The D&O Diary

What to Watch in the World of D&O

By Kevin LaCroix on Sep 07, 2026 08:31 am

Every year after Labor Day, The D&O Diary takes a step back to survey the most important current trends and developments in the world of Directors' and Officers' liability and insurance. This year's review is set out below. As the following discussion shows, this is a particularly interesting time in the world of D&O.

AI-Related Claims Are Already Mounting, But What May Be Ahead?

In a very short time, artificial intelligence (AI) has become one of the most important forces in the economy. As the *Wall Street Journal* put it in an August 3, 2026, article (here), the AI Boom has already "transformed" the American economy "beyond recognition."

AI technology's economic significance is reflected in extraordinary investor enthusiasm for AI-related companies. In addition, several big technology companies have committed to AI-related capital expenditures measured in the hundreds of billions of dollars. Given the sheer scale of the AI dynamic and given the seemingly boundless extent of investor enthusiasm for AI companies, it is hardly surprising that the rise of AI has also translated into D&O-related litigation, as companies eager to ride the AI wave fall short of aspirations or investor expectations.

Indeed, AI-related corporate and securities litigation has been one of the most important D&O claims trends so far in 2026. As of August 31, 2026, as many as 22 AI-related federal court securities class action lawsuits have been filed this year, compared to 16 in all of 2025. The AI-related D&O claims also include a number of shareholder derivative lawsuits, as well as AI-related enforcement actions, as noted below.

The most prevalent kinds of allegations in these AI-related lawsuits involve what has become known as "AI washing" – that is, allegations that the defendant companies overstated their AI-related capabilities, opportunities, or prospects. The August 26, 2026 settled enforcment action the SEC filed against Genesis AI and its CEO is a good illustration of this type of AI washing claim. In its complaint, the SEC alleged that the company had raised over $5 million from over 4,000 investors in a crowdfunding campaign by misrepresenting the company's financial prospects and the viability of its purported marketplace for AI models. The company and the CEO agreed to pay fines, penalties, and interest. Readers will want to note that this AI-washing enforcement action involved a private company, underscoring the fact that AI-related D&O claim risk is not limited to just public companies.

But while AI-washing type allegations remain important in many AI-related lawsuits, AI-related litigation in recent months has included many other types of allegations. We detail below four other categories of allegations that have been raised in AI-related lawsuits: allegations of not involving *overstatement* of AI prospects but rather *understatement* of AI risk; allegations specifically concerning AI infrastructure build-out and strategies; allegations concerning misrepresentations about AI spending; and, finally, allegations in follow-on derivative lawsuits alleging that company executives' decisions and actions led to underlying AI-related litigation. Many of the AI-related lawsuits involve more than one of the various types of allegations we identify.

Here are the four additional categories of allegations.

AI Risk Disclosure Allegations: One recent example of a case involving allegations that the defendant company understated its AI-related risk is the lawsuit filed in August 2026 against the software and services company Intuit. As discussed here, the plaintiffs alleged that while the company had emphasized its business prospects from its adoption of AI, the company failed to disclose the extent to which AI was simultaneously creating competitive pressures for key parts of its business. Similarly, in their June 2026 lawsuit filed against ZoomInfo Technologies (discussed here), the plaintiffs alleged that the company accurately described its AI initiatives but failed to disclose the risk that AI was threatening to disrupt its long-term business model.

AI Infrastructure-Related Allegations: In cases involving AI infrastructure companies, the defendant companies are alleged to have made misrepresentations regarding their infrastructure build-out and strategies. For example, in March 2026, a plaintiff shareholder filed a securities class action lawsuit against the engine and power systems company Power Solutions International, alleging that the company's new strategy of providing power generation solutions for AI data centers had fallen short of the company's representations. Other lawsuits involving AI infrastructure companies' misrepresentations include the January 2026 lawsuit against the start-up AI energy supply company Fermi (discussed here) and the lawsuit against the AI cloud computing data center company Coreweave (here).

AI Spending-Related Allegations: The huge AI-related capital expenditures companies are making have also generated their own category of AI-related claims, as shareholder plaintiffs allege that companies have not been sufficiently forthcoming about the extent of their AI-related spending. An example of this type of case is the February 2026 lawsuit filed against Oracle (discussed here). As discussed here, the plaintiffs in that case alleged that the company failed to disclose that: "(1) the Company's AI infrastructure strategy would result in massive increases in CapEx without equivalent, near-term growth in revenue; (2) the Company's substantially increased spending created serious risks involving Oracle's debt and credit rating, free cash flow, and ability to fund its projects, among other concerns."

