

# Business Insurance: Pendulum swings causing emerging D&O risks, panel says

NEW YORK — New risks in directors and officers liability coverage are emerging from artificial intelligence, executive orders calling for rollbacks in initiatives for diversity, equity, and inclusion, environmental, societal, and governance, and companies considering reincorporating outside of Delaware, a panel of experts said Wednesday.

During a session at the Professional Liability Underwriting Society D&O Symposium moderated by Beachwood, Ohio-based Kevin LaCroix, the executive vice president of RT ProExec, panelists said rollbacks of DEI and ESG initiatives can potentially cause a spike in securities class actions and regulatory and enforcement actions from government agencies.

The rollbacks could also lead to “a new brand of litigation” containing allegations that could impact both D&O and employment practices liability policies, said Adam Ziffer, a New York-based insurance recovery partner at Cohen Ziffer Frenchman & McKenna LLP.

“One of the challenges I think we’re going to see are that the cases aren’t the ‘up the middle’ stock drop cases on the public company side,” he said.

Public companies that remove the initiatives could be at an increased risk of inadequate disclosure claims from shareholders, and private companies could face unfair trade practices lawsuits, said Jennifer L. Odrobina, senior vice president and head of financial lines claims at Sompo International.

She said companies should take a step back, not make drastic changes and think about how any changes are disclosed.

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Texas, which launched its own business court system last September, is likely to rely heavily on the corpus of Delaware case law, Mr. Ziffer said.

The main benefit of Delaware courts is its 90-day rule for issuing a ruling after a motion is fully briefed or argued and that judges are receptive to working with counsel on litigating claims, he said.

As AI use continues its ascent, it will be an exposure for companies and become part of their risk profile, Ms. Odrobina said.

She said the insurance industry needs to think about AI and aggregated risk and that companies should categorize how they use AI.

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