

No Coverage under D&O Endorsement Because No Directors or Officers Named in Suit

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A New York intermediate appellate court has ruled that an insurer owed no duty to defend or indemnify its policyholder under a directors and officers liability endorsement to a general liability policy in a suit arising out of a landlord-tenant dispute because no directors or officers were named in the dispute. *85-10 34th Avenue Apartment Corp. v. Nationwide Mutual Ins. Co.*, Nos. 2000-04196, 2000-08656, 2001 N.Y. App. Div. LEXIS 5454 (N.Y. Sup. Ct., App. Div. May 29, 2001).

The policyholder, an apartment corporation, purchased an insurance policy containing a "Directors and Officers Errors or Omissions Liability Endorsement" from Nationwide, which provided for defense and indemnification for any loss arising from a claim made against an officer or director of the apartment cooperative. Subsequently, the corporation was sued by a lessee, who alleged that the corporation's Board of Directors wrongfully refused to allow her to sublease her apartment. No directors or officers were named as defendants in the action, and the insurer accordingly denied coverage for the claim.

The court held that the Directors and Officers Errors or Omissions Liability Endorsement "expressly limits coverage to those instances where an officer or director is entitled to indemnification from the corporation, or where an officer or director is obligated to pay an amount based upon his legal liability for an actual or asserted wrongful act." Because no directors or officers were named as defendants in the underlying action, the court held that no coverage was provided under the endorsement.