There have been a number of other recent cases alleging that the company defendants have not sufficiently informed investors about the companies' massive ramp-up in AI-related spending, including, for example, the June 2026 lawsuit filed against Microsoft (discussed here), the July 2026 lawsuit filed against Israeli web platform development company Wix (discussed here), and the August 2026 lawsuit filed against the cloud computing firm Rackspace Technology (discussed here). These "AI spend" lawsuits highlight growing investor scrutiny of whether management adequately disclosed the financial risks, costs, and tradeoffs associated with aggressive AI initiatives.

AI Follow-On Derivative Litigation: One further type of AI-related lawsuit that has been prevalent so far this year has been "follow-on" derivative lawsuits in which it is alleged that company management knowingly used copyrighted materials to develop their company's AI products and models, which in turn caused the company to be sued by copyright holders for intellectual property violations. A number of large technology companies have been hit with these kinds of lawsuit in recent months, including, for example, Adobe (about which see here), Microsoft (here), Nvidia (here), and Apple (here).

These "follow-on" lawsuits also represent interesting examples of what has been called "silent AI" – that is, the way in which AI-related liabilities that would not typically be covered under a D&O insurance policy (in this case, intellectual property liability) can translate into a type of liability presumptively covered under the typical D&O insurance policy (in this case, breach of fiduciary duty allegations).

The emergence of this type of "silent AI" exposure is one reason that at least some insurers have been flirting with the idea of attempting to incorporate various types of AI-related exclusions on their management and professional liability policies. Given that the D&O insurance market remains in a soft market, these kinds of exclusions are unlikely to become widespread. However, if the market were to turn, it could well be that these kinds of AI-related exclusions could become more prevalent.

One overriding fear as AI infrastructure spending has mushroomed and as the financial markets have been roiled by a phenomenon that can only be described as an AI mania is the possibility that the AI frenzy is a huge bubble that could leave an enormous mess if the bubble were to burst. This possibility is certainly something that those of us who lived through the Dot Com era can easily picture.

Anyone looking for signs that things are getting frothy need look no further than the media reports that in connection with its planned IPO, Anthropic plans to identify potential revenue of $30 trillion. (By way of comparison, the current U.S. GDP is approximately $32 trillion).

In addition, a significant portion of AI activity is being driven by what is in effect "circular financing" – as, for example, where Nvidia agrees to finance a purchaser's acquisition of Nvidia's chips, and in return Nvidia agrees to acquire or backstop the purchaser's computing power or other product or services. In this kind of structure, a mishap anywhere in the sequence could have cascading economic effects.

And while the overall amount of debt involved in the AI buildout is staggering, what is even more alarming is that, according to the *Wall Street Journal* (here), apparently much of the AI debt is being carried off the debtors' balance sheets (to the tune of *$3 trillion*, just for the top nine tech companies).

Creative financing, obscure financial reporting, fantastic financial projections – these are the kinds of practices that in the past have preceded significant market corrections.

And if that were not enough, the reality is that the AI buildout is facing an increasing political backlash, as voters increasingly voice their concerns not just about data center construction but also about AI's potential employment displacement effects. A hostile voter population could have a potentially devastating impact on some of the more ambitious AI plans, particularly if politicians eager to ingratiate themselves with voters turn on AI companies as convenient political targets.

For now, the picture is complex and uncertain. However, it seems probable that in the weeks, months, and years ahead, AI will be an increasingly charged source of D&O risk. There is a lot here for D&O underwriters to worry about.

Our views about the D&O underwriting implications of these AI-related developments are set out in Sarah Abrams's June 2026 post, here.

What is Next with Geopolitics and D&O Risk?

In the current fraught global political and economic environment, businesses face a host of geopolitical risks. Among many other things, companies must deal with the current Trump administration's shifting tariff policies; armed conflict in Ukraine and the Middle East; tensions in the South China Sea; increasing governmental use of sanctions, export restrictions, and technology controls; and supply chain concentration or disruptions.

The claims risk from geopolitical developments has been particularly apparent with respect to the Trump administration's tariff policies. The tariff-related claims risk has involved both regulatory enforcement actions, on the one hand, and private civil litigation, on the other.

