

Insurance Implications For Derivative Suits Against Corporations and Corporate Officers Arising From Sexual Misconduct

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Last month, 21st Century Fox reached a settlement with the City of Monroe Employees' Retirement System relating to sexual misconduct litigation. Unlike the wave of recent lawsuits brought by victims of alleged sexual misconduct, the 21st Century Fox settlement resolved a derivative suit against the company brought by its shareholders. The shareholder derivative suit alleged that the company's management allowed a culture of sexual and racial harassment, resulting in financial harm to the company. Notably, the suit was not actually filed until November 20, the same day that the settlement agreement was submitted to the Delaware Court of Chancery.

The complaint named several individual defendants, including Roger Ailes, Rupert Murdoch and other company directors, and alleged breach of fiduciary duty against Murdoch and others and an unjust enrichment claim against Ailes's estate (based on severance pay to Ailes). The complaint alleged that the Board of Directors failed to take steps to address sexual harassment issues and to implement sufficient controls to prevent a hostile work environment. According to the complaint, those failures led to numerous sexual harassment settlements and race discrimination suits that cost the company millions of dollars, as well as damage to the company's good will.

The settlement, which does not admit any wrongdoing, provides for the establishment of a Fox News Workplace Professionalism and Inclusion Council and the implementation of procedures to ensure a "proper workplace environment." In addition, the settlement provides that the defendants will "cause their insurers to make a payment" of \$90 million back to the company. A recent press release issued by 21st Century Fox confirms that the payment is to be funded by insurers. However, it is unclear which insurers and what type of coverage is involved, and whether any exclusions would arguably bar coverage for such claims. These and other insurance-related issues may be significant in the event that similar derivative shareholder suits are filed in the future.

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