

Delaware Court Decision Changes Expectations for Directors' Indemnification and Advancement Rights

The litigation risks facing private equity firms and their portfolio companies have increased significantly in the last several years. Until recently, the widespread expectation of private equity investors whose principals sit on the board of directors of a sponsor's portfolio company has been that, in the event of litigation against the sponsor's director designees, the portfolio company would provide full advancement and indemnification to the sponsor's designee(s), with the private equity sponsor providing such advancement or indemnification only in the event that the portfolio company is legally or financially unable to pay. A single Delaware Chancery Court decision has, however, disrupted this settled expectation and, in so doing, raised the financial stakes faced by private equity firms and their principals in the event of litigation.

In the attached article, "Director and Officer Liability: Delaware Reinforces the Limits on Indemnification Claims," Ropes & Gray partner [Randall Bodner](#) and associate [Peter Welsh](#) discuss the implications of the *Levy v. HLI Operating Co.* decision on the indemnification and advancement rights of private equity firms' board designees. The authors also suggest potential work-arounds to the issues raised by the Levy decision. One of the work-arounds the authors discuss was recently embraced by the Delaware Chancery Court in *Sadona v. American Stock Exchange*, which was issued after the attached article was written. To view the article, please [click here](#).

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