In a post earlier this year, Sarah Abrams detailed the claims risks associated with tariff enforcement, including in particular the possibility of False Claims Act claims brought against companies the administration alleges have sought to evade the tariffs. The administration has actively organized investigative personnel and processes to pursue tariff enforcement. Notably, these regulatory claims are not limited just to public companies; indeed, many of the enforcement actions have involved private companies.

In addition to the regulatory risks associated with tariff enforcement, companies also face the risk of private civil litigation associated with tariff-related disclosures. An example of this type of litigation is the securities class action lawsuit filed in June 2026 against the solar panel company First Solar, discussed here. The company's products manufactured overseas are subject to tariffs imposed by the Trump administration. The lawsuit alleges that the company overstated its capacity to manage the impact of U.S. tariff policy and understated the extent to which its operational responses to U.S. tariff policy would negatively impact its financial results.

Other companies have faced securities litigation involving tariff-related disclosures. For example, and as discussed here, in the February 2026 securities class action lawsuit filed against the industrial clothing manufacturer Lakeland Industries, the plaintiff shareholder alleged, among other things, that the company had failed to disclose the extent to which the company's financial performance was deteriorating as a result of "tariff-related headwinds."

Similarly, and as discussed here, in March 2026, the social media company Pinterest was hit with a securities suit alleging that the company "overstated its ability to manage the impact of U.S. tariffs on the macroeconomic environment in which the Company operated, including the foreseeable impact on its advertising partners."

Tariff-related issues remain critically important even though various courts have declared the Trump administration's IEEPA tariffs (discussed here) and Section 122 tariffs (discussed here) to be unlawful. Notwithstanding these court setbacks, the Trump administration has continued to pursue its aggressive tariff policies, most recently seeking to impose tariffs in reliance on Section 301 of the Trade Act of 1974. These tariffs, too, have been the subject of a court challenge. In its recent imposition of tariffs on Canada, the Trump administration is relying on Section 338 of the Tariff Act of 1930 (the infamous Smoot-Hawley Act), which has never previously been used by a U.S. President to impose tariffs.

The current Trump administration clearly intends to continue to use tariff policies as part of its global trade strategy. The likelihood, therefore, is that companies will continue to face tariff-related operating and financial challenges, and it seems likely that the risk of tariff-related claims will continue in the months ahead.

The tariff-related enforcement actions and civil lawsuits are not the only claims that have risen out of geopolitical issues. In recent months, there have been a variety of corporate and securities lawsuits arising from other geopolitical developments affecting companies' operations or financial performance.

For example, and as discussed here, in late March 2026, the data storage and computing systems company Super Micro Computer was hit with a securities suit alleging that the company failed to disclose that a significant portion of its China sales were made in violation of U.S. export control laws and regulations.

Similarly, as discussed here, in July 2026, the semiconductor component parts manufacturer Photronics was sued in a securities class action lawsuit after the company reported disappointing financial results, among other things, because the U.S.-Iran conflict had increased macroeconomic uncertainty and affected customer decision-making.

In addition, in August 2026, and as discussed here, the energy fuel cell company Bloom Energy was sued in a securities class action lawsuit after a short-seller report disclosed that the company was sourcing its supply of the rare earth metal scandium from or through China, contrary to the company's prior representations that it was not dependent on Chinese scandium supplies.

Tensions and trade frictions with China represent something of a theme in a number of recent class action lawsuit filings. For example, and as discussed here, the Chinese technology company Alibaba was hit with a securities suit in August 2026, in which the plaintiff alleged, among other things, that the company had failed to disclose the possibility that its links to Chinese regulatory authorities could expose the company to designation as a "Chinese military company" under U.S. law.

Another geopolitical issue that can have an impact on D&O risk is the enforcement of anti-money laundering laws (AML). For example, as discussed here, in August 2026 a shareholder filed a securities suit against the British money transfer company Wise. The lawsuit was filed after the company failed to obtain a U.S. banking charter following revelations that Belgian authorities were investigating the company for possible AML violations.

In short, geopolitical risks present companies with a host of complicated operational and financial challenges. It is already clear that these challenges can translate into corporate and securities litigation. The challenges, and the related litigation threat, could potentially become of much greater significance in the months ahead.

Market Manipulation Schemes Proliferate

Market-manipulation litigation emerged as a notable securities class action lawsuit filing trend in 2026, involving at least 14 related class actions filed year-to-date (as of August 31, 2026). Although the allegations range from pump-and-dump schemes and stock promotion to spoofing and short-squeeze activity, the cases generally assert that the defendant's manipulative trading practices artificially affected stock prices, resulting in significant investor losses.

