

## Delaware Supreme Court Rules That Insurers Need Not Cover Costs Of Defending Appraisal Suit (Insurance Law Alert)

03.31.22



(Article from *Insurance Law Alert*, March 2022)

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The Delaware Supreme Court affirmed a lower court decision holding that insurers were not obligated to pay the costs of defending an appraisal action because that suit did not seek compensation “for a wrongful act.” *Jarden LLC v. Ace American Ins. Co.*, 2022 WL 618962 (Del. Mar. 3, 2022).

Jarden entered into a merger agreement that was approved by a majority of its shareholders. However, a group of dissenting shareholders filed an appraisal action, arguing that Jarden should have negotiated a higher per-share price. A trial court ultimately found that the fair market value of the share was less than that provided in the merger, but determined that the merger negotiation process was flawed. As a result, Jarden was ordered to pay to the shareholders the fair value of the shares as well as \$38 million in interest accumulated during the course of litigation. Jarden’s insurers refused to pay the costs of Jarden’s defense or the interest payment, arguing that even if the appraisal action was a covered securities claim, there was still no coverage because the policies require underlying claims to seek redress “for a Wrongful Act.”

A Delaware trial court agreed and ruled in the insurers’ favor. The court held that the appraisal action did not seek redress for any conduct by Jarden, reasoning that “in order for a claim to be ‘for’ a wrongful act, it must ‘seek redress in response to, or as retribution of,’ that act.” The court noted that this conclusion is the logical extension of the Delaware Supreme Court’s ruling in *In re Solera Ins. Coverage Appeals*, 2020 WL 6280593 (Del. Oct. 23, 2020) (discussed in our [November 2020 Alert](#)), which upheld a coverage denial for an appraisal claim based on different policy language. The court observed that “evidence of a flawed negotiation process” bears on the “reliability of the negotiated deal price,” but is not a necessary element of an appraisal action.

Finally, the trial court noted that even if the appraisal action was a claim “for a Wrongful Act,” it did not arise out of an act committed before the run-off date. The court agreed with the insurers that the act that conferred the appraisal litigation rights was the execution of the merger, which did not close until after the run-off date. The court deemed it irrelevant that the dissenting shareholders lodged appraisal demands prior to the run-off date.

In a summary opinion issued this month, the Delaware Supreme Court affirmed the trial court ruling in full.

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