

# Application of Caremark Duties to Officers

## Publications

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In the landmark case *In re Caremark International Inc. Derivative Litigation* (1996), the Delaware Court of Chancery clarified the standard of liability for oversight failures by directors. Specifically, the Delaware Court of Chancery articulated a high pleading standard for breach of fiduciary duty claims based on an oversight failure, requiring (in general) allegations of "systematic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system exists."

On January 25, 2023, the Delaware Court of Chancery extended Caremark type duties, previously focused to corporate directors in Delaware, to officers of Delaware corporations. In particular, in *In Re McDonald's Corp. S'Holder Litig.*, the court declined to dismiss the claims of the plaintiff alleging a breach of Caremark duties by a corporate officer, finding that corporate officers have the duty of oversight to an equal, if not greater, extent than directors. The decision creates some uncertainty as to the scope of such duty as applied to officers of a Delaware corporation.

However, the court suggested that the duty of oversight for an officer could be more limited than the duty of oversight as applied to a director. It noted that the oversight role of directors is holistic, whereas officers are often responsible for only certain areas, and thus their oversight responsibility may be limited to those areas. The breadth of oversight duties for an officer depends, however. The Court of Chancery noted, "some officers, like the CEO, have a company-wide remit. Other officers have particular areas of responsibility, and the officer's [Caremark] duty only applies within that area[.]"

*In Re McDonald's* creates a new risk profile for Delaware corporate officers. We expect corporate officers will be named more frequently as defendants in derivative complaints alleging oversight failures. Officers should remain diligent to (among other things) identify for red flag concerns, including potential misconduct perpetuated by other officers or employees. Officers (in combination with the board) should ensure the company has implemented systems for reporting material red flags and concerns. We will continue to monitor and report on further developments in this area.

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