

ATTORNEYS

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"Delaware Chancery Court Creates Potential Pitfall For Indemnification And Advancement Rights" by David Daniels and Paul Leder

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Anyone who has been involved in civil litigation or a regulatory investigation can appreciate the speed with which legal bills can add up or the costs of settlement. Directors and officers frequently are targets of civil litigants and regulators, which can be financially devastating for these individuals absent adequate protections. Most company by-laws provide directors and officers with the right to advancement (requiring the company to pay defense costs as incurred) and the right to indemnification (requiring the company to pay the cost of defense, settlement or judgment after the matter is concluded). In addition to insurance, these rights provide critical protection for directors and officers against the risk of litigation. A recent decision by the Delaware Court of Chancery, however, has created a hole in what may have appeared to be bulletproof indemnification and advancement by-law language. The decision points to the potential need for changes in by-law language or a separate agreement to prevent a company from unilaterally withdrawing such protections.

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