



Liability. Are You Covered? Probably Not.

San Antonio (1/12/2015)

Austin (1/13/2015)

Houston (1/14/2015)

Dallas (1/15/2015)

Mintz Levin. **Not your standard practice.**

Indemnification & Insurance: Why You Should Be Concerned

- Focus on Individuals is on the Rise
- Government is Targeting Individuals
- Plaintiffs are Targeting Individuals
- Delaware Courts have an Increasing Number of Cases for Advancement of Defense Costs
- D&O Insurance is Not What it Used to Be



First Line Of Defense: Indemnification

- Myths About By-Laws
- Why Have a Separate Indemnification Agreement?



Indemnification Agreements: Key Terms

- Indemnified in a Proceeding? Investigation? As a Witness?
- Is Indemnification Presumed? What is the Standard?
- When does Advancement of Defense Costs Take Place?
- Can Indemnification be Decided by Independent Counsel?
- What Happens in an M&A Transaction? After You are No Longer on the Board?

Indemnification And D&O Insurance: A Difficult Relationship

- Presumptive Indemnification Clauses in D&O Insurance
 - Presumes Indemnification
 - Presumes Advancement
 - Requires Going to Court?



Is Indemnification: A Condition Precedent To Coverage?

- Special Considerations in Bankruptcy
 - Priority Clause that Directors are Paid First
 - Express Statement that Bankruptcy does Not Change Priority



Indemnification: Special Considerations For Private Equity And Venture Capital Investors

- Levy Case: Multiple Sources of Indemnification = No Protection?
- Who is on First?
- How does this Impact Indemnification Agreements/Provisions?
- How does this Impact PE/VC Coverage and Portfolio Company D&O Coverage? (*Hint: Coverage is Based on the Presumption that the Portfolio Company Indemnified First*)



D&O Insurance: Hidden Gaps In Protection

- What Hat Am I Wearing?
- Government Investigations and the “Alleging a Wrongful Act” Requirement
- Cyber Exposures and Privacy Exclusion
- International



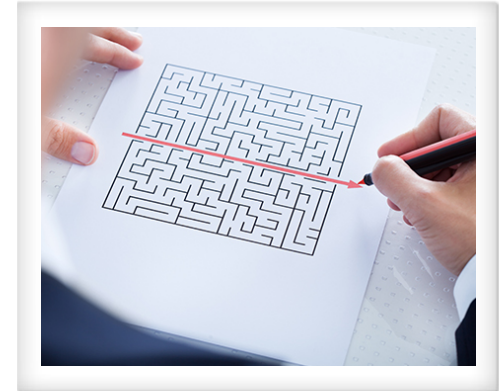
D&O Insurance: What Questions Should You Be Asking?

- Three Lists:
 - IPO
 - M&A
 - Renewal



PE & VC Insurance: What Questions Should You Be Asking?

- Two Articles on PE and VC Coverage Issues
 - Common Basic Mistakes
 - Scope of Professional Services – Pre-Investment/Transaction
 - M&A Exclusions
 - Interaction with Portfolio Company Insurance





Questions?

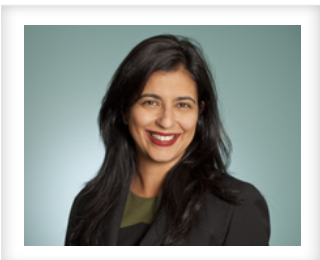
Thank You!



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