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ITLA

*The Newsletter of
Independent Testing
Laboratories Association
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Message from the President

By Kevin Braga

I recently attended the Safe Drinking Water Act Advisory Committee Meeting on Wednesday, January 30, 2008. The meeting discussed the ability of water supplies to meet Homeland Security issues. They also demonstrated the Homeland Health Alert Network. I found this interesting and informative, but somehow a topic was discussed that was not mentioned on the agenda. Damon Guterman spoke about issues concerning labs' and sub-contracted labs' obligation to report results immediately for drinking water samples that have exceeded regulatory limits. I discovered during the meeting, that just such an issue happened between a lab and a sub-contracted lab concerning reporting results. The sub-contracted lab held the results due to payment issues between the prime lab and the sub-contracted lab. This "issue" delayed the reporting of results which in turn caused a delay in the reporting of the results to the drinking water supply. I have included an excerpt from the

minutes of that meeting. They are as follows:

Damon Guterman requested input on an issue that Mass DEP became aware of last Thursday. A lab held back water quality results for months because of a non-payment issue with the client. In this case the results were not valid due to failure of holding time requirements. There is an existing requirement for 24 hour resampling for exceedances and invalid results. The Drinking Water Program would like to have the lab certification regulations revised to require 1) 24 hour notification by a lab to a client about an invalid sample result and 2) notification of the invalid sample result to Mass DEP if the lab has an issue with sending the information to the client. The Laboratory Certification Committee will review this proposal at their meeting in March. (Note: The original proposal from Mass DEP's Strike Force was to no longer allow third party contractors.)

Annual Meeting

Wednesday, March 19, 2008, Crowne Plaza in Worcester, MA

Feature Presentation: "The Challenge of Nitrogenous Disinfection Byproducts"

Mr. David Reckhow, University of Massachusetts, Amherst, MA See page 4 for agenda

Question for the committee: Should this wait until the next regulatory package (for the Groundwater Rule) scheduled for January 2009? Should an emergency regulation be put forth?

It appears that due to this problem, there will be changes for the lab community concerning how we deal with drinking water samples. This topic is set for discussion at the LAC meeting scheduled for early March. There will be a discussion about what will meet the obligation for informing the prime lab of a "failure" concerning drinking water samples. It appears that notification of the failure without supplying the actual results may be acceptable.

Finally, this is my last letter as President. I want to thank all of the members of the Executive Committee for their help during the past two years. Without them, this position would be impossible to manage alone. It has been a pleasure serving as your President, and I wish all the best to Chris Wakefield as he assumes the roll as President of the ITLA.

I look forward to seeing all of you at our annual meeting scheduled for Wednesday, March 19, 2008 at the Crowne Plaza, Worcester, MA.

MWRA Items

By Mike Delaney, mdelaney@mwra.state.ma.us

Update on MWRA TRAC.IS and LIMS

Inflection Point Solutions continues to work on MWRA's new Pretreatment Information Management System (PIMS), formerly known as TRAC.IS. This commercial, off-the-shelf system is being modified to address MWRA's unique needs for enhanced data management capabilities in the MWRA's Toxic Reduction and Control section. Three contract labs have volunteered to beta-test the software in March and plans are to go-live with the new software later in 2008. All contract labs that have been submitting data to TRAC should have received an email containing a description of the new system and the specifications of the data file format.

The New LIMS contract has been awarded to LabWare, inc. (www.labware.com) and configuration and implementation will take place over about the

next year. The current LIMS and TRAC.IS have been in use for over fourteen years and are in need of updates due to changes in computer technology.

MWRA Receives New England Water Environment Association's Asset Management Award

The New England Water Environment Association (NEWEA) presented MWRA with its new Asset Management Award at its Annual Conference, held in Boston recently. This award recognizes the initiative and leadership of MWRA and its staff in the field of facilities asset management, most notably at the Deer Island Treatment Plant. MWRA's initiated one of the country's first comprehensive and successful facility asset management programs in 2000.

In 2002, MWRA volunteered its staff to share their methodologies with similar agencies and helped to create the NEWEA Asset Management Committee. The committee has since educated utilities across the nation about best practices in facilities asset management through numerous publications, case studies, and conferences.

