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MEAN BUSINESS



Creative Business Solutions

Director Protection/Covergard

Helping public and private companies make informed decisions on appropriate D&O insurance and on the implementation of available corporate “structural” protections.

Problem

It is clear that Sarbanes-Oxley and other post-Enron developments have imposed new requirements and a greater burden on directors and officers. Shareholder activists, SEC enforcers and state attorneys general seem to be increasingly motivated to attack directors where they perceive a breach of fiduciary duty. Directors and director candidates are increasingly and justifiably concerned about the potential exposure of their personal assets to the costs and risks of litigation and may be reluctant to continue to serve or to accept a Board position. And the risks to corporate officers may be even greater than those of directors. These risks are not limited to fiduciaries of public companies. Directors and officers of privately-held companies may be sued by disgruntled shareholders, as well as by representatives of creditors.

Action

General Counsel, financial officers and risk managers of both public and privately-held companies should regularly review the steps their corporation has taken to protect their directors and officers from risk of unjustified expense and liability as a result of their service. The cornerstone of D&O protection should be maintenance of adequate and appropriately-designed director and officer liability insurance, designed to protect directors and officers even in the event of the corporation’s insolvency. In addition, all of the corporation’s fundamental documents and indemnification contracts should be reviewed to ensure that directors and officers are provided the maximum indemnification and exculpation protections possible under applicable law.

Results

WCSR has formed a skilled legal D&O protection team that can, without great expense, advise on all aspects of director protection. D&O insurance is a highly complex, ever-changing subject, and policy forms can (and should) be negotiated. While insurance brokers have much-needed expertise, we believe that directors will be reassured that a highly expert and entirely independent legal team has counseled on all aspects of director protection.

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