

Law360 Insurance Authority: Fox's Dominion Settlement Exposes Coverage Risks

. and Dominion Voting Systems' \$787.5 million settlement to resolve Dominion's \$1.6 billion defamation suit against the network and avoid what was expected to be a jury trial lasting weeks may usher in numerous challenging coverage issues, experts say.

The settlement , which claimed that and its commentators pounded relentlessly on allegations that Dominion's voting machines were at the center of a vast conspiracy during the 2020 election to steal votes from then-President Donald Trump and hand them to his Democratic challenger, Joe Biden.

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"The biggest issue, from a D&O perspective, there is typically an exclusion in the policy that excludes dishonest acts, but there has to be a final adjudication of fraud or dishonest acts," Robin Cohen, chair at , told Law360 before the settlement.

While actual malice is the legal standard for proving a defamation case, many D&O policies and media liability policies contain exclusions that could be implicated if a final ruling had found Fox or its officers liable.

"In the question of strategy and how to maximize the coverage, settlement is much better than non-settlement on the D&O policy," Cohen said.

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Scope of Legal Disputes Could Overwhelm Coverage

Experts agreed that the size of the Dominion settlement, paired with the numerous remaining legal proceedings against Fox News, opens the network up to significant exposure that may also risk exhausting the network's coverage under D&O and other policies.

The settlement amount was equal to 65.3% of the \$1.205 billion in net income attributable to Fox Corp. stockholders for the fiscal year that ended June 30, 2022, according to filings.

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Ken Frenchman of Cohen Ziffer Frenchman & McKenna told Law360 that securities claims, such as shareholder suits, typically fell under D&O policies as Coverage C, which protected the entity in addition to other claims brought against individual officers and directors of the company.

"It would be a suit against directors and officers themselves that the entity is indemnifying those directors and officers for and then getting insurance coverage for the amount that they advance and indemnify their respective directors and officers," Frenchman said.

Insurers may argue that the subsequent shareholder suits tied to the Dominion trial may share similar enough facts or arise out of the same occurrence, straining how much of Fox News' covered costs can be stacked below the limit for a particular policy period, Levine said.

"I would be very surprised if the subsequent insurer or insurers, whether they're the same or different,

didn't attempt to push everything back to the original period by claiming that they're all interrelated wrongful acts," he said. "I've seen it happen too often, even where the relationship is tenuous at best."

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