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Judge: National Union Fire Insurance Liable for Up to \$10M in Hotel Chain's Legal Costs

By [Greg Land \(/dailyreportonline/author/profile/Greg_Land/\)](https://dailyreportonline/author/profile/Greg_Land/) | May 04, 2018 at 06:21 PM

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WoodSpring hotel.

A Delaware court has [ruled](https://images.law.com/contrib/content/uploads/documents/395/1919/WoodSpring-v-National-Union-SJ-order-Delaware.pdf) (<https://images.law.com/contrib/content/uploads/documents/395/1919/WoodSpring-v-National-Union-SJ-order-Delaware.pdf>) on summary judgment that National Union Fire Insurance Co. must indemnify a multistate extended stay of a hotel chain for up to \$10 million it spent defending a now-settled trade secrets lawsuit.

The May 2 ruling said that, while only two of the counts in the underlying 11-count complaint fell within the parameters of coverage National Union provided to [WoodSpring Hotels \(https://www.woodspring.com/\)](https://www.woodspring.com/), the insurer was still obliged to defend the action.

As detailed in the order, the case began when an executive with WoodSpring rival Extended Stay America left that company to become WoodSpring's vice president of sales in 2015.

The following year, ESA sued WoodSpring, vice president Bernadette Ruby and IT consultant Michael Docteroff in federal court in Kansas.

ESA claimed the defendants had appropriated electronic information, including a customer database, and asserted claims for theft of trade secrets and violation of the Computer Fraud and Abuse Act.

WoodSpring carried a \$10 million officers & executive policy with National Union, and notified the insurer when the suit was filed, requesting that it advance defense costs.

National Union responded that all of the complaint's counts were covered under exclusions including, among other things, trade secrets and unfair trade practices. National Union denied coverage for everyone except Ruby, whom it defended while reserving its rights to recoup expenses.

The ESA litigation settled about a year ago, with WoodSpring paying nearly \$1.2 million to drop the suit.

WoodSpring filed a complaint in Delaware Superior Court in October targeting National Union for breach of contract.

WoodSpring alleged its defense costs exceeded \$2.3 million, not including the settlement funds.

WoodSpring moved for partial summary judgment in January, arguing that even if some of ESA's claims fell under the policy exclusions, others did not and that "an insurer cannot avoid a duty to defend unless every allegation in a complaint falls into an exception under the policy."

In issuing his ruling, Delaware Superior Court Judge Eric Davis wrote that an insurer has an obligation to investigate "whenever there is a 'potential of liability' under the policy."

"This is true even when the possibility of coverage is remote, or that ultimately the insurer may have no obligation to indemnify," Davis said.

Thus, "National Union should have satisfied its duty to defend WoodSpring under the policy," Davis wrote.

The ruling does not end the litigation, as there is still the matter of the money paid to settle the ESA lawsuit, which is not addressed in Davis' ruling.

WoodSpring is represented by Jennifer Wasson and Carla Jones of Wilmington's **Potter Anderson & Corroon** (<http://www.potteranderson.com/>), and Kenneth Frenchman and Denise Yasinow of **McKool Smith** (<https://www.law.com/law-firm-profile?id=3363&name=McKool-Smith-Hennigan>) in New York.

Frenchman said he could not discuss the ongoing litigation, but hailed Davis' ruling.

"We're very happy with the decision, and think that Judge Davis got it exactly right," he said.

National Union is represented by Seth Niederman of **Fox Rothschild** (<https://www.law.com/law-firm-profile?id=109&name=Fox-Rothschild-LLP>) in Wilmington, and Joseph Collins of the firm's Chicago office. Neither responded to a

request for comment Friday afternoon.

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Greg Land

Greg Land covers topics including verdicts and settlements and insurance-related litigation for the Daily Report in Atlanta.

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