

Del. Court Rebuffs Insurers' Challenge To Verizon Judgment

By Rick Archer

Law360 (May 8, 2018, 7:56 PM EDT) -- A Delaware state court judge on Monday granted final judgment to Verizon and GTE in their suit seeking coverage for the \$48 million they spent defending themselves against a \$14 billion shareholder suit, saying the time for the insurers to object to the claimed defense costs is past.

Superior Court Judge William C. Carpenter Jr. rejected requests by the excess insurers in the case to escape prejudgment interest and delay final judgment until they can investigate the reasonableness of the defense costs being claimed, saying the primary policy does not have to be exhausted to start the clock on prejudgment interest and the insurers should have raised the reasonableness question before the case was filed four years ago, not a year after summary judgment has been entered.

"It is the court's opinion that it is simply time to stop this litigation Ferris wheel," Judge Carpenter said. "In spite of the assertions by the defendants to the contrary, the litigation will end only when either the parties accept the court's prior decision or it is affirmed or reversed by the Delaware Supreme Court. Granting final judgment will allow this path to occur."

The underlying suit was brought by U.S. Bank as a result of the November 2006 spinoff of Verizon Communication Inc.'s phone book unit Idearc Inc.'s electronic directories business. Idearc — which became Dex Media Inc. after a 2013 merger with Dex One Corp. — 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, alleging Verizon had devised the spinoff to get rid of its underperforming yellow pages and online directory businesses and shed debt at the same time. Verizon won a bench trial in the case in June 2013.

Verizon held a primary policy with Illinois National Insurance Co. and excess policies with XL Specialty Insurance Co., Zurich American Insurance Co., Twin City Fire Insurance Co. and U.S. Specialty Insurance Co., among others. 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 U.S. Bank had made only common-law claims instead of citing specific state or federal securities laws.

Judge Carpenter said in his March 2017 ruling 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.

XL, Zurich and Twin City contested the entry of final judgment, arguing there remain disputes over the reasonableness of Verizon and GTE's defense costs that will require additional discovery.

Judge Carpenter, however, said the insurers did not contest reasonableness when they denied the claim or in their defense to the suit. He said despite having had access to the defense invoices in the underlying case for four years they had failed to show evidence of any unreasonable charges.

"The defendants' position on coverage lived and died on the issue of 'securities claim' and to continue the litigation is not only unreasonable but would condone the excess insurers' continual failure to comply with the insurance policies," he said.

Judge Carpenter also rejected the excess insurers' argument that they did not owe prejudgment interest because their obligation to pay will not be triggered until the Illinois National policy is exhausted.

"Specifically, the court believes since the summary judgment decision was rendered against all defendants, the prejudgment interest should be a shared burden among the defendants," he said, adding that the excess insurers will pay interest on whatever they pay above Illinois National's \$15 million limit.

Counsel for the plaintiffs and XL Specialty declined to comment. Counsel and representatives for the remaining parties did not immediately respond to requests for comment Tuesday.

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

Illinois National and National Union are represented by Edward M. McNally, Meghan A. Adams, Patricia A. Winston 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, and Douglas L. Mangel and Joseph A. Bailey III of Clyde & Co.

Twin City is represented by Joel Friedlander, Christopher P. Quinn 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 and Tammy Yuen of Skarzynski Black LLC.

Zurich American is represented by Bruce W. McCullough of Bodell Bove LLC and Ronald P. Schiller of Hangle Aronchick Segal Pudlin & Schiller.

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.

--Editing by Jack Karp.