WALKER WILCOX
WALKER WILCOX MATOUSEK LLP

WALKER WILCOX WINS MOTION FOR JUDGMENT ON PLEADINGS BASED ON SPECIFIC LITIGATION EXCLUSION IN D&O POLICY

Walker Wilcox Matousek recently obtained judgment on the pleadings for insurer RSUI in the District Court for the Northern District of Illinois, with the court finding no coverage under a Directors & Officers policy pursuant to the Specific Litigation Exclusion in the policy. *RSUI Indemnity Co. v. Worldwide Wagering, Inc., et al.*, 1:17-cv-01690 (N.D. Ill. July 17, 2017).

World Wide Wagering ("WWW"), sought coverage for an underlying bankruptcy adversary complaint filed against it in December 2016, alleging, among other things, that WWW transferred funds to avoid paying a $78 million judgment against it in a prior lawsuit: *Empress Casino Joliet Corporation, et. al. v. Rod Blagojevich, et. al.*, Case No. 1:09-cv-03585 (the "*Riverboat Matter*"). The bankruptcy adversary complaint also re-alleged some of the allegations from the *Riverboat Matter*, specifically that WWW's subsidiaries, a group of horseracing track owners in Illinois, allegedly paid bribes to former Governor Rod Blagojevich in exchange for his support for legislation that would require Illinois riverboat casinos to pay 3% of their revenue to the racetrack owners.

The adversary complaint further alleged that WWW intentionally shielded and fraudulently transferred some of its assets, knowing they were at risk for the judgment in the *Riverboat Matter*. RSUI denied coverage for the bankruptcy proceeding based on the Specific Litigation Exclusion in the D&O policy, which excluded coverage for any claims made against the insureds "alleging, arising out of, based upon or attributable to, directly or indirectly, in whole or in part" the *Riverboat Matter*.

On behalf of RSUI, Walker Wilcox initiated a coverage action and filed an early motion for judgment on the pleadings based primarily on the Specific Litigation Exclusion. WWW filed a counterclaim and contemporaneous motion for summary judgment, arguing that the bankruptcy adversary complaint triggered a duty to defend because at least *some* of the claims in the underlying lawsuit did not arise out of the *Riverboat Matter*. The Northern District of Illinois Court, relying on Delaware law, found that the Specific Litigation Exclusion applied to bar coverage for the entire case because the bankruptcy adversary complaint needed only arise "*in part*" out of the *Riverboat Matter*. Ultimately, the court granted RSUI's motion for judgment on the pleadings and denied WWW's motion for summary judgment, also dismissing WWW's counterclaim.

RSUI was represented by the Walker Wilcox team of Bill Bila, Jeremy Kerman, and Cassandra Jones.