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Verizon Clinches $48M Coverage For Spinoff Fraud Suit

By **Rick Archer**

Law360, Los Angeles (March 15, 2017, 7:11 PM EDT) -- A collection of insurance companies must cover Verizon and GTE for the $48 million they spent defending themselves against a $14 billion shareholder suit over an allegedly debt-laden spinoff, a Delaware court has ruled.

The underlying suit, brought by U.S. Bank and spawned by the spinoff of Verizon Communication Inc.'s Idearc Inc. electronic directories business, is a securities suit as defined by Verizon's insurance policies despite not being based on a specific securities law, meaning the insurers must cover defense costs in excess of the retention, Superior Court Judge William C. Carpenter Jr. ruled in a March 2 decision, which was unsealed Wednesday.

"Nothing in the policies' definitions of securities claims purports to exclude common-law rules or to limit coverage to only those claims alleging violations of enumerated state or federal securities statutes and regulations," Judge Carpenter said.

Idearc — which became Dex Media Inc. after a 2013 merger with Dex One Corp. — was a wholly owned subsidiary of Verizon, serving as its phone-book unit before being spun off in November 2006. Idearc turned to Chapter 11 bankruptcy in March 2009 to shed $6 billion of debt.

U.S. Bank sued Verizon, Verizon executive John W. Diercksen, Verizon Financial Services LLC and affiliate GTE Corp. in September 2010 for allegedly engineering the Idearc spinoff. U.S. Bank argued that Verizon had devised a scheme to get rid of its declining yellow pages and online directory businesses, cooking up a complex spinoff deal that would enable Verizon to rid itself of the underperforming units and shed debt at the same time.

Verizon won a bench trial of the case in October 2012. The Fifth Circuit upheld the verdict, and the U.S. Supreme Court refused to review the matter.

Verizon held a primary policy with Illinois National Insurance Co. and excess policies with XL Specialty Insurance Co., Zurich American Insurance Co. and Twin City Fire Insurance Co. The insurers denied Verizon and GTE's claims for defense costs, arguing that the policies expressly covered only allegations of violations of "rules or statutes regulating securities," and that as U.S. Bank had made only common-law claims instead of citing specific state or federal securities laws, the suit was not covered.

Judge Carpenter said in the ruling earlier this month that he agreed with Verizon's argument that this interpretation was too narrow, saying that the insurers deliberately broadened the clause's phrasing in 1995 and that Illinois previously approved claims for a breach of fiduciary duty case.

The insurance companies had also argued that U.S. Bank's was not a securities case, because the bank brought the claims on behalf of an Idearc litigation trust, but Judge Carpenter disagreed, saying the language of the policy was too broad to exclude it.

Counsel for the insurers did not immediately respond to requests for comment Wednesday.

Verizon and GTE are represented by Robin L. Cohen, Keith McKenna and Michelle R. Migdon of McKool Smith PC and by Jennifer C. Wasson and Michael Rush of Potter Anderson & Corroon LLP.

Illinois National and National Union are represented by Edward M. McNally, Meghan A. Adams and Nicolas Krawitz of Morris James LLC. U.S. Specialty Insurance Co. is represented by John C. Phillips Jr. and David A. Bilson of Phillips Goldman McLaughlin & Hall PA. Twin City is represented by Joel Friedlander and Christopher M. Foulds of Friedlander & Gorris PA. XL Specialty is represented by Bruce E. Davidson, Kevin Davenport and John Day of Prickett Jones & Elliott PA. Zurich American is represented by Bruce W. McCullough of Bodell Bove LLC.

The case is Verizon Communications Inc. et al. v. Illinois National Insurance Co. et al., case number N14C-06-048, in the Superior Court of the State of Delaware.

--Additional reporting by Kurt Orzeck. Editing by Edrienne Su.