The Executive Office Of Energy And Environmental Affairs Leading By Example - Program Award Recipient:

MWRA was honored by the Executive Office of Energy and Environmental Affairs for its renewable energy, efficiency, and recycling efforts. EOEEA received 22 Leading by Example Award Applications, and MWRA was one of six awardees selected. A number of efforts by MWRA were cited, including MWRA's on-site generation and renewable energy generation on Deer Island; the recent award of a design/build contract for solar panels at Deer Island; the exploration of other opportunities for solar, wind, and hydroelectric power at a number of facilities; recycling efforts; and its alternative fuel vehicles and diesel retrofits.

MWRA Featured As "Success Story" In Water Efficiency Journal:

MWRA's demand management efforts have been featured in the January/February issue of Water Efficiency, a national journal for conservation professionals. The Water Efficiency cover story highlights MWRA's program to aggressively reduce water waste and consumption system-wide. MWRA's demand management initiatives include continuous leak detection and pipeline rehabilitation

efforts, community support programs and public education about household water efficiency. The demand management program has been in place since MWRA was created in 1985 and continues today with excellent results. MWRA's overall demand for water has been reduced from 336 million gallons per day (average) in 1987 to approximately 212 million gallons per day in 2007/2008 — despite population changes and recent housing booms.

Visit our web page for more information: Check us out at www.mwra.com. We have a wealth of information for both the public and for experts on our water and wastewater activities. This includes monthly updates on drinking water quality testing, information on lead, our most recent Consumer Confidence Report, and many technical reports associated with the Deer Island Treatment Plant and our extensive Harbor and Outfall Monitoring program.

Regulatory Update

By Bob Bentley, bob@h2otest.net

eDEP: eDEP is still a work in progress. As I wrote in our last newsletter, the DEP heard that some in our community are not overly excited about how the process works. They earmarked the “nickname” issue and the end user-friendly form as “priority projects.” At the last meeting, we were given a time lines. The end user-friendly form is expected to be done in late March or early April, but the “nickname” issue would be a “2008 project.” They are currently working on a small lab version (basically one sample at a time) for some of the more frequently uploaded analytes, and hope to have it rolled out soon. This has been a very, very long process, and at this writing, appears that it will take much longer before we have a final, smoothly working version.

Lab Certification Program: Apparently, as a part of the eDEP program, the acceptance of Performance Testing results in an electronic format is being actively discussed. Evidently, almost all PT providers are reporting in their own format, making review of the submitted data very cumbersome on the part of the LCO. Requiring electronic submission will streamline

this process. The LCO has to discuss this with PT providers before going ahead, so stay tuned.

The LCO reports that they are also working on ITLA's request for electronic submission of laboratory renewals.

There was discussion regarding the reporting of perchlorate results from laboratories who are using EPA Method 331 or 332. Regional differences in reporting requirements (MRL vs. MDL) were discussed, and thought, to be resolved. At this writing, however, there has been no formal memorandum from the LCO regarding this, and Central Region wants one prior to acceptance of the data.

It was reported that all 4 Regions and Boston staff sat down to discuss bacteria codes. There is a movement afoot to eliminate some and add some, but this cannot be done until there is a revision to eDEP, and based on the previous discussion, this could be a ways off.

State oversight: As I have reported in this column before, Rhode Island has recently promulgated regulations requiring labs to submit private well (new or being transferred) data to them - even without the homeowner's consent. These are in the process of being finalized now. Some of the requirements include certification of samplers, and certification of interpreters. While the “sampler” is self-explanatory, the imposition of an “interpreter” is significant for homeowners, boards of health, real estate personnel, and labs. NOTE that “samplers” and “interpreters” are **required** to be **licensed** under this law! While the onus seems to remain with the homeowner and/or Board of Health to report, this still has the potential to morph into requiring reporting by the lab. At a meeting where the law was being presented, a question relating to “failing” the pH recommended limit of 6.5-8.5 with a 6.0 pH, drew a response that “this could be waived by the Interpreter.” Otherwise, the well would “fail.” This impacts all laboratories doing any drinking water analyses in Rhode Island.

We will be able to update you at our upcoming meeting with news from the March Lab Advisory Committee meeting. If you know of other regulatory issues, please contact me or any member of the Executive Committee.

