

Viacom's Insurers Must Face Coverage Suits Over CBS Merger

By **Emily Enfinger**

Law360 (February 17, 2023, 5:51 PM EST) -- A Delaware state judge ruled that several of Viacom's directors and officers insurance carriers must face the media company's suits seeking coverage for litigation stemming from its merger with CBS, deeming the dispute ripe for consideration.



A Delaware Superior Court judge said Thursday that Viacom's insurance suits are ripe because "concrete facts" can be used now to resolve issues over the meaning of exclusions and which policy period is applicable. (AP Photo/Mark Lennihan)

Superior Court Judge Abigail M. LeGrow determined in an **opinion and order** Thursday that two separate insurance coverage suits brought by Viacom Inc. and Shari E. Redstone, who was a member of Viacom's board of directors at the time of the 2019 CBS **merger**, are ready for adjudication.

Viacom and Redstone are seeking coverage from insurers under Viacom's 2016 and 2019 D&O towers for damages they might be ordered to pay, whether by settlement or judgment, in the underlying actions.

The underlying actions accuse the directors, officers and controlling shareholders of Viacom and CBS of breaching their fiduciary duties in connection with the 2019 merger.

According to court filings, the insurers have paid defense costs but refuse to provide coverage for a judgment or settlement for various reasons, such as arguments that certain exclusions bar coverage for

damages as well as a dispute over which policy period is implicated in the underlying actions. Some of the 2019 tower insurers have taken the position that the 2016 tower is implicated by the claims in the underlying actions, rather than the 2019 tower.

Because of the disagreement about which policy tower is implicated by the claims, insurers in both the 2016 and 2019 towers were named as defendants in the coverage fight, according to the judge's ruling.

Some of the insurers filed motions to dismiss the coverage fights, arguing that those disputes won't be ripe for consideration until the underlying actions have been resolved.

But the judge said Thursday that the insurance disputes are ripe because "concrete facts" can be used now to resolve issues over the meaning of exclusions and which policy period is applicable.

Counsel for Viacom declined to comment Friday.

Representatives of the other parties did not immediately respond to requests for comment.

Viacom Inc. is represented by Robin Cohen, Adam Ziffer and Jillian Raines of Cohen Ziffer Frenchman & McKenna and David J. Baldwin, Peter C. McGivney and Harry W. Shenton IV of Berger Harris LLP.

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

Zurich American Insurance Co. is represented by Bruce W. McCullough and Louis A. Bové of Bodell Bove LLC.

XL Specialty Insurance Co. is represented by Joanna J. Cline, Emily L. Wheatley, Jennifer Mathis and Daniel W. Cohen of Troutman Pepper.

QBE Insurance Corp. is represented by John C. Phillips Jr and David A. Bilson of Phillips McLaughlin & Hall PA, and Andrew L. Margulis of Ropers Majeski Kohn Bentley PC.

Travelers Casualty and Surety Co. of America is represented by Robert J. Katzenstein and Julie M. O'Dell of Smith Katzenstein & Jenkins LLP, and Thomas J. Judge of Dykema Gossett LLC.

National Casualty Co. is represented by Darius N. Kandawalla and James M. Young of Bailey Cavalieri LLC.

Freedom Specialty Insurance Co. is represented by Darius N. Kandawalla of Bailey Cavalier, and Robert J. Katzenstein and Julie M. O'Dell of Smith Katzenstein & Jenkins LLP.

Markel American Insurance Co. is represented by Timothy S. Martin, Daryll Hawthorne-Searight, David J. Creagan and Celestine Montague of White and Williams LLP.

National Liability & Fire Insurance Co. and Axis Insurance Co. are represented by Curtis J. Crowther and Erica J. Kerstein of Robinson & Cole LLP.

Berkley Insurance Co. is represented by James W. Semple of Cooch and Taylor PA, and David F. Cutter of BatesCarey LLP.

Hudson Insurance Co. is represented by Courtney E. Scott of Tressler LLP.

Starr Indemnity & Liability Co. is represented by Matthew P. Donelson of Elzufon Austin & Mondell PA, and David A. Wilford and Anthony D'Agostino of Wilford LLP.

The cases are Viacom Inc. nka Paramount Global v. U.S. Specialty Insurance Co. et al., case number N22C-06-016, and Shari E. Redstone v. ACE American Insurance Co. et al., case number N22C-06-020, in the U.S. Superior Court of the State of Delaware.

--Editing by Abbie Sarfo.