

New York Federal Court Denies Insurer's Motion for a Preliminary Injunction Seeking to Obtain Documents Sought to Evaluate Subrogation Rights

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The United States District Court for the Southern District of New York has denied an insurer's motion seeking preliminary injunctive relief in the form of an order requiring its insured to produce documents related to the underlying claim, including documents previously provided to the U.S. Securities and Exchange Commission, and enjoining the insured from prejudicing the insurer's subrogation rights. *Fed. Ins. Co. v. Time Warner Inc.*, 2006 WL 1026466 (S.D.N.Y. Apr. 19, 2006).

Instead, the court granted the policyholder's cross-motion to dismiss the insurer's complaint. It also denied the policyholder's motion for sanctions against the insurer.

The insurer issued the first layer excess policy in a \$500 million D&O program. After the policyholder became subject to numerous regulatory investigations and civil actions regarding its accounting practices, the insurer and the policyholder entered into a non-waiver and interim funding agreement that obligated the insurer to advance the policy's limits. After the insurer advanced limits, it requested numerous documents from the policyholder in order to evaluate its subrogation rights against third parties. The policyholder refused to comply with the insurer's requests and invoked the policy's arbitration provision with respect to the insurer's document request and other coverage issues. The insurer then filed the instant action, requesting preliminary injunctive relief. The insured filed cross-motions to dismiss the complaint and for sanctions.

After reviewing the standards applicable to requests for injunctive relief, the court denied the insurer's motion. In so doing, the court concluded that the insurer failed to establish the required irreparable harm. The court reasoned that the insurer could not demonstrate irreparable harm because all it could potentially lose was the amount it had already advanced and that such harm could be "redressed financially and [could not] serve as the basis for injunctive relief." The court also rejected the insurer's contention that it was likely to suffer injury in the immediate future. The court reasoned that references in the insurer's complaint to "'possible running of statutes of limitations' on 'potential subrogation claims'" were insufficient to establish imminent injury where the insurer "neglect[ed] to identify the parties it is targeting or the subrogation claims it is

contemplating."

Based on the foregoing analysis, the court denied the insurer's motion for a preliminary injunction and granted the policyholder's motion to dismiss. The court also denied the policyholder's motion for sanctions, holding that "[t]hough [the insurer's] motion is not persuasive, its claims are colorable and do not warrant Rule 11 sanctions."