



PROGRAM MATERIALS

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**Under Pressure to Diversify: An
Overview of Diversity Lawsuits
Against Public Companies and How to
Maximize Insurance Coverage for
Them**

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***Under Pressure to Diversify:
An Overview of Diversity Lawsuits
Against Public Companies and How To
Maximize Insurance Coverage for Them***

Celesq AttorneysEd Center and
West LegalEdcenter Webinar

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What is DEI?*

- **Diversity:** The ways in which individuals are and can be different
- **Equity:** Acknowledging that the ways in which individuals are different will require varying and unique solutions and resources to make sure everyone has a seat at the same
- **Inclusion:** Embracing the ways individuals are and can be different and creating a respectful and welcoming environment for everyone

*Also styled as IED, EID, D&I

Why DEI Matters in the Workplace

- DEI is critical not only for individual employees, but also for corporations
 - Emphasizing DEI can help company build positive employer brand, attracting top talent (https://business.linkedin.com/content/dam/business/talent-solutions/global/en_us/c/pdfs/ultimate-list-of-employer-brand-stats.pdf)
 - Meaningful DEI can boost key performance indicators like engagement, motivation and innovation (https://www.conference-board.org/pdf_free/councils/TCBCP005.pdf)
 - Strong correlation between diverse management teams and higher financial returns (<https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity>)
 - Diverse decision makers avoid group think and embarrassing mishaps

The Risk of Ignoring DEI

- Corporations that fail to course correct with respect to DEI risk more than just bad publicity or consumer fallout
 - Potential for Regulatory Action
 - States are passing legislation mandating diverse management
 - NASDAQ has submitted proposal to mandate diverse management
 - DEI Lawsuits
 - Costly to Defend
 - Expensive to Settle
 - Explosive Damages if Liable
 - Impact on Insurance Coverage
 - More difficult or expensive to procure D&O coverage
 - Insurance company underwriting can be more demanding; desired coverage may be difficult to achieve; blanket exclusions could negate coverage entirely

DEI Lawsuits Seeking to Accelerate Change

- What is a DEI Lawsuit?
 - Not an individual claim of harassment or discrimination
 - Refers to a lawsuits that allege systemic failure of a corporation to protect, promote, or provide equal pay on the basis of race, gender, sexual orientation, disability, etc.
- More often than not, DEI Lawsuits also allege intentional wrongdoing by the corporation, including but not limited to covering-up or making misleading representations with respect to a corporation's systemic failures with respect to their diverse employees and/or diversifying their workforce

Agenda

- BRIEF OVERVIEW OF D&O COVERAGE
- GENDER DIVERSITY
 - Regulations and Lawsuits Arising from the “Me Too” Movement
- RACIAL DIVERSITY
 - The Summer of 2020 and the New Legal Frontier
 - Impact of Gender Diversity Lawsuits on Racial Diversity Lawsuits
- CONSIDERATIONS GOING FORWARD
 - D&O Coverage for DEI Lawsuits
 - Do’s and Don’ts Going Forward for Securing Coverage

Brief Overview of D&O Insurance



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D&O Coverage

- Directors and Officers (“D&O”) Policies have become a regular part of companies’ risk management
 - Offer liability cover for company directors and officers (collectively “Management”) to protect them from lawsuits and investigations that may result because decisions and/or actions made on behalf of the company
 - D&O policies cover personal liability of Management (past, present and future), but also reimbursement of the company in case it has paid the claim of a third party on behalf of Management in order to protect them
 - Coverage typically does not include fraudulent, criminal or intentional non-compliant acts, including when Management obtained illegal remuneration or acted for personal profit

Types of Claims Covered by D&O Policies

- Derivative Claims
 - Traditionally stemming from stock devaluations and often include claims of inadequate or inaccurate disclosures, dishonesty or fraud, and breach of fiduciary duty
- Claims by governmental agencies
- Investigations by the SEC, DOJ, or EPA
 - Includes investigations that may have criminal implications
- Employment practices and HR issues

D&O Insuring Agreements

- D&O Policies have multiple insuring agreements that responds to different types of claims
 - Side A responds when a company is unable to indemnify its directors and officers (Directors and Officers Liability)
 - Side B reimburses a corporation when the corporation indemnifies its directors and officers for claims against them (Indemnification)
 - Side C ensures there is corporate coverage whenever the corporation is sued along with the directors and officers – for security claims only (Corporate Liability)
 - Side D pays the costs associated with shareholder derivative demand investigations (Derivative Investigation Coverage)