ITLA Annual Meeting

Wednesday, March 19, 2008

Crowne Plaza

10 Lincoln Square Worcester, MA 01608

Phone: (508) 791-1600

9:00 a.m. Meeting Begins

9:15 a.m. Committee Reports

Secretary	Technical
Newsletter	Lab Advisory
Election	Membership
Ethics	Treasurer
Regulatory	By-laws

9:45 a.m. Break

10:00 am The Analysis of Environmental Samples by ICP-Mass Spec. Instrumentation

Lee Davidowski, Ph.D., PerkinElmer

An introduction to the role of ICP-MS in the environmental laboratory.

Answers to the question: "What is needed to put an ICP-MS in my lab?"

Discussions of some new interference-correction hardware options. Also, a review of the current status of the EPA methods for determining trace metals in water, waste water, and solid wastes will be given. Sample preparation options and contamination precautions will be reviewed.

10:45 am Break

11:00 am The Challenge of Nitrogenous Disinfection Byproducts

By Dave Reckhow, University of Massachusetts, Amherst, MA

Nitrogen-containing disinfection byproducts (N-DBPs) include halogenated cyano compounds, amides, amines, nitrosamines, and haloamines. In contrast to the THMs and HAAs,

many of the N-DBPs are formed at higher concentrations in systems that use chloramines. Their analytical chemistry is complicated by the presence of nitrogen, especially when the nitrogen becomes halogenated. Until recently, very little was known about most N-DBPs, but data are starting to emerge on the chemistry and occurrence of these compounds. The N-DBPs also raise new questions of toxicologists as they represent structures that have been little studied. In this talk, I will try to summarize the current state of knowledge in this rapidly changing area.

12:00 am Lunch

1:00 a.m. Finding Pharmaceutical Compounds and Their Derivates in Both Drinking Water and Wastewater

By Nick Anastas, MA DEP

This presentation will provide an update on a project that the Massachusetts Department of Environmental Protection and the University of Massachusetts at Amherst have undertaken to find pharmaceutical compounds and their derivates in both drinking water and wastewater samples.

calendar

April 30, 2008 - Tentative
Executive Board Meeting
Bugaboo Creek Restaurant

June 18, 2008 - Tentative
ITLA Quarterly Meeting
TBD
9:00 a.m. - 12:00 p.m.

Nominating Committee & Bylaws Committee Report

The offices to be filled in 2008 are President and Vice-President. We are pleased to report that the nominee for President is Chris Wakefield and the nominee for Vice-President is Dan Falcone. Both are long-time ITLA members and have served the Association for many years in other capacities. If you are members in good standing, you will be asked to vote at the upcoming Annual Meeting. If you are unable to attend, please print this page and fax it to Judy Graves at (570) 882-8538. Please add your name and your company name to the bottom of this page. Remember that there is one vote per member lab. Questions about the bylaws should be addressed to Dan Falcone at 401-461-7181.

ITLA

2008 Ballot for Election of Officers

Please - one vote only per member lab or member vendor

please vote for one by circling the bullet for each office

President:

■ **Chris Wakefield**

■ _____

Vice-President:

■ **Dan Falcone**

■ _____

Bylaws

■ **Accept Bylaws as attached**

■ **Do Not Accept Bylaws**

Company: _____

Name: _____

**Independent Testing Laboratory Association
By-Laws Approved March 2008**

**ARTICLE I
NAME AND OFFICES**

Section 1. Name. The name of this organization is INDEPENDENT TESTING LABORATORY ASSOCIATION, hereinafter called "Association" or ITLA.

Section 2. Offices. The organization will have offices in such places in the Commonwealth of Massachusetts as the Executive Board of Directors may from time to time determine or the business of the organization may require.

**ARTICLE II
OBJECTIVES**

Section 1. Objectives. The objectives of ITLA shall be:

- 1) To promote excellence and professionalism of the Association's members and to provide activities and opportunities to the individual members who may enhance professional development.
- 2) To provide activities and opportunities, which may contribute to individuals and technical growth by informing members of new or improved technologies
- 3) To acquaint the public with the professional stature of the Association and its members.
- 4) To provide activities and opportunities, which will enable a member to make a greater contribution to his or her company and/or community.
- 5) To strive for ethical competition between laboratories
- 6) To promote interactions with other relative industry Associations.
- 7) By virtue of the above objectives, to provide united and meaningful input and influence in the formation and legislation of laws and regulations that affects ITLA and its members.

