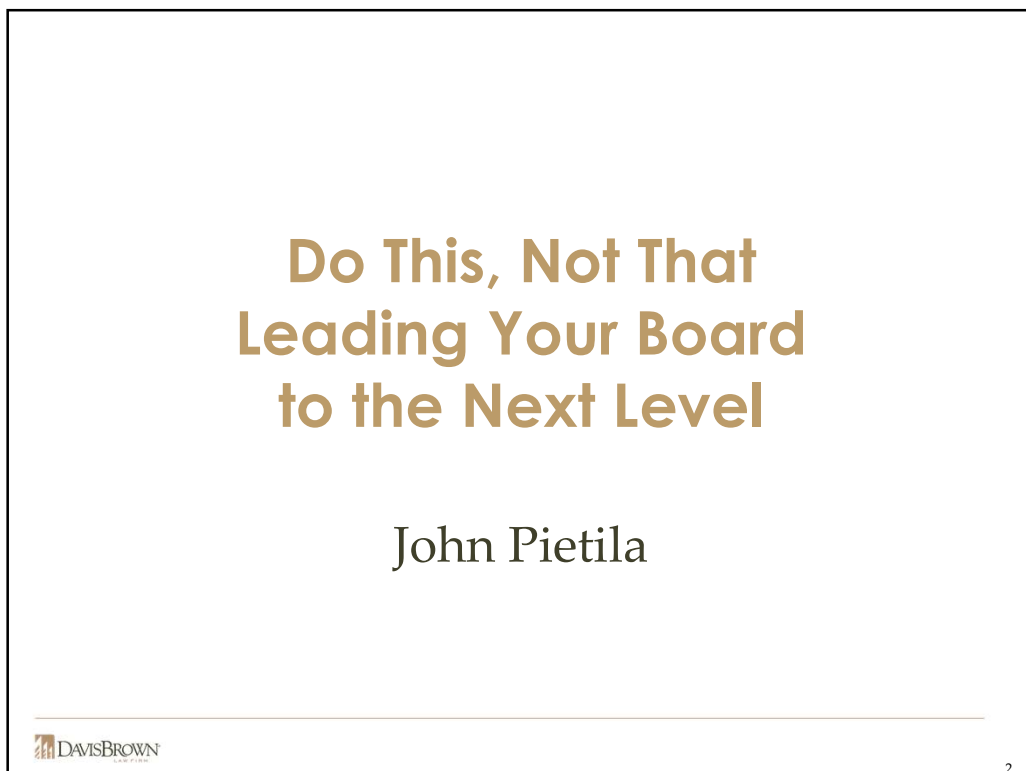




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Disclaimer

This presentation is not intended to provide legal advice with respect to any particular situation, and no legal or business decision should be based solely on its content



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Introduction

- This presentation discusses:
 - Fundamentals of corporate governance
 - The proper governance role of the board of directors
 - Key areas of board leadership
 - The importance of a strong board culture
- *Feel free to ask questions as we go ...*



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The Fundamentals

- Duty of Care
 - Directors must be adequately informed and act with reasonable care when acting or making decisions for the company
- Duty of Loyalty
 - Directors must act and make decisions in the best interest of the company, not in their own personal interest

The Fundamentals

- The business judgment rule
- Exculpation
- Indemnification
- D & O Insurance

Bottom Line

- The job description for directors
 1. Work hard
 2. Be honest

Just a Minute

- Well kept corporate minutes
 - Serve as official record of corporate decisions
 - Reflect director dissent, where appropriate
 - Offer guidance for future board action
 - Serve as evidence of directors' compliance with fiduciary duties
 - Reduce misunderstanding concerning the board's intent

Bottom Line

- Minutes should be a summary of board action, not a virtual transcript
- Minutes should reflect the specific decisions made at a meeting, whether they involved a decision to take action or not take action
- The length of the minutes should bear a direct relationship to the importance of the meeting agenda

Who is Running the Business?

- Directors
 - Hire management
 - Supervise management
 - Make major decisions for the company

Who is Running the Business?