Occurrence Based Policies vs. Claims Made Policies

- Occurrence Based Policies
 - Responds to claims resulting from injury or another event that occurs during the policy period
- Claims Made Policies
 - Responds to claims made against the policyholder and reported to the insurance

Primary vs. Excess Policies

- Primary Policy contains basic coverage provisions that define the scope of the particular type of insurance
- Excess Policy generally pays the amount of the loss or claim that exceeds the primary policy limit. Can have multiple layers of excess coverage
 - Not uncommon for more than one insurance company to share a “layer” of coverage
 - Each company’s percentage of the “layer” is referred to its “quota share”
- Excess Policies typically “follow form” to underlying Primary Policy
 - Where excess policies do not follow form, may present inconsistencies which lead to gaps in coverage

Insurance Documents: The Policy

- Formal Policy generally consists of:
 - Declarations Page
 - Summary of insurance provisions
 - Policy Form
 - Often the forms are standardized where policy holder has little to no opportunity to negotiate the language of the basic insuring provisions
 - As a result, general rule of contract construction that ambiguities are construed against the draft is particularly strong when interpreting insurance contracts
 - Endorsements
 - Modifications to the Policy Form
 - Some endorsements are standard, pre-printed while others are customized

“Manuscript” Policies

- Policies can be negotiated through the addition of endorsements to the formal policy.
 - Insurers may point to these negotiations to try to defeat *contra proferentem*
- Not a matter of whether insurance policy was subject to negotiation, but whether policyholder actually drafted the particular language at issue.
 - In some circumstances, insurance policies may be tailored for particular policyholder. These are referred to as “manuscript” policies.

Sections of the Policy Form: Who (or What) is Covered?

- Typically, policy will have a “named insured” that lists the covered corporate entity
 - Usually in a separate provision, the policy will include other persons (e.g., employees) or entities (e.g., subsidiaries) as “insureds”
 - Some policies may instead include a definition of “Insured”
- The equivalent provision in property policies would be “Covered Property”
- Policies may also cover “additional insureds” which are listed in endorsements

Settling Underlying Claims While Protecting Coverage

- Always keep insurers notified of settlement negotiations
 - Invite insurer to participate
 - Give notice with sufficient time to attend and to voice any objection
- Notice and opportunity to participate in settlement discussions prevents insurance company from later claiming that settlement was unreasonable
 - Should explicitly ask insurer if it believes that settlement is unreasonable and whether it advises that policyholder should reject offer and continue litigating
- Closely examine settlement documents to make sure coverage for underlying claim is not adversely affected

Renewing Policies or Procuring Policies

- Participate in Procurement of Policies
 - Carefully evaluate any exclusions during the renewal process to ensure that the coverage placed clearly aligns with the expectations of your business
 - Even if your policies are already issued, they can still be endorsed with changes
 - **DON'T** accept an off-the-rack policy
 - **DO** negotiate/renegotiate your coverage like you would any other contract
 - Look for inconsistent language which may leave gaps in coverage or negate coverage entirely

Gender Diversity



Regulations: California State Bill 826

- California State Bill 826 (“SB 826”) was enacted in 2018. It requires all publicly-traded California companies, regardless of their state of incorporation, to meet timetables for including women on the board of directors.
 - California was the first state to legally compel public companies to add women directors.
 - By end of 2019, each public company had to have a minimum of one director on its board.
 - By end of 2021, the number increases to two women if the corporation has five directors, and to three women if the corporation has six or more directors.
 - Secretary of State is required to publish reports showing rate of compliance.

Regulations: California State Bill 826

- SB 826 Provides Fines for Non-Compliant Companies:
 - \$100,000 for first violation
 - \$300,000 for each subsequent violation
 - \$100,000 for failure to file information with Secretary of State

Regulations: Challenges to SB 826

- Two lawsuits were filed challenging the statute on a variety of grounds, including whether statute can be applied against companies not incorporated in California and whether gender mandates violate equal protection under California and US Constitutions.
 - *Meland v. Padilla*, Case No. 2:19-cv-02288-JAM-AC (E.D. Cal. Nov. 13, 2019)
 - On April 20, 2020, the Eastern District of California granted the state's motion to dismiss the federal court lawsuit. The dismissal has been appealed to the 9th Circuit. Oral argument before the Ninth Circuit took place on March 16, 2021.
 - *Crest et al. v. Padilla*, LASC Case No. 19STCV27561 (Super. Ct. Cal., County of Los Angeles Aug. 6, 2019)
 - The state court action challenging the gender diversity statute remains pending and is headed for trial later this year.

