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Insurer Ducks Coverage For John Varvatos Discrimination Suit

By **Eli Flesch**

Law360 (December 13, 2021, 4:57 PM EST) -- A Liberty Mutual unit doesn't need to pay a group of former John Varvatos menswear employees a \$2.1 million judgment handed down in a pay discrimination suit, a New York federal judge ruled, saying a broad exclusion in the retailer's insurance policy barred coverage.



John Varvatos presents his collection at Men's Fashion Week in New York in 2017. Dozens of women who worked for his company filed a pay discrimination suit in 2017 and won on all their claims at a trial in 2020. (AP Photo/Julie Jacobson)

U.S. District Judge Denise Cote said Friday that the "plain terms" of Ironshore Indemnity's policy with Varvatos barred coverage because the fashion designer put in place a discriminatory payment scheme years before there could have been coverage.

The exclusion precluded coverage for wrongful acts that occurred before 2012, but a Varvatos plan to exclude female employees from receiving allowances for company clothing was put in place in 2005, according to court documents.

"Varvatos adopted its discriminatory clothing allowance policy before April 30, 2012, and maintained it after that date," Judge Cote said in the 17-page ruling. "The harms that the plaintiffs suffered arose from the same policy both before and after April 30, 2012."

Under the company's 2005 clothing policy, male employees were given \$12,000 every year to purchase clothing, while their female counterparts were given nothing. In 2012, Varvatos began to offer female employees the chance to buy \$2,500 worth of clothing at a 50% discount every six months, but the allowance was still only open to male workers.

Those discrepancies amounted to violations of federal and New York state laws prohibiting pay discrimination, according to an underlying class action filed in 2017.

A class of dozens of women who worked on John Varvatos' sales floor, and won on all their claims after a trial in 2020, and a jury awarded them \$3.5 million in damages, which included up to \$10,000 per woman for each year working for the menswear company.

However, U.S. Magistrate Judge Gabriel W. Gorenstein **slashed that award** in half in January this

year, capping each worker's takeaway at \$5,000 per year. He said the women were already receiving some perks with their discounts, and noted there were significant restrictions on what the men could buy with their clothing allowance.

After further litigation over the amount of the judgment, it was settled on \$2.1 million.

The former Varvatos employees sued Ironshore in July, arguing that the insurer had promised in a 2017 letter to provide coverage for the underlying claims. Ironshore's eventual denial of coverage was a violation of the policy it issued to Varvatos, the former employees said.

In her decision Friday, Judge Cote said it didn't matter that the manner of the pay discrimination changed when Varvatos began to offer its female employees clothing at a discount. The Ironshore policy didn't bar coverage for wrongful acts that were "entirely consistent or repeated identically" over a given period of time, Judge Cote wrote.

Judge Cote also pushed back on the former Varvatos employees' arguments that Ironshore's exclusion was ambiguous because they sustained losses every time they were denied the \$12,000 allowance — including after the 2012 exclusion date.

Saying that argument "misses the mark," Judge Cote explained that the relevant question concerned when Varvatos incurred its own loss in the form of the \$2.1 million judgment — not when the employees incurred their losses from the discrimination. That's because Varvatos was Ironshore's policyholder, according to Judge Cote.

"We are pleased the court enforced the clear language of the policy exclusion, which unequivocally established that plaintiffs had no claim against our client," said Alexander Truitt, a lawyer for Ironshore from Winget Spadafora & Schwartzberg LLP.

A spokesperson for Liberty Mutual declined to comment on the decision Monday.

Counsel for the former employees didn't immediately respond to comment requests.

The employees are represented by William Dunnegan and Richard Weiss of Dunnegan & Scileppi LLC.

Ironshore is represented by Luigi Spadafora and Alexander A. Truitt of Winget Spadafora & Schwartzberg LLP.

The case is Tessa Knox et al. v. Ironshore Indemnity Inc., case number 1:21-cv-06321, in the U.S. District Court for the Southern District of New York

--Additional reporting by Anne Cullen. Editing by Abbie Sarfo.