

The Fiduciary Duties of Directors of Troubled U.S. Companies: Emerging Clarity

May 1, 2008 | Articles & Books

When a company finds itself hard-pressed to pay its debts, its officers and directors often must make difficult decisions, frequently under challenging constraints. Many of those choices require a balancing of interests among shareholders, creditors and other constituencies. Officers and directors must make those choices while being guided, at all times, by their duties to the corporation and its stakeholders. In two recent decisions that should provide both greater clarity and comfort to corporate decision-makers, the Delaware Supreme Court addressed many issues relating to the duties of officers and directors. This article examines the legal responsibilities and potential liabilities of directors of insolvent and nearly-insolvent corporations in light of those recent decisions. It also discusses the underlying ethos of the decisions, and briefly contrasts it to those of other legal systems.

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