A July 2026 Bloomberg Law report noted that in light of reduced SEC enforcement activity and SEC investor distributions, private securities litigation may be playing an increasingly important role in policing alleged market-manipulation schemes.

Many of the market manipulation securities lawsuits filed this year involve foreign, often China-based, low-float issuers. Recent examples include suits against Ostin Technology Group and Megan Holdings, where plaintiffs alleged that stock-promotion activity, limited public float, and concentrated ownership contributed to dramatic stock-price increases followed by steep declines. Similar allegations have been asserted against CLEU, PomDoctor, ChowChow Cloud, Concorde International, and iTonic Holdings. Several of these actions also underscore the growing role of social media in alleged pump-and-dump schemes, with plaintiffs asserting that coordinated online promotion through social-media platforms, investor forums, and digital marketing campaigns contributed to inflated stock prices and heightened trading activity.

The developing trend is not limited to social-media-driven promotion schemes. The February 2026 securities suit against Richtech Robotics alleges that the company overstated the significance of its relationship with Microsoft in order to enhance investor enthusiasm surrounding its AI initiatives, contributing to a substantial increase in its share price immediately before an at-the-market capital raise.

Notably, in March 2026, a federal court dismissed claims against Meta Platforms arising from alleged third-party stock-promotion activity, concluding that Meta was not liable for content posted by users on its platform, though plaintiffs were granted leave to amend. While the decision may limit efforts to hold social-media platforms directly responsible for alleged pump-and-dump activity, it has not diminished plaintiffs' willingness to pursue claims against issuers, insiders, promoters, underwriters, and other participants allegedly involved in the underlying schemes.

Beyond stock-promotion and disclosure-based allegations, plaintiffs are increasingly targeting other forms of alleged market manipulation. The Genius Group/Citadel litigation centers on alleged spoofing activity by the defendant asset manager, while the Pentwater Capital case involves claims that the defendant's short squeeze artificially inflated Avis Budget Group's share price, allowing the defendant to profitably offload its Avis shares before an ensuing price decline. These cases reflect plaintiffs' growing willingness to pursue market-manipulation claims under Sections 9(a) and 10(b) of the Exchange Act.

For D&O underwriters, characteristics that may make a security more susceptible to volatility or trading distortions, including limited float, concentrated ownership, heavy short interest, or unusual trading activity, may warrant increased scrutiny. Whether courts permit these market-manipulation cases to proceed will be an important issue to monitor, but if current filing levels persist, market-manipulation litigation could become one of the most significant emerging securities litigation filing trends.

Private Credit–Related Risk Leads to D&O Claims, D&O Risk

Private credit refers to lending conducted outside the traditional banking system. Over the last decade, private credit funds and other non-bank lenders have become an increasingly important source of financing for private-equity-backed and middle-market companies. As banks have retreated from portions of the lending market because of regulatory and capital constraints, private lenders have stepped in to fill the gap. What was once a niche asset class has grown into a market with more than $2 trillion in assets under management globally, making private credit one of the fastest-growing segments of the financial services industry.

The sector's rapid expansion has attracted substantial investor capital and increased scrutiny of valuation practices, governance, fee structures, and potential conflicts of interest. As credit conditions have become more challenging, many of those issues are now beginning to surface in litigation.

Private credit's rapid growth has brought increased attention to the features that make the asset class distinct, including illiquid valuations, complex fee structures, and liquidity management challenges. In March 2025, *The D&O Diary* asked a straightforward but increasingly important question: Is private credit a good D&O risk? As market stresses have emerged, many of the issues underlying that question are now being tested through borrower bankruptcies and a growing wave of litigation against private credit managers, advisers, and business development companies.

The private credit litigation wave continues to broaden. What began with securities class actions against BlackRock TCP Capital, Blue Owl, Hercules Capital, and FS KKR alleging inflated asset valuations, deteriorating loan performance, liquidity pressures, and inadequate disclosures has expanded into a new generation of claims targeting the business models and compensation structures of private credit advisers. At the same time, distress among private credit borrowers is creating a separate source of exposure, as demonstrated by the Tricolor Holdings bankruptcy and follow-on criminal and civil litigation. Together, these developments suggest that litigation risk is increasingly arising both at the lender level and within the private companies that rely on private credit financing.

