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## Judicial Update

# Nevada Supreme Court Finds Knowing Violation of Regulations May Constitute Breach of Fiduciary Duty

By [Sean Donahue](#)

In *State Comm'r of Ins. v. Chur*, 2025 Nev. LEXIS 77 (*Chur II*), the Nevada Supreme Court found that a knowing violation of administrative regulations may constitute a knowing violation of law under NRS 78.138(7)(b)(2). 78.138(7) provides that a director is not individually liable to the corporation or its stockholders for any damages unless:

- a) the presumption of the business judgment rule in 78.138(3) has been rebutted; and
- b) it is proven that:
  - (1) the director's act or failure to act constituted a breach of his or her fiduciary duties as a director; and
  - (2) such breach involved intentional misconduct, fraud or a *knowing violation of law*.

In this case, the court acknowledged that a violation of administrative regulations may constitute violations of law under NRS 78.138(7)(b)(2) if it is proved that the directors violated the regulations knowingly.

### Overview of the Court's Decision

This case arose from a lawsuit brought by the Commissioner of Insurance for the State of Nevada in its capacity as a receiver against directors of an insurance company. The directors were dismissed as defendants by the district court when the court denied the commissioner's motion for leave to amend the complaint. The commissioner sought leave to amend due to a change in law resulting from the court's decision in *Chur v. Eighth Judicial Dist. Court of Nev.*, 136 Nev. 68 (2020) (*Chur I*). *Chur I* changed the law regarding pleading standards for tort claims against directors. In *Chur II*, the court held that the district court abused its discretion in denying the commissioner's motion for leave to amend where an intervening decision by the court in *Chur I* changed the law.

In *Chur I*, the court held that directors cannot be held personally liable for gross negligence in the performance of their fiduciary duties. Personal liability may arise only from intentional misconduct, fraud or a knowing violation of law. Because the commissioner had only pleaded gross negligence in *Chur I*, the court directed the district court to grant the directors' motion for judgment on the pleadings resulting in their dismissal from the case. The court deferred to the district court whether to grant the commissioner leave to amend the complaint. As discussed above, the commissioner filed a motion for leave to amend the complaint.

The amended complaint alleged that the directors breached their fiduciary duties and that the business judgment rule did not protect those breaches. The commissioner asserted that the breaches involved intentional and knowing misconduct and/or knowing violations of law. The commissioner alleged that the conduct of the directors violated several Nevada statutes and regulations causing substantial damages. As discussed above, the district court denied the commissioner's motion for leave to amend.

In *Chur II*, the court held that leave to file an amended complaint should have been granted in light of the change in law pronounced in *Chur I*. It indicated that *Chur I* effected a material change in the law and that the district court should have permitted the amendment. The court concluded that the commissioner's proposed amended complaint was not futile because it sought to plead a permissible claim of intentional misconduct, where the previous complaint did not plead the breach of fiduciary duty claim under the standard that NRS 78.138(7) demands, as set forth in *Chur I*.

### Key Takeaways

As we have indicated in a recent [client alert](#), the plain text of the Nevada statute will control with Nevada judges interpreting the statute when necessary. This ruling is a good example of the Nevada Supreme Court interpreting what is meant by the "knowing violation of law" prong of NRS 78.138(7)(b)(2). In finding that a violation of administrative regulations may constitute a knowing violation of law for purposes of the statute, the court has added additional clarity to the meaning of the language in 78.138. As the case law in Nevada continues to [develop](#), Nevada corporations and companies considering [reincorporating](#) in Nevada should continue to monitor Nevada legal developments.

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*If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings lawyer:*

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