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WALKER WILCOX WINS SUMMARY JUDGMENT IN THE SOUTHERN DISTRICT OF NEW YORK

On August 10, 2017, Walker Wilcox Matousek obtained summary judgment for RSUI Indemnity Company in the U.S. District Court for the Southern District of New York in *Abrams v. RSUI Indemnity Co.*, No. 16-CV-4886 (JGK), 2017 WL 3433108 (S.D.N.Y. Aug. 10, 2017).

The insured in *Abrams* sought reimbursement from RSUI under a Directors & Officers Liability Insurance Policy for defense expenses the insured incurred in defending an underlying lawsuit pending in New York Supreme Court, styled *Southern Advanced Materials, LLC v. Robert S. Abrams, and John Does 1-10*, Index No. 650773/2015 (the "SAM Action"). Specifically, the insured sought reimbursement from RSUI for defense expenses he incurred prior to giving RSUI notice of the SAM Action in April 2016. The SAM Action was filed in March 2015 and RSUI's insured allegedly incurred more than $3.5 million in defense expenses prior to notifying RSUI of the lawsuit. While RSUI agreed to defend the insured under a reservation of rights after April 2016, RSUI denied the insured's claim for defense expenses incurred prior to notice.

RSUI maintained that it was not responsible for the insured's pre-notice defense expenses under the policy, stressing that the D&O Policy was a claims-made policy that required the insured to give notice to RSUI as a condition precedent to coverage. RSUI also noted that the policy required RSUI's consent before the insured could incur any covered defense expenses, and that the insured in *Abrams* did not have consent prior to giving notice to RSUI. In response, the insured argued that the policy did not specifically disclaim pre-notice defense expenses and that RSUI must show prejudice before denying that claim.

On cross-motions for summary judgment, Judge John G. Koetl ruled in RSUI's favor, holding that Delaware law (which applied to interpret the policy) enforces the plain language of the RSUI Policy, including the notice and consent provisions requiring notice as a condition precedent and consent prior to incurring any defense costs. 2017 WL 3433108 at *4. The Court rejected the insured's argument that RSUI must show prejudice before denying the claim, stating that the policy language and applicable Delaware law did not support that analysis. *Id.* at *5-6. Accordingly, the Court granted RSUI's motion for summary judgment and denied the insured's motion.

RSUI was represented by the Walker Wilcox team of William P. Bila and Kevin A. Lahm.