
Delaware Court of Chancery Holds That Duty of Oversight Imposed on Directors Applies Equally to Officers

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Since the landmark decision *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del.Ch. 1996) (“Caremark”), Delaware courts have imposed on directors of companies the duties of loyalty, care, and oversight. In an important decision issued on January 25, 2023, the Chancery Court recognized that the duty of oversight imposed on corporate directors applies equally to officers and that corporate officers must (1) ensure that proper information and reporting systems exist within the corporation and (2) appropriately address or escalate “red flags” suggestive of wrongdoing. The court ruled that the plaintiffs in the derivative stockholder litigation stated claims against McDonald’s head of human resources both for his alleged failure to exercise proper oversight as a corporate officer, which required him to “address or report upward about any red flags regarding sexual harassment and misconduct at McDonald’s,” and for an alleged breach of the duty of loyalty, stemming from his own alleged sexual misconduct. The court also held that like an officer’s duty of oversight, establishing a breach of the officer’s duty of oversight requires pleading, and later proving, bad faith.

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