

BRILL STYBEL CASE

HOW SHOULD THIS “BRILLIANT” BOARD
STRUCTURE ITSELF FOR OVERSEEING
MANAGEMENT’S RESPONSES TO
CYBERSECURITY RISK?

Brilliant Construction is a privately held construction company that was once a third-generation \$150 million family business. The family sold its controlling interest to Heritage Private Equity.

Heritage is looking at it as an investment for the next 2-4 years. Their goal is to grow the business and then sell it to a larger construction company.

Brilliant Construction is the nation's leading construction company specializing in metal ceilings. At one end of the customer market, the company bids on the construction of specialty metal ceilings designed for prisons around the world. These metal ceilings keep inmates from escaping. At the other end are beautifully designed metal ceilings that are featured in museums, airport terminals, and other prestigious locations.

THE BRILLIANT CONSTRUCTION BOARD

Brenda Woods is CEO of Brilliant and a member of its Board of Directors. It was Brenda who inspired the Woods family to take cash out of the

business. She has been pleased with the decision and has a positive relationship with Fred Waverly. Fred is Chair of the Board and a Senior Partner at Heritage.

There are seven Board members, including Brenda and Fred. June Wagner is the only external Board member. The other four Board members are Partners of Heritage. June is Chair of the Audit Committee.

EXPAND THE ROLE OF THE AUDIT COMMITTEE?

After one Board meeting, Brenda, Fred, and June are having dinner together. June is a retired partner from a Big Four CPA firm and serves on two other Heritage portfolio company boards.

June mentioned recent newspaper articles about ransomware cyber-attacks. She attended a cybersecurity webinar given by her former CPA firm. The cybersecurity expert predicted that ransom ware attacks would increase, and the key targets would be firms like Brilliant Technologies.

June observed that there is nobody on the Board with cybersecurity expertise. There is nothing on the agenda to focus on cybersecurity risk management.

June expressed the belief that the Audit Committee's mission should expand to include reviewing cybersecurity risk. After all, the Audit Committee looks at how risk is managed by management.

June stated that the Board's failure to review management's effectiveness in cybersecurity would amount to "professional malpractice."

She stated that the Audit Committee should have the mandate to retain the services of an external cybersecurity consulting firm.

SHOULD CYBERSECURITY BE IN THE AUDIT COMMITTEE MANDATE?

Brenda responded by saying cybersecurity is only one risk facing Brilliant Construction. Other risks facing Brilliant Construction include pandemics, climate change, Artificial Intelligence, Robotics, and unionization efforts. There are likely other risks that the company should consider. Is the Audit Committee the proper forum for all risk management?

Brenda suggested that the full board spend at least one day a year focusing on risk. In an ideal world. The CEO and her staff would be spending time on these issues as well. But “we get so focused on day-to-day operations. We don’t do it. Why not have the Board do it and we attend the meeting?”

HOW ABOUT A RISK COMMITTEE?

June countered that the full Board agenda is already jammed. “If you don’t want the Audit Committee focusing on cybersecurity, why not establish a new Committee called The Risk Committee?”

Fred Waverly had been silent during this discussion. Now he was moved to say to June, “We have seven Directors on this Board. Our

Board members are already overworked. If we add another committee, we need to increase the size of the Board from seven to nine. That's an additional cost and sets a precedent for our other portfolio company Boards. I'm not sure my partners will be receptive to expanding the Board size.

Fred then said, "Risk is such a broad topic. How can we structure a full board meeting focusing on risk without boring or overwhelming our directors? The reality is we Directors don't know what questions to ask."

By the end of the dinner, no consensus was reached. In the morning, Fred contacts you and summarizes the meeting. He asks for your opinion.

Xxxxx

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