

# The Risk is Real for an Independent Director

Because of today's litigious environment, independent directors face greater personal liability than ever before. A traditional Directors and Officers (D&O) Liability Insurance policy may not be sufficient and the personal assets of independent directors may be at risk.

Independent Director Liability (IDL) Insurance can reduce this risk by providing policy limits dedicated to cover the individual director. Here are just a few examples of the damage lawsuits can have on independent directors — illustrating why having IDL coverage is so important.

## Nonprofits' Independent Directors Pay Share of \$3 Million Judgment Costs

### *Breach of Fiduciary Duty*

A nonprofit organization providing housing for the disabled was sued by the parent of a group of adult disabled children for breach of fiduciary duty. After a jury trial and an appeal, the parents were awarded a judgment in excess of \$3 million. Since the organization's D&O insurance limits of liability were exhausted, each independent director of the nonprofit's board of directors was required to contribute toward judgment.

## Country Club's Defense Costs Become Independent Directors' Responsibility

### *Financial Mismanagement*

Country club members filed suit against the country club after the club's directors and officers neglected to renew an option to extend the rent-free lease of the land it used for its golf course. As a result of this omission, the landowner required the club to either purchase the land for more than

\$10 million or to lease the land for a substantial price. The suit was settled for \$2 million. Defense costs exceeded six figures. Since the country club's primary insurance limits were exhausted and no excess insurance had been purchased, its independent directors were required to pay a portion of the legal costs.

## Independent Directors Left Footing \$41 Million Legal Bill

### *Conflict of Interest/Bad Faith/Breach of Fiduciary Duty*

Five former independent directors of an athletic shoe retailer were required to pay more than \$41 million from their own funds to settle a lawsuit that charged conflicts of interest, bad faith and breaches of fiduciary duty. The costs of this securities class action lawsuit and criminal and SEC investigations, which stemmed from allegations of accounting fraud, had exceeded the company's D&O policy limits. A settlement was reached after the company filed for bankruptcy and bankruptcy trustees filed suit against the independent directors. This settlement was one of the largest of its kind.

## Enron and Worldcom's Independent Directors' Personal Assets Tapped

### *Breach of Fiduciary Duty*

Enron's independent directors paid approximately \$13 million of their own money following multiple lawsuits arising from the accounting fraud charges levied against the energy company. Enron's independent directors were sued for alleged breach of fiduciary duty. According to the allegations, the independent directors failed to be informed of certain management decisions that ultimately were detrimental to the company and shareholders. In Worldcom's case, its independent directors agreed to pay nearly \$20 million to settle a securities class action lawsuit against them for alleged breach of fiduciary duty stemming from Worldcom's massive financial collapse.

