee then initiated an adversary proceeding against the insurers, seeking a declaratory judgment that, *inter alia*, none of the policies was subject to rescission. The insurers subsequently settled with the bankruptcy trustee. The investors filed objections to the settlement, but the bankruptcy court approved the settlement, prompting the investors to appeal.

On appeal, the district court held that the bankruptcy court's approval of the settlement "has a sufficient pecuniary effect" on the investors because the insurance proceeds might not be available to satisfy their claims if they prevail. Accordingly, the court determined that the investors have standing to appeal. The court also concluded that, even though the investors did not move to stay the bankruptcy court's order, other directors successfully had done so, and thus "the entirety of the settlement proceeds is currently held by the Trustee." The court indicated it would "return the parties to status quo ante" and order that the settlement monies be returned to the insurers if it determined that the policies' priority of payments provision required that the investors' claims be paid before any payment to the debtor estate.

For more information, please contact us at 202.719.7130