

The Biggest D&O Liability Insurance Rulings of 2021

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Troutman Pepper Partners Tony Jones and Jennifer Mathis are quoted in the *Law360* article, [“The Biggest D&O Liability Insurance Rulings of 2021.”](#)

Summarizing the landscape for D&O coverage decisions this year, Tony Jones, a partner at Troutman Pepper who represents insurers, told *Law360* it “seems like a lot of 2021 was Delaware, Delaware and Delaware.”

“It was even more than in past years,” Jones said. “Delaware is being very clear on its choice-of-law analysis in D&O cases at this point.”

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Jones called the Dole decision part of “a trend of policyholder-friendly rulings in Delaware, particularly on what is insurable in terms of fraud damages, disgorgement, or ill-gotten gains,” as well as carriers losing “public policy-type arguments.”

Jennifer Mathis, another insurance partner at Troutman Pepper, said the Delaware high court’s Dole ruling was “not surprising.” As she pointed out, the state justices specifically said that the fact that Delaware corporate directors can rely on D&O insurance to protect themselves will help Delaware corporations attract more talent.

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“The policy language said that you apply the law that is most favorable to insurability and not all policies say that,” Mathis said. “It’s not surprising that the court’s going to look at all the different laws that might apply and pick the one that’s most favorable to the policyholder.”

However, these policyholder-friendly rulings do not mean that a carrier cannot prevail in Delaware, and insurers should not be afraid to litigate there, she said.

“Just because you’re sued in Delaware doesn’t mean you have to fold on what your coverage issues are,” Jones agreed. The Delaware chancellors understand the underlying issues in D&O disputes “in a much more sophisticated way because they see so many more of them,” he said.

“There are certainly other state courts outside of Delaware, around the country, where I’m very concerned about whether I’m going to get a fair shot to convince the court,” he said.

Jones and Mathis said they anticipate Delaware courts being increasingly active to address D&O-related claims ranging from coverage for appraisal actions and analysis of exclusions to definition of securities claims.

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