A significant development in this trend is the emergence of Section 36(b) lawsuits under the Investment Company Act of 1940. In derivative actions against Blue Owl, Ares, and FS KKR, plaintiffs allege that advisers collected excessive fees because their compensation was tied to valuations of illiquid private credit investments and, in some cases, payment-in-kind (PIK) income that may never be realized in cash. The suits contend that advisers benefited financially from valuation practices that increased assets under management and incentive compensation.

Excessive fee lawsuits allege that private credit advisers faced an inherent conflict by both valuing illiquid portfolio assets and collecting fees tied to those valuations. The key issue to watch is whether courts allow these Section 36(b) derivative claims to proceed past the motion-to-dismiss stage. While any rulings would not be binding outside their jurisdictions, they could provide a roadmap for future claims against other private credit managers.

Another important trend to watch is whether deterioration in private credit portfolios translates into private company D&O exposure at the portfolio-company level. The Tricolor bankruptcy highlighted how allegations involving underwriting, oversight, disclosure, and governance failures can emerge when highly leveraged companies encounter financial distress. As more private credit-backed companies face restructurings, bankruptcies, and liquidity challenges, stakeholders may increasingly scrutinize board decision-making, sponsor oversight, lender influence, and related-party transactions, potentially creating new D&O risk for private company directors and officers.

More broadly, these cases signal that private credit litigation is evolving beyond traditional disclosure-based claims. As borrower defaults, restructurings, non-accrual loans, and redemption pressures continue to test private credit portfolios, investors are increasingly focusing on valuation methodologies, incentive compensation, governance practices, and potential conflicts of interest. Distress within the asset class also appears likely to remain a significant theme.

At the same time, private credit’s reach continues to expand into new pools of capital. The *Wall Street Journal* recently reported that private credit managers are increasingly targeting the U.K.’s pension and annuity markets, creating additional avenues through which risks associated with the asset class may be transmitted to institutional investors. The outcome of the fee-related derivative lawsuits, together with future litigation arising from distressed private credit borrowers and any increase in borrower bankruptcies, may help define the next phase of D&O and E&O exposure across the private credit ecosystem.

Cybersecurity, a Perennial D&O Risk, May be Poised for Transformative Change

Cybersecurity-related issues have long been recognized as an important potential source of D&O claims and liability. More recently, other D&O claims concerns have become more conspicuous, and cybersecurity-related issues have been less prominent. But while cybersecurity-related D&O risks may feature less prominently than in the past, cyber risk remains an important source of D&O liability exposure, and cybersecurity related D&O lawsuits continue to be filed. And even more significantly, the nature of the underlying cyber risk may itself be changing as well, as discussed below.

In an example of the continuing D&O litigation risk associated with cybersecurity, in May 2026, a plaintiff shareholder filed a securities class action lawsuit against cloud data storage company Snowflake, alleging, among many other things, that the company failed to disclose shortcomings in its customer data security arrangements that allegedly allowed key customers to experience a data breach.

In a more recent case, in August 2026, as discussed here, Israeli-based web data firm Alarum Technologies was hit with a securities class action lawsuit in which the plaintiff alleged that the company failed to disclose that alleged flaws in the company's proxy network allowed third-party bad actors to use Alarum's customers' home internet systems to disguise the bad actors' location and to potentially engage in cyber-criminal activity.

These two cases are interesting not just because they involve cybersecurity-related D&O claims, but also because of the nature of the underlying allegations. In each case, the cybersecurity intrusions occurred not to the systems of the defendant companies; rather, the alleged cyber violation involved breaches or intrusions into the defendant companies' customers' systems, as a result of alleged weaknesses in the defendant companies' security protocols or procedures. This distinction is important in considering the underwriting implications; underwriters may find it important to analyze what applicant companies are saying about the risks to customers and others from potential weaknesses in the applicant companies' cybersecurity.

While cybersecurity issues have long been recognized as potential sources of D&O litigation risk, the nature of underlying cybersecurity risks arguably is changing, which in turn could alter the related D&O claims risk. The advent of artificial intelligence (AI) may massively change the cybersecurity equation. AI not only dramatically lowers the cost and skills required for cyber attackers to operate, but it also may act as a force multiplier, massively expanding the potential scope of a bad actor's operations as autonomous AI-powered agents execute actions. AI also provides a host of new targets for the bad actors to try to attack (not only models, but servers, applications, and so on).