Impact of SB 826 on Increased Gender Diversity

- SB 826 Resulted in a Significant Increase in the Number of Women on the Board of California Headquartered Companies
 - 650 companies headquartered in California and subject to the requirements of SB 826:
 - Before the bill, 183 (29%) of companies had zero female board members
 - By Summer of 2020, only 15 companies (2.3%) had no women on their boards.
 - Before the bill, 766 board seats in California were held by women compared to 1275 board seats in 2-2-

Finding Insurance Coverage for Gender Diversity Claims

- Traditionally, companies have sought coverage under Employment Practices Liability (“EPL”) policies when faced with asexual harassment or discrimination claims.
- However, where claims are made against Management for their role in allowing for systemic harassment/discrimination, D&O policies may apply. Allegations may include:
 - Facilitating improper corporate environment;
 - Overlooking discrimination or harassment;
 - Failing to implement proper anti-harassment and anti-discrimination policies and/or procedures.

Finding Insurance Coverage for Gender DEI Lawsuits

- Common to these claims is the assertion that the Management of the company had “actual knowledge” of the systemic wrongful conduct and, by failing to take steps to prevent its recurrence, breached their fiduciary duties to the shareholders.
 - Alternatively, it is often alleged in these actions that the Management failed to make disclosures to investors about the extent of wrongful conduct, with implications for the company’s financial standing.
- “Corporate boards can no longer pretend that such conduct is isolated, nor can corporate boards pretend that such conduct does not and will not pose a grave risk to companies and their shareholders.” *City of Monroe Employees’ Retirement System v. Murdoch*, C.A. No. 2017-0883 (Del. Ch. Nov. 20, 2017).

D&O Liability in Gender DEI Lawsuits

- Grounds for which Management can be held liable:
 1. Failing to establish protocols to investigate and allow employees to report sexual misconduct
 2. Failure to address multiple cases of harassment or sexual misconduct
 3. Significant misconduct settlements that are real damages to the company
 4. Sexual misconduct lawsuits are injuring corporate goodwill and reputation
 5. Sexual misconduct allegations are impacting corporate performance (*i.e.*, lost customers, lost advertisers, lost revenue)
 6. Board's failure to properly handle the allegations that officers and directors engaged in sexual misconduct and/or paying significant departure packages to executives who are alleged to have engaged in sexual misconduct

Case Study: The Weinstein Company

- The Weinstein Company was sued over misconduct of former chairman and alleged knowledge of the same.
 - Specifically, plaintiffs allege that The Weinstein Company's executives, officers and employees had "actual knowledge of Weinstein's repeated acts of sexual misconduct with women."

Case Study: Wynn Resorts

- Wynn Resorts and its Management had to defend against derivative and securities lawsuits as a result of alleged executive misconduct and the failure to address and disclose the issues to shareholders.
- Derivative suit alleges that the company and Management “turned a blind eye to, and covered up, misconduct [of former CEO Steve Wynn] that lasted for decades...and [the plaintiff] seek[s] to hold the board and its directors accountable for failing to meet their fiduciary obligations to shareholders.”
 - Also alleges that the company’s board and top leadership “tacitly permit[ted] and eventually covered” Wynn’s “decades-long pattern” of “unchecked” sexual abuse and harassment.
 - According to the complaint(s), the board acted in breach of loyalty and the fiduciary duties owed to shareholders which resulted in a market capitalization loss of \$2 billion on the day the news broke.

Case Study: Wynn Resorts Cont'd

- In the securities suit, allegations that Management made materially false and/or misleading statements and/or failed to disclose that Wynn had engaged in a pattern of sexual misconduct with respect to the company's employees.
 - Also alleged that Management was aware that discovery of Wynn's misconduct would subject the company to heightened regulatory scrutiny and threaten Wynn's ability to stay at the company, leading to company's shares trading at artificially inflated prices.

