

SEC Investigation Is Not A Covered Securities Claim, Says New York Court

04.30.21



(Article from *Insurance Law Alert*, April 2021)

For more information, please visit the [Insurance Law Alert Resource Center](#).

A New York federal district court dismissed a policyholder's breach of contract suit against its insurer, finding that a Securities and Exchange Commission ("SEC") investigation was not a covered Securities Claim under the D&O policy. *Hertz Global Holdings, Inc. v. National Union Fire Ins. Co. of Pittsburgh*, 2021 WL 1198802 (S.D.N.Y. Mar. 30, 2021).

In 2013, a securities class action was filed against Hertz. In 2014, the SEC demanded documents relating to the company's financial statements and issued an order of investigation stating that the SEC had "information that tends to show" violations of securities laws. National Union agreed that the class action was a "Securities Claim" under the policy, but argued that the SEC investigation did not trigger coverage. Hertz ultimately settled with the SEC, agreeing to pay a \$16 million penalty. Thereafter, Hertz sued National Union for breach of contract and sought a declaration that National Union was obligated to pay the expenses of the SEC investigation and settlement costs. The court granted National Union's motion to dismiss.

The policy covers "Securities Claims" against "Hertz the Organization," as well as "Claims against Individual Insureds." Securities Claim is defined as "a Claim, other than an investigation of an Organization . . . alleging violation of securities laws or regulations." The court ruled that this language unambiguously excludes the SEC investigation from coverage, rejecting Hertz's assertion that the investigation was a covered "administrative or regulatory proceeding." The court also rejected Hertz's contention that the SEC order issued in connection with the investigation was a claim alleging a violation of securities laws. The court explained that language in the order stating that the SEC has information that tends to show multiple possible violations is not equivalent to an actual claim.

In addition, the court dismissed Hertz's argument that the costs of the SEC investigation should be included as part of the covered securities class action, noting that the SEC investigation did not arise from that action. Finally, the court deemed unpersuasive Hertz's assertion that the investigation was covered as a "claim" against Insured Individuals. The court emphasized that the investigation targeted Hertz as an organization, rather than any individual executives, and held that the cooperation of executives or their participation in tolling agreements is not equivalent to claims against those individuals.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

