

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

Liability of Corporate Officers and Directors

Publication 63962 Release 21 December 2014

HIGHLIGHTS

- All of the chapters have been updated, except Chapter 28. Dozens of important new cases relating to D&O liability, litigation, indemnification and insurance are discussed.

Chapter 2. Chapter 2 updates include an analysis of recent cases addressing whether the business judgment rule applies to claims by the FDIC against directors and officers of failed banks.

Chapter 6. Chapter 6 updates include a discussion of recent regulatory developments relating to director and officer responsibilities in connection with cyber-related risks.

Chapter 8. Chapter 8 updates include recent developments involving the growing number of criminal proceedings against directors and officers for violation of the Foreign Corrupt Practices Act.

Chapter 9. Chapter 9 updates include an analysis of the landmark new *Fifth Third Bancorp* U.S. Supreme Court decision

which, among other things, eliminated a presumption of prudence regarding plan fiduciaries' investment in company stock.

Chapter 11. Chapter 11 updates include an analysis of recent case law addressing various defenses asserted by directors and officers of failed banks in the growing number of claims against them by the FDIC.

Chapter 12. Chapter 12 updates include a discussion of the important new Delaware "public benefit" corporation statute.

- Chapter 13.** Chapter 13 updates include:
- A discussion of the U.S. Supreme Court's recent decision in *Halliburton II*, which confirmed that a plaintiff is entitled to a rebuttable presumption of reliance in securities class action lawsuit;
 - A discussion of case law developments since the U.S. Supreme Court's 2007 decision in *Tellabs v. Makor Rights & Issues, Ltd.* regarding scienter;
 - A new section summarizing the

U.S. Supreme Court's three recent decisions regarding federal securities fraud class action jurisprudence: *Halliburton I* (2011); *Amgen* (2013); and *Halliburton II* (2014); and

- A discussion of recent cases construing the whistleblower provisions of the Sarbanes-Oxley Act and the Dodd-Frank Act.

Chapter 14. Chapter 14 updates include a discussion of recent Delaware case law describing the responsibility of directors in various types of acquisition transactions, including where a controlling shareholder buys the interests of minority shareholders.

Chapter 15. Chapter 15 updates include a discussion of recent developments relating to state law claims by a corporation against its directors and officers for illegal insider trading (i.e., *Brophy* claims).

Chapter 18. Chapter 18 updates include a new section which discusses the validity and impact on D&O claims of litigation forum selection clauses in bylaws.

Chapter 20. Chapter 20 updates include

a new section which discusses statutes and case law defining the scope of indemnification for LLC managers.

Chapter 21. Chapter 21 updates include a discussion of how an allocation provision in a D&O insurance policy may impact the applicability of the insured v. insured exclusion in the policy.

Chapter 26. Chapter 26 updates include a discussion of issues relevant to an excess insurer's claim against a primary insurer for wrongful claims handling.

Chapter 27. Chapter 27 updates include a discussion of the impact of new Side A DIC provisions in ABC policies.

Chapter 29. Chapter 29 updates include summaries of recent studies and surveys relating to D&O litigation and insurance trends.

Appendix A is updated to include a list of the most recent mega D&O settlements.

Appendix D is updated to include an example of the most recent broad-form Side A policy form.

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December 2014

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<input type="checkbox"/>	1 thru 1-2.1	1 thru 1-2.1
<input type="checkbox"/>	1-21 thru 1-33	1-21 thru 1-34.1
<input type="checkbox"/>	1-40.1 thru 1-71.	1-41 thru 1-72.11
<input type="checkbox"/>	1-87 thru 2-40.5.	1-87 thru 2-40.13
<input type="checkbox"/>	2-51 thru 4-11	2-51 thru 4-12.1
<input type="checkbox"/>	4-35 thru 4-36.1.	4-35 thru 4-36.1
<input type="checkbox"/>	4-51 thru 5-3	4-51 thru 5-4.1
<input type="checkbox"/>	5-25 thru 5-30.1.	5-25 thru 5-30.1
<input type="checkbox"/>	5-41 thru 6-53	5-41 thru 6-55
<input type="checkbox"/>	7-11 thru 7-25	7-11 thru 7-25
<input type="checkbox"/>	8-17 thru 8-21	8-17 thru 8-22.1
<input type="checkbox"/>	8-51 thru 9-15	8-51 thru 9-16.1
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<input type="checkbox"/>	11-23 thru 11-37	11-23 thru 11-38.5
<input type="checkbox"/>	11-63 thru 13-95	11-63 thru 13-96.3
<input type="checkbox"/>	13-115 thru 14-6.1	13-115 thru 14-6.1
<input type="checkbox"/>	14-31 thru 14-32.1	14-31 thru 14-32.1
<input type="checkbox"/>	14-57.	14-57 thru 14-58.1
<input type="checkbox"/>	14-77 thru 14-79	14-77 thru 14-79
<input type="checkbox"/>	15-9 thru 15-27	15-9 thru 15-28.7
<input type="checkbox"/>	15-50.1 thru 15-56.1.	15-51 thru 15-56.5
<input type="checkbox"/>	15-85.	15-85

VOLUME 2

Revision

<input type="checkbox"/>	Title page thru 16-29	Title page thru 16-31
<input type="checkbox"/>	17-12.1 thru 17-13	17-13 thru 17-14.1
<input type="checkbox"/>	17-43 thru 17-45	17-43 thru 17-46.1
<input type="checkbox"/>	18-1 thru 19-7	18-1 thru 19-8.1
<input type="checkbox"/>	19-17.	19-17 thru 19-18.1
<input type="checkbox"/>	19-27.	19-27 thru 19-28.1
<input type="checkbox"/>	19-47 thru 20-42.3	19-47 thru 20-42.5
<input type="checkbox"/>	20-51 thru 20-55	20-51 thru 20-56.1
<input type="checkbox"/>	20-85 thru 21-7	20-85 thru 21-7
<input type="checkbox"/>	21-35.	21-35 thru 21-36.1
<input type="checkbox"/>	21-45 thru 22-25	21-45 thru 22-25
<input type="checkbox"/>	23-8.1 thru 23-13	23-9 thru 23-14.1
<input type="checkbox"/>	23-41 thru 23-43	23-41 thru 23-44.1

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<input type="checkbox"/>	23-53 thru 24-41	23-53 thru 24-42.1
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