Case Study: Wynn Resorts Cont'd

- Wynn Resorts agreed to a \$90 Million settlement
 - \$41 Million Cash Payment to Wynn Resorts
 - \$20 Million paid by Stephen A. Wynn
 - \$21 Million paid by certain insurance carriers
 - \$49 Million in Significant Corporate Governance Reforms
 - Independent Board Chair
 - Majority Vote Requirement
 - Commitment to Diversity
 - Succession Plan
 - 10b5-1 Plan

Case Study: 21st Century Fox

- Lawsuits against 21st Century Fox included allegations of sexual harassment
- 21st Century Fox shareholders filed a derivative suit against the company based on allegations in the lawsuits
 - The derivative complaint asserted several causes of action against the company's Management, including breach of fiduciary duty in failing to prevent the alleged misconduct
- The public documents filed in support of the agreed settlement indicate that the \$90 million settlement reached in November 2017 was covered by insurance

Case Study: Alphabet Google

- In January 2019, two shareholder derivative suits were filed in California state court against current/former Management of Google's parent company, Alphabet
- The Complaint asserted claims against Management for breach of fiduciary duty, unjust enrichment, corporate waste and abuse of control concerning alleged sexual misconduct by Andy Rubin and two other male executives.
 - The complaint focused on other senior Google executives who were aware that allegations of misconduct were credible, but paid Rubin a reported \$90 million exit package in 2014
 - Complaint also referenced a November 2018 walk out by Google employees protesting company's inadequate approach to harassment and discrimination

Case Study: Alphabet Google Cont'd

- After a pre-suit demand and internal investigation, Alphabet entered into one of the largest derivative lawsuit settlements of all time: **\$310 Million.**
 - The Stipulation governing the terms of settlement does NOT say that Alphabet is paying, only that “Alphabet shall cause to be spent a total of \$310 million.”
 - The Stipulation also does not say that any individuals are contributing to payment.
 - The company’s 8-k is silent about any contribution from insurance

Racial Diversity



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Overview of Diversity Equity and Inclusion (DEI) Lawsuits

- Lawsuits have been filed against number of public companies
 - Focuses on appearances – including photographs of C-suite executives and board members in the complaints
 - Micron targeted for having one racially diverse executive, even though diverse executive was the CEO
 - Lawsuits seek disgorgement of compensation (including stock gains), resignation of board members and executives, termination of auditors, institution of training programs; establishment of hiring committees focused on bringing in diverse candidates

Evolution of Racial Diversity Cases

2014: Investigation by Department of Labor (Office of Federal Contract Compliance Programs (“OFCCP”)) into systemic practices at Oracle America, Inc.

- Paying Caucasian male workers more than their female, African American and Asian employees
- Favoring Asian workers in recruiting and hiring practices.

2017: OFCCP files lawsuit against Oracle seeking permanent injunction against Oracle from discrimination in recruitment, hiring and compensation practices and seeking lost wages, stock, interest, front wages, salary adjustments, promotions and all other lost benefits of employment for affected class.

Evolution of Racial Diversity Cases Cont'd

2019: Black Enterprise publishes analysis of 500 companies in the S&P

- 37% of companies had no black members on their boards (representing only a 2 percentage point improvement since 2018)
- Only 307 of those 500 companies had at least one black director
- Out of 5,500 board seats, only 322 were filled by black directors, representing only 6% of the director total despite 13.4% of population identifying as black
- The statistics for smaller companies not in the S&P 500 are even worse: only 4% of directors on boards of Russell 2000 companies were held by black directors

Evolution of Racial Diversity Cases Cont'd

Summer 2020: Newsweek reviews the board membership of more than 100 of the country's largest companies. Concludes that despite outward show of support for diversity, corporate boards remain largely white (black leaders are either woefully underrepresented or not even present on boards)

- Newsweek identifies the 20 largest public companies in the S&P 500 (as measured by their market value) that do not have a single black person on their board of directors)
- Information and technology companies are among the top offenders, including Cisco, Oracle and Qualcomm

Evolution of Racial Diversity Cases Cont'd

June 2020: California legislator introduces bill that would require corporations to include on their boards people from “underrepresented communities”

July 2, 2020: Oracle, one of the companies included on Newsweek list, is hit with a derivative lawsuit in California for failure to diversify the company’s board and to address diversity and equality issues

