

US Corporate Law News: Tenth Circuit finds that certain government investigations are not covered under directors & officers insurance policies

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In *MusclePharm Corp. v. Liberty Insurance Underwriters, Inc.* the Tenth Circuit recently held that a corporation was not entitled to coverage under a directors and officers (D&O) insurance policy related to an informal investigation by the SEC. The decision in *MusclePharm* is significant because the Tenth Circuit broke with authority from other circuit courts holding that the company's tender was not a "claim" because the SEC's informal investigation was not a "formal administrative or regulatory proceeding," the SEC did not request any "non-monetary relief," and the SEC ostensibly did not allege any "wrongful act" against the insured. In contrast, decisions in other circuit courts hold that a "wrongful act" can be implied due to the serious and specific nature of government investigations and further, that the SEC's demand for documents or testimony qualifies as a demand for "non-monetary relief." For more information, see:


<http://www.businessinsurance.com/article/00010101/NEWS06/912316604/Liberty-Mutual-unit-not-obligated-to-pay-informal-SEC-probe-costs>.


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