

Protecting Yourself from Personal Liability

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IBIS

Independent Bankers Insurance Services

Introduction – Being Well Prepared

- Why are we here?
 - You are a prominent member of the community
 - You have a substantial net worth
 - You think that what you are doing is worthwhile and want to keep doing it
 - You don't want to take unnecessary risks



Introduction – Being Well Prepared

- What is There to Worry About? – Shareholders
 - Pressure to improve corporate governance
 - Anticipated stock performance
 - Shareholder proxy fights
 - Pressure to sell or merge
 - Suits



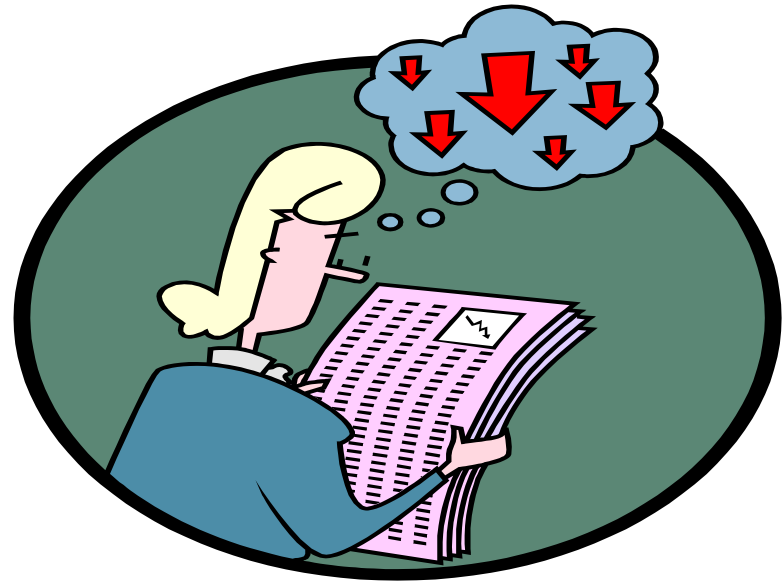
Introduction – Being Well Prepared

- What is There to Worry About? – Regulators
 - Pressure to improve corporate governance
 - Civil money penalties
 - Personal recoveries
 - Limits on D&O insurance coverage



Introduction – Being Well Prepared

- What is There to Worry About? – Reputational Risk
 - Loss of investment
 - Declining stock prices
 - Reputation with customers



Fine-Tuning the Directors and Officers Liability Policy

- What Determines Appropriate Policy Limits for my Bank?
 - Asset Size
 - Peer Group Average Limits
 - Geographical Location
 - Non-traditional Banking Activities
 - Publicly or Privately Held
 - Underwriting Factors
 - Shared or Separate Endorsement Limits (Capacity Risk)



Fine-Tuning the Directors and Officers Liability Policy

- Insurance Terms You Should Know
 - Insured's versus Insurer's Duty to Defend
 - Hammer Clause
 - Allocation
 - Extended Reporting Period (Tail of Coverage)
 - Laundry List



Fine-Tuning the Directors and Officers Liability Policy

- Adding the Bank to the D&O Policy
 - Employment Practices Liability
 - Lender Liability
 - Broad Form Errors and Omissions
 - Professional Liability
 - Trust Department Errors and Omissions
 - Internet Liability
 - What you Shouldn't Add to Your D&O Policy



Fine-Tuning the Directors and Officers Liability Policy

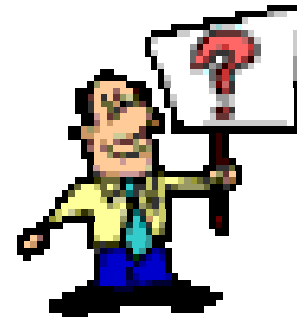
- Additional Coverage Enhancements
 - Regulatory Coverage
 - Coverage for All Employees
 - SEC Coverage
 - Prior & Pending Exclusion
 - Retro Dates (Past Acts Coverage)
 - Marital Estate (Spousal) Extension
 - Coverage for Service on Non-Profit Boards (Excess)

