

NACD NJ  
June 13, 2017  
Canoe Brook Country Club, Summit, New Jersey

#### BET YOUR COMPANY: WHEN MAJOR LITIGATION HITS

The law firm of Morgan, Lewis & Bockius LLP sponsored today's program examining the role of Board members when their company is targeted with litigation, including when Board members are named as defendants to the lawsuit or in follow-on litigation initiated by shareholders. The panel featured Marc Sonnenfeld, a senior trial attorney with Morgan, Lewis who has defended boards in class action, derivative and other litigation; John McGahren, a litigation practice leader at Morgan, Lewis; and Ralph J. Marra, SVP for the NJ Sports and Exposition Authority and a former US Attorney. Pam Craven, NACD-NJ Board member and a Director of Amber Road, Inc., moderated the panel.

The panel approached the issue from the perspective of hypothetical and actual litigation scenarios involving criminal exposures, shareholder claims and cybersecurity investigations. Among the areas covered were the Board's legal duties and its avenues for self-protection both in the law and through insurance, the Board's role in conducting investigations, the engagement of counsel, the importance of preserving legal privilege, when separate representation may be required for different parties and the use of a crisis communications advisor.

As the bottom line of a lively and interactive meeting, the experts offered the following advice: be prepared before actual or threatened litigation occurs by understanding the Board's duties, reviewing corporate documents that can shield the Board from liability and providing for indemnification and insurance coverage; have a regular process for litigation review; examine the qualifications and any conflicts of counsel; and understand which cases can have far-reaching reputational or other impacts and take an active role in settlement strategy.