

A BOARD GUIDE

Fiduciary Responsibilities

Director and Officer Duties

The duties every director—and now every officer—owes the company, how the business judgment rule protects them, and how the landscape keeps shifting

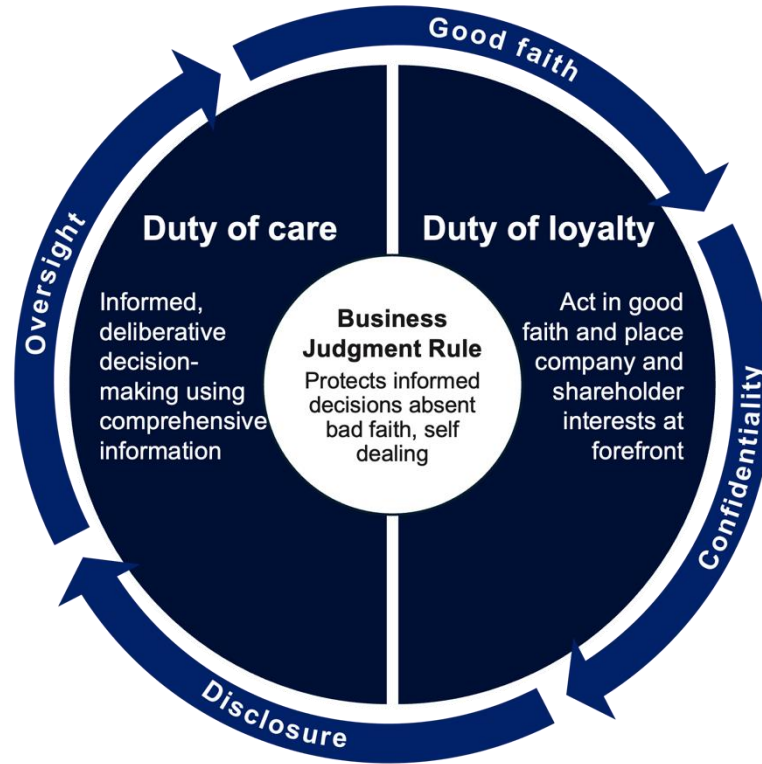
Fiduciary Duty Landscape for Directors Post-Boeing

Oversight

- Part of duty of care; *Boeing* highlighted importance of “mission critical” risk management and held board liable for lack of monitoring and quality risk oversight
- AI increasingly qualifies as a ‘mission-critical’ risk when embedded in core operations, compliance, or safety functions.



Delaware Fiduciary Duties



Good faith

Component of duty of care and loyalty providing protection for directors who make decisions and take actions in best interests of the corporation

Confidentiality

Directors must keep corporate information confidential, including Board communications and deliberations. Shareholders not entitled to all information

Disclosure

Directors must communicate honestly with shareholders, including full and fair disclosures. Does not obligate Board to provide all information to shareholders (materiality standard)

Duty of Care

Decide on an informed basis—care is judged by your process, not hindsight

- **Use comprehensive information.** Consider the material facts a reasonable director would want.
- **Deliberate, don't rubber-stamp.** Preparation and genuine discussion are the substance of care.
- **Rely reasonably on others.** Good-faith reliance on management, counsel, and experts is protected.
- **Document the process.** A record of an informed, deliberate process is the best protection.

THE STANDARD

Care is about *how* you decided—an informed, deliberate process—not whether the outcome was right.



Duty of Loyalty

Put the company first—good faith, and no divided loyalty

- **Company and shareholders first.** Act in their interests, never for personal gain.
- **No self-dealing.** Don't transact with the company on terms that favor you.
- **No corporate opportunities.** Don't take an opportunity that belongs to the company.
- **Disclose and recuse.** Surface conflicts, then step out of the discussion and the vote.

WHEN A CONFLICT ARISES

Disclose it fully, leave the discussion, don't vote, let the record reflect it, and consider an independent committee.



Duty of Oversight

Part of the duty of care—and the fastest-moving area of the law

- **Build and watch the system.** Make a good-faith effort to implement reporting and monitoring—and use it.
- **Focus on “mission-critical” risk.** Oversight is judged hardest on risks central to the business and compliance.
- **Don’t ignore red flags.** Liability turns on a sustained failure to oversee, or disregarding warnings.
- **It now reaches officers.** Officers owe the same oversight duty for their areas of responsibility.

THE VERNACULAR TO KNOW

“Mission-critical risk” — the phrase courts now use to decide when a board should have been watching more closely.



The Business Judgment Rule

Courts protect informed, good-faith decisions

- **Be informed.** Gather and weigh the material facts.
- **Be disinterested.** No personal stake; conflicts disclosed and managed.
- **Act in good faith.** No conscious disregard of duty.
- **Document it.** A record that shows all of the above.

THE PROTECTION

Most informed decisions are protected ***absent bad faith or self-dealing.***
Courts won't second-guess a decision made the right way.



Accountability Keeps Expanding

Caremark's duty of oversight has reached further with each major case

1996

Caremark

2019–21

Blue Bell & Boeing

2023

McDonald's

Establishes the duty to make a good-faith effort to oversee and monitor.

Extend oversight to “mission-critical” risk—food safety, then airplane safety.

Clarifies the duty of oversight applies to officers, not only directors.

The takeaway: the same “mission-critical” reasoning is surfacing in newer suits (e.g., the Fox derivative litigation)—and now reaches officers.



Recent Developments

Where the duties are heading—and what boards should do

Officers are now on the hook

Senior officers owe the same oversight duty—within their areas of responsibility.

“Mission-critical” is spreading

The vernacular is appearing beyond Boeing, in newer suits across industries.

Process is the protection

Informed, documented, good-faith decisions keep the business judgment rule in place.

Oversight is an active mandate

Boards oversee compliance, respond to red flags, and engage investors on a “clear day.”



What Stands Between a Director and Liability

Four layers—anchored by good process

1. Good process

Informed, disinterested, documented decisions earn the business judgment rule.

2. Charter exculpation

Charters may shield directors—and, since 2022, certain officers—for duty-of-care breaches (not loyalty or bad faith).

3. Indemnification

Companies may indemnify for expenses and liabilities incurred in the role, within statutory limits.

4. D&O insurance

Coverage backstops defense costs and liabilities when indemnification falls short.



A Practical Checklist

Habits that keep duty—and the business judgment rule—on your side

Am I prepared?

Read the materials; come with questions, not just attendance.

Am I conflicted?

Surface any personal interest early—and step aside if so.

Are we informed?

Insist on the facts, alternatives, and expert input the decision needs.

Is risk being watched?

Confirm the company surfaces mission-critical risk to the board.

And always: *would the record show we acted in good faith, on an informed basis, in the company's best interest?*