

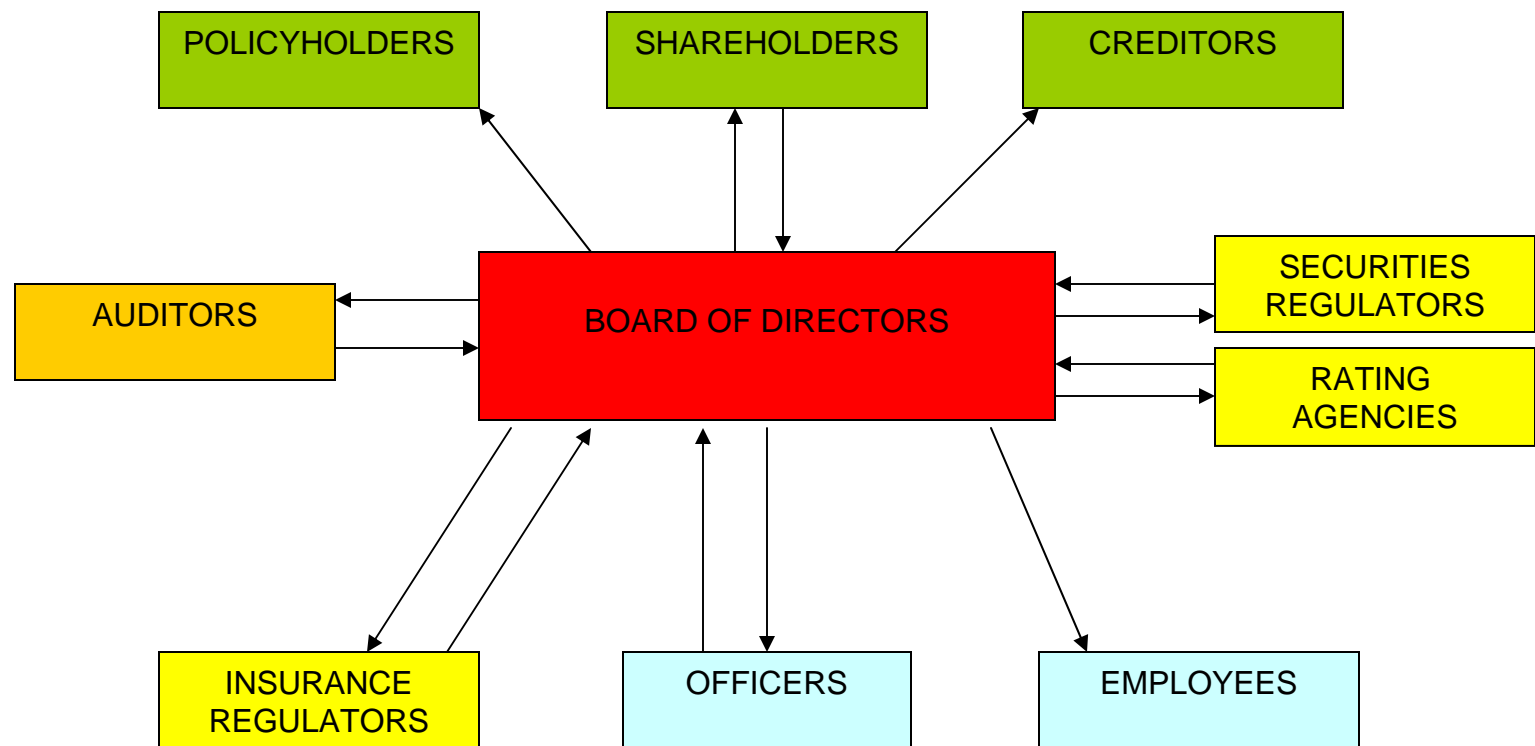
# Regulators, Risk Managers and Good Corporate Governance Is Your Board of Directors Up To The Job?

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# DIRECTOR CONSTITUENCIES



# Sources of Director Liability

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- **Stockholders**
  - Inadequate/inaccurate disclosures
  - Dishonesty/fraud
  - Financial reporting
  - Fiduciary duty/gross negligence
- **Policyholders**
  - Inadequate surplus
  - Insolvency
- **Government (i.e., Insurance or Securities Regulators or Attorneys General)**
  - Enforcement proceedings
  - Investigation/subpoenas
  - Criminal penalties

# DIRECTOR RESOURCES TO MANAGE LIABILITY

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- **Officers**
  - **Financial Reports**
  - **Management Discussions of Operations**
- **Auditors**
  - **Internal**
  - **External**
- **Actuaries**
- **Attorneys**
  - **General Counsel**
  - **Outside Firms**

# CIVIL AND CRIMINAL PROCEEDINGS

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- **Insurance Regulatory Actions**
  - Breaches of fiduciary duty
  - Failure to manage investments
  - Insolvency
  - Breaches of laws and regulations
- **Securities Class Actions or Securities Regulator Enforcement Proceedings**
  - Misstatements or omissions in company's public filings
  - False or misleading statements in offering documents
  - Forward-looking reports to analysts, rating agencies, etc.

## CIVIL AND CRIMINAL PROCEEDINGS (cont.)

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- **Shareholder Derivative Actions (brought on behalf of the company to address breach of fiduciary duty owed to the company)**
  - **Breach of obligations can result in personal liability**
    - **Duty of Care**
      - “prudent person” standard
      - Informed decision
      - Perform in good faith
    - **Duty of Loyalty**
      - No furthering of personal interests
      - Refrain from personal action that may damage the company
- **Many jurisdictions have or are developing shareholder derivative actions**

## Principles-Based Regulation: Greater Risk of Litigation?

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- **Bright-Line v. Principles Based**
- **Without technical standards, legitimate business judgments may be second-guessed**
  - **Regulators**
  - **Private plaintiffs**
- **Rules-based regulation provides definitive answer and “safe harbors” for engaging in defined conduct**
- **Principles-based regulation requires a tailored approach and the continuing education of all constituencies**