

ALERT

Insurer's Equitable Estoppel Defense Raises Issue of Fact with Respect to Insurer's Reasonable Reliance on Information Provided by Insured

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The United States District Court for the Eastern District of New York, applying New York law, denied an insurer's motion for reconsideration of a decision denying an insurer's motion for summary judgment. *Intelligent Digital Systems, LLC v. Beazley Ins. Co.*, 2013 WL 3356051 (E.D.N.Y. Jul. 3, 2013). The court had previously held that issues of fact regarding whether an individual was a "duly elected or appointed" board member precluded the application of the "insured v. insured" exclusion and the insurer's defense of equitable estoppel. Here, the court declined to reconsider its ruling on the equitable estoppel defense. A summary of the court's prior decision was published in the January 2013 *Executive Summary*.

The insurer issued a D&O policy to a company after receiving a renewal application that identified an individual, the owner of another company, as a member of the company's board of directors. After a sales transaction between the two companies closed, the owner of the other company took a seat on the board of directors, but he resigned from the board and, along with the other company, brought suit against the insured company when the insured company failed to meet its obligations under a purchase agreement.

The insured company tendered notice of the litigation to the insurer and identified the claimant as a former director. The insurer denied coverage based on the "insured v. insured" exclusion. The underlying litigation settled, and the insured company assigned its rights under the D&O policy to the claimant. In the coverage action that followed,

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the insurer and claimant disputed the individual's status as a duly elected or appointed board member of the insured company. The insurer also raised equitable estoppel as a defense, arguing that it had relied on information from the insured that identified the individual as a board member and therefore an insured in relying on the "insured v. insured" exclusion.

In its motion for reconsideration, the insurer challenged the court's holding that questions of fact existed with regard to "whether [the insurer] was justified or reasonable in relying on [the insured's] representations that the [individual] was a director on the Board." The insurer argued that New York law does not require an insurer "to verify or investigate factual information provided by its insured" and that the court's order imposed an obligation on insurers that "does not reflect applicable New York law."

The court rejected this argument and distinguished the cases on which the insurer relied. The court noted that the insurer relied on rescission cases in which the issue was whether the insurer had accepted an application for a policy, that might otherwise have been refused, based on information provided by the insured and whether an insurer in that context could rely on information from the insured without verifying it. The court stated that the defense of equitable estoppel required the insurer to show, among other elements, "that its detrimental reliance [on the misrepresentation] was reasonable under the circumstances," which was not an element of an insurer demonstrating that a policy should be void *ab initio* due to a misrepresentation (alteration in original). The court therefore held that issues of fact remained with respect to whether the insurer reasonably relied on information provided by its insured and denied the insurer's motion for reconsideration.