- Management
 - Run the day-to-day operations of the company
 - Propose strategies and objectives
 - Implement corporate plans

Bottom Line

- Directors should:
 - Focus on overseeing the overall business, not managing the daily operations
 - Regularly attend and participate in board meetings
 - Make sure management prepares adequate reports before board meetings and that the board receives those reports well beforehand

Bottom Line

- Directors should:
 - Consult with counsel and experts, as needed
 - Disclose and manage conflicts of interest
 - Develop and maintain a leadership culture that contributes to the continuous success of the enterprise

Bottom Line

- Directors should avoid:
 - Micromanaging
 - Interfering with or blurring lines of authority
 - Over-dependence or over-deference to management
 - Losing touch with ownership

Where is our Focus?

- Directors should avoid:
 - Focusing on the past
 - Reviewing, rehashing, re-doing
 - Focusing on the internal only
 - Focusing on the trivial
 - Lack of focus
 - Excessive risk taking
 - Un-businesslike avoidance of risk

Time and Attention

- Key areas of board leadership
 - Oversight of strategic planning to create long-term sustainable value
 - Risk management and crisis preparedness
 - Management performance, compensation and succession
 - More effective engagement with owners
 - Board succession planning

Oversight of Strategic Planning

- A board should:
 - Support a focus on long-term strategy and prudent risk taking
 - Approve strategic and operating plans and related budgets, after active discussion with management and board deliberation
 - Monitor management's performance to determine progress in relation to approved plans and budgets

Oversight of Strategic Planning

- A board should:
 - Regularly review and assess management's strategies, decisions and underlying assumptions
 - Ask appropriate questions
 - How are we making (or losing) money?
 - When will we get our investment back?
 - What is our plan if this does not work as expected?

Risk Management and Crisis Preparedness

- A board should:
 - Determine with management the level of risk exposure the company is willing to accept with regard to its strategies and operations
 - Monitor management's efforts and the processes and controls related to the identification, review, management and mitigation of risk

Risk Management and Crisis Preparedness

- A board should:
 - Understand significant internal and external risks to the business and how the company is prepared to respond
 - Ensure the board can act effectively when a crisis occurs

Management Performance, Compensation and Succession

- A board should:
 - Select the GM/CEO and clearly articulate the scope of authority delegated to management, as well as performance expectations
 - Monitor the performance of the GM/CEO and other executive officers
 - Advise and coach management as appropriate, by providing the benefit of the board's collective expertise, not by dictating actions clearly within management's purview

Management Performance, Compensation and Succession

- A board should:
 - Plan for succession of the key executive officers, under both normal and emergency circumstances
 - Replace the GM/CEO, when circumstances warrant
 - Determine appropriate incentives to attract and retain well-qualified management and to align the efforts of management with performance expectations

Engagement with Owners

- A board should:
 - Work with management to inform and engage with shareholders or members about corporate strategy, key board decisions and the rationale for those decisions
 - Periodically review the company's engagement efforts to determine what is working well and which processes could be improved
 - Consider and address appropriate shareholder or member inquiries or proposals



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Board Succession Planning

- A board should:
 - Recruit qualified directors with relevant expertise and the ability to commit the requisite time
 - Consider board refreshment mechanisms, including age and term limits
 - Seek directors that complement and balance one another's differing perspectives, skills and experiences



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Board Succession Planning

- A board should:
 - Organize the work of the board, including determining board agendas and information needs, taking care to ensure the most important matters receive priority attention
 - Provide compensation for directors that fairly reflects the time and effort required
 - Evaluate and discuss board and director effectiveness on a regular basis

Minding Your Culture

- Hallmarks of a strong(er) board culture:
 - Board is viewed as a strong yet generally supportive counterbalance to management
 - Tone and quality of relations with management and among directors reflects mutual respect and collegiality and supports open and productive discussion

Minding Your Culture

- Hallmarks of a strong(er) board culture:
 - Consensus can be readily achieved after full and informed discussion
 - Independent viewpoints are respected and valued
 - Confidentiality is respected and discretion is practiced



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