

INDEPENDENT DIRECTORS LIABILITIES

ISSUE

Outside directors' fiduciary obligations have been redefined to include more rigorous participation in and aggressive oversight of the company on whose boards they sit. The positions that outside directors occupy on a firm's committees, such as Audit, Compensation and Finance, underline their increasing importance to organizations and stakeholders. Independent directors are in the center of the storm when aggrieved parties seek to hold them legally liable for their own alleged failures and those of the company's employees and officers. Aside from the important legal defenses that may be relevant, available protections include corporate indemnification and coverage under a D&O insurance program. For an independent board member sitting at the request of another company, there may be additional layers of indemnification and insurance available from their "home" company.

IMPACT

The cost of defense and settlements resulting from D&O claims has reached an astonishing level. There has been a dramatic increase in suits settling for \$100 million or more in damages (this figure does not even include defense costs). In addition to being the target in securities actions, independent directors are vulnerable to derivative claims, where settlements are generally non-indemnifiable. Furthermore, the rising

tide of corporate insolvencies threatens to leave directors without the protection of corporate indemnification. In the absence of indemnification, insurance is their sole protection.

ACTION

Traditional D&O insurance protects both personal and corporate liability; however, more specialized forms of insurance should also be considered – together and separately:

- **A-Side D&O coverage** responds solely to non-indemnifiable claims against the executives (Directors and Officers)
- **Independent Directors Liability (IDL)** insurance covers non-indemnifiable claims only against the firm's independent directors
- **Outside Directorship Liability (ODL)** insurance can cover all claims against the company's executives who have been asked to sit on outside boards
- **Retired Directors insurance** would cover a single, specific retired director or retired directors en mass
- **Various hybrid options** combine some or all of the above

CONTACTS

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