



# THE OKLAHOMAN

Q&A with Jake Krattiger

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## **Corporate board members, directors face potential personal liability**

**Q: Does joining a corporate board impose any personal liability on board members?**

A: Joining a board doesn't impose any personal liability on an individual per se, but improper actions taken while serving on a board can certainly subject an individual to personal liability. Even if a board member is ultimately exonerated, the monetary and reputational costs of merely being sued for corporate misconduct can be substantial. It's critical for individuals serving on a board to understand their legal duties and to avoid any actions that would justify a suit against them in their individual capacity.

**Q: What is the standard for finding directors and officers liable for mismanagement?**

A: Directors of corporations are subject to three duties, each of which is derived from a director's general fiduciary duty to her company. The duty of care requires a director to act with the care a person in a similar position would reasonably believe to be appropriate under similar circumstances. The duty of loyalty requires a director to act in good faith and in a manner the director reasonably believes to be in the organization's best interests, always exercising independent judgment. Finally, the duty of obedience requires directors to perform their responsibilities in accordance with applicable laws and the terms of the entity's charter or articles of incorporation. Failure to fulfill any of these duties potentially could result in a director being held personally liable for his or her actions, especially if the director knew or intended for his or her conduct to be wrongful.

**Q: How can board members protect themselves from corporate wrongdoing and litigation costs?**

A: Demonstrating compliance with the elements of the "business judgment rule" is the best defense to any allegation of director misconduct. This rule protects a director from personal liability to a corporation and its shareholders for even erroneous or harmful actions if the director acted in good faith, on an informed basis, and with the rational, honest belief that he or she acted in the entity's best interests. However, this rule doesn't provide impenetrable cover for all forms of misconduct. Examples of how a director can breach his duties include: failing to become informed of all material information before making decisions, failing to monitor the entity's affairs, and failing to exercise prudent stewardship of the entity's resources. Under any of these examples, personal liability may follow.