**ARTICLE III
MEMBERSHIP**

Section 1. Qualifications. Any approved laboratory involved in environmental analysis; those laboratories pursuing approval; or those individuals, organizations, companies, firms, and other corporate and non-corporate entities interested in the activities of the Association are eligible for membership. Membership shall be in the name of one, designated individual.

Section 2. Membership Classification. There shall be the following membership classifications: ACTIVE, AFFILIATE, STUDENT, and CORPORATE SPONSORS.

Section 3: ACTIVE Membership. Active membership in ITLA shall only be available to independent commercial laboratories maintaining current certification from the Massachusetts Department of Environmental Protection (MADEP) or other equivalent state or federal certifying authorities as may be determined from time to time by the Executive Board.

Section 4. NON-VOTING Membership. Except where specifically noted, the following membership classes shall have no vote nor be eligible to hold office in the Association.

- 1) Affiliate membership shall be available to any municipal or government funded (fully or partially) laboratory maintaining current certification from the MADEP or other equivalent state or federal certifying authorities as may be determined from time to time by the Executive Board or those laboratories actively pursuing certification from MADEP. Affiliate members can participate in the activities of the Association and serve on committees.

- 2) Student membership shall be made available to any interested undergraduate or graduate student enrolled in any of the universities or colleges within the Commonwealth. Student members can participate in the activities of the Association and serve on committees.
- 3) Corporate Sponsorship shall be available for organizations that are not testing laboratories, and do not have MADEP certification, upon approval of the Executive Board who will also establish an annual fee schedule for these sponsors. Corporate Sponsors can participate in the activities of the Association and serve on committees.

Section 5. Termination. Membership may be terminated for the following reasons:

- 1) Any member may resign by giving notice in writing to the President of the Association thirty days prior to its effective date. Resignation does not relieve the member of responsibility for all dues or other obligations accrued until the effective date of registration.
- 2) The Executive Board may terminate membership when dues of a member are six months in arrears.
- 3) Any member may be expelled, censured, or suspended as two thirds of the membership may be determined for actions prejudicial to the welfare, interest or character of ITLA including violation of the Association's Code of Ethics, Article XVI.

Section 6. Membership applications are to be received by the membership committee. After initial review, the application is forwarded to the Executive Board for approval.

ARTICLE IV VOTING

Section 1. Voting Privileges. Voting will be limited to Active laboratory members. Each member laboratory will possess only one vote.

ARTICLE V DUES AND FEES

Section 1. Annual Dues. The annual dues for Active, Affiliate, Students, and Corporate Sponsors shall be as determined by the Executive Board. Dues are payable to the Treasurer on or before January 1st. No member shall be in good standing whose payments are more than sixty days in arrears.

Section 2. Annual dues cover the Association's fiscal year, January 1 - December 31 of each year.

Section 3. There may be a charge per Laboratory to cover the cost of meeting expenses as determined by the Executive Board.

ARTICLE VI ADMINISTRATION

Section 1. The property and business of the corporation shall be managed by its Executive Board as delegated by the membership which may exercise all powers of the corporation and do all such lawful acts and things that are not in conflict with the Certificate of Incorporation or Bylaws.

Section 2. Meetings. Regular Meetings of the membership may be held within the Commonwealth of Massachusetts at such time and place as shall be determined by the Executive Board or the membership. There shall be a minimum of four meetings of the membership in each fiscal year and the March meeting shall be considered the annual meeting of the corporation.

Section 3. Emergency Meetings. The Executive Board may call special or emergency meetings with three day's notice given to each member.

Section 4. Quorum. Ten percent, (10%), of the total membership present at a designated meeting shall be necessary and sufficient to constitute a quorum for the transaction of business.

Section 5. The order of business at meetings shall be:

- (1) Reading of minutes of last meeting
- (2) Reports of Officers
- (3) Reports of committees
- (4) Reading of papers or talks by invited speakers
- (5) Unfinished Business
- (6) New Business
- (7) Adjournment

The conduct of meetings of the membership shall be governed by the current edition of Robert's Rules of Order, except as modified by rules adopted by a majority of the board.

