

Bankruptcy and the Board: Risks, Rules & Realities

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Fiduciary duty of care: practice tips

- remain engaged and informed
- insist upon current information
- ask tough questions (contingency plans, risks and consequences of failure)
- carefully monitor financial condition (waning solvency)
- memorialize deliberations

Fiduciary duty of loyalty: practice tips

- put company's interests first
- scrutinize your actions from the perspective of a potential plaintiff

“zone of insolvency”: practice tips

- follow your gut instincts
- err on the side of assuming you are farther along the continuum than management presents

recapitalizations: practice tips

- model the pro forma capitalization
- beware of conflicts between early investors and later investors

pay-to-play: practice tips

- model the pro forma capitalization
- beware of conflicts between participants and non-participants

down rounds: practice tip

- focus on process as much as result

resignation: practice tip

- think of serving as a director of a troubled company like parenting a troubled teenager