July 2, 2020: Facebook is also hit with a similar type lawsuit in California, filed by the same law firm as the one representing the plaintiff in Oracle case

July 17, 2020: Qualcomm is sued in California by the same law firm

Evolution of Racial Diversity Cases Cont'd

August 5, 2020: NortonLifeLock sued in California by same law firm

September 1, 2020: GAP is sued in California by same law firm

September 1, 2020: Danaher Corporation is sued in Delaware by a different law firm

September 9, 2020: The Board Challenge announces the launch of a pledge for US corporate boards of directors to add a Black director within the next year in an effort to accelerate diversity

Evolution of Racial Diversity Cases Cont'd

September 23, 2020: Cisco is sued in California

September 30, 2020: California Governor Gavin Newsom signs AB 979 requiring approximately 625 companies with securities listed on US exchanges that are headquartered in California, regardless of state of incorporation, to have a minimum of one director from an underrepresented community by end of 2021

September 30, 2020: Justice Watch files a state court action challenging the constitutionality of the statute

September/October 2020: U.S. Department of Labor commences investigation into a number of companies, including Microsoft, over whether Microsoft's June 2020 pledge to double the number of Black managers and leaders by 2025, represents illegal quotas and discriminates against white applicants and other groups

Evolution of Racial Diversity Cases Cont'd

December 1, 2020: NASDAQ files a proposal with SEC to require Nasdaq-listed companies to disclose whether companies meet board diversity requirements, including having 1 female director, 1 director who is a racial minority or identifies as LGBTQ+, or to provide an explanation why they do not

February 2021: 12 Republican Senate banking committee members send the SEC a letter urging the SEC to reject the proposed Nasdaq rules which they claim constitute a “proposed diversity quota”

February 9, 2021: Micron, a Nasdaq listed company, is hit with shareholder derivative lawsuit filed by a third law firm

March 5, 2021: Florida-based healthcare company and NASDAQ listed company, OPKO Health, Inc. is sued by the same firm as Micron

Evolution of Racial Diversity Cases Cont'd

March 19, 2021: Northern District of California Court grants Facebook's motion to dismiss:

- Fail to make pre-suit demand or allege that such demand would have been futile
- Fail to identify actionable false/misleading statements because statements about diversity were aspirational
- Fail to allege loss to corporation even if DEI statements were materially false

April 21, 2021: Northern District of California Court dismisses case against GAP based on forum selection clause

April 28, 2021: Northern District of California Court grants Plaintiff in Facebook DEI Lawsuit an extension of time to file Amended Complaint until May 28, 2021

The Advent of New Legislation and Regulations

- It is clear that there will be legislation and regulations across the country that seek to encourage greater diversity on corporate boards
- Question is whether these requirements will be limited to disclosures, or will follow the California model (i.e., mandatory requirements and fines for failure to comply)
- At least 12 states have enacted or are considering board diversity legislation; but the focus appears to be on disclosures rather than mandating certain minimum diversity requirements unlike California

DEI Legislation and Regulations

- California
 - All domestic and foreign companies with principal office in CA
 - By end of 2021, all boards must have one “underrepresented” member
 - By end of 2022, boards with 5-8 members must have 2 “underrepresented” members
 - By end of 2022, boards with 9+ members must have 3 “underrepresented” members
 - Companies that do not meet these requirements will be subject to penalties of \$100,000 to \$300,000.
- Colorado
 - Encourages “equitable and diverse gender representation on corporate board”
 - Urges corporations have a minimum number of female directors
- Maryland
 - Requires business entities with corporate headquarters in Maryland to disclose in their Annual Reports the total number of directors and total number of female directors
- New York
 - Enacted “Study” which imposes reporting obligations on domestic and foreign corporations authorized to do business in New York, specifically corporation must identify the total number of directors and the number of female directors

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DEI Legislation and Regulations Cont'd

- NASDAQ Seeks to Mandate Diversity
 - Requested permission to require companies on the exchange to:
 - Have at least one woman on their Board
 - Have at least one person who self-identifies as a racial minority or LGBTQ on their board
 - Publish board diversity metrics
 - SEC has postponed decision, seeking further public comment. Decision will likely come out this summer

Considerations Going Forward: D&O Coverage



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Is There Coverage: Side A and Indemnification of D&Os