ARTICLE VII

OFFICERS

Section 1. The elected Officers of the Association shall consist of a President, Vice-President, Secretary, and Treasurer.

Section 2. All Officers shall be employees of Active member laboratories of the Association and be in good standing.

Section 3. The term of office will be initiated at the annual meeting and the elected officers will assume the duties of their office at midnight following their election.

Section 4. Vacancies. Vacancies occurring before the annual election may be filled by appointment of the Executive Board. All such appointments shall be for the un-expired term and any appointment shall not interfere with the scheduled elections for that office. Any appointment for over one-year shall constitute a full term of office.

Section 5. Terms. The same person may not hold more than one office at the same time and no two employees of one member laboratory may be an officer at any one time. In the event of an office being unfilled it is acceptable to have two officers from the same lab. Officers of ITLA will encourage the admission of new members.

Section 6. Removal. Any Officer of the Association may be removed from office by vote of two-thirds (2/3) of the membership for the following reasons.

- a. Immoral or unethical conduct in the course of business operations.
- b. Failure to abide by the by-law's of this Association.
- c. Repeated and unexcused absences from meetings.
- d. Conviction of a felony charge.

ARTICLE VIII

DUTIES AND RESPONSIBILITIES OF THE OFFICERS

Section 1. President. The President shall be the principal executive officer of the Association and shall preside at all meetings of the membership and the Executive Board. He or she shall execute all contracts requiring a seal, under the seal of the Association except where the execution thereof shall be expressly delegated by the membership or the Executive Board to some other officer or agent of the Association.

Section 2. Vice-President. The Vice-President, in the absence or disability of the president, shall perform the duties and exercise the powers of the President.

Section 3. Secretary. The Secretary shall record all votes and the minutes of all proceedings of the members and of the Executive Board, affix the same to any instrument requiring it, and when so affixed, it shall be attested to by his or her signature or by the signature of the Treasurer.

Section 4. Treasurer. The Treasurer shall have custody of the Association funds, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall prepare the budget of the Association. The Treasurer shall administer Association transactions involving the transfer of money.

ARTICLE IX

EXECUTIVE BOARD OF DIRECTORS

Section 1. The general management of the affairs and properties of the Association shall be vested in the Executive Board.

Section 2. The Executive Board of Directors shall consist of the four elected officers of the Association plus the past President if he or she does not hold another executive office, in which case the past Vice-President shall serve as the director, or the past Secretary or the past Treasurer, whichever in that order does not hold an executive officer position. During emergency situations, the Executive Board shall have all of the power and duties of the membership between meetings subject to a poll of the directors on the action to be taken with at least four directors in complete agreement on the action to be taken.

Section 3. The Executive Board shall hold office for the operating year of the Association, annual meeting to annual meeting, and will hold office until their successors have been elected or assume office. The Executive Board may fill vacancies occurring before the annual election.

ARTICLE X

NOMINATIONS

Section 1. The nomination of officers and members of the Executive Board shall be made by a Nominating Committee of 3 members of the Association at least two months before the annual meeting of the Association. Not more than one shall be on the existing Executive Board.

Section 2. The Nominating Committee's choices shall be announced in writing to the membership of the Association in the regular mailing prior to the annual meeting.

Section 3. Nominations may be received directly from the membership. Such nominations must have the consent of the nominee. Nominations from the membership should be directed to the chairman of the Nominating Committee and be in his or her hands at least five days prior to the mailing for the annual meeting or the last meeting of the fiscal year. The chairman of the Nominating Committee will so advise the Association President of additional nominations so they can be given consideration at the annual meeting. No nominations shall be received from the floor except in the event that no qualified candidates have been nominated by the foregoing procedures, or that prior candidates have become unable to serve.

ARTICLE XI

ELECTIONS

Section 1. The elected Officers of the Association shall be elected for and limited to a single two-(2) year term. The offices of President and Vice-President shall be filled in the odd-numbered years, while the offices of Secretary and Treasurer shall be filled in the even-numbered years. The terms of the President and Vice-President shall then overlap the terms of the Secretary and Treasurer to provide continuity to the Executive Board.

Section 2. The election of officers and members of the Executive Board shall take place either by a letter ballot mailed prior to the annual meeting or at the annual meeting, as the Executive Board shall dictate.

