

DiCanio in Law360: Haynes Boone Policyholder Attorney Talks Rising Securities Settlements

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PRACTICES Alternative Dispute Resolution, Insurance Recovery

In a recent Q&A with Law360, Haynes Boone Partner [Carrie DiCanio](#) shared more about the insurance considerations tied to securities settlements, including how different coverages apply and the issues that can arise when seeking reimbursement for defense and settlement costs.

Read an excerpt from the article below.

This report focuses on settlements specifically. For insurance purposes, how are settlements covered differently from judgments, if at all?

The difference with a settlement is that there's many reasons that a policyholder or an insured might settle litigation. It could be [that] the cost of litigation is exponential, they're trying to cut off those costs in part. It could be like the uncertainty of a jury trial, for example. There's a lot of factors that come into play.

When there's a judgment, there has been a factual finding. Coverage for settlements is based on if there's a potential for coverage and what that settlement represents — does it represent costs incurred by the policyholder for defense costs, for example. That's clearly covered by the policy.

The report notes that the Securities Act claims are associated with a high level of docket entries, which this report correlates with very high expenses. Are high defense costs a source of friction between insurers and policyholders?

In every D&O matter, there's a few factors that goes into defense cost coverage.

Typically, D&O policies permit the policyholder to select their defense counsel. But some policies are duty-to-defend policies, where the insurer might argue that they have the right to select counsel. If that's the case, and the insurer does select counsel, then they are usually paying counsel's cost directly, so it's less of a risk for the policyholder.

However, when the policyholder selects their own counsel, there's usually some amount of auditing that occurs when those invoices are submitted to the insurance company for reimbursement.

Whether it's litigation because they don't comply with insurance litigation guidelines or an insurance company saying they're not going to pay certain costs — there can be a lot of back and forth between the policyholder and the insurance company in terms of processing invoices and getting those invoices paid to the fullest extent.

Even if you're getting coverage for those costs, you may not get full coverage, and there's going to be some labor investment in making sure you get as much coverage as possible for your defense costs.

Read the full Law360 article [here](#).