

## Verizon Covered For \$95M Fraudulent Transfer Settlement

By **Daniel Tay**

*Law360 (October 26, 2022, 8:46 PM EDT)* -- Verizon Communications Inc. is covered for a \$95 million settlement in a fraudulent transfer suit by a bankruptcy trustee to claw back \$2.3 billion in indirect payments, according to a Delaware Superior Court decision unsealed Wednesday that found the underlying suit was a covered securities claim.

The fraudulent transfer suit was brought by the trustee for then-insolvent FairPoint Communications, which accused Verizon of luring FairPoint into a "disastrous" acquisition of Verizon's outdated, mostly landline, telephone equipment and infrastructure.

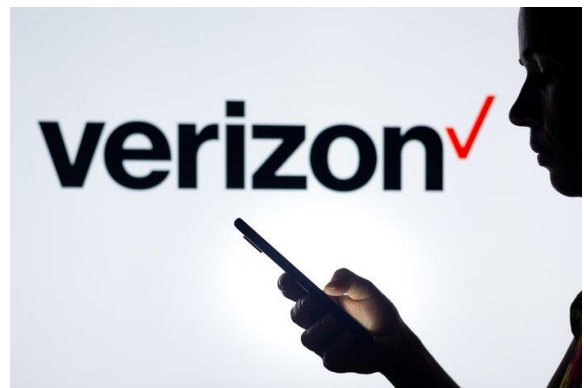
That suit constitutes a securities claim that was "brought derivatively" on behalf of Northern New England Spinco Inc. — an entity Verizon created for delivering its landline assets to FairPoint in a merger — which is a covered organization by the directors and officers policy at issue here, the Delaware court said.

The court also held that the trustee was a security holder for Spinco, which meant the FairPoint suit was a covered securities claim and the settlement for the suit is covered. Under the policy, a securities claim is defined as a claim "brought derivatively on the behalf of an organization by a security holder of such organization," with "organization" including any for-profit entity Verizon controlled on or before the effective date of the policy.

The court's decision is a "complete" win for policyholders, Keith McKenna, counsel for Verizon, told Law360.

"To our knowledge, no court has previously addressed whether a fraudulent conveyance claim can qualify as a securities claim under the policy language that was at issue in the decision," McKenna said. Because the policy language at issue in the case is a standard form used throughout the country, the decision "opens the door" for policyholders across the nation to get coverage for fraudulent transfer claims against them, McKenna added.

Representatives for Verizon's insurers did not respond to requests for comment. The insurers in the



Verizon is covered for a \$95 million settlement in a fraudulent transfer suit by a bankruptcy trustee, the Delaware Superior Court ruled. (Rafael Henrique/SOPA Images/LightRocket via Getty Images)

lawsuit are National Union Fire Insurance Co. of Pittsburgh PA, which issued the primary policy at issue, and U.S. Specialty Insurance Co., Axis Insurance Co. and St. Paul Mercury Insurance Co., which issued excess policies that followed the National Union policy.

The trust, whose beneficiaries are former FairPoint creditors, slapped Verizon with the \$2 billion fraudulent transfer suit in North Carolina in the fall of 2011. The suit claimed that Verizon duped FairPoint into taking on \$2.5 billion in debt to acquire Verizon's conventional landlines and DSL technologies in Maine, New Hampshire and Vermont in 2008.

As part of the transaction, Verizon formed Spinco as a wholly owned subsidiary and sold it the telecommunications portfolio in exchange for Spinco corporate debt notes, according to court documents. Verizon later sold these notes to investment banks that later sold the notes on the secondary market. After FairPoint and Spinco merged, FairPoint's balance sheet included the liabilities on Spinco's notes.

The suit alleged that because Verizon only sold FairPoint shrinking parts of its business and failed to transfer essential information technology networks and back office operations, FairPoint "paid a princely sum for a collection of inferior assets that had no future," according to court documents.

Just 18 months after the deal with Verizon closed, FairPoint filed for Chapter 11 bankruptcy in October 2009 when it wasn't able to service a multibillion-dollar debt load, \$2 billion of which it owed to Bank of America NA, according to court records.

Verizon sought coverage for the underlying suit in August 2018 in Delaware Superior Court and notched a partial win in February 2021 when the court held it was entitled to coverage of \$24 million in defense costs under a separate policy issued by National Union. XL Specialty Insurance Co. and National Specialty Insurance Co. issued excess policies to that policy.

The court on Wednesday rejected arguments by the insurers that the FairPoint suit was not brought by security holders of Spinco but by security holders of FairPoint. When Spinco merged with FairPoint, the new entity was liable for payment on the Spinco notes, and when the new entity could not service its debt, the Spinco note holders went unpaid, the court said.

In bankruptcy, those note holders' Spinco-related fraudulent transfer claims passed to the bankruptcy trust and only the trust could bring those claims, meaning the trustee lodged the FairPoint lawsuit as a Spinco security holder, the court said.

A lawsuit filed in New York federal court by the insurers over the same coverage issue is "duplicative and likely will be dismissed," McKenna said.

Verizon Communications Inc. et al. are represented by Robin L. Cohen, Keith McKenna and Meredith Elkins of Cohen Ziffer Frenchman & McKenna LLP and Jennifer C. Wasson and Carla M. Jones of Potter Anderson & Corroon LLP.

National Union Fire Insurance Co. of Pittsburgh PA is represented by Kurt M. Heyman and Aaron M. Nelson of Heyman Enerio Gattuso & Hirzel LLP and Lisa C. Solbakken and Deana Davidian of Arkin Solbakken LLP.

XL Specialty Insurance Co. is represented by Bruce E. Jameson and John G. Day of Prickett Jones & Elliott

PA and Alexis J. Rogoski and Tammy Yuen of Skarzynski Marick & Black LLP.

National Specialty Insurance Co. is represented by Robert J. Katzenstein and Eve H. Ormerod of Smith Katzenstein & Jenkins LLP and Michael P Duffy and Scarlett M. Rajbanshi of Peabody & Arnold LLP.

U.S. Specialty Insurance Co. is represented by John C. Phillips Jr. and David A. Bilson of Phillips McLaughlin & Hall PA and Joseph A. Bailey III and Gabriela Richeimer of Clyde & Co. LLP.

Axis Insurance Co. is represented by Robert J. Katzenstein and Eve H. Ormerod of Smith Katzenstein & Jenkins LLP and Michael R. Goodstein of Bailey Cavalieri LLC.

St. Paul Mercury Insurance Co. is represented by Robert J. Katzenstein and Eve H. Ormerod of Smith Katzenstein & Jenkins LLP and Jason C. Reichlyn of Dykema Gossett PLLC.

The case is Verizon Communications Inc. et al. v. National Union Fire Insurance Co. of Pittsburgh PA et al., case number N-18C-08-086, in the Superior Court of the State of Delaware.

--Additional reporting by Jeff Montgomery and Linda Chiem. Editing by Nick Petruncio.

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