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Delaware Supreme Court Applies Delaware Law Even When Insured Is Headquartered Elsewhere

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In a unanimous decision, the Delaware Supreme Court recently held that Delaware law applies to a D&O policy issued to a Delaware corporation, ruling that the place of incorporation outweighed other factors such as where the company is headquartered, where its management team is located, or where the policy was negotiated and issued.

RSUI Indem. Co. v. Murdock, 2021 WL 803867 (Del. March 3, 2021) involved a declaratory judgment action filed by Dole Food Company's D&O insurers seeking a declaration that they were not obligated to fund a series of settlements relating to a "going private" transaction. The Delaware Superior Court disagreed with RSUI, holding that it was responsible for funding the settlements. *Id.* at *2.

On appeal, RSUI argued that the Superior Court erred in multiple respects, including that it had overemphasized the fact that Dole was incorporated in Delaware, as "the negotiation and procurement of the policies occurred at Dole's headquarters in Westlake Village, California, through a California-based insurance broker," and "the policies were ultimately issued to that broker in its Los Angeles office and then delivered to Dole's [California] headquarters." *Id.* at *6. RSUI argued that these facts made clear that California had the most significant relationship to the case so its law should control.

The Delaware Supreme Court rejected this argument, holding that "the state of incorporation is the center of gravity of the typical D&O policy." *Id.* at *9. The Court noted that placing an emphasis on physical location "underrates the significance of Dole's status as a Delaware corporation," and the protections afforded to it as a "citizen" of Delaware. *Id.* The Court also held that "it is by virtue of [Delaware] statute" that Dole even had the ability to purchase a D&O policy that provided such "broad indemnification and advancement rights to their directors and officers." *Id.* In one key passage, the Court linked duties and coverage, noting that in the vast majority of cases, "Delaware law governs the duties of the directors and officers of [a] Delaware corporation" so "corporations must assess their need for D&O coverage with reference to *Delaware law*." *Id.* Accordingly, the Court held that Dole's contacts with California did not outweigh the significance its incorporation in Delaware carried, and upheld the Superior Court's decision.

This decision could significantly affect the way courts interpret policies issued to Delaware corporations, both in Delaware and other jurisdictions. For example, just days before the *RSUI* ruling, another Delaware Superior Court decision required insurers to provide coverage because

Delaware law, unlike New York, does not disfavor coverage for restitution or disgorgement.¹

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¹ See *Sycamore Partners Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 WL 761639, at *10-11 (Del. Super. Ct. Feb. 26, 2021).