

December 18, 2023

Court of Chancery Emphasizes High Bar for Oversight Claims Against Officers

On December 14, 2023, the Delaware Court of Chancery in *Segway, Inc. v. Cai* granted a motion to dismiss duty of oversight claims that a company brought against its former president. The court's decision is the first to analyze duty of oversight claims against officers after the Court of Chancery's decision in *McDonald's*, which for the first time held that officers owe a duty of oversight.

In *Segway*, the court held that the plaintiff failed to allege sufficient facts to support a reasonable inference that the former executive acted in bad faith by ignoring potential issues with customers and a resulting increase in the Company's accounts receivable, and by failing to address or advise the board of these issues. In so holding, the court stated that *McDonald's* did not "craft a lower standard for oversight claims brought against officers" as compared to directors, and reiterated that a *Caremark* claim is "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment."

According to the court, at a minimum, a plaintiff pursuing an oversight claim against an officer would need to demonstrate that the officer failed to make a good-faith effort to monitor central compliance risks within such officer's remit that pose potential harm to the company or others. Additionally, the company in *Segway* sued its former president directly. We continue to expect that shareholder class action suits asserting officer oversight claims will not become prevalent because officer oversight claims remain the purview of the Board absent unexpected conflicts.

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