

News

Hinshaw's Scott Seaman Discusses Implications of Delaware D&O Coverage Ruling

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Hinshaw attorney Scott Seaman, a Chicago-based partner and co-chair of the global Insurance Services Practice Group, was recently quoted in *Law360* on a recent D&O coverage ruling by the Delaware Supreme Court. In the case, the court ruled that Delaware, not California law governs the excess D&O policy in question. It further ruled that Delaware public policy did not bar coverage for the subject claim. The court affirmed the trial court's ruling that the Profit/Fraud exclusion did not apply on the narrow ground that one of the two underlying matters was resolved by settlement and, therefore, did not satisfy the requirement of the exclusion that the underlying matter be resolved by adjudication. The court also affirmed the trial court's application of the "larger loss" rule as opposed to the "relative exposure" rule to defense costs and costs of settling one of the two underlying matters. Finally, the court rejected the bad faith claim.

In the *Law360* article, Seaman said that the court's choice-of-law decision and its refusal to prohibit D&O coverage for fraud-based claims did not come as much of a surprise, given the state's business-friendly environment:

"The Delaware Supreme Court has enjoyed its prominence on corporate governance issues. Against this background it is not surprising that the court would place preeminence on the place of incorporation of a Delaware corporation in ruling on the choice of law in the context of D&O insurance policies. Nor is it surprising that the court would not take an expansive view of excluding coverage based upon 'public policy' grounds."

He cautioned, however, that the decision should not be viewed as establishing one-size-fits-all rules for addressing disputes under all types of insurance policies held by Delaware corporations:

"It should not be presumed that its approach on these issues would extend to coverage disputes under other types of policies where, for example, the court has looked more beyond place of incorporation in applying the most significant contacts test."

[Read the full article](#) (*subscription may be required*)

"Dole's Win Bolsters Del. Corporations in D&O Coverage Fights" was published by *Law360*, March 5, 2021.

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