

Strategies to Mitigate Director Liability and Exposure in 2021 and Beyond

A presentation for ACC Dallas-Fort Worth by Elizabeth Myers and Mackenzie Wallace of Thompson Coburn LLP
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KEY TAKEAWAYS FOR DIRECTOR LIABILITY:

REASSESS RISK

Consider key operational, financial and legal risks, including:

- Outlook and contingency planning regarding operations, operational continuity, and disaster preparedness, including the supply chain, distributors, and customers;
- Outlook and contingency planning regarding personnel;
- Liquidity and finance arrangements;
- Potential insolvency;
- Outlook of revenues and expenses;
- Earnings guidance;
- Privacy and cybersecurity issues; and
- Regulators' expectations in the current climate.

INCREASE OVERSIGHT

Schedule additional meetings, add subcommittees, and rely on subcommittees:

- Consider scheduling more or additional meetings with management to discuss key risks and critical COVID-19 and related economic issues, ensuring the right people are in the conversation; and
- Rely on an established risk committee or even consider forming a board subcommittee or special committee specifically to oversee COVID-19 issues and its potential impacts on the company.

REVIEW PROCESSES

Review each of the reassessed key risks and ensure reporting and monitoring systems exist to ensure:

- The board remains informed about these key risks;
- The company has implemented COVID-19 reporting systems at the board level; and
- The systems in place

INCREASE DOCUMENTATION

Document effectively the systems and oversight in place and the monitoring of the same.

- Directors should keep in mind that possible plaintiffs will cite to such minutes in support of potential derivatives suits.



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