The potentially transformative AI effect on cybersecurity is even further complicated by the potential emergence of state actors deploying AI-powered cybersecurity attack tools for political or economic purposes. The July 2026 attack on over 30 municipal water systems in Minnesota, which investigators think was perpetrated by Iranian hackers, could be an example of this kind of nation-state activity, and could also suggest more disruptive and damaging attacks in the future. While nation state cyberactivity is not necessarily a new thing, nation states using AI-powered tools to search for vulnerabilities and to mount attacks could represent a categorically different level of risk.

The risk here is that the combination of AI-enabled cyber tools and the increase in state actor cyber activity could mean an increase in the frequency, complexity, and severity of cyber intrusions, creating both an increasingly challenging environment for company managers as they seek to navigate this environment, and a heightened level of concern for corporate boards as they seek to monitor their companies' operations and related cybersecurity risks.

The bottom line is that while cybersecurity may in some ways represent a perennial D&O liability risk, the nature of both the cybersecurity element and the related D&O risk could be set for changes – potentially, significant changes – in the months and years ahead.

DExit Debate Raises Governance Questions

Although AI remains the dominant emerging risk theme, the continuing "DExit" movement may prove to be one of the most consequential corporate governance developments heading into 2027. Delaware's efforts to stem the outflow of corporations through legislative reforms have not halted interest in alternative domiciles, particularly Nevada or Texas, where lawmakers have enacted a series of measures designed to attract public companies.

A growing concern is whether reincorporation transactions will become a new source of D&O exposure, particularly where shareholders perceive a shift away from Delaware as reducing investor protections or reducing accounability for directors, officers, and controlling shareholders. Proxy voting results suggest that institutional investors and proxy advisory firms are closely scrutinizing whether reincorporation transactions may alter shareholder rights and litigation remedies.

Recent reincorporation by major public companies, including ExxonMobil's move from New Jersey to Texas and Dell's move from Delaware to Texas, underscore that corporate migration is no longer limited to founder-controlled or closely held companies. As larger and more widely held issuers evaluate Texas as a corporate domicile, increased attention has focused on whether the state's evolving corporate law framework may provide greater protections for directors and officers while limiting certain shareholder rights and litigation tools. These concerns have fueled opposition from proxy advisory firms and prompted investors to scrutinize the governance structures, charter provisions, and shareholder-rights protections accompanying reincorporation proposals.

One issue to watch is the extent to which reincorporation transactions themselves continue to be a source of D&O litigation. In August 2026, shareholders filed an amended derivative complaint challenging Dropbox's reincorporation to Nevada, alleging that the move was designed to insulate management and the company's controlling stockholder from accountability and to reduce stockholder protections. The case is significant because it suggests that plaintiffs may increasingly challenge reincorporation transactions not merely as governance decisions, but as conflicted transactions that allegedly benefit insiders at the expense of shareholders. The litigation also raises questions about what process, disclosure, and board-level safeguards may be necessary when a company seeks to leave Delaware.

As more companies evaluate whether to relocate their corporate domicile, a key question will be whether plaintiffs increasingly challenge those transactions through fiduciary duty, disclosure, derivative, or books-and-records litigation. Whether courts treat these moves as ordinary governance decisions entitled to business-judgment deference or as transactions conferring unique benefits on directors, officers, or controlling shareholders could significantly influence both the pace of future reincorporations and the litigation exposure associated with them.

For D&O underwriters, reincorporation proposals may warrant closer examination of a company's ownership structure, governance profile, stockholder relations, and rationale for leaving Delaware. Companies with controlling shareholders, activist pressures, significant governance disputes, or proposals perceived as reducing shareholder rights may face heightened litigation risk surrounding the reincorporation process itself. As DExit transactions become more common, litigation challenging the decision to change domicile may emerge as a distinct category of corporate governance and D&O exposure.

New Developments on the Frontiers of Corporate Governance

In recent months, along with the changes in technology and geopolitics, there have also been developments at the frontiers of corporate governance, some of which potentially could have significant impacts on the liabilities of corporate directors and officers, and in some cases potentially could transform D&O litigation. One of the most significant recent changes in the corporate governance arena has been the previously discussed DExit movement. Other changes, which potentially could have an even more significant impact, are discussed below.

SpaceX IPO and Litigation Minimization Efforts

SpaceX went public in a high-profile IPO in June 2026. The transaction was noteworthy for many reasons, not least of which was its size – it was in fact the largest IPO ever. The transaction is also noteworthy because of what it may represent in terms of corporate governance reform.

In connection with its IPO, SpaceX adopted a host of measures clearly calculated to try to reduce the corporate and securities litigation exposures of the company and its executives. Although many of these measures are not entirely new, SpaceX initiatives take these steps further; taken collectively, the measures could transform the company's corporate litigation exposure – and, if followed by other firms, the exposures of other publicly traded companies as well.

The SpaceX litigation management efforts start with its move to reincorporate from Delaware to Texas, in part due to an expectation that Texas corporate law provides broader protections for directors and officers. SpaceX also opted into a Texas-law provision allowing companies to require a shareholder to own at least 3% of the company's outstanding stock before bringing a derivative action on behalf of the company. (Given SpaceX's massive valuation, a 3% share represents tens of billions of dollars.)

SpaceX also adopted a number of exclusive forum provisions, designating specific venues, including the Texas Business Court and in certain circumstances arbitration forums, as the exclusive forum for many shareholder disputes.

The company went even further by implementing mandatory arbitration provisions, requiring many shareholder disputes to be resolved through binding arbitration rather than court litigation. These provisions are accompanied by jury trial and class action waivers, under which investors purchasing SpaceX shares are deemed to have waived the right to a jury trial and, for specified disputes, the ability to pursue class actions.

These provisions could extend to a broad range of shareholder and securities-related claims. Were the company to seek to extend these forum and other restrictive provisions to liability actions under the federal securities laws, they could face significant court challenges. However, the provisions' inclusion in the company's charter provisions highlights the extent to which the company is seeking to minimize and channel its litigation exposures.

Although not itself a litigation management measure, the company's corporate dual-class and founder control mechanisms were structured to limit shareholders' ability to challenge management through governance processes, reducing potential inroads for shareholder disputes and arguably even efforts to hold management accountable.

The broader significance of these efforts does not lie in any one provision, but rather in what the overall effort represents: a continuing of a growing trend of companies seeking to narrow shareholder litigation avenues before the companies enter the public markets, as discussed in a May 26, 2026, *Wall Street Journal* op-ed (here).

The bottom line is that SpaceX's efforts, taken collectively, may, if successful, significantly shift the corporate governance line away from investor protection and management accountability, and toward a more comprehensive set of corporate protections.

The "Rampant" Increase in Government Corporate Ownership

It is not an entirely new development for the U.S. government to take an equity ownership position in private companies. Many will recall that during the global financial crisis several years ago, the government took equity positions in a number of companies, including, for example, General Motors and American International Group.

More recently, under the current Trump Administration, the federal government has adopted measures to take equity positions in a number of shareholder-owned companies. In a July 2026 study, the libertarian Cato Institute has said that the Trump administration's moves to take equity ownership positions have become "routine." The report states that the Trump administration has taken or has sought to take an equity ownership position in 30 companies.

The highest profile example from this expansive program is the 2025 transaction in which the U.S. government received approximately a 9.9% stake in Intel. The ownership interest was issued in connection with the release of roughly $8.9 billion in funding previously awarded to the company under federal semiconductor initiatives, including grants authorized by the CHIPS and Science Act of 2022 (CHIPS Act).

Regardless of what may be said about these kinds of arrangements from a policy perspective, this form of governmental corporate ownership raises a host of corporate governance concerns and questions. Indeed, the transaction in which the government received the Intel stake is itself already the subject of a shareholder derivative lawsuit, as discussed here.

The March 2026 Intel derivative lawsuit complaint alleges that the company's CEO and board breached their fiduciary duties by approving an unlawful contract giving the U.S. government billions of dollars' worth of Intel stock for no meaningful consideration in response to extortionary threats by the government. The complaint advances allegations of illegality, coercion, conflicted decision-making and inadequate board process, while also raising concerns about corporate waste and the potential entrenchment effects of a government-aligned corporate share voting arrangement.

The potential problems with these kinds of government ownership arrangements are legion. For starters, the government owner inevitably will sit in conflicted positions, as shareholder, regulator, customer, tax authority and policymaker. Corporate management may feel pressure regarding plant locations, employment and supply-chain choices, and even pricing or production decisions.

As the Intel derivative lawsuit demonstrates, private companies encountering government pressure to provide the federal government with an ownership stake may face complicated questions pitting shareholder primacy against political pragmatism. As the Intel case also shows, these complicated questions may lead to shareholder claims, suggesting that the Trump administration’s move toward state capitalism could represent a new area of potential D&O litigation exposure.

The Advent of the Artificial Intelligence Company?

One of the most interesting recent developments suggests the possibility of changes at the very frontiers of corporate governance. As we discussed in a recent post (here), Delaware is considering groundbreaking legislation that would create a new type of legal entity called an Artificial Intelligence Company (AIC). Under the proposal, an AI agent, rather than human managers or executives, would run the company’s operations. The AIC would have its own legal identity, allowing it to own assets, enter contracts, and sue or be sued, while providing limited liability protection to its owner or member. Initially, these entities would operate within a tightly controlled 30-month regulatory sandbox overseen by Delaware officials.

Supporters of the proposal argue that autonomous commerce is likely to emerge regardless of whether laws are prepared for it. By creating a regulated framework now, Delaware hopes to monitor, test, and shape the development of AI-run businesses rather than allowing them to develop in less regulated jurisdictions. The proposal includes safeguards such as capitalization requirements, mandatory disclosures, activity logging, defined authority limits for the AI agent, and mechanisms to suspend or revoke an AIC’s authorization if problems arise.

The concept raises significant legal and governance questions. Critics question the practical need for AI-run companies and wonder whether courts outside Delaware would recognize the new corporate form and its liability protections. There are also concerns about accountability if an autonomous company makes harmful decisions, violates laws, enters unauthorized contracts, or otherwise “goes rogue.” The proposal’s supporters contend that granting legal personhood to autonomous entities may actually provide a clearer framework for assigning responsibility when AI systems cause harm.

The possibility of the introduction of this new autonomous corporate form has interesting implications for the D&O insurance industry. Traditional D&O policies are designed to protect human directors and officers, but an AIC would have no human management. As a result, insurers may need to develop entirely new liability products tailored to autonomous companies. Such policies would likely focus on entity-level risks, the AI system’s controls and limitations, capitalization levels, oversight mechanisms, and potential liability arising from the AI’s actions.

While many questions remain unanswered, the proposal represents an important early effort to address the legal, governance, and insurance challenges posed by increasingly autonomous AI systems. Time will tell, of course, what is to become of the Delaware proposal.

What is Next for the D&O Insurance Marketplace?

As the preceding discussion shows, the D&O insurance industry is faced with an array of increasingly complex and challenging risks. But for now at least, the D&O insurance market remains in the soft market phase of the insurance cycle. However, there may be signs that the D&O insurance market may be beginning to stabilize.

Today's soft market can be traced back to the last hard market phase, in the period 2019-2021. At that time, deteriorating losses in insurers' D&O books led to sharp price increases. The price increases in turn attracted substantial numbers of new market entrants with fresh underwriting capacity. The result of the influx of new capacity was that starting in 2022, D&O insurance pricing began to fall, and coverage offerings broadened. The soft market phase of the cycle then commenced in earnest, as insurance buyers benefitted from several consecutive years of pricing decreases and increasingly favorable terms.

As always happens during the soft phase of the market cycle, insurers began to complain that pricing had fallen below risk-based levels. Notwithstanding these concerns, the market has remained competitive (although in every phase of the market cycle, hard-to-place accounts and distressed risks may still face a more challenging placement process).

There have been recent signs that pricing decreases may have levelled off, suggesting that at least some insurers in at least some instances are able to hold the line on pricing. Some observers have tried to suggest that this leveling off represents the early stages of an incipient market turn. Time will tell if this will be the case, although for now a true market turn seems unlikely.

The key circumstance that led to the soft market – an abundance of insurance capacity – remains in place and unchanged. As long as insuring capacity is abundant, competition will continue, which will in turn act as a check on any systemic shift to the next phase of the market cycle.

Another factor to consider is the issue of insurer profitability. One factor that generally leads to a hard market is industry-wide unprofitability. However, the D&O insurers generally continue to report profitable results, and many of the leading D&O insurers most recently reported results were solidly profitable. The current reported levels of profitability do not reflect the kinds of circumstances that generally precede an industry shift to a harder market.

In short, the most likely scenario in the near and middle term is a gradual stabilization of pricing, rather than a rapid shift toward a harder market. The marketplace in general, and in the near term at least, continues to be characterized by ample capacity, with competition acting as a check on comprehensive price increases.

In the near term, at least, most insurance buyers will continue to enjoy the wide availability of broad coverage at attractive pricing, though pricing is likelier to be closer to flat rather than reflecting the kinds of pricing reductions that were common in many of the more recent years.

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