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Guest Post: Leveraging D&O Insurance for Shareholder Derivative Claims

By Kevin LaCroix on June 10, 2026

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One of the common situations in which D&O insurance is called into play is when a company's board has been hit with a shareholder derivative lawsuit. In the following guest post, Geoffrey B. Fehling and Charlotte E. Leszinske examine a recent derivative suit and consider the D&O insurance issues that can arise in the derivative lawsuit context. Geoff is a Partner, Hunton Andrews Kurth LLP, and Charlotte is an

Associate, Hunton Andrews Kurth LLP. A version of this article previously was published as a Hunton Andrews Kurth client alert. My thanks to Geoff and Charlotte for allowing us to publish their article as a guest post on this site. Here is the authors' article.

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A recent lawsuit underscores the threat posed by rogue shareholders and the importance of obtaining adequate D&O insurance to address those risks. Derivative claims—*i.e.*, shareholder lawsuits brought on behalf of the company against its officers, directors, and managers—are not just costly to defend and resolve in court. They can also divert precious internal resources, impede normal business operations, harm commercial relationships, hurt market confidence, and directly impact share prices.

Unfortunately, these concerns are not theoretical. One recent California federal lawsuit alleges a pattern of extortion by a man who purchased small stakes in public companies and then weaponized his shareholder status to threaten financial harm if the company did not do as he said. While the allegations against this particular serial litigator for extortion, racketeering, and fraud may seem extreme, they nevertheless underscore how a good D&O policy can protect companies and their directors and officers from exposure.

Background

A recently-filed federal complaint, *Maddox Defense, Inc. and Envirotech Vehicles, Inc. v. Diveroli, et al.*, No. 26-cv-2992, alleges that a corporate shareholder used his status to pressure the company into business deals that would benefit him personally. The complaint alleges multiple schemes by the shareholder to bilk the companies out of funds, including frivolous lawsuits, seeking to freeze corporate bank accounts, and asking for restraining orders against individual directors.

According to the complaint, the shareholder acquired stock in the company for the purpose of extorting it. The company had secured a lucrative government contract to supply medical gowns during the COVID-19 pandemic. The shareholder allegedly held himself out as the company's agent related to this contract, which caused significant harm to the company, including by scaring off potential business partners.

Squabbles over this conduct allegedly culminated in a three-year derivative lawsuit by the shareholder against the company. That suit sought remedies that significantly interfered with corporate operations, like asking that bank accounts be frozen and individual executives be restrained. The shareholder-plaintiff then dangled multiple business opportunities before the company, offering to dismiss the lawsuit if the opportunities went forward. When they did not, the

shareholder escalated his pressure campaign. At one point, the shareholder's counsel allegedly admitted that the shareholder was just after money and if not paid to go away, he would continue his course of conduct.

Mitigating Shareholder Risks With D&O Insurance

D&O insurance, which protects companies and their boards and management against claims challenging management decisions, is uniquely poised to mitigate risks caused by rogue shareholders. Here are some of the top coverage considerations when facing similar shareholder claims.

Defense Coverage Is Critical. Even if claims are frivolous or pursued in bad faith, as alleged in *Diveroli*, shareholder disputes can prove very costly. When placed in a defensive posture, policyholders still need to retain counsel and present a defense. Getting a suit dismissed on an early motion can still run up six- or even seven-figure legal bills depending on the size and scope of the claims.

That is why negotiating robust defense coverage in D&O policies is critical. Common provisions governing the duty to defend, notice, consent, panel counsel, rate caps, and allocation can materially impact the benefits received under the policy to defray significant costs and mount a successful defense.

Don't Underestimate the Importance of Side A Coverage. Derivative claims like those identified in the *Diveroli* lawsuit present unique D&O coverage issues because indemnification may be legally limited, unavailable, or impracticable for settlements or judgments, leaving the individual director or officer defendants to rely exclusively on the company's D&O policy to protect them from personal exposure. Even where the company is permitted to advance legal fees to defend derivative claims, indemnification may be restricted by company bylaws, public policy, or governing law.

As a result, shareholder derivative claims often implicate "Side A" coverage, which protects individual directors and officers against losses the company cannot indemnify. If a company purchases only "Side ABC" policies that cover both the entity and individuals, claims against the company could erode or exhaust limits that otherwise would be available to protect individuals from non-indemnified derivative liabilities.

For those reasons, consider purchasing dedicated Side A limits, which are often available as part of Side ABC policies to set aside coverage available exclusively for the benefit of officers and directors. Or better yet, consider a standalone Side A policy, which can provide not only dedicated

limits but also enhanced coverage, fewer exclusions, and special features (such as "difference in conditions" coverage) not available under traditional Side ABC policies.

Audit Common Traps in Traditional Side ABC Policies. At each placement and renewal, take a look at D&O policies with an eye towards derivative liability. Here are some key questions to consider:

– Does the "insured v. insured" exclusion have appropriate carve-outs for derivative claims brought in the name of the company against other insureds?

– Is the policy's definition of "loss" sufficiently broad to include remedies often claimed in derivative litigation?

– How does the policy allocate between covered and uncovered matters in claims brought against both the company and individuals?

– Since derivative and similar fiduciary litigation often intensify around distress situations, how will the company's D&O insurance program respond during bankruptcy, and are there improvements to implement with an eye towards bankruptcy?

D&O policies are heavily negotiable and customizable. But the time to review and improve policies is during renewal, not on the eve of closing, in the immediate lead-up to a bankruptcy filing, or after a claim is made.

Consider Useful Coverage Extensions. Many putative shareholder claimants start making demands on the company or board long before a derivative suit is filed. Those pre-litigation matters can involve shareholder demand letters, Section 220 and similar books-and-records demands, interview and document requests targeting specific individuals, and special committee or board investigations. Policyholders may be able to **negotiate extended coverage** for pre-claim inquiries, books-and-records demands, and special committee investigation costs.

Conclusion

While shareholder litigation can present significant risk, that risk can be mitigated with D&O insurance. Companies should consider obtaining D&O insurance and carefully review existing policies to determine their coverage in the event of a claim.