
Book Review: The Best in D&O Duties and Liabilities

by Robert W. Wood • San Francisco

We at *The M&A Tax Report* occasionally receive books that we think our readers would enjoy knowing about. In the days of legal publishing consolidation, the mass of information and printed documents now available through Amazon and other internet companies, all of the news about books can become a bit daunting. Yes, they are still relevant despite the internet. Perhaps the greatest relevance to anyone serving on a board of directors is precisely what duties and liabilities those directors have. Speaking from personal experience, they can be intimidating.

Now, Bowne (of legal and securities offering printing fame) has published a compilation of journal articles it has aptly titled *The Best in D&O Duties and Liabilities*. The book runs \$175, and is a hefty tome, weighing in with 788 pages. It covers such topics as the usual D&O liability insurance; indemnification; compensation; takeover defenses in M&A transactions; conflicts (and a number of subsets under this always thorny conflicts topic); and compliance programs and oversight responsibilities. They even take on securities disclosure and financial reporting, as well as such arcane (but important) topics as tracking stock and dilutive financing. There are even pages devoted to lawyers as directors (nicely quipped to be an oxymoron); corporate contracts; board meetings; nonprofit boards, etc.

There is obviously a great deal to cover in this rather monolithic topic. Yet it is the quality of information, rather than mere quantity, that one should seek as a smart buyer (and smart liability avoider). I found most interesting the practical tips that the promoters of the book are touting. For example, the practical

Continued on Page 7

BOOK REVIEW: D&O

Continued from Page 6

may be ordered online at pubs.Bowne.com or by calling Bowne Publishing at 800/370-8402. ■

items include guidance on:

- Defining when directors can say “no” to an unwanted tender offer;
- Setting guidelines for directors in acquiring companies;
- How personal liability for corporate breaches of contract can be avoided;
- The mechanics of board meeting preparation, both procedural and substantive, that can help avoid liability;
- Techniques to establish and maintain the independence of outside directors, at the same time improving corporate governance;
- Drafting joint venture documents to address fiduciary conflicts that may arise;
- Structuring stock compensation packages for directors (here’s a topic that all directors will find of interest!);
- When to provide (and when to deny) indemnification to officers and directors; and
- Finally, negotiating to broaden director and officer insurance coverage and limit exclusions (a veritable topic unto itself).

I suppose there are a few shortcomings in this Bowne monster of a book. For one, the 788 pages makes it a bit too thick to slip into a slim briefcase. It is nearly 4½ pounds. Such quibblings aside as size and bulkiness, the only real deficiency I could perceive is the one suffered by virtually any collective. It has no index, so one spends a fair amount of time flipping through the book looking for what one is worried about. True, the table of contents is quite good, and it should serve as the primary means of locating the desired solution to the problem one faces. But it would still be helpful to have an index to key into the various pieces that have been written, some of them by luminaries in their fields.

All in all, if one serves on a board, or advises those who do, this new Bowne book would be a useful (albeit big!) addition to one’s library. It is available from Bowne in a paperback version for \$175, and

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