

# Delaware Court Denies Dismissal of Caremark Oversight Claims in Teligent Case, Highlighting Board and Officer Compliance Obligations

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By: Jessica Bonadurer

In *Giuliano v. Grenfell-Gardner et al.* (Del. Ch. Sept. 2, 2025), the Delaware Court of Chancery considered fiduciary oversight claims under the *Caremark* doctrine arising from alleged deficiencies in board- and officer-level oversight at pharmaceutical company Teligent, Inc. The court denied, in substantial part, a motion to dismiss claims alleging that former directors and officers failed to implement and maintain systems to oversee FDA compliance, a risk characterized as central to the company's operations.

The plaintiff, acting through a bankruptcy plan administrator appointed after Teligent's Chapter 11 filing, was the company's successor in interest. Once the case was realigned following bankruptcy, the claims were brought directly by the company rather than derivatively. As a result, the complaint was not subject to demand requirements, and the court assessed the allegations under the Rule 12(b)(6) "reasonable conceivability" standard.

## Board-Level Oversight and Information Systems

The principal claims against the director defendants were brought under the first prong of *Caremark*, alleging an "utter failure" to implement a board-level system for monitoring regulatory compliance. The court emphasized that, while Delaware law affords boards substantial discretion in structuring oversight mechanisms, *Caremark* imposes a baseline obligation: directors must make a good-faith effort to establish reasonable systems to monitor risks that are central to the company's business.

Accepting the well-pleaded allegations as true, the court concluded that the plaintiff adequately alleged such a failure. The complaint described a prolonged period during which the company allegedly lacked a board committee responsible for FDA compliance, formal reporting protocols requiring management to elevate regulatory issues to the board, and training systems designed to ensure employee awareness of core compliance obligations. The court rejected the argument that sporadic or management-driven communications sufficed, explaining that a reporting framework

allowing management to decide whether and when to report on compliance matters does not satisfy *Caremark's* minimum requirements.

### **Red Flags and the Limits of Board Liability**

By contrast, the court dismissed claims under *Caremark's* second prong, which requires allegations that directors consciously disregarded known “red flags.” Although FDA warning letters and inspection findings were communicated to the board at various points, the court found that the allegations supported an inference that the board was not fully informed of their significance. The opinion highlighted the analytical tension between information-systems and red-flags theories, noting that strong allegations of deficient reporting structures can undermine an inference that directors knowingly disregarded compliance issues.

### **Officer Oversight Obligations**

The court also addressed oversight claims against former officers. Claims against the CEO and Chief Scientific Officer were permitted to proceed, based on allegations that FDA compliance fell within their respective areas of responsibility and that they failed to report known regulatory issues to the board. By contrast, claims against the CFO were dismissed, as FDA compliance did not fall within the CFO's core responsibilities and the alleged nondisclosures concerning remediation costs were not plausibly connected to the company's regulatory oversight failures. A separately pleaded duty-of-care claim was dismissed in its entirety, consistent with Delaware law requiring a showing of bad faith to sustain oversight liability.

### **Key Takeaways**

The decision reinforces that Delaware courts continue to examine carefully whether boards have implemented meaningful oversight systems for risks that are fundamental to a company's operations. It also confirms that officers may face oversight liability where compliance responsibilities fall squarely within their functional roles. For companies operating in heavily regulated industries, the opinion underscores the importance of clearly defined reporting structures, disciplined escalation of compliance issues, and governance frameworks that align oversight mechanisms with the organization's most significant regulatory risks.

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## **Jessica Bonadurer**

Associate

[jbonadurer@jenner.com](mailto:jbonadurer@jenner.com)

+1 312 840 7256

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