- Shareholder Derivative suits are covered under “Side A”
 - Typically, a company may pay directors and officers’ defense costs in the derivative suit corporation
 - However, the company is usually not permitted to indemnify directors or officers for a settlement or judgment in an action brought against them derivatively

Is There Coverage: Damages Sought in DEI Lawsuits

- The relief sought in these diversity suits typically includes both monetary and non-monetary relief
- In many of the diversity lawsuits based on race, monetary relief seeks the return of all 2020 compensation received by the directors
- There will likely be a dispute between carriers and policyholders over whether this type of relief should be treated as disgorgement if restitutionary in nature
 - It is possible that D&O policy will likely not cover this form of relief sought by the shareholders
 - But there has not been a uniform interpretation of “disgorgement” and at least one court has recently held that settlement payments only constitute disgorgement if the amounts *conclusively* represent ill-gotten gains

Is There Coverage: Damages Sought in DEI Lawsuits Cont'd

- The non-monetary relief sought includes changes in the board selection procedures and diversity training initiatives
- It is unlikely that a D&O policy will provide coverage for the cost associated with fulfilling these non-monetary demands
 - “Loss” is commonly defined as not including costs incurred by an insured to comply with any order for non-monetary relief, any agreement to provide such relief, or any regulatory or administrative directive
 - While case law on this issue is limited, the plain language of the policy will likely control, and courts have held the exclusionary language to “unambiguously eliminate coverage for non-monetary relief” and “the cost of undertaking those acts”
- Thus, as is the case with monetary relief, coverage for non-monetary relief is unlikely, although both are ultimately dependent on policy language, specific facts, and jurisdictionally-specific authority

The Importance of Coverage of Defense Costs

- Defense costs may be covered under “Side B” or “Side C”
 - Putting aside whether and to what extent settlements and judgments may be covered, defense costs incurred by individuals and by the company should be covered
 - Defense costs for these types of suits may potentially cost millions, including just for the initial motion to dismiss
- Many insurance policies do not expressly address whether the company’s defense costs in a derivative action are covered:
 - Insurers may argue there is no coverage for company’s defense costs because of nominal defendant status or because the nominal defendant is not alleged to have committed a “wrongful act”
 - Unless there is an express exclusion though, “Side C” should provide coverage for a defense because it expressly covers loss to the corporation

Considerations Going Forward: Do's and Don'ts



DOs



DON'Ts

Advocate for Specific Language

- THERE IS NO TYPICAL FORM OF D&O COVERAGE
 - D&O policies are not issued on standard forms and typically contain manuscript language
 - Coverage can vary greatly from carrier to carrier, and even year to year, especially as carriers adjust for risk and/or the market hardens
 - Do not just accept the language that you are presented with, or assume that it is the same as in previous years

Negotiate for Policy Language Enhancements

- Double-check that the “Insured v. Insured” exclusion does not apply to derivative actions
- Try to negotiate for removal of any explicit exclusions for “restitution,” “penalty,” and “disgorgement” from the definition of “Loss”
- Ensure that Side A Excess Difference in Conditions (DIC) coverage, drops down if an underlying insurer refuses to pay

Carefully Review Final Adjudication Language

- It is critical that the D&O policy is clear that there is coverage for claims alleging fraud, dishonesty, violations of law, and unlawful personal profit or remuneration until such time, if ever, that there is a final, non-appealable adjudication of liability in the underlying matter
- If the language states that there must be a final adjudication in an “underlying proceeding,” negotiate to have the language changed to “underlying judicial proceeding” to eliminate triggering the exclusion based on an administrative proceeding

Purchase Additional Coverage

- Consider increasing Side A limits since companies typically cannot reimburse D&Os for settlements or judgments in shareholder derivative cases
- Consider obtaining “Side D” coverage for investigation costs incurred by the company in response to a shareholder derivative claim.
 - Especially if the state of incorporation, like Delaware, requires good faith investigations: When directors are placed on notice of misconduct within the company, they must take reasonable steps to investigate and remedy the problem.
- Consider purchasing more than the typical sub-limit of \$250,000-\$500,000, which is usually not sufficient to cover such investigations

Next Steps – Avoiding Shareholder or Derivative Lawsuits

- Implement policies that encourage company diversity and hire diverse board members
- Adhere to governance procedures and taking reasonable precautions regarding disclosures and policy implementation
- Be cognizant of discrepancies between what is disclosed publicly and what actions are actually taken within the company