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Board Duties: Reliance on Experts Is NOT a Safe Harbor – Keep Your Eyes Open!

Here's a tip from the sixth edition of our popular publication [*The Public Company Handbook*](#), which is an easy-to-read guide that provides practical insights regarding legal and other board management issues facing public—or soon-to-be-public—companies.

This tip involves reliance on experts. As *Smith v. Van Gorkom* and *Disney* show, a director has traditionally been able to demonstrate good faith and due care by relying on reports prepared by expert advisors to the company, such as bankers and accountants, regardless of the director's personal qualifications. There are limits, however, to the safe harbor for a director who "should have known better."

In the 2004 *Emerging Communications* case, a Delaware court determined that an outside director who, as an investment banker, possessed special expertise had no right to rely on a fairness opinion of the company's independent investment banker. The court found that the director violated his duties of loyalty and/or good faith in approving a transaction because, given his background, he should have known that the transaction was unfair to minority shareholders.

The key takeaway: Although as a director you may generally rely on a report prepared by a third-party advisor, if you possess special knowledge or skill, you may not "leave it at the door" of the Boardroom! In your area of expertise, you may be held to a higher standard than your peers.

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