

Key Governance Risks for 2025: Directors and Officers Insurance

Technological, societal, and legal trends are creating new director and officer exposures.

TRENDS & EMERGING ISSUES

- **AI & Cybersecurity:** As company leaders navigate the threat of increasingly sophisticated cyberattacks, they are also deciding how to implement new AI capabilities, which can, in some instances, lead to allegations of AI washing.
- **ESG:** Company leaders are feeling pressure from activists—both those seeking to advance an ESG agenda and conservative political groups who want companies to focus on profit maximization. At the same time, regulators and watchdogs are pursuing allegations of greenwashing.
- **Duty to Monitor:** Ever since the Delaware Supreme Court’s 2019 decision in *Marchand v. Barnhill*, corporate boards have faced uncertain but increased exposure to a potential breach of fiduciary duty claims based on alleged failure to establish reporting mechanisms to monitor mission-critical operations and functions or to monitor circumstances in response to red flags.

CASE STUDY

In November 2021, the board of aircraft manufacturer Boeing entered a \$237.5 million settlement of the derivative lawsuit that shareholders had filed against the board alleging that the directors had failed to establish a reporting system for monitoring flight safety, a mission-critical operation for an airline manufacturer.

IMPACT

The Boeing case represents something of a high-water mark in this regard. While many breach of the duty of oversight claims do not survive the dismissal motions, the recent survival of oversight-duty breaches alleged against the boards of Wells Fargo and Abbott Laboratories underscore the fact that boards are going to continue to face scrutiny and potential claims for alleged breaches of the duty of oversight, suggesting that boards need to take particular care to ensure that they have reporting mechanisms in place to respond to operations and functions that are mission critical and to respond to red flags that may arise in the course of company operations.

QUESTIONS FOR YOUR NEXT BOARD MEETING

- How does our AI strategy align with our overall business strategy? How are we balancing value creation and risk management? How are we ensuring ethical AI use?
- What are our most critical assets? How are we protecting them from cyber risks? Are board members receiving training on cybersecurity threats and trends?
- How does our ESG strategy align with our overall business goals? Who is responsible for ESG within our organization? How are we engaging stakeholders?
- Do we have an effective reporting system in place to ensure the board receives timely and accurate information?



“Technological and societal changes create risks as well as opportunities. Board members need to determine whether they’re keeping up and asking the right questions to ensure the risk-management strategy not only addresses risk prevention but also growth for the organization.”

— Joseph Talmadge, Senior Vice President, Heffernan Insurance Brokers

