

Delaware Court Rules That Fiduciary Claims Are Not Covered “Securities Claims”

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A Delaware federal district court ruled that an excess D&O insurer had no duty to indemnify losses arising out of a lawsuit alleging that directors and officers of the insured company breached their fiduciary duties. *Calamos Asset Mgmt., Inc. v. Travelers Cas. & Sur. Co. of Am.*, 2021 WL 663056 (D. Del. Feb. 19, 2021).

Travelers provided excess D&O coverage to Calamos. The policy covered loss resulting from a “Securities Claim,” defined as “a claim . . . for: (1) any actual or alleged violation of any federal, state, local regulation, statute or rule (whether statutory or common law) regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities. . .” Calamos sought coverage under this provision for a shareholder suit alleging breach of fiduciary duty in connection with a company merger. Travelers denied coverage, arguing that the suit was not a covered “securities claim” under the policy. The court agreed and granted the insurer’s summary judgment motion.

The court held that even assuming that the fiduciary duty claims alleged a violation of common law, coverage would still be unavailable because the Delaware Supreme Court has ruled that claims for breach of fiduciary duties are not “securities claims.” See *In re Verizon Ins. Coverage Appeals*, 222 A.3d 566 (Del. Oct. 31, 2019) (discussed in our [November 2019 Alert](#)). Even though the policy at issue defined “rule” to include common law, whereas the policy in *Verizon* did not, the court deemed this distinction irrelevant because the phrase “regulating securities” imposes its own, distinct requirements. In particular, “regulations, rules or statutes that regulate securities are those specifically directed towards securities, such as the sale, or offer for sale, of securities.” The court held that breach of fiduciary duty claims do not meet this test because they do not depend on the involvement of a security and can involve a variety of claims arising from breach of trust or a special duty of care.

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