

Delaware Supreme Court Rules That Appraisal Action Is Not A Covered “Securities Claim”

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The Supreme Court of Delaware ruled that an appraisal action is not a covered “Securities Claim” and that D&O insurers have no duty to pay for pre-judgment interest and defense expenses incurred in that action. *In re Solera Ins. Coverage Appeals*, 2020 WL 6280593 (Del. Oct. 23, 2020).

A group of shareholders of Solera filed an appraisal action seeking determination of the fair value of their shares after Solera was acquired. The appraisal action found that the value of the petitioners’ shares at the time of merger was actually lower than the merger price. Notwithstanding this positive result, Solera was required to pay statutory pre-judgment interest on the fair value of the shares. Solera also paid more than \$13 million in attorneys’ fees and other costs defending the appraisal action.

Solera’s excess D&O insurers denied coverage, arguing that the appraisal action was not a “Securities Claim,” defined as a claim “made against [Solera] for any actual or alleged violation of any federal, state or local statute, regulation, or rule or common law regulating securities.” The insurers contended that the appraisal action did not allege any “violation” of law or any wrongdoing. As discussed in our [September 2019 Alert](#), a Delaware trial court held that allegations of wrongdoing are not required by the policy language and that “violation” can include a demand for an appraisal, which is an allegation that a company violated stockholders’ right to receive fair value for their shares in certain transactions. Additionally, the trial court ruled that even though Solera’s payment of the fair value of the shares was not a covered loss, pre-judgment interest on that payment may be covered. However, the trial court declined to grant summary judgment in Solera’s favor, noting factual disputes as to whether other provisions preclude coverage, whether Solera could have mitigated damages, and whether Solera actually paid the interest award.

Last month, the Delaware Supreme Court reversed the decision, ruling that the appraisal action is not a covered “Securities Claim.” The court explained that an appraisal action does not involve a “violation” of law or regulation, as required by policy language. The court reasoned that “violation” must involve “some element of wrongdoing,” whereas an appraisal action is a neutral remedy limited to the determination of the fair value of stock shares. As the court noted, this conclusion is supported by “an unbroken line of cases” holding that a statutory appraisal action “does not involve any inquiry into claims of wrongdoing.”

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