

## Viacom And NAI Can Continue Shareholder Coverage Dispute

By **Elizabeth Daley**

*Law360 (March 10, 2025, 9:51 PM EDT)* -- A Delaware Superior Court judge ruled in companion cases that Shari Redstone, National Amusements Inc. and Viacom Inc. can still seek coverage for millions after underlying shareholder litigation in the wake of Viacom's 2019 CBS merger, determining prior actions were unrelated to the underlying disputes at hand.

In an order filed Thursday in NAI and Redstone's case against insurers, Judge Sheldon K. Rennie wrote that although the 2019 shareholder action for which coverage is sought had certain things in common with prior 2016 litigation, "the claims are not interrelated." For similar reasons, he also issued an order in favor of Viacom in its case against insurers.

NAI and Redstone were allowed to continue their quest for coverage against insurers Endurance American Specialty Insurance Co., Ironshore Indemnity Inc., Starr Indemnity & Liability Co. and National Union Fire Insurance Co. of Pittsburgh, Pa. The former media giant Viacom was allowed to keep seeking coverage from Endurance, Starr, Continental Casualty Co., Illinois National Insurance Co. and North American Specialty Insurance Co. for shareholder litigation arising out of the CBS Viacom merger.

For NAI and Redstone, \$40 million in coverage hangs in the balance, while in Viacom's companion case against its insurers, around \$55 million in coverage is at stake, according to court filings.

The judge wrote that in Viacom's case, "identical issues" were raised to those in NAI and Redstone's, which were argued concurrently. He similarly ruled that "'the merger litigation' underlying [Viacom's] suit, 'is a 'claim' first made under [plaintiff's] 2019 [insurance] policies.'" He said that the 2019 directors and officers policies' prior notice exclusion did not apply to bar coverage.

The underlying litigation concerns disputes from former Viacom shareholders and CBS shareholders, with each group alleging breach of fiduciary duty, claiming its shares were undervalued based upon the merger, according to court filings.

In the judge's order addressing the underlying litigation for which NAI and Redstone sought coverage, he wrote that the 2019 suit brought by CBS shareholders, which has since been settled, challenged the fairness of shareholder compensation following the merger that year between Viacom and CBS.

The 2016 litigation cited by NAI insurers as interrelated included four suits that did not have enough in common with the 2019 matter to be considered interrelated under the insurers' identical 2019 directors and officers policies, the judge said.

The insurers' challenges relied in part on the timing of suits filed in 2016 in California and Massachusetts, as well as two in Delaware Chancery Court in connection with bitter litigation over control of NAI.

One 2016 suit found NAI Entertainment Holdings LLC's board members challenging their removal from the board and as trustees to the Sumner Redstone Trust, the judge said. Another was filed by NAI seeking declaratory judgment that it properly used written consents to amend Viacom's bylaws, the judge summarized. A third was an action challenging the removal of five directors from Viacom's board, while the fourth was filed by Viacom's Class B shareholders against Redstone, NAI, Sumner Redstone, Viacom and various Viacom directors.

Certain suits took aim at NAI Chairman Sumner Redstone's failing health — he died in 2020 — and alleged incapacity, and at allegations that his daughter, Shari Redstone, was aggressively maneuvering to gain control of CBS and Viacom, as well as her interest in an eventual deal with Paramount Pictures, court records show.

Three of the cases settled in 2016 with releases of "any and all claims," while a fourth, targeting Shari Redstone's moves to oust Viacom directors and assert control, was dismissed in 2017. By 2019, CBS and Viacom had merged into ViacomCBS before becoming Paramount Global.

In 2019 and 2020, Viacom and CBS stockholders separately sought damages in Chancery Court for breaches of fiduciary duty in connection with the 2019 merger process. A \$122.5 million settlement was approved for direct claims filed by Viacom stockholders and a \$167.5 million settlement was approved for the CBS stockholder direct and derivative suit, court records show.

NAI and Redstone sought coverage for the current litigation under a directors and officers insurance policy dating to 2017 that was renewed for the 2018-2019 period. Their suit sought a declaratory judgment that the insurers are obligated to cover all expenses other than a \$2.5 million deductible, up to the limits of the policies, as well as damages for contract breaches.

Viacom sought coverage for its underlying shareholder litigation under its 2019 director and officer policies.

Representatives of Viacom declined to comment on the case. Representatives of the remaining parties did not immediately respond to requests for comment on Monday.

Redstone, NAI and its affiliate are represented by Matthew Fischer, Jennifer Wasson, Jacqueline Rogers and Carla Jones of Potter Anderson & Corroon LLP and by David B. Goodwin, Neema Sahni, Mitchell F. Dolin and Jad H. Khazem of Covington & Burling LLP.

Viacom is represented by David J. Baldwin and Peter C. McGivney of Berger McDermott LLP and by Robin L. Cohen, Adam Ziffer and Jillian Raines of Cohen Ziffer Frenchman & McKenna LLP.

Endurance American Insurance is represented by Kristen S. Swift of Kaufman Dolowich and by Manuel Mungia and Chad W. Schreiber of Norton Rose Fulbright.

Ironshore Indemnity is represented by Carmella P. Keener of Cooch & Taylor PA, by Ronald P. Schiller, Daniel J. Layden and Isabel C. Naveira Lopez of Hanglely Aronchick Segal Pudlin & Schiller, by Brandon

Almond and Savannah Billingham-Hemminger of Troutman Pepper Locke LLP and by John A. Elzufon and Nathan V. Gin of Elzufon Austin & Mondell PA.

Starr Indemnity & Liability is represented by Christopher B. Chuff, Kevin F. Kieffer and Ryan C. Tuley of Troutman Pepper Locke LLP.

National Union Fire Insurance is represented by Kurt M. Heyman and Aaron M. Nelson of Heyman Enerio Gattuso & Hirzel LLP and by Scott B. Schreiber and Arthur Luk of Arnold & Porter Kaye Scholer LLP.

North American Specialty Insurance Co. is represented by Aimee M. Czachorowski and Jessica Gavril of Lewis Brisbois Bisgaard & Smith LLP.

Illinois National Insurance Co. is represented by Kurt M. Heyman and Aaron M. Nelson of Heyman Enerio Gattuso & Hirzel LLP.

Continental Casualty Co. is represented by Marc Casarino of Kennedys CMK.

The cases are National Amusements Inc. et al. v. Endurance American Specialty Insurance Co. et al., case number N22C-06-018, and Viacom Inc. n/k/a Paramount Global v. U.S. Specialty Insurance Co. et al., case number N22C-06-016, in the Superior Court of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Nick Petruncio.