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**October 1, 2008**

**Federal Judge in New Jersey Orders Award of 100% of Reasonable Attorneys' Fees  
Despite Achievement of Only 50% of Relief**

District Judge Katharine S. Hayden of the District of New Jersey, applying New Jersey state law, awarded full attorneys' fees to Plaintiff in its action seeking coverage under a National Union Directors and Officers liability insurance policy, even though it was held that National Union owed coverage for only two of the four counts in the underlying lawsuit. In *Foodtown, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA, Civ. Action No. 05-3627, 2008 WL 3887617*, Foodtown sought coverage under its National Union D & O policy for claims asserted against it in a lawsuit filed by a corporate shareholder, Food King, Inc. After examining each of the four counts asserted in the underlying case against the language of the D & O policy, the District Court held that National Union owed indemnity coverage to Foodtown for only two of the four counts.

Foodtown sought recovery of attorneys' fees incurred in pursuing the declaratory judgment action pursuant to N.J. Court Rule 4:42-9(a)(6). Recognizing that awards of attorneys' fees are discretionary, the District Court applied the two-prong test established in *Singer v. New Jersey*. Finding that Foodtown satisfied both prongs, the Court further inquired into whether Foodtown was entitled to full recovery of attorneys' fees even though it achieved only 50% of the relief it sought. The Court reasoned that, once National Union denied coverage, the only remedy available to Foodtown was the declaratory judgment action. In addition, because both the successful claims and the unsuccessful claims arose out of the same underlying litigation, "it was reasonable for Foodtown's counsel to expend time on the entire litigation to clarify its rights as to all the claims for which coverage was denied."

The Court held that the success achieved by Foodtown in obtaining coverage for two of the four claims against it was substantial enough to justify an award of the entire amount of reasonable attorneys' fees.

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