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ALERT

District Court Withdraws Reference to the Bankruptcy Court of Non-Core Coverage Actions

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The United States District Court for the Central District of California has granted motions by eight directors and officers liability insurers to withdraw the reference to the bankruptcy court of two coverage actions involving coverage for claims against former directors and officers of a bank holding company. *In re IndyMac Bancorp, Inc.*, Nos. CV11-02600; CV11-02605; CV11-02950; CV11-02988 (C.D. Cal. May 17, 2011). Wiley Rein LLP represents an excess insurer and the primary Side A insurer in the litigation.

Certain directors and officers insurers issued traditional directors and officers liability policies, which afforded specified coverage to the bank holding company and its directors and officers. Others issued Side A only policies, which afford specified coverage only to the directors and officers. Two coverage actions were brought against both sets of insurers. One action was filed in bankruptcy court by the chapter 7 trustee of the bank holding company and sought a declaration regarding coverage for an underlying action by the trustee against certain directors of the holding company. A second action was filed in state court by a former subsidiary of the holding company, seeking determinations as to coverage for numerous actions against the subsidiary and former directors and officers of the holding company. This action was subsequently removed to the bankruptcy court.

Both sets of insurers moved to withdraw the reference of the coverage actions to the bankruptcy court. The insurers argued that the coverage actions were not "core proceedings" under bankruptcy law because they did not involve the administration of the bankruptcy

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estate or property of the estate. Instead, the insurers argued that the actions involved only state law issues. Accordingly, the bankruptcy court would be unable to enter a final order, and any determinations made in the bankruptcy court would be subject to *de novo* review in the district court. The insurers also contended that judicial efficiency supported withdrawal of the reference and that withdrawal would not affect the uniformity of bankruptcy administration.

The district court agreed with the insurers. It found that the coverage actions were not core proceedings, but instead involved "rights created by state law that are independent of and antecedent to [the holding company]'s bankruptcy so [they are] beyond the scope of the Article I bankruptcy power and properly categorized as . . . non-core proceeding[s]." The court rejected the chapter 7 trustee's argument that the coverage actions were core because they would determine "the nature and extent of the Estate's property interest in the insurance policies." Instead, the court determined, the coverage actions might determine whether money is owed to the estate, depending on the outcome of the trustee's underlying action against insured persons. Therefore, the court reasoned, the actions might involve "property *owed to* an estate" but do not deal with "property *of* an estate."

The court found further that judicial efficiency favored withdrawal. Because the bankruptcy court could not enter a final judgment in the non-core coverage actions, withdrawal would eliminate the need for an additional round of *de novo* review if the coverage actions were initially decided in the bankruptcy court. The court also found that withdrawal would not disrupt the uniformity of bankruptcy adjudication and that the motions to withdraw were not an attempt to forum shop.