The Business Judgment Rule: Partial Armor for Directors and Officers

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A shareholder sues the board of directors derivatively on behalf of the corporation. The corporation or directors seeks legal representation to defend them from individual liability. The practitioner instantly thinks of the business judgment rule, the go-to defense in shareholder derivative litigation and various other director and officer liability lawsuits. It's common knowledge that the rule provides some degree of protection against many such actions. But when can this rule be invoked to shield from second-guessing or liability? How much armor does it really afford? There are some important questions the practitioner needs to consider regarding which party bears the burden of proof and how deferential the applicable law will be to his or her clients.