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Insurers Cannot Escape Verizon Judgment, Superior Court Rules

By [Tom McParland \(/author/profile/Tom McParland/\)](https://delawarelawweekly.com/author/profile/Tom-McParland/) | May 09, 2018 at 06:26 PM

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A Delaware judge has ruled that Verizon Communications Inc. is owed \$48 million from insurers from having defended a shareholder suit seeking \$14 billion over the telecommunication giant’s spinoff of its print and electronic directories business in 2006.

The ruling

<https://images.law.com/contrib/content/uploads/documents/395/1944/Judge-Carpenter-Ruling-on-Motion-for-Final-Judgment.pdf>

from Delaware Superior Court Judge William C. Carpenter Jr. on Monday granted final judgment to Verizon in its years-long fight for advancement of defense costs, and shut down an effort by the company’s excess insurers to investigate the reasonableness of the costs Verizon had claimed.

Rather, it would be up to the state’s high court to ultimately decide the **central issue** <https://courts.delaware.gov/Opinions/Download.aspx?id=254520> of whether the insurers were in fact responsible for advancing Verizon its costs, Carpenter said.

"It is the court's opinion that it is simply time to stop this litigation Ferris wheel. In spite of the assertions by the defendants to the contrary, the litigation will end only when either the parties accept this court's prior decision or it is affirmed or reversed by the Delaware Supreme Court," he wrote in a 32-page opinion. "Granting final judgment will allow this path to occur."

Monday's decision came more than one year after Carpenter ruled that a unit of AIG Inc. and several excess insurers were obligated to pay Verizon more than \$48 million related to litigation in a Texas federal court over the company's spinoff of its directories business, which later went bankrupt.

The case, which sought \$14 billion in damages against Verizon and executive John Diercksen, was dismissed by the U.S. District Court for the Northern District of Texas, in a decision that was later upheld by the U.S. Court of Appeals for the Fifth Circuit.

Key to Carpenter's earlier ruling was the judge's finding that the claims for fraudulent transfer and breach of fiduciary duties in the Texas litigation pertained to laws regulating securities and thus qualified as securities claims under Verizon's primary insurance policy.

Illinois National Insurance Co., the primary insurer and AIG affiliate, later conceded that Verizon was entitled to recovery under the policy; however, excess insurers XL Specialty Insurance Co., Zurich American Insurance Co. and Twin City Fire Insurance Co. held out against Verizon's motion for final judgment, contending that they did not owe anything because the primary insurer had not yet paid Verizon under its policy.

Instead, the insurers argued that another round of discovery was needed to determine whether the amount was reasonable, and they challenged Verizon's position that it was entitled to prejudgment interest on the costs.

On Monday, Carpenter rejected the argument as an attempt to "prolong" the litigation, saying that the excess insurers had never contested a single invoice it had received from Verizon over the course of four years.

"The defendants' position on coverage lived and died on the issue of 'securities claim' and to continue the litigation is not only unreasonable but would condone the excess insurers continual failure to comply with the insurance policies," Carpenter said.

"As a result, the court believes that the proper and most reasonable decision is to grant final judgment and if the parties desire, let the Supreme Court decide if this court has properly decided the securities claim issue. Otherwise, the excess insurers, who have not challenged a single invoice, would stall this litigation for years at great expense to everyone while reviewing thousands of invoices."

An attorney for Verizon on Wednesday declined to comment on the decision.

According to Carpenter's ruling, Verizon is entitled to full reimbursement of \$48 million, plus prejudgment interest of 5.75 percent from January 2014 to March 24, 2017.

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Verizon was represented by Robin Cohen, Keith McKenna and Michelle R. Migdon of McKool Smith's New York offices and Jennifer C. Wasson and Carla M. Jones of Potter Anderson & Corroon in Wilmington.

Illinois National Insurance is represented by Edward M. McNally, Meghan A. Adams, Nicolas Kravitz and Patricia A. Winston of Morris James in Wilmington.

XL Specialty Insurance is represented by Bruce E. Jameson, Kevin H. Davenport and John G. Day of Prickett, Jones & Elliott. Zurich American Insurance is represented by Bruce W. McCullough of Bodell Bove. Twin City Fire Insurance is represented by Joel Friedlander, Christopher M. Foulds and Christopher P. Quinn of Friedlander & Gorris.

The case is captioned *Verizon v. Illinois National Insurance*.

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