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# NYC Investment Firm Entitled to Insurance Payment on $14.5M in Legal Costs, Del. Court Says

**Delaware Business Court Insider**
**Tom McParland**
**December 13, 2018**

A Delaware Superior Court judge has ruled that AR Capital is entitled to insurance payments to cover legal costs stemming from multiple lawsuits and a regulatory investigation into a $23 million accounting error at real estate investment firm VEREIT Inc.

Judge William C. Carpenter said Wednesday that AR Capital, a New York-based investment and advisory firm, was covered under VEREIT's insurance policy for management services it had provided to VEREIT before the errors were discovered in late 2014.

**At the time AR Capital filed its complaint in 2016, the company had incurred about $14.5 million in legal fees to McKool Smith and Potter Anderson & Corroon, according to court documents.**

The **summary judgement ruling** from Carpenter rejected VEREIT's claim that AR Capital was excluded from coverage under the firm's policy as a lawyer-created assertion, and ordered VEREIT's insurers to begin making the payments immediately.

"Payment of these costs has been pending for years, and the insurers are obligated to advance these costs," Carpenter said in a 38-page memorandum opinion.

The case stemmed from VEREIT's September 2014 investigation into reporting irregularities, which caused the firm to restate its financial results for four straight quarters, starting in the second half of 2013.

The chief financial officer and the head accountant of the firm, which was doing business as American Realty Capital Properties both resigned in the aftermath, and the company later changed its name to VEREIT.

An investigation by the U.S. Securities and Exchange Commission targeted VEREIT's directors and officers, and regulators subpoenaed AR Capital for documents related to its external management of VEREIT, as well as its knowledge of the firm's financials. The debacle also sparked multiple lawsuits against VEREIT and AR Capital alleging years-long accounting fraud.

AR Capital sued in 2016 demanding payment from VEREIT's insurers, but the case quickly took on new life after VEREIT intervened, arguing that AR Capital would have to seek coverage under its own liability insurance program. AR Capital then accused VEREIT of fraud in diverting the insurance assets, in a move that Carpenter said "exploded the litigation beyond any reasonable common sense."

"As such, what should be cooperative litigation by two companies to maximize insurance coverage, has turned into a fight between them (or at least their counsel), with coverage of legal fees still not provided," the judge wrote.

At issue in the case was a contractual provision regarding coverage for "company wrongful acts." Although Carpenter said the language was "sloppily and poorly written," there was nothing to suggest that the policies were intended only to provide coverage to VEREIT.

"If the parties to this insurance policy wanted to exclude AR Capital from [the] coverage, distinguishing it from the other 'company' entities, they could have simply stated so," Carpenter said. "Even a non-lawyer with elementary comprehension of the English language could have created such an exception."

An attorney for AR Capital declined to comment, and an attorney for VEREIT did not return a call Thursday afternoon seeking comment on the ruling.

**AR Capital is represented by Robin L. Cohen and Natasha Romagnoli of McKool Smith in New York and Jennifer C. Wasson and Carla M. Jones of Potter Anderson.**

VEREIT is represented by Joseph D. Jean, Alexander D. Hardiman and Benjamin D. Tievsky of Pillsbury Winthrop Shaw Pittman in New York and Stephen B. Brauerman and Sara E. Bussiere of Bayard in Wilmington.

The case is captioned *AR Capital v. XL Specialty Insurance Co.*