Fine-Tuning the Directors and Officers Liability Policy

- The Process of Renewing Policies
 - Prudent Management of Premium Expense
 - How Often Should I Go to Market?
 - Coinciding Policy Anniversaries
 - Getting Involved
 - Diligent Review of Proposals
 - Periodic Legal Review

Common Sense Proactive Protection

- How to Protect Yourself – The Legal “Black Letter Answer”
 - Be knowledgeable
 - Be vigilant
 - Be questioning of management
 - Be demanding
 - Be independent



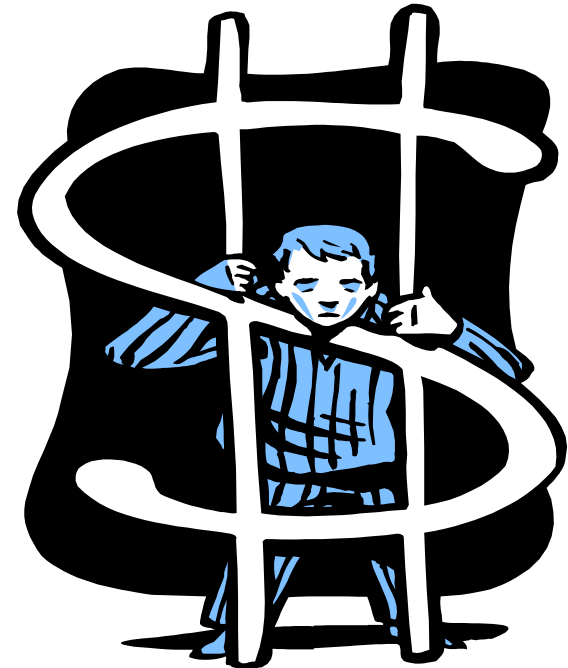
Common Sense Proactive Protection

- How to Protect Yourself – The “Practical Answer”
 - Create a positive board environment
 - Choose people you can trust in management
 - Watch for danger signals
 - Trust your instincts
 - Recognize the differences between banking and your own business



Common Sense Proactive Protection

- Why Do You Need Indemnity Protection?
 - Legal Fees – Insurance Deductibles
 - Legal Fees – Shareholder Actions
 - Legal Fees – Civil Money Penalties



Common Sense Proactive Protection

- What Type of Protection is Appropriate
 - Articles and Bylaws
 - Board Resolutions
 - Indemnification Agreements
 - Regulatory Limitations 12 CFR Part 359
 - SEC Position in Settlement Negotiations



Common Sense Proactive Protection

- Why is Everyone Talking About Sarbanes-Oxley?
 - \$500 million or more in assets
 - Effect on Accounting Standards
 - Stock Exchange Rules
 - Best Practices
 - Trend to “Transparency”

Common Sense Proactive Protection

- What Do You Really Need to Know About Corporate Governance?
 - Consider what will help get D&O Insurance
 - Stick with Best Practices
 - Lead Independent Director
 - Outside Directors Meet Separately and Regularly
 - Show up to Meetings and Prepare

Common Sense Proactive Protection

- Is There Regulatory Guidance on Director Duties?
 - DFI Corporate Governance Web page:
 - <http://www.dfi.ca.gov/licensee/bank/corpgov.asp>
 - FDIC Supervisory Insights Letters:
 - <http://www.fdic.gov/regulations/examinations/supervisory/insights>
 - FDIC Directors Corner
 - <http://www.fdic.gov/regulations/resources/directorscorner.html>
 - OCC Director Guide

Common Sense Proactive Protection

- What Can I Do To Protect Myself?
 - Trust but Verify
 - Imagine How Things Would Look and Sound in a Deposition
 - Listen to What is Said and “Unsaid” by the Regulators



Common Sense Proactive Protection

- Practical Steps
 - Never Let an Insider Transaction Go Bad
 - Don't Talk Outside the Boardroom
 - Be Forthright With the Regulators No Matter How Hard It Is
 - Have a "Technology" Person on the Board
 - Get Budgets and Track Them
 - Track Progress to Peers
 - Have an M&A Committee
 - Have Regular Meetings of Outside Directors
 - Review Policies Annually or When it Appears a Lot of Exceptions Are Being Made
 - Hold People Accountable

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THANK YOU!

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