

Michael Duffy and Scarlett Rajbanshi Win Motion to Dismiss in Declaratory Judgment Action Against D&O Insurer

Partners

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Peabody & Arnold Partners Michael Duffy and Scarlett Rajbanshi obtained dismissal of a declaratory judgment action brought against the firm's insurance company client alleging a breach of a directors and officers insurance agreement. The matter was pending in the United States District Court of the Southern District of New York and centered on the allegation that the insurer failed to obtain the Plaintiff's consent prior to funding a settlement of bankruptcy claims against Plaintiff's co-insured which depleted the available policy limits. Plaintiff alleged that his co-insured had made admissions of liability without notice to him or the insurer and, in doing so, breached the insurance policy. The Court dismissed the Complaint holding that each Insured had a separate right to settlement under the policy provisions which could not be blocked by other Insureds. Accordingly, the insurer did not breach the policy by funding the settlement at issue. The Court also rejected Plaintiff's assertions that its co-insured's alleged admissions of liability violated the policy's cooperation provisions, noting that Plaintiff lacked standing to object to another insured's alleged lack of cooperation with the insurer, and agreeing with the insurer that discussion in a confidential mediation proceeding do not rise to the level of breach of cooperation. *See Modell v. Argonaut Insurance Company, et al.*, 2024 WL 495135 (S.D.N.Y. 2024)