Section 3. The Nominating Committee shall count the ballots. The announcement of the election of the elected officers and members of the Executive Board will be made at the annual meeting.

ARTICLE XII MEETINGS

Section 1. The Executive Board shall designate the date and location of all meetings of the Association.

Section 2. One meeting of the year shall be designated as the annual meeting in which the election of officers shall take place. This annual meeting will be held in March.

Section 3. Special Business meetings may be called at the discretion of the Executive Board with 15 days notice given to the membership by mail for each special business meeting. An agenda of the contemplated business shall be included with each notice.

Section 4. Ten percent, (10%) of the total membership present at a designated time and place of business meetings will constitute a quorum.

ARTICLE XIII COMMITTEES

Section 1. The standing committees of the Association shall be as follows:

- 1) Membership Committee. This committee will receive and review the applications of prospective members of the Association. This committee is also responsible for recruiting new members.
- 2) Ethics Committee. This committee will be responsible for the formulation of ethical standards by which ITLA members will be bound. In addition, this committee will consider any disciplinary action which may be taken against any member and suggest to the membership what that disciplinary action should be.
- 3) By-laws Committee. This committee will put forward for the membership's consideration the by-laws by which ITLA will be bound. The committee will also consider amendments to these laws.
- 4) Regulatory Committee. This committee will be responsible for reporting to the membership any proposed or promulgated regulations they are aware of which would affect the membership.
- 5) Technical Committee. This committee will be responsible for providing the membership with new information of technological advances relative to the environmental testing field. This committee will also be responsible for scheduling presentations from vendors of instruments and supplies for the quarterly meetings.
- 6) Laboratory Advisory Committee. The acting President and a minimum of two full members are to be selected by the Association every two years to serve on this committee. Members will meet with representatives of various DEP divisions as scheduled by the Wall Experiment Station and are to report details of these meetings to the Association.
- 7) Newsletter Committee. This committee is responsible for the production of a quarterly newsletter outlying the activities of the Association and relative regulatory and technical information.
- 8) Nominating Committee-for duties please see Article X Nominations and Article XI Elections.

Section 2. The President is authorized to appoint special committees deemed necessary by the Executive Board.

Section 3. The President, subject to the approval of the Executive Board, shall appoint all committee chairman and members.

ARTICLE XIV APPROVAL, AMENDMENTS, OR INTERPRETATION OF THE BY-LAWS

Section 1. Approval. The By-laws of the Association shall require the approval of the membership by a 2/3 vote of the membership.

Section 2. Amendments. Articles may be amended by 2/3 vote of the Association members provided a copy of the proposed changes has been sent to every member of the Association at least 30 days preceding the meeting in which the members shall vote on the change, or by letter ballot. Proposed changes may be originated in the Executive Board or through a petition signed by not less than 20% of the members of the Association and presented to the President who will submit it to a vote of the membership.

Section 3. Interpretation. The decision of the voting members of the Association on any question involving interpretation of the articles of the by-laws shall be final.

ARTICLE XV CODE OF ETHICS

Section 1. Association members are committed to ensuring the integrity of their data and to meet the data quality objectives of their clients and of methods utilized.

Section 2. To provide confidential and honest professional services.

Section 3. To train employees on both the ethical and technical quality standards required.

Section 4. To adhere to applicable environmental guidelines in operating their laboratories.

Section 5. To adhere to applicable health and safety standards for their employees.

Section 6. To work with the MADEP to develop reasonable and responsible laws and regulations.

Section 7. To guard against advertisements, which are misrepresentative.

Section 8. To provide adherence to the business ethics embodied in this code.

ARTICLE XVI DEDICATION OF ASSETS UPON DISSOLUTION

Section 1. Upon dissolution of the Association and the discharge of its debts and the settlement of its affairs, all funds, and property of the Association remaining thereafter shall be conveyed to one or more non-profit charitable organization as approved by the Executive Board. If the Executive Board fails to reach consensus within one (1) year of the decision for dissolution, such assets shall then be disposed of in any such manner as may be decreed by a court of law of the Commonwealth of Massachusetts.

ARTICLE XVII INDEMNIFICATION

Section 1. The corporation shall indemnify any and all of its directors or officers or former directors or officers against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers of the corporation except in relation to matters as to which such director or officer shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty.