

In The News

Bill Ide, Michael Kelly, Amanda Leech Write Governance Article for Columbia Law School's *Blue Sky Blog*

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Bill Ide, Michael Kelly, and Amanda Leech wrote an article for Columbia Law School's *Blue Sky Blog* titled, "How Boards of Directors Should Protect Against the Rising Storm," offering directors best practices to avoid oversight failures that may lead to legal repercussions.

"Prosecutors, regulators, investors, and the media are increasingly holding directors and officers accountable, while special interest groups, plaintiffs' lawyers, and activist hedge funds are constantly looking for their next targets.

This new reality requires directors to be aggressive in overseeing legal, ethical, and reputational risks that, in many cases, prior generations of boards did not even have to face. Those risks include cybersecurity, data breaches, data privacy, ESG issues, and false rumors that can spread almost instantaneously and destroy a company's reputation. And thanks to social media, directors and their companies are subject to more scrutiny than ever before.

Historically, the legal landscape has been favorable for boards of directors. Directors could be sued in civil actions for breaching their fiduciary duties of loyalty and care. However, the business judgment rule created a presumption that directors were

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acting in good faith, a hurdle generally difficult to overcome.

But things are changing. Last year, the Delaware Supreme Court allowed a derivative lawsuit against directors of Blue Bell Creameries USA, Inc., to proceed based on allegations that the directors failed to implement and monitor – at the board level – a reasonable system to oversee whether the company’s ice cream was safe for consumers.”

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