

Highlights of the 2025–2026 Edition

Director and Officer Liability: Indemnity and Insurance provides an essential guide to the nature of legal actions brought against officers and directors, possible liabilities under federal and state statutes, indemnification by corporate bylaws and state statutes, and the protections afforded by indemnification insurance.

This Edition includes:

1. Expanded caselaw including:

- California Supreme Court held that the forum selection clauses in a corporation's articles of incorporation and bylaws were enforceable, despite the fact that, unlike California, the selected state did not allow for a trial by jury for such claims. *EpicentRx, Inc. v. Superior Court*, 572 P.3d 1 (CA 2025) (§ 2:5)
- Federal court in New York ruled in a bench trial that the owner of a corporation that operated a restaurant was an employer for purposes of FLSA individual liability, but the vice president of the corporation was not. *Feng v. Kelai Corp.*, 727 F.Supp.3d 423 (S.D.N.Y. 2024) (§ 3:9)
- Ninth Circuit held that the SEC is not required to show pecuniary harm to investors as a precondition for a disgorgement award. *United States Securities and Exchange Commission v. Sripetch*, ____ F.4th ____, 2025 WL 2525848 (9th Cir. 2025) (§ 3:84)
- New York Court of Appeals rejects challenge to longstanding application of internal affairs doctrine. *Ezrasons, Inc. v. Rudd*, ____ N.E.3d ____, 2025 WL 1436000 (NY 2025), 2025 N.Y. Slip Op. 03008 (§ 5:2)
- Supreme Court of Maryland held that the director of a corporation was made party to the underlying action at least in part in his capacity as director, as necessary to satisfy the state's corporate indemnification statute. *Hyperheal Hyperbarics, Inc. v. Shapiro*, 491 Md. 432 (MD 2025) (§ 5:50)
- California Court of Appeal held that a directors and officers liability policy covered an insured's claim for legal defense costs. *Jasper v. Chubb National Insurance Company*, 2024 WL 4759411 (CA Ct. App. November 12, 2024) (§ 12:16)

2. Statutory updates including:

- Legislative summary of Delaware SB-21, signed into law on March 25, 2025, which amends § 144 of Title 8 (DE ST TI 8 § 144) to provide safe harbor procedures for acts or transactions in which one or more directors or officers as well as controlling stockholders and members of control groups have interests or relationships that might render them interested or not independent with respect to the act or transaction. (App. 17-6)

3. Regulatory Guidance and sample updated corporate indemnification agreement:

- SEC Division of Corporation Finance released in February 2025 a Staff Legal Bulletin addressing shareholder proposals and providing corporations more flexibility in excluding some shareholder proposals, especially those relating to environmental and social issues. (App. 17-7)
- Tesla Inc. filed in September 2025 a new corporate indemnification agreement. (App. 17-8)