

Delaware Supreme Court Doles Out Landmark Choice-of-Law Decision in Dole Food Case

“On March 3, 2021, the Delaware Supreme Court issued a landmark decision holding that Delaware law should be applied in disputes over directors and officers liability (“D&O”) insurance policies sold to companies incorporated in Delaware. *RSUI Indem. Co. v. Murdock, et al.* No. 154, 2020, C.A. No. N16C-01-104 CCLD (Del. Mar. 3, 2021). The court addressed this and other key issues in the long-running dispute over D&O insurance purchased by Dole Food Company, specifically addressing issues raised by Dole’s eighth-layer excess insurer, RSUI, which provided \$10 million coverage excess of \$75 million,” report Lorelie S. Masters, Sergio F. Oehninger, Geoffrey B. Fehling and Michael L. Huggins in *The National Law Review*.

“The court decided multiple important issues, finding that liability for alleged fraud is insurable under Delaware public policy, RSUI’s Profit/Fraud Exclusion did not bar coverage because there had been no “final adjudication” of fraud, and the “larger sums rule” governed allocation issues. However, among these important rulings, the most significant may be the Supreme Court’s ruling that Delaware governs the interpretation of D&O insurance issued to a company incorporated in Delaware. The court specifically rejected the insurer’s arguments that California law (which might preclude coverage) should apply under a policy that was purchased and issued in California to a Delaware corporation headquartered in California.”

Read the article.